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115TH CONGRESS
2D SESSION

H. R. 6080

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, the Labor-Management Reporting and Disclosure Act, 1959, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2018

Mr. SCOTT of Virginia (for himself, Mr. SABLAN, Mr. TAKANO, Mr. ESPAILLAT, Ms. BONAMICI, Ms. WILSON of Florida, Mr. POCAN, Ms. DELAURO, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. GARAMENDI, Mr. DESAULNIER, Ms. JUDY CHU of California, Ms. SCHAKOWSKY, Ms. NORTON, Mr. CICILLINE, Mr. KHANNA, Mr. BRADY of Pennsylvania, Mr. NORCROSS, Ms. ROYBAL-ALLARD, Mr. CUMMINGS, Mrs. WATSON COLEMAN, Mrs. DAVIS of California, Mrs. NAPOLITANO, Mr. NADLER, Mr. PALLONE, Ms. SÁNCHEZ, Ms. SHEA-PORTER, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. LOWENTHAL, Ms. HANABUSA, Mr. ELLISON, Mr. AL GREEN of Texas, Mrs. DINGELL, Mr. LAMB, and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, the Labor-Management Reporting and Disclosure Act, 1959, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Workers' Freedom to Negotiate Act of 2018''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Labor Relations Act (29 U.S.C. 151 et seq.) was enacted to encourage the practice of collective bargaining and to protect the exercise by workers of full freedom of association in the workplace. Since its enactment in 1935, tens of millions of workers have bargained with their employers over wages, benefits, and other terms and conditions of employment and have raised the standard of living for all workers.

(2) According to the Bureau of Labor Statistics, union members earn 25.6 percent more than workers who are not covered by a collective bargaining agreement. Workers who are represented by a union are 28 percent more likely to be offered health insurance through work and nearly 5 times more likely to have defined benefit pensions. The wage differential is significant for women and people of color. African-American union members earn 25 percent more than African-American workers who are not covered by a collective bargaining agreement, and Latino union members earn 42.6 percent more

than Latino workers who are not covered by a collective bargaining agreement. Women union members earn 30 percent more than women who are not covered by a collective bargaining agreement, and the wage gap between men and women is much smaller at workplaces covered by a collective bargaining agreement because collective bargaining agreements ensure the same rate is paid to workers for a particular job without regard to gender. The wage and benefit gains achieved through collective bargaining agreements benefit both workers and their communities.

(3) Unions and collective bargaining ensure that productivity gains are shared by working people. The decline in the percentage of workers covered by collective bargaining has contributed to skyrocketing income inequality and wage stagnation for the average worker.

(4) The National Labor Relations Act protects the right of workers to join together with their coworkers in concerted activities for their mutual aid or protection. This protection applies broadly to all concerted activities by workers aimed at improving the terms and conditions of their employment or aiding each other in any way, regardless of whether

workers are seeking to form a union or engage in collective bargaining with their employer.

(5) The Act protects the right of workers to discuss issues like pay and benefits without retaliation or interference by employers. However, the awareness of workers regarding their rights under the Act is lacking, due in part to the absence of any legally required notice informing employees of the rights and responsibilities under the Act. Many employers maintain policies that restrict the ability of workers to discuss workplace issues with each other, directly contravening these rights. Research shows that more than one-half of workers report that their employers have policies that prohibit or discourage workers from discussing pay with their coworkers. These policies and practices impede workers from exercising their rights under the Act and impair their freedom of association at work.

(6) Retaliation by employers against workers who exercise their rights under the National Labor Relations Act persists at troubling levels. Employers routinely fire workers for trying to form a union at their workplace. In one out of 3 organizing campaigns, one or more workers are discharged for supporting or joining a union.

(7) The current remedies are inadequate to deter employers from violating the National Labor Relations Act. The remedies and penalties for violations of the Act are far weaker than for other labor and employment laws. Unlike other major labor and employment laws, there are no civil penalties for violations of the National Labor Relations Act. Workers cannot go to court to pursue relief on their own and must rely on the National Labor Relations Board to prosecute their case. Should the Board decline to prosecute for any reason, aggrieved workers have no other remedy.

(8) Unlike orders of other Federal agencies, the orders of the National Labor Relations Board are not enforced until the Board seeks enforcement from the Court of Appeals. As far back as 1969, the Administrative Conference of the United States recognized that the absence of a self-enforcing agency order imposes wasteful delays in the enforcement of the National Labor Relations Act, and recommended that the Board's orders be made self-enforcing like those of other agencies. Congress did not act upon this recommendation, and delays in the Board's enforcement remain a problem undermining the effectiveness of the Act.

(9) Many workers do not currently enjoy the protections of the National Labor Relations Act because they are excluded from coverage under the Act or interpretations of the Act.

(10) Too often, workers who choose to form unions are frustrated when their employers use delay and other tactics to avoid reaching an initial collective bargaining agreement. Estimates are that in as many as half of new organizing campaigns, workers and their employers fail to reach an initial collective bargaining agreement.

