

116TH CONGRESS  
1ST SESSION

# H. R. 2148

To prevent discrimination and harassment in employment.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2019

Ms. CLARK of Massachusetts (for herself, Ms. PRESSLEY, Ms. SLOTKIN, and Ms. MUCARSEL-POWELL) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on the Judiciary, House Administration, Oversight and Reform, and Veterans' Affairs, 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 prevent discrimination and harassment in employment.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bringing an End to  
5 Harassment by Enhancing Accountability and Rejecting  
6 Discrimination in the Workplace Act” or the “BE  
7 HEARD in the Workplace Act”.

8 **SEC. 2. TABLE OF CONTENTS.**

9 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Purposes.

## TITLE I—RESEARCHING AND PREVENTING WORKPLACE HARASSMENT; TIPPED EMPLOYEES

- Sec. 100. Definitions.

### Subtitle A—Preventing Workplace Harassment

- Sec. 101. Mandatory nondiscrimination policies.
- Sec. 102. Nondiscrimination training.
- Sec. 103. Resource materials on policies and trainings for small businesses.
- Sec. 104. Education, training, and technical assistance to employers.
- Sec. 105. Task force regarding harassment.
- Sec. 106. Resource materials on employment climate assessments.
- Sec. 107. Establishing an Office of Education and Outreach within the Equal Employment Opportunity Commission.
- Sec. 108. Relationship to other laws.
- Sec. 109. Authorization of appropriations.

### Subtitle B—Research and Additional Resources for Harassment Prevention

- Sec. 111. National prevalence survey on harassment in employment.
- Sec. 112. Study and report on harassment in the Federal Government.
- Sec. 113. Studies, reports, and further research.

### Subtitle C—Preventing Harassment of Tipped Employees

- Sec. 121. Tipped employees.

## TITLE II—STRENGTHENING WORKPLACE RIGHTS

- Sec. 201. Clarifying sexual orientation discrimination and gender identity discrimination are unlawful sex discrimination.
- Sec. 202. Covered employers.
- Sec. 203. Compensatory and punitive damages available.
- Sec. 204. Harassment and discrimination; standards of proof.
- Sec. 205. Clarifying other standards of proof.
- Sec. 206. Supervisor liability.
- Sec. 207. Extending the statutes of limitations.
- Sec. 208. Extending the time limitations on Federal employees filing a complaint.

## TITLE III—BROADENING PROTECTIONS AND ENSURING TRANSPARENCY

- Sec. 301. Independent contractors, interns, fellows, volunteers, and trainees.
- Sec. 302. Nondisclosure agreements.
- Sec. 303. Prohibition on mandatory arbitration and protection of concerted legal action.
- Sec. 304. Federal contractor compliance with civil rights laws.

## TITLE IV—NATIONWIDE GRANTS TO PREVENT AND RESPOND TO WORKPLACE HARASSMENT

- Sec. 401. Definitions.

Subtitle A—National Grants for Preventing and Addressing Employment  
Discrimination, Including Harassment

- Sec. 411. Definitions.  
Sec. 412. Grants.  
Sec. 413. Authorization of appropriations.

Subtitle B—Grants for Legal Assistance for Low-Income Workers

- Sec. 421. Definitions.  
Sec. 422. Grants for civil legal needs related to employment discrimination.  
Sec. 423. Authorization of appropriations.

Subtitle C—Grants for a System of State Advocacy

- Sec. 431. Purpose.  
Sec. 432. Definitions.  
Sec. 433. Allotments and payments.  
Sec. 434. System required.  
Sec. 435. Administration.  
Sec. 436. Authorization of appropriations.

TITLE V—GENERAL PROVISIONS

- Sec. 501. Severability.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (1) to prevent and reduce prohibited discrimina-  
4 tion and harassment in employment;

5 (2) to prevent and reduce discriminatory and  
6 harassing conduct in the workplace;

7 (3) to identify and implement best practices in  
8 creating a workplace free from discrimination and  
9 harassment;

10 (4) to update and clarify certain employment  
11 nondiscrimination laws; and

12 (5) to expand workers' access to counsel and  
13 advocacy services to protect the legal and human  
14 rights of workers by preventing and reducing dis-

1       crimination and harassment and responding to viola-  
 2       tions of worker’s rights.

3       **TITLE     I—RESEARCHING     AND**  
 4       **PREVENTING     WORKPLACE**  
 5       **HARASSMENT;   TIPPED   EM-**  
 6       **PLOYEES**

7       **SEC. 100. DEFINITIONS.**

8       In this title:

9               (1) COMMISSION.—The term “Commission”  
 10       means the Equal Employment Opportunity Commis-  
 11       sion.

12              (2) EMPLOYER.—The term “employer” has the  
 13       meaning given the term in section 701 of the Civil  
 14       Rights Act of 1964 (42 U.S.C. 2000e), as amended  
 15       by section 202 of this Act.

16       **Subtitle A—Preventing Workplace**  
 17       **Harassment**

18       **SEC. 101. MANDATORY NONDISCRIMINATION POLICIES.**

19       (a) POLICIES.—

20              (1) IN GENERAL.—Beginning not later than 1  
 21       year after the date of enactment of this Act, each  
 22       employer who has 15 or more employees shall adopt,  
 23       maintain, and periodically review a comprehensive  
 24       nondiscrimination policy, which shall establish poli-

1       cies and procedures concerning prohibited discrimi-  
2       nation and harassment in employment.

3           (2) DISSEMINATION AND POSTING.—The em-  
4       ployer shall disseminate the comprehensive non-  
5       discrimination policy to each employee at the begin-  
6       ning of employment, annually, and on the issuance  
7       of any update to the comprehensive nondiscrimina-  
8       tion policy. The employer shall post the comprehen-  
9       sive nondiscrimination policy in prominent locations,  
10      including in a prominent location on the employer’s  
11      website.

12      (b) CONTENTS.—At a minimum, the comprehensive  
13      nondiscrimination policy shall include—

14           (1) a definition of prohibited discrimination and  
15      prohibited harassment in employment;

16           (2) a description of the types of behaviors pro-  
17      hibited by the policy;

18           (3) the identification of multiple persons to  
19      whom an employee may report such discrimination  
20      or harassment;

21           (4) a description of multiple methods for re-  
22      porting such discrimination or harassment;

23           (5) a general description of how the employer  
24      will conduct prompt, thorough, and impartial inves-

1        tigungen and respond to complaints regarding such  
2        discrimination or harassment;

3            (6) a prohibition against retaliation related to  
4        such discrimination or harassment, including dis-  
5        closing, reporting, or challenging such discrimination  
6        or harassment;

7            (7) a description of potential consequences for  
8        violating the policy; and

9            (8) any additional components required by the  
10       Commission for the purpose of preventing unlawful  
11       discrimination and harassment.

12        (c) ACCESSIBILITY.—The comprehensive non-  
13       discrimination policy shall be made available in plain  
14       English and in an accessible manner for individuals with  
15       disabilities and for individuals who primarily speak a lan-  
16       guage other than English.

17        (d) ENFORCEMENT.—

18            (1) Subject to paragraph (2), an employer who  
19        fails to comply with this section shall be fined not  
20        more than \$1,000 for each separate offense.

21            (2) An employer who repeatedly or willfully fails  
22        to comply with this section shall be fined not less  
23        than \$5,000 for each separate offense.

24        (e) REGULATIONS.—The Commission shall have au-  
25       thority to promulgate regulations to carry out this section.

1 **SEC. 102. NONDISCRIMINATION TRAINING.**

2 (a) IN GENERAL.—The Commission shall promulgate  
3 regulations to require appropriate employers, as deter-  
4 mined by the Commission, to provide—

5 (1) in-person or other interactive training for  
6 each employee regarding discriminatory and harass-  
7 sing behaviors in employment; and

8 (2) training specifically designed for supervisors  
9 regarding the prevention of and response to dis-  
10 crimination and harassment in employment, includ-  
11 ing retaliation.

12 (b) REQUIRED TRAINING.—The requirements de-  
13 scribed in subsection (a) shall—

14 (1) be based on research on effective training;  
15 and

16 (2) identify specific elements of such training.

17 (c) ENFORCEMENT.—The Commission shall issue  
18 remedies for noncompliance by regulation.

19 **SEC. 103. RESOURCE MATERIALS ON POLICIES AND**  
20 **TRAININGS FOR SMALL BUSINESSES.**

21 (a) IN GENERAL.—Not later than 1 year after the  
22 date of enactment of this Act, the Commission shall make  
23 publicly available resource materials on comprehensive  
24 nondiscrimination policies and trainings on such policies  
25 for employers with fewer than 15 employees.