(11) While the National Labor Relations Act guarantees workers the right to strike, courts have permitted employers to ''permanently replace'' workers who exercise their right to strike. This is contrary to Congress's intent in enacting the National Labor Relations Act and has led to confusion amongst workers regarding to their right to strike.

(12) Hearings under section 9 of the National Labor Relations Act (29 U.S.C. 159) exist to assure to employees the fullest freedom in exercising the rights guaranteed by the Act. However, some employers have abused the representation process of the National Labor Relations Board to impede work-

ers from freely choosing their own representatives and exercising their rights under the Act.

(13) So-called ''right-to-work'' laws do not give any employee the right to a job. While Federal law requires unions to fairly represent all members of a given bargaining unit, and thereby expend resources on all unit members, many States' so-called ''right-to-work'' laws prohibit unions from charging all members for the representation and services that the unions are legally obliged to render. Section 14(b) of the National Labor Relations Act (29 U.S.C. 164(b)) must be reformed to permit unions and employers to mutually agree that payment of fair share fees shall be a condition of employment following initial hiring.

(14) Restrictions on so-called ''secondary boycotts'' and ''recognitional picketing'' unduly impede workers' ability to engage in peaceful conduct and expression. Workers must be free to act in solidarity with workers in other workplaces in order to improve labor standards and achieve other lawful ends for mutual aid or protection.

(15) In order to make the right to collective bargaining and freedom of association in the work-

place a reality for workers, the National Labor Relations Act must be strengthened.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to strengthen protections for employees engaged in collective bargaining to improve their wages, hours, and terms and conditions of employment;

(2) to expand coverage under the National Labor Relations Act (29 U.S.C. 151 et seq.) to more employees;

(3) to provide a process by which workers and employers can successfully negotiate an initial collective bargaining agreement;

(4) to provide a stronger deterrent and fairer remedies for workers who face retaliation, discrimination, or other interference with their legal rights to act concertedly, join a union, or engage in collective bargaining;

(5) to broadly protect employees' right to engage in concerted activities for mutual aid or protection;

(6) to streamline the enforcement procedures of the National Labor Relations Board to provide for more timely and effective enforcement of the law;

(7) to safeguard the right to strike by prohibiting ''permanent replacement'' of striking workers;

(8) to repeal specific prohibitions on collective action and peaceful expression;

(9) to permit fair share fee arrangements in order to promote workers' freedom of association and encourage the practice of collective bargaining;

(10) to improve the purchasing power of wage earners in industry;

(11) to promote the stabilization of fair wage rates and humane working conditions within and between industries; and

(12) to redress the inequality of bargaining power between employees and employers.

TITLE I—AMENDMENTS TO LABOR LAWS

SEC. 101. AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT.

(a) DEFINITIONS OF EMPLOYEE AND SUPERVISOR.—

(1) Section 2(3) of the National Labor Relations Act (29 U.S.C. 152) is amended by inserting at the end the following: ''An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an

independent contractor for purposes of this Act, unless—

''(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

''(B) the service is performed outside the usual course of the business of the employer; and

''(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.''.

(2) Section 2(11) of the National Labor Relations Act (29 U.S.C. 152(11)) is amended—

(A) by inserting ''and for a majority of the individual's worktime'' after ''interest of the employer'';

(B) by striking ''assign,''; and

(C) by striking ''or responsibly to direct them,''.

(b) APPOINTMENT.—Section 4(a) of the National Labor Relations Act (29 U.S.C. 154(a)) is amended by striking '', or for economic analysis''.

(c) UNFAIR LABOR PRACTICES.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking the period and inserting ''; and''; and

(B) by adding at the end the following:

''(6) to promise, threaten, or take any action—

''(A) to permanently replace an employee who participates in a strike as defined by section 501(2) of the Labor Management Relations Act, 1947 (29 U.S.C. 142(2)); or

''(B) to discriminate against an employee who is working or has unconditionally offered to return to work for the employer because the employee supported or participated in such a strike.'';

(2) in subsection (b)—

(A) by striking paragraphs (4) and (7);

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(C) in paragraph (4), as so redesignated, by adding ''and'' at the end; and

(D) in paragraph (5), as so redesignated, by striking ''; and'' and inserting a period;

(3) in subsection (c), by striking the period at the end and inserting the following: ‘‘: *Provided,* That it shall be an unfair labor practice under subsection (a)(1) for any employer to require or coerce an employee to attend or participate in campaign activities unrelated to the employee's job duties, including activities that are subject to the requirements under section 203(b) of the Labor-Management Reporting and Disclosure Act, 1959 (29 U.S.C. 433(b)).’’;

(4) by amending subsection (e) to read as follows:

‘‘(e) Notwithstanding chapter 1 of title 9, United States Code (commonly known as the 'Federal Arbitration Act'), or any other provision of law, it shall be an unfair labor practice under subsection (a)(1) for any employer to enter into any contract or agreement, express or implied, whereby an employee of the employer undertakes or promises not to pursue, bring, join, litigate, or support any kind of collective legal claim arising from or relating to the employment of such employee in any forum that, but for such contract or agreement, is of competent jurisdiction. The provisions of this subsection shall not apply with respect to employees who are represented by a labor organization and covered by a collective-bargaining agreement

in effect with the employer. Any contract or agreement entered into heretofore or hereafter containing an agreement prohibited by this subsection shall be to such extent unenforceable and void.''; and

(5) by adding at the end the following:

''(h)(1) The Board shall promulgate regulations requiring each employer to post and maintain, in conspicuous places where notices to employees and applicants for employment are customarily posted both physically and electronically, a notice setting forth the rights and protections afforded employees under this Act. The Board shall make available the form and text of such notice. The Board shall promulgate regulations requiring employers to notify each new employee of the information contained in the notice described in the preceding two sentences.

''(2) Whenever the Board directs an election under section 9(c) or approves an election agreement, the employer of employees in the bargaining unit shall, not later than 2 business days after the Board directs such election or approves such election agreement, provide a voter list to a labor organization that has petitioned to represent such employees. Such voter list shall include the names of all employees in the bargaining unit and such employees' home addresses, work locations, shifts, job classifications, and, if available to the employer, personal landline

and mobile phone numbers, and work and personal email addresses. Not later than 9 months after the date of enactment of the Workers' Freedom to Negotiate Act of 2018, the Board shall promulgate regulations implementing the requirements of this paragraph.

''(i) Whenever collective bargaining is for the purpose of establishing an initial agreement following certification or recognition, the provisions of subsection (d) shall be modified as follows:

''(1) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly organized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

''(2) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a

request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

''(3) If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (2), or such additional period as the parties may agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to a tripartite arbitration panel established in accordance with such regulations as may be prescribed by the Service, with one member selected by the labor organization, one member selected by the employer, and one neutral member mutually agreed to by the parties. A majority of the tripartite arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years, unless amended during such period by written consent of the parties. Such decision shall be based on the following considerations:

''(A) the employer's financial status and prospects;

''(B) the size and type of the employer's operations and business;

''(C) the employees' cost of living;

''(D) the employees' ability to sustain themselves, their families, and their dependents on the wages and benefits they earn from the employer; and

''(E) the wages and benefits other employers in the same business provide their employees.''.

(d) REPRESENTATIVES AND ELECTIONS.—Section 9 of the National Labor Relations Act (29 U.S.C. 159) is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

(i) by striking ''as may be'' and all that follows through ''by an employee'' and inserting ''as may be prescribed by the Board, by an employee'';

(ii) by striking ''; or'' and all that follows through ''the Board shall investigate'' and inserting '', the Board shall investigate''; and

(iii) by adding at the end the following: ''No employer shall have standing as a party, or to intervene, in any rep-

resentation proceeding under this section.'';

(B) in paragraph (3), by striking ''an economic strike who are not entitled to reinstatement'' and inserting ''a strike'';

(C) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively;

(D) by inserting after paragraph (3) the following:

''(4) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have been cast in favor of representation by the labor organization, the Board shall certify the labor organization as the representative of the employees in such unit and shall issue an order requiring the employer to collectively bargain with the labor organization in accordance with section 8(d). This order shall be deemed an order under section 10(c) of the Act, without need for a determination of an unfair labor practice.

''(5)(A) If the Board finds that, in an election under paragraph (1), a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representa-

tion by the labor organization, the Board shall dismiss the petition, subject to subparagraphs (B) and (C).

''(B) In any case in which a majority of the valid votes cast in a unit appropriate for purposes of collective bargaining have not been cast in favor of representation by the labor organization and the Board determines that the election should be set aside because the employer has committed a violation of this Act or otherwise interfered with a fair election, and the employer has not demonstrated that the violation or other interference is unlikely to have affected the outcome of the election, the Board shall, without ordering a new or rerun election, certify the labor organization as the representative of the employees in such unit and issue an order requiring the employer to bargain with the labor organization in accordance with section 8(d) if, at any time during the period beginning 1 year preceding the date of the commencement of the election and ending on the date upon which the Board makes the determination of a violation or other interference, a majority of the employees in the bargaining unit have signed authorizations designating the labor or-

ganization as their collective bargaining representative.

''(C) In any case where the Board determines that an election under this paragraph should be set aside, the Board shall direct a rerun election with appropriate additional safeguards necessary to ensure a fair election process, except in cases where the Board issues a bargaining order under subparagraph (B).''; and

(E) by inserting after paragraph (7), as so redesignated, the following:

''(8) Except under extraordinary circumstances—

''(A) a pre-election hearing under this subsection shall begin not later than 8 days after a notice of such hearing is served on the parties; and

''(B) a post-election hearing under this subsection shall begin not later than 14 days after the filing of objections, if any.''; and

(2) in subsection (d), by striking ''(e) or'' and inserting ''(d) or''.

(e) PREVENTION OF UNFAIR LABOR PRACTICES.—

(1) IN GENERAL.—Section 10(c) of the National Labor Relations Act (29 U.S.C. 160(c)) is

amended by striking ''suffered by him'' and inserting ''suffered by such employee: *Provided further,* That if the Board finds that an employer has discriminated against an employee in violation of paragraph (3) or (4) of section 8(a) or has committed a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee, the Board shall award the employee back pay without any reduction (including any reduction based on the employee's interim earnings or failure to earn interim earnings), front pay (when appropriate), consequential damages, and an additional amount as liquidated damages equal to 2 times the amount of damages awarded: *Provided further,* no relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens''.