1 (b) CONTENTS.—Such resource materials shall in-  
2 clude, at a minimum—

3 (1) model comprehensive nondiscrimination  
4 policies concerning prohibited discrimination and  
5 harassment in employment, as described in section  
6 101, for use by employers with fewer than 15 em-  
7 ployees, which shall—

8 (A) be designed to be easily distributed by  
9 such employers to employees;

10 (B) take into account the resources avail-  
11 able to such employers;

12 (C) take into account the particular needs  
13 of employees of such employers;

14 (D) be made available in plain English and  
15 in accessible formats for individuals with dis-  
16 abilities and for individuals who primarily speak  
17 a language other than English;

18 (E) include a definition of prohibited dis-  
19 crimination and harassment in employment;

20 (F) include examples of prohibited dis-  
21 criminatory and harassing behaviors;

22 (G) describe how the employer may con-  
23 duct prompt, thorough, and impartial investiga-  
24 tions and respond to complaints regarding such  
25 prohibited discrimination and harassment;



1           (H) include a prohibition against retaliation  
2           tion related to such discrimination or harassment;  
3           ment;

4           (I) include policies that reflect the needs of  
5           a variety of different types of workplaces, including  
6           those with differing work structures, facilities,  
7           or tasks;

8           (J) describe behaviors that would constitute  
9           retaliation; and

10          (K) include a description of potential consequences  
11          for violating the comprehensive non-discrimination  
12          policy; and

13          (2) model trainings regarding prohibited discrimination  
14          and harassment in employment, as described in section  
15          102, for use by employers with fewer than 15 employees,  
16          which shall—

17               (A) take into account the resources available  
18               to such employers;

19               (B) take into account the particular needs  
20               of employees of such employers;

21               (C) be made available in plain English and  
22               in accessible formats for individuals with disabilities  
23               and for individuals who primarily speak a language  
24               other than English;

1 (D) be made available in an online format  
2 that is widely available to such employers and  
3 employees of such employers;

4 (E) include an explanation of prohibited  
5 discrimination and harassment in employment,  
6 including retaliation related to such discrimina-  
7 tion and harassment;

8 (F) describe the affirmative behaviors that  
9 contribute to preventing and reducing harass-  
10 ment and discrimination in employment;

11 (G) include trainings designed to address  
12 the needs of a variety of workplaces, including  
13 those with differing work structures, facilities,  
14 and tasks;

15 (H) include best practices for preventing  
16 prohibited discrimination and harassment spe-  
17 cific to industries in which the Commission de-  
18 termines that harassment is particularly preva-  
19 lent or severe; and

20 (I) include any additional information the  
21 Commission determines may prevent discrimi-  
22 nation and harassment of employees.

23 (c) INDIVIDUALIZATION.—The Commission shall en-  
24 sure that resource materials under this section are de-  
25 signed to facilitate individual employers to customize

1 training to address the needs of their workplaces, includ-  
2 ing differing work structures, facilities, and tasks.

3 **SEC. 104. EDUCATION, TRAINING, AND TECHNICAL ASSIST-**  
4 **ANCE TO EMPLOYERS.**

5 The Commission shall have the authority to—

6 (1) reasonably adjust the fees the Commission  
7 charges for any education, technical assistance, or  
8 training the Commission offers in accordance with  
9 section 705(j)(1) of the Civil Rights Act of 1964 (42  
10 U.S.C. 2000e–4(j)(1));

11 (2) use the materials developed by the Commis-  
12 sion for any education, technical assistance, or train-  
13 ing offered by the Commission in accordance with  
14 that section in any education and outreach activities  
15 carried out by the Commission; and

16 (3) use funds from the Commission’s EEOC  
17 Education, Technical Assistance, and Training Re-  
18 volving Fund, established under section 705(k) of  
19 the Civil Rights Act of 1964 (42 U.S.C. 2000e–  
20 4(k)), to pay the full salaries of any Commission em-  
21 ployees that develop and administer any education,  
22 technical assistance, or training programs offered by  
23 the Commission.

1 **SEC. 105. TASK FORCE REGARDING HARASSMENT.**

2 (a) IN GENERAL.—The Commission shall establish  
3 and periodically convene a harassment prevention task  
4 force (referred to in this subsection as the “Task Force”)  
5 to study prohibited harassment in employment.

6 (b) MEMBERSHIP.—The Task Force established  
7 under paragraph (1) shall include membership that re-  
8 flects a broad diversity of experience and expertise relating  
9 to prohibited harassment, including—

10 (1) employee advocates;

11 (2) researchers with expertise in organizational  
12 culture change or reducing behavior related to har-  
13 assment and discrimination;

14 (3) legal practitioners with professional exper-  
15 tise related to harassment litigation on behalf of em-  
16 ployees;

17 (4) legal practitioners with experience serving  
18 as a chief legal officer or human resource officer in  
19 a corporate legal department;

20 (5) individuals with expertise in diversity and  
21 inclusion initiatives;

22 (6) individuals who have experienced prohibited  
23 harassment in employment; and

24 (7) union leaders.

25 (c) DUTIES.—The Task Force shall—

1           (1) identify strategies and recommend proposals  
2       to prevent prohibited harassment in employment;  
3       and

4           (2) provide guidance on effective strategies to  
5       prevent prohibited harassment that are specific to  
6       industries in which the Task Force determines that  
7       harassment is particularly prevalent or severe.

8       (d) REPORT.—Not less than once every 5 years, the  
9       Commission shall prepare and publish a report on the  
10      Commission’s website, which shall be based on the work  
11      of the Task Force and shall include—

12           (1) a review of the prevalence of prohibited har-  
13      assment in employment, including the results of the  
14      national prevalence survey described in section 112;

15           (2) recommendations for Federal, State, and  
16      local initiatives, reforms, and legislation to prevent  
17      prohibited harassment in employment;

18           (3) assessments of the effectiveness of employ-  
19      ment policies designed to prevent prohibited harass-  
20      ment in employment by changing behavior and cul-  
21      ture;

22           (4) assessments of the effectiveness of processes  
23      for investigations into prohibited harassment in em-  
24      ployment;

1           (5) assessments of the effectiveness of different  
2       types of training to reduce and prevent harassment  
3       in employment; and

4           (6) assessments of the effectiveness of other  
5       proactive initiatives and interventions to reduce and  
6       prevent harassment in employment.

7   **SEC. 106. RESOURCE MATERIALS ON EMPLOYMENT CLI-**  
8                   **MATE ASSESSMENTS.**

9       (a) IN GENERAL.—Not later than 1 year after the  
10   date of enactment of this Act, the Commission shall de-  
11   velop and make publicly available resource materials for  
12   employers on assessing the employment climate, including  
13   the occurrence of prohibited harassment in employment,  
14   in order to assist such employers in determining the effec-  
15   tiveness of measures the employer takes to prevent and  
16   address prohibited harassment in employment.

17       (b) EMPLOYMENT CLIMATE SURVEY.—Such resource  
18   materials shall include a model survey regarding prohib-  
19   ited harassment in employment, which shall be available  
20   for an employer to use (at the employer’s discretion and  
21   employer’s expense) in order to assess the employment cli-  
22   mate. The model survey shall be—

23           (1) designed to assess employees’ experiences  
24       related to prohibited harassment in employment;

1           (2) fair, unbiased, and scientifically valid to the  
2       greatest extent practicable;

3           (3) designed to solicit confidential submissions  
4       and to provide data without revealing personally  
5       identifiable information; and

6           (4) inclusive of individuals required to be af-  
7       forded protection under section 301.

8       (c) CONTENTS.—The model survey may include—

9           (1) questions designed to assess the prevalence  
10      of prohibited harassment in employment;

11          (2) questions designed to understand whether  
12      employees have access to and are familiar with the  
13      employer’s nondiscrimination and anti-harassment  
14      policies and procedures;

15          (3) questions to assess the employment climate;  
16      and

17          (4) any additional questions the Commission  
18      determines are consistent with the purposes of this  
19      section.

20       (d) MANDATORY EMPLOYEE PARTICIPATION PRO-  
21      HIBITED.—An employer may not compel or require em-  
22      ployees to participate in a survey regarding prohibited  
23      harassment or discrimination in employment.

24       (e) REVIEW AND REVISION.—The Commission shall  
25      periodically review and revise the resource materials de-

1 scribed in subsection (a) and the model survey developed  
2 under subsection (b).

3 **SEC. 107. ESTABLISHING AN OFFICE OF EDUCATION AND**  
4 **OUTREACH WITHIN THE EQUAL EMPLOY-**  
5 **MENT OPPORTUNITY COMMISSION.**

6 (a) IN GENERAL.—The Commission shall establish  
7 and maintain an Office of Education and Outreach to—

8 (1) conduct outreach and education concerning  
9 prohibited discrimination and harassment in employ-  
10 ment under Federal civil rights laws and available  
11 resources and remedies relating to those laws; and

12 (2) conduct a multi-year public awareness cam-  
13 paign to improve public awareness of the Commis-  
14 sion, which shall include disseminating information  
15 about—

16 (A) the purpose of the Commission;

17 (B) the resources available through the  
18 Commission to prevent prohibited discrimina-  
19 tion and harassment in employment;

20 (C) the ways in which an individual can  
21 file a complaint with the Commission; and

22 (D) the process by which the Commission  
23 investigates charges of discrimination.

24 (b) INFORMATION DISSEMINATED.—The information  
25 disseminated in accordance with subsection (a)(2) shall be



1 made available in plain English and in an accessible man-  
 2 ner for individuals with disabilities and for individuals who  
 3 primarily speak a language other than English.

4 **SEC. 108. RELATIONSHIP TO OTHER LAWS.**

5 Compliance with section 101 or 102, or use of mate-  
 6 rials provided under subtitle A, is not an affirmative de-  
 7 fense under applicable employment nondiscrimination  
 8 laws.

9 **SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated to the Com-  
 11 mission such sums as may be necessary to carry out the  
 12 Commission's duties and activities, including such duties  
 13 and activities authorized under this subtitle.

14 **Subtitle B—Research and Addi-**  
 15 **tional Resources for Harass-**  
 16 **ment Prevention**

17 **SEC. 111. NATIONAL PREVALENCE SURVEY ON HARASS-**  
 18 **MENT IN EMPLOYMENT.**

19 (a) SURVEY.—The Bureau of the Census, the Com-  
 20 mission, and the Bureau of Labor Statistics shall jointly  
 21 develop a national prevalence survey on the prevalence of  
 22 prohibited harassment in employment (referred to in this  
 23 section as the “national prevalence survey”). Such survey  
 24 shall be administered by the Bureau of the Census not

1 later than 1 year after the date of enactment of this Act,  
2 and every 3 years thereafter.