(f) ENFORCING COMPLIANCE WITH ORDERS OF THE BOARD.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended—

(1) by striking subsection (e);

(2) by redesignating subsection (d) as subsection (e);

(3) by inserting after subsection (c) the following:

''(d)(1) Each order of the Board shall take effect upon issuance of such order, unless otherwise directed by the Board, and shall remain in effect unless modified by the Board or unless a court of competent jurisdiction issues a superseding order.

''(2) Any person who fails or neglects to obey an order of the Board shall forfeit and pay to the Board a civil penalty of not more than $10,000 for each violation, which shall accrue to the Board and may be recovered in a civil action brought by the Board to the district court of the United States in which the unfair labor practice or other subject of the order occurred, or in which such person or entity resides or transacts business. No action by the Board under this paragraph may be made until 30 days following the issuance of an order. Each separate violation of such an order shall be a separate offense, except that, in the case of a violation in which a person fails to obey or neglects to obey a final order of the Board, each day such failure or neglect continues shall be deemed a separate offense.

''(3) If, after having provided a person or entity with notice and an opportunity to be heard regarding a civil action under subparagraph (2) for the enforcement of an order, the court determines that the order was regularly made and duly served, and that the person or entity is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to—

''(A) restrain such person or entity or the officers, agents, or representatives of such person or entity, from further disobedience to such order; or

''(B) enjoin upon such person or entity, officers, agents, or representatives obedience to the same.'';

(4) in subsection (f)—

(A) by striking ''proceed in the same manner as in the case of an application by the Board under subsection (e) of this section,'' and inserting ''proceed as provided under paragraph (2) of this subsection'';

(B) by striking ''Any'' and inserting the following:

''(1) Within 30 days of the issuance of an order, any''; and

(C) by adding at the end the following:

''(2) No objection that has not been urged before the Board, its member, agent, or agency shall be considered by a court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the

record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.''; and

(5) in section 10(g), by striking ''subsection (e) or (f) of this section'' and inserting ''subsection (d) or (f)''.

(g) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES INVOLVING DISCHARGE OR OTHER SERIOUS ECONOMIC HARM.—Section 10(j) of the National Labor Relations Act (29 U.S.C. 160(j)) is amended—

(1) by striking ''(j) The Board'' and inserting ''(j)(1) The Board''; and

(2) by adding at the end the following:

''(2) Notwithstanding subsection (m) of section 10, whenever it is charged that an employer has engaged in an unfair labor practice within the meaning of paragraph (1) or (3) of section 8(a) that significantly interferes with, restrains, or coerces employees in the exercise of the rights guaranteed under section 7, or involves discharge or other serious eco-

nomic harm to an employee, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, such officer or attorney shall bring a petition for appropriate temporary relief or restraining order as set forth in paragraph (1). The district court shall grant the relief requested unless the court concludes that there is no reasonable likelihood that the Board will succeed on the merits of the Board's claim.''; and

(h) REPEALS.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is further amended by repealing subsections (k) and (l).

(i) PENALTIES.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended—

(1) by striking ''SEC. 12. Any person'' and inserting the following:

''SEC. 12. PENALTIES.

''(a) VIOLATIONS FOR INTERFERENCE WITH BOARD.—Any person''; and

(2) by adding at the end the following:

''(b) VIOLATIONS FOR POSTING REQUIREMENTS AND VOTER LIST.—If the Board, or any agent or agency designated by the Board for such purposes, determines that an employer has violated section 8(h) or regulations issued thereunder, the Board shall—

''(1) state the findings of fact supporting such determination;

''(2) issue and cause to be served on such employer an order requiring that such employer comply with section 8(h) or regulations issued thereunder; and

''(3) impose a civil penalty in an amount determined appropriate by the Board, except that in no case shall the amount of such penalty exceed $500 for each such violation.

''(c) VIOLATIONS CAUSING SERIOUS ECONOMIC HARM TO EMPLOYEES.—

''(1) IN GENERAL.—Any employer who commits an unfair labor practice within the meaning of paragraph (3) or (4) of section 8(a), or a violation of section 8(a) that results in the discharge of an employee or other serious economic harm to an employee shall, in addition to any remedy ordered by the Board, be subject to a civil penalty in an amount not to exceed $50,000 for each violation, except that

the Board shall double the amount of such penalty, to an amount not to exceed $100,000, in any case where the employer has within the preceding 5 years committed another such violation.

''(2) CONSIDERATIONS.—In determining the amount of any civil penalty under this subsection, the Board shall consider—

''(A) the gravity of the unfair labor practice;

''(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

''(C) the gross income of the employer.

''(3) DIRECTOR AND OFFICER LIABILITY.—If the Board determines, based on the particular facts and circumstances presented, that a director or officer's personal liability is warranted, a civil penalty for a violation described in this subsection may also be assessed against any director or officer of the employer who directed or committed the violation, had established a policy that led to such a violation, or had actual or constructive knowledge of and the authority to prevent the violation and failed to prevent the violation.