3 (b) CONTENTS.—The national prevalence survey  
4 shall include questions designed to collect such informa-  
5 tion from individuals as may be necessary to examine ex-  
6 isting beliefs, attitudes, and understanding of prohibited  
7 harassment in employment, and the extent to which such  
8 harassment is experienced or observed by individuals, su-  
9 pervisors, and employers, including the information nec-  
10 essary for the report described in subsection (c).

11 (c) REPORT.—

12 (1) IN GENERAL.—Not later than 6 months  
13 after each national prevalence survey has been ad-  
14 ministered, the Bureau of the Census, the Commis-  
15 sion, and the Bureau of Labor Statistics shall jointly  
16 prepare and submit to the Committee on Health,  
17 Education, Labor, and Pensions of the Senate and  
18 the Committee on Education and Labor of the  
19 House of Representatives a report on the results of  
20 that survey.

21 (2) REQUIRED INFORMATION.—The report  
22 under this subsection shall include, at minimum—

23 (A) information about the extent to which  
24 individuals experience prohibited harassment in  
25 employment on the basis of sex (including sex-

ual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), race, color, religion, national origin, age, disability, genetic information, and uniformed service status, and information about the interaction of different characteristics that may be the basis of harassment in employment;

(B) information about the prevalence of each such form of prohibited harassment in employment, disaggregated by industry and salary level, including across all wage bands; and

(C) an analysis of the economic impacts of prohibited harassment.

(3) DISAGGREGATION OF SEX BASED HARASSMENT.—The report under this subsection shall separately, and in the aggregate, report each of the following bases of sex harassment:

(A) Sexual orientation.

(B) Gender identity.

(C) Pregnancy.

(D) Childbirth.

(E) A medical condition related to pregnancy or childbirth.

(F) A sex stereotype.

1 (G) Sexual in nature.

2 (4) PUBLIC AVAILABILITY.—The report shall be  
3 made publicly available on the websites of the Bu-  
4 reau of the Census, the Commission, and Bureau of  
5 Labor Statistics.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
7 are authorized to be appropriated for the Bureau of the  
8 Census to carry out this section \$1,200,000 for fiscal year  
9 2019 and such sums as may be necessary for each fiscal  
10 year the national prevalence survey is to be administered  
11 under subsection (a) or the report is to be submitted under  
12 subsection (c).

13 **SEC. 112. STUDY AND REPORT ON HARASSMENT IN THE**  
14 **FEDERAL GOVERNMENT.**

15 (a) IN GENERAL.—Not later than 1 year after the  
16 date of enactment of this Act, and not less than once every  
17 3 years thereafter, the Merit Systems Protection Board  
18 shall prepare and submit to the Committee on Health,  
19 Education, Labor, and Pensions of the Senate and the  
20 Committee on Education and Labor of the House of Rep-  
21 resentatives a report containing the following information:

22 (1) The prevalence of specific behaviors associ-  
23 ated with prohibited harassment in employment  
24 among Federal employees, including information

1       about such behaviors disaggregated by each wage  
2       band.

3               (2) The impact of prohibited harassment in em-  
4       ployment and violations of Federal civil rights laws  
5       on the Federal Government, in terms of monetary  
6       costs, attrition, and morale.

7               (3) The particular impact of prohibited harass-  
8       ment in employment on the experience of Federal  
9       employees with disabilities.

10              (4) Working in coordination with the Commis-  
11       sion's Office of Federal Operations, a description of  
12       the differences in Federal agency policies, strategies,  
13       reporting mechanisms, training programs, and other  
14       practices regarding preventing and addressing pro-  
15       hibited harassment in employment.

16              (5) A description of which policies, strategies,  
17       reporting mechanisms, training programs, and other  
18       practices described in paragraph (4) have prevented,  
19       addressed, or reduced prohibited harassment in em-  
20       ployment.

21              (6) Working in coordination with the Commis-  
22       sion's Office of Federal Operations, joint rec-  
23       ommendations from such Office and the Merit Sys-  
24       tems Protection Board to Federal agencies on how

1 to prevent and address prohibited harassment in em-  
2 ployment.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Merit Systems  
5 Protection Board such sums as may be necessary to carry  
6 out this section.

7 **SEC. 113. STUDIES, REPORTS, AND FURTHER RESEARCH.**

8 (a) STUDY AND REPORT ON ENFORCEMENT OF NON-  
9 DISCRIMINATION LAWS PROHIBITING HARASSMENT  
10 LAWS.—Not later than 1 year after the date of enactment  
11 of this Act, the United States Commission on Civil Rights  
12 shall prepare and submit to the Committee on Health,  
13 Education, Labor, and Pensions of the Senate and the  
14 Committee on Education and Labor of the House of Rep-  
15 resentatives a report that shall examine enforcement of  
16 the nondiscrimination laws prohibiting harassment includ-  
17 ing—

- 18 (1) trends in enforcement of such laws;  
19 (2) barriers to effective enforcement of such  
20 laws;  
21 (3) best practices in enforcement of such laws;  
22 (4) recommendations about how to improve en-  
23 forcement of such laws, including whether estab-  
24 lishing individual liability for discrimination and har-

1        assessment in employment would improve enforcement  
2        of such laws; and

3            (5) how the experience of harassment for em-  
4        ployees and individuals required to be afforded pro-  
5        tections under section 301 has changed over time  
6        since the passage of such laws.

7        (b) STUDY AND REPORT ON PREVENTION OF HAR-  
8        ASSMENT IN EMPLOYMENT.—

9            (1) IN GENERAL.—Not later than 60 days after  
10       the date of enactment of this Act, the Director of  
11       the National Institutes of Health shall enter into an  
12       agreement with the National Academies of Sciences,  
13       Engineering, and Medicine, through which the Na-  
14       tional Academies of Science, Engineering, and Medi-  
15       cine shall conduct a study on preventing and ad-  
16       dressing prohibited harassment in employment.

17            (2) CONTENTS.—Such study shall include—

18            (A) an evaluation of the existing research  
19       of the causes of prohibited harassment in em-  
20       ployment, including retaliation related to such  
21       harassment, and gaps in such research;

22            (B) a review of the existing research re-  
23       garding how prohibited harassment in employ-  
24       ment impacts individuals;

1 (C) an evaluation of the existing research  
2 on training to prevent prohibited harassment in  
3 employment, including essential components of  
4 effective training to prevent such prohibited  
5 harassment and retaliation, and gaps in such  
6 research;

7 (D) an assessment of the efficacy and  
8 availability of training models and programs to  
9 prevent prohibited harassment in employment;

10 (E) the identification of employment or so-  
11 cietal factors that increase the likelihood of pro-  
12 hibited harassment in employment, particularly  
13 across industries with a high number of individ-  
14 uals who are vulnerable to experiencing such  
15 prohibited harassment, including whether diver-  
16 sity in leadership positions within an organiza-  
17 tion reduces the likelihood of such prohibited  
18 harassment;

19 (F) an examination of methods of induc-  
20 ing, scaling, and sustaining institutional or or-  
21 ganizational change to prevent prohibited har-  
22 assment in employment;

23 (G) an analysis of policies, strategies, and  
24 practices that have been the most successful in



1 preventing and addressing prohibited harass-  
2 ment in employment; and

3 (H) any other information or analysis nec-  
4 essary to identify the gaps in research and  
5 other measures described in subsection (c).

6 (3) REPORT.—Not later than 1 year after the  
7 date of enactment of this Act, the National Acad-  
8 emies of Sciences, Engineering, and Medicine shall  
9 prepare and submit to the Committee on Health,  
10 Education, Labor, and Pensions of the Senate, the  
11 Committee on Education and Labor of the House of  
12 Representatives, and the Director of the National  
13 Institutes of Health, a report containing the results  
14 of the study conducted under this subsection and  
15 make recommendations to Congress, executive  
16 branch agencies, private employers, and researchers.  
17 Such recommendations shall include ways that such  
18 training could be improved to result in behavioral  
19 and cultural changes that prevent and reduce behav-  
20 iors associated with prohibited harassment in em-  
21 ployment. The report and recommendations shall be  
22 made publicly available.

23 (c) SUPPORTING FURTHER RESEARCH ON PRE-  
24 VENTING AND UNDERSTANDING HARASSMENT IN EM-  
25 PLOYMENT.—

1           (1) IN GENERAL.—Not later than 6 months  
2     after the submission required under subsection  
3     (b)(3), the Director of the National Institutes of  
4     Health, in consultation with the Commission and the  
5     Secretary of Labor, shall enter into agreements (in-  
6     cluding through the use of grants, contracts, cooper-  
7     ative agreements, or other transactions) to support  
8     research regarding—

9           (A) the gaps identified in the report re-  
10    quired under subsection (b)(3) in research on  
11    the causes of prohibited harassment in employ-  
12    ment, including retaliation related to such har-  
13    assment;

14          (B) the gaps identified in the report re-  
15    quired under subsection (b)(3) in research on  
16    the psychological sequelae of prohibited harass-  
17    ment in employment, including retaliation re-  
18    lated to such harassment;

19          (C) gaps identified in the report required  
20    under subsection (b)(3) in research on special  
21    populations and their risk for prohibited harass-  
22    ment in employment, including adolescents,  
23    older individuals, racial and ethnic minorities,  
24    individuals with disabilities, women, and other

1 populations that could be disproportionately af-  
2 fected by prohibited harassment in employment;

3 (D) gaps identified in the report required  
4 under subsection (b)(3) in research on prohib-  
5 ited harassment in employment, including retal-  
6 iation related to such harassment, as a risk fac-  
7 tor for various mental health problems;

8 (E) gaps identified in the report required  
9 under subsection (b)(3) in research on  
10 sociocultural correlations within prohibited har-  
11 assment in employment, including retaliation  
12 related to such harassment; and

13 (F) systematic and quantifiable measures  
14 to evaluate prevention strategies for victims and  
15 perpetrators of prohibited harassment in em-  
16 ployment, including retaliation related to such  
17 harassment.

18 (2) AUTHORIZATION OF APPROPRIATIONS.—

19 There are authorized to be appropriated to the Na-  
20 tional Institutes of Health to carry out this sub-  
21 section such sums as may be necessary.

1 **Subtitle C—Preventing Harassment**  
2 **of Tipped Employees**

3 **SEC. 121. TIPPED EMPLOYEES.**

4 (a) BASE MINIMUM WAGE FOR TIPPED EMPLOYEES  
5 AND TIPS RETAINED BY EMPLOYEES.—Section  
6 3(m)(2)(A)(i) of the Fair Labor Standards Act of 1938  
7 (29 U.S.C. 203(m)(2)(A)(i)) is amended to read as fol-  
8 lows:

9 “(i) the cash wage paid such em-  
10 ployee, which for purposes of such deter-  
11 mination shall be not less than—

12 “(I) for the 1-year period begin-  
13 ning on the effective date under sub-  
14 section (e), \$3.60 an hour;

15 “(II) for each succeeding 1-year  
16 period until the hourly wage under  
17 this clause equals the wage in effect  
18 under section 6(a)(1) for such period,  
19 an hourly wage equal to the amount  
20 determined under this clause for the  
21 preceding year, increased by the lesser  
22 of—

23 “(aa) \$1.50; or

24 “(bb) the amount necessary  
25 for the wage in effect under this

1 clause to equal the wage in effect  
2 under section 6(a)(1) for such  
3 period, rounded up to the nearest  
4 multiple of \$0.05; and  
5 “(III) for each succeeding 1-year  
6 period after the increase made pursu-  
7 ant to subclause (II), the minimum  
8 wage in effect under section 6(a)(1);  
9 and”.

10 (b) TIPS RETAINED BY EMPLOYEES.—Section  
11 3(m)(2)(A) of the Fair Labor Standards Act of 1938 (29  
12 U.S.C. 203(m)(2)(A)) is amended—

13 (1) in the second sentence of the matter fol-  
14 lowing clause (ii), by striking “of this subsection,  
15 and all tips received by such employee have been re-  
16 tained by the employee” and inserting “of this sub-  
17 section. Any employee shall have the right to retain  
18 any tips received by such employee”; and

19 (2) by adding at the end the following: “An em-  
20 ployer shall inform each employee of the right and  
21 exception provided under the preceding sentence.”.

22 (c) PUBLICATION OF NOTICE.—Section 6 of the Fair  
23 Labor Standards Act of 1938 (29 U.S.C. 206) is amended  
24 by adding at the end the following:

1 “(h) Not later than 60 days prior to the effective date  
 2 of any increase in the required wage determined in accord-  
 3 ance with subclause (II) or (III) of section 3(m)(2)(A)(i),  
 4 the Secretary shall publish in the Federal Register and  
 5 on the website of the Department of Labor a notice an-  
 6 nouncing each increase in such required wage.”.

7 (d) SCHEDULED REPEAL OF SEPARATE MINIMUM  
 8 WAGE FOR TIPPED EMPLOYEES.—

9 (1) TIPPED EMPLOYEES.—Section 3(m)(2)(A)  
 10 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
 11 203(m)(2)(A)), as amended by subsections (a) and  
 12 (b), is further amended by striking the sentence be-  
 13 ginning with “In determining the wage an employer  
 14 is required to pay a tipped employee,” and all that  
 15 follows through “of this subsection.” and inserting  
 16 “The wage required to be paid to a tipped employee  
 17 shall be the wage set forth in section 6(a)(1).”.

18 (2) PUBLICATION OF NOTICE.—Section 6 of the  
 19 Fair Labor Standards Act of 1938 (29 U.S.C. 206),  
 20 as amended by subsection (c), is further amended by  
 21 striking subsection (h).

22 (3) EFFECTIVE DATE.—The amendments made  
 23 by paragraphs (1) and (2) shall take effect on the  
 24 date that is one day after the date on which the  
 25 hourly wage under subclause (III) of section

1        3(m)(2)(A)(i) of the Fair Labor Standards Act of  
 2        1938 (29 U.S.C. 203(m)(2)(A)(i)), as amended by  
 3        subsection (a), takes effect.

4        (e) EFFECTIVE DATE.—Except as provided in sub-  
 5        section (d)(3), this section and the amendments made by  
 6        this section shall take effect on the first day of the third  
 7        month that begins after the date of enactment of this Act.

## 8        **TITLE II—STRENGTHENING** 9        **WORKPLACE RIGHTS**

### 10        **SEC. 201. CLARIFYING SEXUAL ORIENTATION DISCRIMINA-** 11        **TION AND GENDER IDENTITY DISCRIMINA-** 12        **TION ARE UNLAWFUL SEX DISCRIMINATION.**

13        (a) EMPLOYMENT.—

14                (1) RULES OF CONSTRUCTION.—Title VII of  
 15        the Civil Rights Act of 1964 is amended by inserting  
 16        after section 701 (42 U.S.C. 2000e) the following:

#### 17        **“SEC. 701A. RULES OF CONSTRUCTION.**

18                “Section 1106 shall apply to this title except that for  
 19        purposes of that application, a reference in that section  
 20        to an ‘unlawful practice’ shall be considered to be a ref-  
 21        erence to an ‘unlawful employment practice’.”.

22                (2) UNLAWFUL EMPLOYMENT PRACTICES.—

23        Section 703 of the Civil Rights Act of 1964 (42  
 24        U.S.C. 2000e–2) is amended—

1 (A) in the section header, by striking  
 2 “**SEX**,” and inserting “**SEX (INCLUDING SEX-**  
 3 **UAL ORIENTATION, GENDER IDENTITY,**  
 4 **PREGNANCY, CHILDBIRTH, A MEDICAL**  
 5 **CONDITION RELATED TO PREGNANCY OR**  
 6 **CHILDBIRTH, AND A SEX STEREOTYPE),”;**

7 (B) except in subsections (e), (j) and (m),  
 8 by striking “sex,” each place it appears and in-  
 9 serting “sex (including sexual orientation, gen-  
 10 der identity, pregnancy, childbirth, a medical  
 11 condition related to pregnancy or childbirth,  
 12 and a sex stereotype),”;

13 (C) in subsection (e)(1), by striking “en-  
 14 terprise,” and inserting “enterprise, if, in a sit-  
 15 uation in which sex is a bona fide occupational  
 16 qualification, individuals are recognized as  
 17 qualified in accordance with their gender iden-  
 18 tity,”;

19 (D) in subsection (h), by striking “sex”  
 20 the second place it appears and inserting “sex  
 21 (including sexual orientation, gender identity,  
 22 pregnancy, childbirth, a medical condition re-  
 23 lated to pregnancy or childbirth, and a sex  
 24 stereotype),”;

25 (E) in subsection (j)—



1 (i) by striking “sex,” the first place it  
 2 appears and inserting “sex (including sexual  
 3 ual orientation, gender identity, pregnancy,  
 4 childbirth, a medical condition related to  
 5 pregnancy or childbirth, and a sex stereo-  
 6 type),”; and

7 (ii) by striking “sex,” the second and  
 8 third places it appears and inserting “sex  
 9 (including sexual orientation, gender iden-  
 10 tity, pregnancy, childbirth, a medical con-  
 11 dition related to pregnancy or childbirth,  
 12 and a sex stereotype),”; and

13 (F) in subsection (m), by striking “sex,”  
 14 and inserting “sex (including sexual orientation,  
 15 gender identity, pregnancy, childbirth, a med-  
 16 ical condition related to pregnancy or childbirth,  
 17 and a sex stereotype),”.

18 (3) OTHER UNLAWFUL EMPLOYMENT PRAC-  
 19 TICES.—Section 704(b) of the Civil Rights Act of  
 20 1964 (42 U.S.C. 2000e–3(b)) is amended—

21 (A) by striking “sex,” the first place it ap-  
 22 pears and inserting “sex (including sexual ori-  
 23 entation, gender identity, pregnancy, childbirth,  
 24 a medical condition related to pregnancy or  
 25 childbirth, and a sex stereotype),”; and

1 (B) by striking “employment.” and insert-  
2 ing “employment, if, in a situation in which sex  
3 is a bona fide occupational qualification, indi-  
4 viduals are recognized as qualified in accord-  
5 ance with their gender identity.”.

6 (4) CLAIMS.—Section 706(g)(2)(A) of the Civil  
7 Rights Act of 1964 (2000e–5(g)(2)(A)) is amended  
8 by striking “sex,” and inserting “sex (including sex-  
9 ual orientation, gender identity, pregnancy, child-  
10 birth, a medical condition related to pregnancy or  
11 childbirth, and a sex stereotype),”.

12 (5) EMPLOYMENT BY FEDERAL GOVERN-  
13 MENT.—Section 717 of the Civil Rights Act of 1964  
14 (42 U.S.C. 2000e–16) is amended—

15 (A) in subsection (a), by striking “sex,”  
16 and inserting “sex (including sexual orientation,  
17 gender identity, pregnancy, childbirth, a med-  
18 ical condition related to pregnancy or childbirth,  
19 and a sex stereotype),”; and

20 (B) in subsection (c), by striking “sex”  
21 and inserting “sex (including sexual orientation,  
22 gender identity, pregnancy, childbirth, a med-  
23 ical condition related to pregnancy or childbirth,  
24 and a sex stereotype),”.