''(d) JOINT EMPLOYMENT.—Two or more persons shall be employers for purposes of this Act with respect to employees if each such person possesses sufficient control over the employees' essential terms and conditions of employment to permit meaningful collective bargaining. In applying this inquiry, the Board or a court of competent jurisdiction shall consider as relevant direct control, indirect control, reserved authority to control, and control exercised in fact: *Provided,* That nothing in this paragraph shall be construed to bring within the definition of employer under section 2(2) the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

''(e) RIGHT TO CIVIL ACTION.—

''(1) IN GENERAL.—Any person who is injured by reason of a violation of paragraph (1) or (3) of section 8(a) may, in addition to or in lieu of filing a charge alleging such unfair labor practice with the Board in accordance with this Act, bring a civil action in the appropriate district court of the United States against the employer within 180 days of the

violation. No relief under this subsection shall be denied on the basis that the employee is, or was during the time of relevant employment or during the back pay period, an unauthorized alien as defined in section 274(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or any other provision of Federal law relating to the unlawful employment of aliens.

''(2) AVAILABLE RELIEF.—Relief granted in an action under paragraph (1) may include—

''(A) back pay without any reduction, including any reduction based on the employee's interim earnings or failure to earn interim earnings;

''(B) front pay (where appropriate);

''(C) consequential damages;

''(D) an additional amount as liquidated damages equal to 2 times the cumulative amount of damages awarded under subparagraphs (A) through (C);

''(E) in appropriate cases, punitive damages in accordance with paragraph (4); and

''(F) any other relief authorized by section 706(g) of the Civil Rights Act of 1964 (42

U.S.C. 2000e–5(g)) or by section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

''(3) ATTORNEY'S FEES.—In any civil action under this subsection, the court may allow the prevailing party a reasonable attorney's fee (including expert fees) and other reasonable costs associated with maintaining the action.

''(4) PUNITIVE DAMAGES.—In awarding punitive damages under paragraph (2)(E), the court shall consider—

''(A) the gravity of the unfair labor practice;

''(B) the impact of the unfair labor practice on the charging party, on other persons seeking to exercise rights guaranteed by this Act, and on the public interest; and

''(C) the gross income of the employer.''.

(3) CONFORMING AMENDMENTS.—Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) is amended—

(A) by striking ''six months'' and inserting ''180 days''; and

(B) by striking ''the six-month period'' and inserting ''the 180-day period''.

(j) LIMITATIONS.—Section 13 of the National Labor Relations Act (29 U.S.C. 163) is amended by striking the period at the end and inserting the following: ": *Provided,* That the duration, scope, frequency, or intermittence of any strike or strikes shall not render such strike or strikes unprotected or prohibited.".

(k) FAIR SHARE AGREEMENTS PERMITTED.—Section 14(b) of the National Labor Relations Act (29 U.S.C. 164(b)) is amended by striking the period at the end and inserting the following: ": *Provided,* That collective bargaining agreements providing that all employees in a bargaining unit shall contribute fees to a labor organization for the cost of bargaining and representation as a condition of employment shall be valid and enforceable notwithstanding any State or Territorial law.".

SEC. 102. AMENDMENTS TO THE LABOR MANAGEMENT RELATIONS ACT, 1947.

Section 303 of the Labor Management Relations Act, 1947 (29 U.S.C. 187) is repealed.

SEC. 103. AMENDMENTS TO THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959.

Section 203(c) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended by striking the period at the end and inserting the following ": *Provided,* That this subsection shall not exempt

from the requirements of this section any arrangement or part of an arrangement in which a party agrees, for an object described in section (b)(1), to plan or conduct employee meetings; train supervisors or employer representatives to conduct meetings; coordinate or direct activities of supervisors or employer representatives; establish or facilitate employee committees; identify employees for disciplinary action, reward, or other targeting; or draft or revise employer personnel policies, speeches, presentations, or other written, recorded, or electronic communications to be delivered or disseminated to employees.''.

TITLE II—FAIR PAY AND SAFE WORKPLACES

SEC. 201. DEFINITIONS.

In this title:

(1) COVERED CONTRACT.—The term ''covered contract'' means a Federal contract for the procurement of property or services, including construction, valued in excess of $500,000.

(2) COVERED SUBCONTRACT.—The term ''covered subcontract''—

(A) means a subcontract for property or services under a Federal contract that is valued in excess of $500,000; and

(B) does not include a subcontract for the procurement of commercially available off-the-shelf items.

(3) EXECUTIVE AGENCY.—The term ''executive agency'' has the meaning given the term in section 133 of title 41, United States Code.

SEC. 202. PURPOSE.

The purpose of this title is to—

(1) ensure that the purchasing power of the Federal Government is employed to raise labor standards, improve working conditions, and strengthen workers' bargaining power; and

(2) increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that they understand and comply with labor laws, which are designed to promote safe, healthy, fair, and effective workplaces and increase the likelihood of enhanced productivity in the workplace and the timely, predictable, and satisfactory delivery of goods and services to the Federal Government.