1           (6) GOVERNMENT EMPLOYEE RIGHTS ACT OF  
2       1991.—The Government Employee Rights Act of  
3       1991 (42 U.S.C. 2000e–16a et seq.) is amended—

4           (A) in section 301(b), by striking “sex,”  
5       and inserting “sex (including sexual orientation,  
6       gender identity, pregnancy, childbirth, a med-  
7       ical condition related to pregnancy or childbirth,  
8       and a sex stereotype),”;

9           (B) in section 302(a)(1), by striking “sex,”  
10      and inserting “sex (including sexual orientation,  
11      gender identity, pregnancy, childbirth, a med-  
12      ical condition related to pregnancy or childbirth,  
13      and a sex stereotype),”;

14           (C) by adding at the end the following:

15   **“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

16       “Sections 1101(b), 1106, and 1107 of the Civil  
17   Rights Act of 1964 shall apply to this title except that  
18   for purposes of that application, a reference in that section  
19   1106 to ‘race, color, religion, sex (including sexual orienta-  
20   tion, gender identity, pregnancy, childbirth, a medical con-  
21   dition related to pregnancy or childbirth, and a sex stereo-  
22   type), or national origin’ shall be considered to be a ref-  
23   erence to ‘race, color, religion, sex (including sexual ori-  
24   entation, gender identity, pregnancy, childbirth, a medical

1 condition related to pregnancy or childbirth, and a sex  
 2 stereotype), national origin, age, or disability’.”.

3 (7) CONGRESSIONAL ACCOUNTABILITY ACT OF  
 4 1995.—The Congressional Accountability Act of 1995  
 5 (2 U.S.C. 1301 et seq.) is amended—

6 (A) in section 201(a)(1) (2 U.S.C.  
 7 1311(a)(1)) by striking “sex,” and inserting  
 8 “sex (including sexual orientation, gender iden-  
 9 tity, pregnancy, childbirth, a medical condition  
 10 related to pregnancy or childbirth, and a sex  
 11 stereotype),”; and

12 (B) by adding at the end of title II (42  
 13 U.S.C. 1311 et seq.) the following:

14 **“SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.**

15 “Sections 1101(b), 1106, and 1107 of the Civil  
 16 Rights Act of 1964 shall apply to section 201 (and reme-  
 17 dial provisions of this Act related to section 201) except  
 18 that for purposes of that application, a reference in that  
 19 section 1106 to ‘race, color, religion, sex (including sexual  
 20 orientation, gender identity, pregnancy, childbirth, a med-  
 21 ical condition related to pregnancy or childbirth, and a sex  
 22 stereotype), or national origin’ shall be considered to be  
 23 a reference to ‘race, color, religion, sex (including sexual  
 24 orientation, gender identity, pregnancy, childbirth, a med-

1 ical condition related to pregnancy or childbirth, and a sex  
2 stereotype), national origin, age, or disability’.”.

3 (8) CIVIL SERVICE REFORM ACT OF 1978.—  
4 Chapter 23 of title 5, United States Code, is amend-  
5 ed—

6 (A) in section 2301(b)(2), by striking  
7 “sex,” and inserting “sex (including sexual ori-  
8 entation, gender identity, pregnancy, childbirth,  
9 a medical condition related to pregnancy or  
10 childbirth, and a sex stereotype),”;

11 (B) in section 2302—

12 (i) in subsection (b)(1)(A), by striking  
13 “sex,” and inserting “sex (including sexual  
14 orientation, gender identity, pregnancy,  
15 childbirth, a medical condition related to  
16 pregnancy or childbirth, and a sex stereo-  
17 type),”; and

18 (ii) in subsection (d)(1), by striking  
19 “sex,” and inserting “sex (including sexual  
20 orientation, gender identity, pregnancy,  
21 childbirth, a medical condition related to  
22 pregnancy or childbirth, and a sex stereo-  
23 type),”; and

24 (C) by adding at the end the following:

1 **“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

2 “Sections 1101(b), 1106, and 1107 of the Civil  
 3 Rights Act of 1964 shall apply to this chapter (and reme-  
 4 dial provisions of this title related to this chapter) except  
 5 that for purposes of that application, a reference in that  
 6 section 1106 to ‘race, color, religion, sex (including sexual  
 7 orientation, gender identity, pregnancy, childbirth, a med-  
 8 ical condition related to pregnancy or childbirth, and a sex  
 9 stereotype), or national origin’ shall be considered to be  
 10 a reference to ‘race, color, religion, sex (including sexual  
 11 orientation, gender identity, pregnancy, childbirth, a med-  
 12 ical condition related to pregnancy or childbirth, and a sex  
 13 stereotype), national origin, age, disability, marital status,  
 14 or political affiliation’.”.

15 (b) MISCELLANEOUS.—Title XI of the Civil Rights  
 16 Act of 1964 is amended—

17 (1) by redesignating sections 1101 through  
 18 1104 (42 U.S.C. 2000h et seq.) and sections 1105  
 19 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections  
 20 1102 through 1105 and sections 1108 and 1109, re-  
 21 spectively;

22 (2) by inserting after the title heading the fol-  
 23 lowing:

24 **“SEC. 1101. DEFINITIONS AND RULES.**

25 “(a) DEFINITIONS.—In title VII:

1           “(1) RACE; COLOR; RELIGION; SEX; SEXUAL  
2           ORIENTATION; GENDER IDENTITY; NATIONAL ORI-  
3           GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’, or  
4           ‘national origin’, used with respect to an individual,  
5           includes—

6                   “(A) the race, color, religion, sex (includ-  
7                   ing sexual orientation, gender identity, preg-  
8                   nancy, childbirth, a medical condition related to  
9                   pregnancy or childbirth, and a sex stereotype),  
10                  or national origin, respectively, of another per-  
11                  son with whom the individual is associated or  
12                  has been associated; and

13                   “(B) a perception or belief, even if inac-  
14                   curate, concerning the race, color, religion, sex  
15                   (including sexual orientation, gender identity,  
16                   pregnancy, childbirth, a medical condition re-  
17                   lated to pregnancy or childbirth, and a sex  
18                   stereotype), or national origin, respectively, of  
19                  the individual.

20           “(2) GENDER IDENTITY.—The term ‘gender  
21           identity’ means the gender-related identity, appear-  
22           ance, mannerisms, or other gender-related character-  
23           istics of an individual, regardless of the individual’s  
24           designated sex at birth.

1           “(3) INCLUDING.—The term ‘including’ means  
2           including, but not limited to, consistent with the  
3           term’s standard meaning in Federal law.

4           “(4) SEXUAL ORIENTATION.—The term ‘sexual  
5           orientation’ means homosexuality, heterosexuality, or  
6           bisexuality.

7           “(b) RULES.—In title VII—

8           “(1) with respect to sex, an individual’s preg-  
9           nancy, childbirth, or related medical condition shall  
10          not receive less favorable treatment than other phys-  
11          ical conditions; and

12          “(2) with respect to gender identity, an indi-  
13          vidual shall not be denied access to a shared facility,  
14          including a restroom, a locker room, and a dressing  
15          room, that is in accordance with the individual’s  
16          gender identity.”; and

17          (3) by inserting after section 1105 the fol-  
18          lowing:

19       **“SEC. 1106. RULES OF CONSTRUCTION.**

20          “(a) SEX.—Nothing in section 1101 or the provisions  
21          of title VII incorporating a term defined or a rule specified  
22          in that section shall be construed—

23          “(1) to limit the protection against an unlawful  
24          practice on the basis of pregnancy, childbirth, a



1 medical condition related to pregnancy or childbirth  
2 provided by section 701(k); or

3 “(2) to limit the protection against an unlawful  
4 practice on the basis of sex available under any pro-  
5 vision of Federal law other than title VII, prohib-  
6 iting a practice on the basis of sex.

7 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—  
8 Nothing in section 1101 or title VII shall be construed  
9 to limit the claims or remedies available to any individual  
10 for an unlawful practice on the basis of race, color, reli-  
11 gion, sex (including sexual orientation, gender identity,  
12 pregnancy, childbirth, a medical condition related to preg-  
13 nancy or childbirth, and a sex stereotype), or national ori-  
14 gin including claims brought pursuant to section 1979 or  
15 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or  
16 any other law, including a Federal law amended by the  
17 BE HEARD in the Workplace Act, regulation, or policy.

18 “(c) NO NEGATIVE INFERENCE.—Nothing in section  
19 1101 or title VII shall be construed to support any infer-  
20 ence that any Federal law prohibiting a practice on the  
21 basis of sex does not prohibit discrimination on the basis  
22 of pregnancy, childbirth, a medical condition related to  
23 pregnancy or childbirth, sexual orientation, gender iden-  
24 tity, or a sex stereotype.

1 **“SEC. 1107. CLAIMS.**

2       “The Religious Freedom Restoration Act of 1993 (42  
3 U.S.C. 2000bb et seq.) shall not provide a claim con-  
4 cerning, or a defense to a claim under, title VII, or provide  
5 a basis for challenging the application or enforcement of  
6 title VII.”.

7 **SEC. 202. COVERED EMPLOYERS.**

8       Section 701(b) of the Civil Rights Act of 1964 (42  
9 U.S.C. 2000e(b)) is amended by striking “fifteen” and in-  
10 serting “one”.

11 **SEC. 203. COMPENSATORY AND PUNITIVE DAMAGES AVAIL-**  
12 **ABLE.**

13       (a) CIVIL RIGHTS; DISABILITY.—

14           (1) IN GENERAL.—Section 1977A(b) of the Re-  
15 vised Statutes (42 U.S.C. 1981a(b)) is amended by  
16 striking paragraph (3) and inserting the following:

17           “(3) LOSSES.—Compensatory damages are  
18 available under this section for future pecuniary  
19 losses, emotional pain, suffering, inconvenience,  
20 mental anguish, loss of enjoyment of life, and other  
21 nonpecuniary losses.”.

22       (2) CONFORMING AMENDMENTS.—

23           (A) Section 201(b) of the Congressional  
24 Accountability Act of 1995 (2 U.S.C. 1311(b))  
25 is amended, in paragraphs (1)(B) and (3)(B)—

1 (i) by striking “and, irrespective of  
 2 the size of the employing office,  
 3 1977A(b)(3)(D)” and inserting “and  
 4 1977A(b)(3)”; and

5 (ii) by striking “and 1981a(b)(3)(D)”  
 6 and inserting “and 1981a(b)(3)”.

7 (B) Section 411(b) of title 3, United  
 8 States Code, is amended, in paragraphs (1)(B)  
 9 and (3)(B), by striking “and, irrespective of the  
 10 size of the employing office, 1977A(b)(3)(D)”  
 11 and inserting “and 1977A(b)(3)”.

12 (C) Section 207 of the Genetic Information  
 13 Nondiscrimination Act of 2008 (42 U.S.C.  
 14 2000ff–16) is amended, in paragraph (3) of  
 15 each of subsections (a) through (e), by striking  
 16 “, including the limitations contained in sub-  
 17 section (b)(3) of such section 1977A,”.

18 (b) AGE.—Section 7(b) of the Age Discrimination in  
 19 Employment Act of 1967 (29 U.S.C. 626(b)) is amend-  
 20 ed—

21 (1) by striking “(b) The” and all that follows  
 22 through the third sentence and inserting the fol-  
 23 lowing:

24 “(b)(1) Except as otherwise provided in another sub-  
 25 section of this section, or section 9, the powers, remedies,

1 and procedures set forth in sections 705, 706, 707, 709,  
 2 and 710 of the Civil Rights Act of 1964 (42 U.S.C.  
 3 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9)  
 4 shall be the powers, remedies, and procedures this Act  
 5 provides to the Commission, to the Attorney General, or  
 6 to any person alleging discrimination on the basis of age  
 7 in violation of section 4, or regulations promulgated under  
 8 section 9.”; and

9           (2) in the second sentence of that subsection  
 10       (b), as amended by paragraph (1), by striking “or  
 11       enforcing the liability for amounts deemed to be un-  
 12       paid minimum wages or unpaid overtime compensa-  
 13       tion under this section” and inserting “and includ-  
 14       ing any type of legal or equitable relief available  
 15       under title VII of the Civil Rights Act of 1964 (42  
 16       U.S.C. 2000e et seq.)”.

17 **SEC. 204. HARASSMENT AND DISCRIMINATION; STANDARDS**  
 18 **OF PROOF.**

19       (a) FINDINGS.—Congress finds that—

20           (1) harassment is a persistent and significant  
 21       problem in the workplace in the United States;

22           (2) workers are harassed because of their sex  
 23       (including sexual orientation, gender identity, preg-  
 24       nancy, childbirth, or a medical condition related to  
 25       pregnancy or childbirth, and a sex stereotype), race,

1 color, religion, national origin, age, disability, genetic  
2 information, and uniformed services status;

3 (3) Congress enacted title VII of the Civil  
4 Rights Act of 1964 intending to provide broad pro-  
5 tection from many forms of bias in the workplace;

6 (4) the Supreme Court has recognized in *City*  
7 *of Los Angeles Department of Water and Power v.*  
8 *Manhart*, 435 U.S. 702 (1978), that the protection  
9 against sex discrimination in the terms, conditions,  
10 or privileges of employment under title VII of the  
11 Civil Rights Act of 1964 reflects Congress' intent to  
12 "strike at the entire spectrum" of sex-based dis-  
13 crimination in employment;

14 (5) in 1980, the Equal Employment Oppor-  
15 tunity Commission (referred to in this section as  
16 "the Commission") amended its Guidelines on Dis-  
17 crimination Because of Sex (referred to in this sec-  
18 tion as "the Guidelines") to specify that sexual har-  
19 assment is a form of sex discrimination prohibited  
20 by title VII of the Civil Rights Act of 1964;

21 (6) in the Guidelines, the Commission explained  
22 that harassing conduct is unlawful where—

23 (A) "submission to such conduct is made  
24 either explicitly or implicitly a term or condition  
25 of an individual's employment";

1 (B) “submission to or rejection of such  
2 conduct by an individual is used as the basis for  
3 employment decisions”; or

4 (C) the conduct “has the purpose or effect  
5 of unreasonably interfering with an individual’s  
6 work performance or creating an intimidating,  
7 hostile, or offensive working environment”;

8 (7) the Commission further explained that, with  
9 respect to the evidence required to support a finding  
10 of unlawful harassment, it “will look at the record  
11 as a whole and at the totality of the circumstances,  
12 such as the nature of the sexual advances and the  
13 context in which the alleged incidents occurred” and  
14 emphasized that the “determination of the legality of  
15 a particular action will be made from the facts, on  
16 a case by case basis”;

17 (8) six years later, the Supreme Court in  
18 *Meritor Savings Bank v. Vinson*, 477 U.S. 57  
19 (1986), recognized that the protections under title  
20 VII of the Civil Rights Act of 1964 are not limited  
21 to discrimination that causes “economic” or “tan-  
22 gible” loss, and held that the phrase “terms, condi-  
23 tions, or privileges of employment” in title VII of  
24 such Act is an “expansive concept that sweeps with-  
25 in its protective ambit” the practice of creating a

1 hostile work environment based on discrimination in  
2 the form of harassment;

3 (9) in reaching this conclusion in the Meritor  
4 decision, the Supreme Court cited and approved the  
5 Guidelines;

6 (10) in the Meritor decision, the Supreme Court  
7 cited with approval lower court decisions that con-  
8 cluded that a hostile work environment based on  
9 race, religion, or national origin violates the prohibi-  
10 tion of discrimination in the terms, conditions, or  
11 privileges of employment under title VII of the Civil  
12 Rights Act of 1964, which decisions included—

13 (A) *Rogers v. EEOC*, 454 F.2d 234 (5th  
14 Cir. 1971);

15 (B) *Firefighters Institute for Racial*  
16 *Equality v. City of St. Louis*, 549 F.2d 506  
17 (8th Cir. 1977);

18 (C) *Gray v. Greyhound Lines*, 545 F.2d  
19 169 (D.C. Cir. 1976);

20 (D) *Compston v. Borden, Inc.*, 424 F.  
21 Supp. 157 (S.D. Ohio 1976); and

22 (E) *Cariddi v. Kansas City Chiefs Football*  
23 *Club, Inc.*, 568 F.2d 87 (8th Cir. 1977);

24 (11) in defining the evidence required to prove  
25 a violation of title VII of the Civil Rights Act of

1       1964, in the Meritor decision, the Supreme Court  
2       noted that harassment would be actionable when it  
3       is “sufficiently severe or pervasive ‘to alter the con-  
4       ditions of [the victim’s] employment and create an  
5       abusive working environment’” (quoting *Rogers v.*  
6       *EEOC*, 454 F.2d 234 (5th Cir. 1971));

7               (12) in *Harris v. Forklift Systems, Inc.*, 510  
8       U.S. 17 (1993), the Supreme Court clarified that  
9       harassment need not seriously affect an employee’s  
10      psychological well-being or lead the employee to suf-  
11      fer injury in order to be unlawful, but rather, need  
12      merely create a work environment that a reasonable  
13      person in the protected class would find hostile or  
14      abusive;

15             (13) in *Harris v. Forklift Systems, Inc.*, the Su-  
16      preme Court held that whether a work environment  
17      is unlawfully hostile or abusive does not depend on  
18      any mathematically precise test, but rather, is to be  
19      determined by looking at all of the circumstances,  
20      with no single factor required;

21             (14) in *National Railroad Passenger Corp. v.*  
22      *Morgan*, 536 U.S. 101 (2002), the Supreme Court  
23      reaffirmed the *Harris* decision and further held that  
24      the hostility or abusiveness of each harassing act  
25      should be considered in the aggregate, not in isola-



1       tion, regardless of whether such acts occur over days  
2       or even years;

3           (15) notwithstanding the rulings of the Su-  
4       preme Court specified in this subsection, some lower  
5       court decisions have treated harassing conduct’s se-  
6       verity or pervasiveness as the only 2 relevant factors  
7       in evaluating whether such conduct violates title VII  
8       of the Civil Rights Act of 1964;

9           (16) some lower court decisions have treated  
10      “severe or pervasive” as a threshold for liability,  
11      when the relevant inquiry is whether the harassing  
12      conduct actually altered the terms, conditions, or  
13      privileges of employment;

14          (17) some lower court decisions further have in-  
15      terpreted the “severe or pervasive” language in the  
16      Meritor decision so narrowly as to recognize only the  
17      most egregious conduct as unlawful, despite Con-  
18      gress’ intent that title VII of the Civil Rights Act of  
19      1964 afford a broad scope of protection from dis-  
20      crimination;

21          (18) examples of decisions that use the erro-  
22      neous analysis described in paragraphs (15) through  
23      (17) in the context of harassment on the basis of sex  
24      include—

1 (A) Singleton v. Department of Correc-  
2 tional Education, 115 Fed. Appx. 119 (4th Cir.  
3 2004);

4 (B) Black v. Zaring Homes, Inc., 104 F.3d  
5 822 (6th Cir. 1997);

6 (C) Weiss v. Coca-Cola Bottling Co., 990  
7 F.2d 333 (7th Cir. 1993);

8 (D) Rickard v. Swedish Match North  
9 America, Inc., 773 F.3d 181 (8th Cir. 2014);