SEC. 203. REQUIRED PRE-CONTRACT AWARD ACTIONS.

(a) DISCLOSURES.—The head of an executive agency shall ensure that the solicitation for a covered contract requires the offeror—

(1) to represent, to the best of the offeror's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil judgment, as defined in guidance issued by the Secretary of Labor, rendered against the offeror in the preceding 3 years for violations of—

(A) the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.);

(B) the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

(C) the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.);

(D) the National Labor Relations Act (29 U.S.C. 151 et seq.);

(E) subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act'');

(F) chapter 67 of title 41, United States Code (commonly known as the ''Service Contract Act'');

(G) Executive Order 11246 (42 U.S.C. 2000e note; relating to equal employment opportunity);

(H) section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793);

(I) section 4212 of title 38, United States Code;

(J) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(K) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(L) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(M) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(N) Executive Order 13658 (79 Fed. Reg. 9851; relating to establishing a minimum wage for contractors); or

(O) equivalent State laws, as defined in guidance issued by the Secretary of Labor;

(2) to require each subcontractor for a covered subcontract—

(A) to represent to the offeror and the entity designated by the final rule reissued under subsection (a) of section 206, to the best of the subcontractor's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil

judgment, as defined in guidance issued by the Department of Labor, rendered against the subcontractor in the preceding 3 years for violations of any of the labor laws and executive orders listed under paragraph (1); and

(B) to update such information every 6 months for the duration of the subcontract; and

(3) to consider the advice rendered by the entity designated by the final rule reissued under subsection (a) of section 206 or information submitted by a subcontractor pursuant to paragraph (2) in determining whether the subcontractor is a responsible source with a satisfactory record of integrity and business ethics—

(A) prior to awarding the subcontract; or

(B) in the case of a subcontract that is awarded or will become effective within 5 days of the prime contract being awarded, not later than 30 days after awarding the subcontract.

(b) PRE-AWARD CORRECTIVE MEASURES.—

(1) IN GENERAL.—A contracting officer, prior to awarding a covered contract, shall, as part of the responsibility determination, provide an offeror who makes a disclosure pursuant to subsection (a) an opportunity to report any steps taken to correct the

violations of or improve compliance with the labor laws listed in paragraph (1) of such subsection, including any agreements entered into with an enforcement agency.

(2) CONSULTATION.—The executive agency's Labor Compliance Advisor designated pursuant to section 205, in consultation with relevant enforcement agencies, shall advise the contracting officer whether agreements are in place or are otherwise needed to address appropriate remedial measures, compliance assistance, steps to resolve issues to avoid further violations, or other related matters concerning the offeror.

(3) RESPONSIBILITY DETERMINATION.—The contracting officer, in consultation with the executive agency's Labor Compliance Advisor, shall consider information provided by the offeror under this subsection in determining whether the offeror is a responsible source with a satisfactory record of integrity and business ethics. The determination shall be based on the guidelines reissued under subsection (b)(1) of section 206 and the final rule reissued under subsection (a) of such section.

(c) REFERRAL OF INFORMATION TO SUSPENSION AND DEBARMENT OFFICIALS.—As appropriate, con-

tracting officers, in consultation with their executive agency's Labor Compliance Advisor, shall refer matters related to information provided pursuant to paragraphs (1) and (2) of subsection (a) to the executive agency's suspension and debarment official in accordance with agency procedures.

SEC. 204. POST-AWARD CONTRACT ACTIONS.

(a) INFORMATION UPDATES.—The contracting officer for a covered contract shall require that the contractor update the information provided under paragraphs (1) and (2) of section 203(a) every 6 months.

(b) CORRECTIVE ACTIONS.—

(1) PRIME CONTRACT.—The contracting officer, in consultation with the Labor Compliance Advisor designated pursuant to section 205, shall determine whether any information provided under subsection (a) warrants corrective action. Such action may include—

(A) an agreement requiring appropriate remedial measures;

(B) compliance assistance;

(C) resolving issues to avoid further violations;

(D) the decision not to exercise an option on a contract or to terminate the contract; or

(E) referral to the agency suspending and debarring official.

(2) SUBCONTRACTS.—The prime contractor for a covered contract, in consultation with the Labor Compliance Advisor, shall determine whether any information provided under section 203(a)(2) warrants corrective action, including remedial measures, compliance assistance, and resolving issues to avoid further violations.

(3) DEPARTMENT OF LABOR.—The Department of Labor shall, as appropriate, inform executive agencies of its investigations of contractors and subcontractors on current Federal contracts for purposes of determining the appropriateness of actions described under paragraphs (1) and (2).

SEC. 205. LABOR COMPLIANCE ADVISORS.

(a) IN GENERAL.—Each executive agency shall designate a senior official to act as the agency's Labor Compliance Advisor.