10 (E) Mitchell v. Pope, 189 F. Appx. 911  
11 (11th Cir. 2006); and

12 (F) Brooks v. City of San Mateo, 229  
13 F.3d 917 (9th Cir. 2000);

14 (19) lower courts have made similar erroneous  
15 decisions in the context of harassment on the basis  
16 of race, national origin, age, and disability such as  
17 in Crawford v. Medina General Hospital, 96 F.3d  
18 830 (6th Cir. 1996), Shaver v. Independent Stave  
19 Co., 350 F.3d 716 (8th Cir. 2003), and Motley v.  
20 Parker-Hannifan Corp., No. 1: 94–CV–639 (W.D.  
21 Mich. 1995);

22 (20) in contrast, other lower court decisions ap-  
23 plying the Meritor case and its progeny have appro-  
24 priately recognized that a wide range of harassing  
25 behavior may alter the terms, conditions, or privi-

1       leges of employment, with no single type, frequency,  
2       or duration of conduct required to make a showing  
3       of severe or pervasive harassment;

4               (21) for example, in the context of harassment  
5       based on sex, those decisions have held that—

6               (A) conduct need not be physical to create  
7       a hostile or abusive work environment, as in  
8       *Billings v. Town of Grafton*, 515 F.3d 39 (1st  
9       Cir. 2008);

10              (B) an individual need not be the target of  
11       sexually demeaning conduct in order to experi-  
12       ence unlawful harassment, as in *Petrosino v.*  
13       *Bell Atlantic*, 385 F.3d 210 (2d Cir. 2004);

14              (C) power disparities, such as the young  
15       age of the individual harassed, compound the  
16       conduct’s harmful effects, as in *EEOC v. R&R*  
17       *Ventures*, 244 F.3d 334 (4th Cir. 2001);

18              (D) gender-based epithets are equally as  
19       unlawful as overtly sexual conduct, as in *Galla-*  
20       *gher v. C.H. Robinson Worldwide, Inc.*, 567  
21       F.3d 263 (6th Cir. 2009); and

22              (E) a single incident can alter the terms,  
23       conditions, or privileges of employment, as in  
24       *Howley v. Town of Stratford*, 217 F.3d 141 (2d  
25       Cir. 2000);

1           (22) similarly, in the context of harassment  
2       based on other protected characteristics, other  
3       courts have appropriately held that—

4           (A) calling an individual an “old man” and  
5       “pops” could create an actionably hostile work  
6       environment based on age, as in *Dediol v. Best*  
7       *Chevrolet, Inc.*, 655 F.3d 435 (5th Cir. 2011);

8           (B) repeatedly calling an individual with  
9       mental illness “crazy” and stating that the indi-  
10      vidual is a threat to security is sufficient to  
11      support a finding of a hostile work environment  
12      based on disability, as in *Quiles-Quiles v. Hen-*  
13      *derson*, 439 F.3d 1 (1st Cir. 2006); and

14          (C) a single incident of calling an African-  
15      American individual the “n word” is sufficient  
16      to support a finding of a hostile work environ-  
17      ment based on race, as in *Rodgers v. Western-*  
18      *Southern Life Insurance Co.*, 12 F.3d 668 (7th  
19      Cir. 1993); and

20          (23) similar erroneous decisions have been ren-  
21      dered in the context of harassment on the basis of  
22      sex in employment under title IX of the Education  
23      Amendments of 1972 (20 U.S.C. 1681 et seq.), as  
24      in *Farmer v. Troy University*, No. 5:17–CV–70–B0  
25      (E.D.N.C. 2017).

1       (b) PURPOSES.—The purposes of this section are  
2 to—

3           (1) enact into statutory law provisions that es-  
4 tablish that workplace harassment is a violation of  
5 the—

6           (A) protections from discrimination in the  
7 “terms, conditions, or privileges of employ-  
8 ment” found in title VII of the Civil Rights Act  
9 of 1964 (42 U.S.C. 2000e et seq.);

10          (B) protections from disability discrimina-  
11 tion found in title I of the Americans with Dis-  
12 abilities Act of 1990 (42 U.S.C. 12111 et seq.)  
13 and sections 501 and 505 of the Rehabilitation  
14 Act of 1973 (29 U.S.C. 791, 794a);

15          (C) protections from age discrimination  
16 found in the Age Discrimination in Employ-  
17 ment Act of 1967 (29 U.S.C. 621 et seq.);

18          (D) protections from genetic information  
19 discrimination found in title II of the Genetic  
20 Information Nondiscrimination Act of 2008 (42  
21 U.S.C. 2000ff et seq.); and

22          (E) protections from uniformed services  
23 status discrimination found in section 4311 of  
24 title 38, United States Code; and

1           (2) establish a liability standard for workplace  
 2           harassment that fulfills Congress’ intent of providing  
 3           broad protection from discrimination in employment  
 4           on the basis of race, color, religion, sex (including  
 5           sexual orientation, gender identity, pregnancy, child-  
 6           birth, a medical condition related to pregnancy or  
 7           childbirth, and a sex stereotype), national origin,  
 8           age, disability, genetic information, and uniformed  
 9           services status.

10       (c) ENACTING INTO STATUTORY LAW PROVISIONS  
 11       ESTABLISHING WORKPLACE HARASSMENT AS AN UNLAW-  
 12       FUL EMPLOYMENT PRACTICE.—

13           (1) CIVIL RIGHTS ACT OF 1964.—Section 703 of  
 14           the Civil Rights Act of 1964 (42 U.S.C. 2000e–2)  
 15           is amended by adding at the end the following:

16       “(o)(1)(A) In this subsection, the term ‘workplace  
 17       harassment’ means conduct based on race, color, religion,  
 18       sex (including sexual orientation, gender identity, preg-  
 19       nancy, childbirth, a medical condition related to pregnancy  
 20       or childbirth, and a sex stereotype), or national origin, re-  
 21       gardless of whether it is direct or indirect, or verbal or  
 22       nonverbal, that unreasonably alters an individual’s terms,  
 23       conditions, or privileges of employment, including by cre-  
 24       ating an intimidating, hostile, or offensive work environ-  
 25       ment.

1       “(B)(i) In this subsection, the term includes sexual  
2 harassment, which is conduct that takes place in a cir-  
3 cumstance described in clause (ii) and that takes the form  
4 of—

5               “(I) a sexual advance;

6               “(II) a request for sexual favors; or

7               “(III) any other conduct of a sexual nature.

8       “(ii) A circumstance described in this clause is a situ-  
9 ation in which—

10              “(I) submission to the conduct involved is made  
11 either explicitly or implicitly a term or condition of  
12 employment;

13              “(II) submission to or rejection of such conduct  
14 is used as the basis for an employment decision af-  
15 fecting an individual’s employment; or

16              “(III) such conduct unreasonably alters an indi-  
17 vidual’s terms, conditions, or privileges of employ-  
18 ment, including by creating an intimidating hostile,  
19 or offensive work environment.

20       “(2) It shall be an unlawful employment practice  
21 under subsection (a) to engage in workplace harassment.

22       “(3) In determining, for purposes of this subsection,  
23 whether conduct constitutes workplace harassment be-  
24 cause the conduct unreasonably alters an individual’s  
25 terms, conditions, or privileges of employment, including

1 by creating an intimidating, hostile, or offensive work en-  
2 vironment, the following rules shall apply:

3 “(A) That determination shall be made on the  
4 basis of the record as a whole, according to the to-  
5 tality of the circumstances. A single incident may  
6 constitute workplace harassment.

7 “(B) Incidents that may be workplace harass-  
8 ment shall be considered in the aggregate, with—

9 “(i) conduct of varying types (such as ex-  
10 pressions of sex-based hostility, requests for  
11 sexual favors, and denial of employment oppor-  
12 tunities due to sexual orientation) viewed in to-  
13 tality, rather than in isolation; and

14 “(ii) conduct based on multiple protected  
15 characteristics (such as sex and race) viewed in  
16 totality, rather than in isolation.

17 “(C) The factors specified in this subparagraph  
18 are among the factors to be considered in deter-  
19 mining whether conduct constitutes workplace har-  
20 assment and are not meant to be exhaustive. No one  
21 of those factors shall be considered to be determina-  
22 tive in establishing whether conduct constitutes  
23 workplace harassment. Such factors are each of the  
24 following:

25 “(i) The frequency of the conduct.



1                   “(ii) The duration of the conduct.

2                   “(iii) The location where the conduct oc-  
3                   curred.

4                   “(iv) The number of individuals engaged in  
5                   the conduct.

6                   “(v) The nature of the conduct, which may  
7                   include physical, verbal, pictorial, or visual con-  
8                   duct, and conduct that occurs in person or is  
9                   transmitted, such as electronically.

10                  “(vi) Whether the conduct is threatening.

11                  “(vii) Any power differential between the  
12                  alleged harasser and the person allegedly har-  
13                  assed.

14                  “(viii) Any use of epithets, slurs, or other  
15                  conduct that is humiliating or degrading.

16                  “(ix) Whether the conduct reflects stereo-  
17                  types about individuals in the protected class  
18                  involved.

19                  “(4) In determining, for purposes of this subsection,  
20                  whether conduct constitutes workplace harassment, con-  
21                  duct may be workplace harassment regardless of whether,  
22                  for example—

23                  “(A) the complaining party is not the individual  
24                  being harassed;

1 “(B) the complaining party acquiesced or other-  
2 wise submitted to, or participated in, the conduct;

3 “(C) the conduct is also experienced by others  
4 outside the protected class involved;

5 “(D) the complaining party was able to con-  
6 tinue carrying out duties and responsibilities of the  
7 party’s job despite the conduct;

8 “(E) the conduct did not cause a tangible in-  
9 jury or psychological injury; or

10 “(F) the conduct occurred outside of the work-  
11 place.”.