(b) DUTIES.—The Labor Compliance Advisor shall—

(1) meet quarterly with the Deputy Secretary, Deputy Administrator, or equivalent executive agency official with regard to matters covered under this title;

(2) work with the acquisition workforce, agency officials, and agency contractors to promote greater awareness and understanding of labor law requirements, including record keeping, reporting, and notice requirements, as well as best practices for obtaining compliance with these requirements;

(3) coordinate assistance for executive agency contractors seeking help in addressing and preventing labor violations;

(4) in consultation with the Department of Labor or other relevant enforcement agencies, and pursuant to section 203(b) as necessary, provide assistance to contracting officers regarding appropriate actions to be taken in response to violations identified prior to or after contracts are awarded, and address complaints in a timely manner, by—

(A) providing assistance to contracting officers and other executive agency officials in reviewing the information provided pursuant to subsections (a) and (b) of section 203 and section 204(a), or other information indicating a violation of a labor law in order to assess the serious, repeated, willful, or pervasive nature of any violation and evaluate steps contractors

have taken to correct violations or improve compliance with relevant requirements;

(B) helping agency officials determine the appropriate response to address violations of the requirements of the labor laws listed in section 203(a)(1) or other information indicating such a labor violation (particularly serious, repeated, willful, or pervasive violations), including agreements requiring appropriate remedial measures, decisions not to award a contract or exercise an option on a contract, contract termination, or referral to the executive agency suspension and debarment official;

(C) providing assistance to appropriate executive agency officials in receiving and responding to, or making referrals of, complaints alleging violations by agency contractors and subcontractors of the requirements of the labor laws listed in section 203(a)(1); and

(D) supporting contracting officers, suspension and debarment officials, and other agency officials in the coordination of actions taken pursuant to this subsection to ensure agency-wide consistency, to the extent practicable;

(5) as appropriate, send information to agency suspension and debarment officials in accordance with agency procedures;

(6) consult with the agency's Chief Acquisition Officer and Senior Procurement Executive, and the Department of Labor as necessary, in the development of regulations, policies, and guidance addressing labor law compliance by contractors and subcontractors;

(7) make recommendations to the agency to strengthen agency management of contractor compliance with labor laws;

(8) publicly report, on an annual basis, a summary of agency actions taken to promote greater labor compliance, including the agency's response pursuant to this order to serious, repeated, willful, or pervasive violations of the requirements of the labor laws listed in section 203(a)(1); and

(9) participate in the interagency meetings regularly convened by the Secretary of Labor pursuant to section 206(b)(2)(C).

SEC. 206. MEASURES TO ENSURE GOVERNMENT-WIDE CONSISTENCY.

(a) FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—Notwithstanding Public Law 115–11 (131 Stat. 75) and section 553 of title 5, United States Code, not later than 1 year after the date of enactment of this Act, the Secretary of Defense, the Administrator of the General Services Administration, and the Administrator of the National Aeronautics and Space Administration shall reissue the final rule entitled ''Federal Acquisition Regulation; Fair Pay and Safe Workplaces'' (81 Fed. Reg. 58,562 (Aug. 25, 2016)), subject to paragraph (2).

(2) UPDATED DATES.—The agencies described in paragraph (1) may, in reissuing the final rule under such paragraph, update any date provided in such final rule as reasonable.

(b) DEPARTMENT OF LABOR.—

(1) GUIDANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall reissue the guidance entitled ''Guidance for Executive Order 13673, 'Fair Pay and Safe Workplaces' '' (81 Fed. Reg. 58,564 (Aug. 25, 2016)). In reissuing such guidance, the Secretary of Labor may update any date provided in such guidance as reasonable and necessary.

(2) ADDITIONAL ACTIVITIES.—The Secretary of Labor shall—

(A) develop a process—

(i) for the Labor Compliance Advisors designated pursuant to section 205 to consult with the Secretary of Labor in carrying out their responsibilities under section 205(b)(4);

(ii) by which contracting officers and Labor Compliance Advisors may give appropriate consideration to determinations and agreements made by the Secretary of Labor and the heads of other executive agencies; and

(iii) by which contractors may enter into agreements with the Secretary of Labor, or the head of another executive agency, prior to being considered for a contract;

(B) review data collection requirements and processes, and work with the Director of the Office of Management and Budget, the Administrator for General Services, and other agency heads to improve such requirements and processes, as necessary, to reduce the burden on contractors and increase the amount of information available to executive agencies;

(C) regularly convene interagency meetings of Labor Compliance Advisors to share and promote best practices for improving labor law compliance; and

(D) designate an appropriate contact for executive agencies seeking to consult with the Secretary of Labor with respect to the requirements and activities under this title.

(c) OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

(1) work with the Administrator of General Services to include in the Federal Awardee Performance and Integrity Information System the information provided by contractors pursuant to sections 203(a)(1) and 204(a) and data on the resolution of any issues related to such information; and

(2) designate an appropriate contact for agencies seeking to consult with the Office of Management and Budget on matters arising under this title.

(d) GENERAL SERVICES ADMINISTRATION.—

(1) IN GENERAL.—The Administrator of General Services, in consultation with other relevant executive agencies, shall establish a single Internet website for Federal contractors to use for all Federal contract reporting requirements under this title, as

well as any other Federal contract reporting requirements to the extent practicable.

(2) AGENCY COOPERATION.—The heads of executive agencies with covered contracts shall provide the Administrator of General Services with the data necessary to maintain the Internet website established under paragraph (1).

(e) MINIMIZING COMPLIANCE BURDEN.—After reissuing the guidance under subsection (b)(1) or the final rule under subsection (a), the Secretary of Labor or the Secretary of Defense, the Administrator of the General Services Administration, and the Administrator of the National Aeronautics and Space Administration may, respectively, amend such guidance or final rule consistent with the requirements under chapter 5 of title 5, United States Code.

SEC. 207. PAYCHECK TRANSPARENCY.

(a) IN GENERAL.—Each executive agency entering into a covered contract, or covered subcontract, shall ensure that provisions in solicitations for such contracts, or subcontracts, and clauses in such contracts, or subcontracts, shall provide that, for each pay period, contractors or subcontractors provide each individual described in subsection (b) with a document containing information with respect to such individual for the pay period con-

cerning hours worked, overtime hours worked, pay, and any additions made to or deductions made from pay.

(b) INDIVIDUALS DESCRIBED.—An individual described in this subsection is any individual performing work under a contract or subcontract for which the contractor or subcontractor is required to maintain wage records under—

(1) the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.);

(2) subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the ''Davis-Bacon Act'');

(3) chapter 67 of title 41, United States Code (commonly known as the ''Service Contract Act''); or

(4) an applicable State law.

(c) EXCEPTIONS.—

(1) EMPLOYEES EXEMPT FROM OVERTIME REQUIREMENTS.—The document provided under subsection (a) to individuals who are exempt under section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) from the overtime compensation requirements under section 7 of such Act (29 U.S.C. 207) shall not be required to include a record of the hours worked if the contractor or subcontractor in-

forms the individual of the status of such individual as exempt from such requirements.

(2) SUBSTANTIALLY SIMILAR STATE LAWS.—The requirements under this section shall be deemed to be satisfied if the contractor or subcontractor complies with State or local requirements that the Secretary of Labor has determined are substantially similar to the requirements under this section.

(d) INDEPENDENT CONTRACTORS.—If the contractor or subcontractor is treating an individual performing work under a covered contract or subcontract as an independent contractor, and not as an employee, the contractor or subcontractor shall provide the individual a document informing the individual of their status as an independent contractor.

SEC. 208. COMPLAINT AND DISPUTE TRANSPARENCY.

(a) IN GENERAL.—

(1) CONTRACTS.—The head of an executive agency may not enter into a contract for the procurement of property or services valued in excess of $500,000 unless the contractor agrees that any decision to arbitrate the claim of an employee or independent contractor performing work under the contract that arises under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or any tort

related to or arising out of sexual assault or sexual harassment may only be made with the voluntary consent of the employee or independent contractor after the dispute arises.

(2) SUBCONTRACTS.—The head of an executive agency shall require that a contractor covered under paragraph (1) incorporate the requirement under such subsection into each subcontract for the procurement of property or services valued in excess of $500,000 at any tier under the contract.

(b) EXCEPTIONS.—

(1) CONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS.—The requirements under subsection (a) do not apply to contracts or subcontracts for the acquisition of commercial items or commercially available off-the-shelf items (as those terms are defined in sections 103(1) and 104, respectively, of title 41, United States Code).

(2) EMPLOYEES AND INDEPENDENT CONTRACTORS NOT COVERED.—The requirements under subsection (a) do not apply with respect to an employee or independent contractor who—

(A) is covered by a collective bargaining agreement negotiated between the contractor or

subcontractor and a labor organization representing the employee or independent contractor; or

(B) entered into a valid agreement to arbitrate claims covered under such subsection before the contractor or subcontractor bid on the contract covered under such subsection, except that such requirements do apply—

(i) if the contractor or subcontractor is permitted to change the terms of the arbitration agreement with the employee or independent contractor; or

(ii) in the event the arbitration agreement is renegotiated or replaced after the contractor or subcontractor bids on the contract.

SEC. 209. NEUTRALITY.

(a) Costs incurred in maintaining satisfactory relations between the contractor and its employees on a covered contract or a subcontractor and its employees on a covered contract (other than those made unallowable in subsection (b) of this section), including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) No Federal funds made available through a covered contract or covered subcontract may be used to engage in activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing or any other activities that are subject to the requirements under section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(b)). Examples of unallowable costs under this subsection include, but are not limited to, the costs of—

(1) preparing and distributing materials;

(2) hiring or consulting legal counsel or consultants;

(3) meetings (including paying the salaries of the attendees at meetings held for this purpose); and

(4) planning or conducting activities by managers, supervisors, or union representatives during work hours.

SEC. 210. IMPLEMENTING REGULATIONS.

Not later than 9 months after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation to carry out the provisions of this title, including sections 207 and 208.

SEC. 211. SEVERABILITY.

If any provision of this title or the application of any such provision to any person or circumstance is held to be unconstitutional, the remaining provisions of this title and the application of such provisions to any person or circumstance shall not be affected by such holding.

SEC. 212. RULES OF CONSTRUCTION.

Nothing in this title shall be construed as—

(1) impairing or otherwise affecting the authority granted by law to an executive agency or the head thereof; or

(2) impairing or otherwise affecting the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including any amendments made by this Act.

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