12 (2) AMERICANS WITH DISABILITIES ACT OF  
13 1990.—Section 102(b) of the Americans with Disabil-  
14 ities Act (42 U.S.C. 12112(b)) is amended—

15 (A) in paragraph (6), by striking “and” at  
16 the end;

17 (B) in paragraph (7), by striking the pe-  
18 riod and inserting “; and”; and

19 (C) by adding at the end the following:

20 “(8) engaging in workplace harassment, which  
21 is conduct based on disability, regardless of whether  
22 it is direct or indirect, or verbal or nonverbal, that—

23 “(A) unreasonably alters an individual’s  
24 terms, conditions, or privileges of employment,

1 including by creating an intimidating, hostile,  
 2 or offensive work environment; and

3 “(B) is determined to be such harassment  
 4 in accordance with paragraphs (3) and (4) of  
 5 section 703(o) of the Civil Rights Act of 1964  
 6 (42 U.S.C. 2000e-2(o)).”.

7 (3) REHABILITATION ACT OF 1973.—Section  
 8 501(f) of the Rehabilitation Act of 1973 (29 U.S.C.  
 9 791(f)) is amended by inserting “, including section  
 10 102(b) of that Act (42 U.S.C. 12112(b))”, before  
 11 “and the provisions”.

12 (4) AGE DISCRIMINATION IN EMPLOYMENT  
 13 ACT.—Section 4 of the Age Discrimination in Em-  
 14 ployment Act of 1967 (29 U.S.C. 623) is amended  
 15 by adding at the end the following:

16 “(n) It shall be unlawful under subsection (a) to en-  
 17 gage in workplace harassment, which is conduct based on  
 18 age, regardless of whether it is direct or indirect, or verbal  
 19 or nonverbal, that—

20 “(1) unreasonably alters an individual’s terms,  
 21 conditions, or privileges of employment, including by  
 22 creating an intimidating, hostile, or offensive work  
 23 environment; and

24 “(2) is determined to be such harassment in ac-  
 25 cordance with paragraphs (3) and (4) of section

1       703(o) of the Civil Rights Act of 1964 (42 U.S.C.  
2       2000e-2(o)).”.

3           (5) GENETIC INFORMATION NONDISCRIMINA-  
4       TION ACT OF 2008.—Section 202 of the Genetic In-  
5       formation Nondiscrimination Act of 2008 (42 U.S.C.  
6       2000ff-1) is amended by adding at the end the fol-  
7       lowing:

8       “(d) WORKPLACE HARASSMENT.—It shall be an un-  
9       lawful employment practice under subsection (a) to engage  
10      in workplace harassment, which is conduct based on ge-  
11      netic information, regardless of whether it is direct or indi-  
12      rect, or verbal or nonverbal, that—

13           “(1) unreasonably alters an individual’s terms,  
14      conditions, or privileges of employment, including by  
15      creating an intimidating, hostile, or offensive work  
16      environment; and

17           “(2) is determined to be such harassment in ac-  
18      cordance with paragraphs (3) and (4) of section  
19      703(o) of the Civil Rights Act of 1964 (42 U.S.C.  
20      2000e-2(o)).”.

21           (6) CHAPTER 43 OF TITLE 38, UNITED STATES  
22      CODE.—Section 4311 of title 38, United States  
23      Code, is amended by adding at the end the fol-  
24      lowing:

1 “(e) It shall be an unlawful employment practice  
 2 under subsection (a) to engage in workplace harassment,  
 3 which is conduct based on uniformed services status  
 4 (meaning the membership, application for membership,  
 5 performance of service, application for service, or obliga-  
 6 tion, described in subsection (a)), regardless of whether  
 7 it is direct or indirect, or verbal or nonverbal, that—

8 “(1) unreasonably alters an individual’s benefits  
 9 of employment, including by creating an intimi-  
 10 dating, hostile, or offensive work environment; and

11 “(2) is determined to be such harassment in ac-  
 12 cordance with paragraphs (3) and (4) of section  
 13 703(o) of the Civil Rights Act of 1964 (42 U.S.C.  
 14 2000e-2(o)).”.

15 **SEC. 205. CLARIFYING OTHER STANDARDS OF PROOF.**

16 (a) AMENDMENTS TO DEFINITIONS.—

17 (1) AMERICANS WITH DISABILITIES ACT OF  
 18 1990.—Section 101 of the Americans with Disabil-  
 19 ities Act of 1990 (42 U.S.C. 12111) is amended by  
 20 adding at the end the following:

21 “(11) DEMONSTRATES.—The term ‘dem-  
 22 onstrates’ means meets the burdens of production  
 23 and persuasion.”.

24 (2) AGE DISCRIMINATION IN EMPLOYMENT ACT  
 25 OF 1967.—Section 11 of the Age Discrimination in

1       Employment Act of 1967 (29 U.S.C. 630) is amend-  
2       ed by adding at the end the following:

3       “(m) The term ‘demonstrates’ means meets the bur-  
4       dens of production and persuasion.”.

5               (3) GENETIC INFORMATION NONDISCRIMINA-  
6       TION ACT OF 2008.—Section 201 of the Genetic In-  
7       formation Nondiscrimination Act of 2008 (42 U.S.C.  
8       2000ff) is amended by adding at the end the fol-  
9       lowing:

10              “(8) DEMONSTRATES.—The term ‘dem-  
11       onstrates’ means meets the burdens of production  
12       and persuasion.”.

13       (b) CLARIFYING PROHIBITION AGAINST IMPERMIS-  
14       SIBLE CONSIDERATION IN EMPLOYMENT PRACTICES.—

15              (1) RACE, COLOR, RELIGION, SEX, OR NA-  
16       TIONAL ORIGIN.—Section 703 of the Civil Rights  
17       Act of 1964 (42 U.S.C. 2000e–2) is amended by  
18       striking subsection (m) and inserting the following:

19       “(m) Except as otherwise provided in this title, an  
20       unlawful employment practice is established under this  
21       title when the complaining party demonstrates that race,  
22       color, religion, sex, or national origin or an activity pro-  
23       tected by section 704(a) was a motivating factor for any  
24       employment practice, even though other factors also moti-  
25       vated the practice.”.

1           (2) DISABILITY.—Section 102 of the Americans  
2       with Disabilities Act of 1990 (42 U.S.C. 12112) is  
3       amended by adding at the end the following:

4       “(e) PROOF.—

5           “(1) ESTABLISHMENT.—Except as otherwise  
6       provided in this Act, a discriminatory practice is es-  
7       tablished under this Act when the complaining party  
8       demonstrates that disability or an activity protected  
9       by subsection (a) or (b) of section 503 was a moti-  
10      vating factor for any employment practice, even  
11      though other factors also motivated the practice.

12          “(2) DEMONSTRATION.—In establishing a dis-  
13      crimatory practice under paragraph (1) or by any  
14      other method of proof, a complaining party—

15           “(A) may rely on any type or form of ad-  
16      missible evidence and need only produce evi-  
17      dence sufficient for a reasonable trier of fact to  
18      find that a discriminatory practice occurred  
19      under this Act; and

20           “(B) shall not be required to demonstrate  
21      that disability or an activity protected by sub-  
22      section (a) or (b) of section 503 was the sole  
23      cause of an employment practice.”.

24          (3) AGE.—Section 4 of the Age Discrimination  
25      in Employment Act of 1967 (29 U.S.C. 623) is

1       amended by inserting after subsection (f) the fol-  
2       lowing:

3       “(g)(1) Except as otherwise provided in this Act, an  
4       unlawful practice is established under this Act when the  
5       complaining party demonstrates that age or an activity  
6       protected by subsection (d) was a motivating factor for  
7       any practice, even though other factors also motivated the  
8       practice.

9       “(2) In establishing an unlawful practice under this  
10      Act, including under paragraph (1) or by any other meth-  
11      od of proof, a complaining party—

12           “(A) may rely on any type or form of admis-  
13           sible evidence and need only produce evidence suffi-  
14           cient for a reasonable trier of fact to find that an  
15           unlawful practice occurred under this Act; and

16           “(B) shall not be required to demonstrate that  
17           age or an activity protected by subsection (d) was  
18           the sole cause of a practice.”.

19           (4) GENETIC INFORMATION.—Section 202 of  
20      the Genetic Information Nondiscrimination Act of  
21      2008 (42 U.S.C. 2000ff–1), as amended by section  
22      204(c)(5), is further amended by adding at the end  
23      the following:

24      “(e) PROOF.—



1           “(1) ESTABLISHMENT.—Except as otherwise  
2           provided in this title, an unlawful employment prac-  
3           tice is established under this title when the com-  
4           plaining party demonstrates that genetic information  
5           or an activity protected by section 207(f) was a mo-  
6           tivating factor for any employment practice, even  
7           though other factors also motivated the practice.

8           “(2) DEMONSTRATION.—In establishing an un-  
9           lawful employment practice under paragraph (1) or  
10          by any other method of proof, a complaining party—

11               “(A) may rely on any type or form of ad-  
12               missible evidence and need only produce evi-  
13               dence sufficient for a reasonable trier of fact to  
14               find that an unlawful employment practice oc-  
15               curred under this title; and

16               “(B) shall not be required to demonstrate  
17               that genetic information or an activity protected  
18               by section 207(f) was the sole cause of an em-  
19               ployment practice.”.

20          (c) CERTAIN RETALIATION CLAIMS.—

21               (1) AMERICANS WITH DISABILITIES ACT OF  
22               1990.—Section 503(c) of the Americans with Disabil-  
23               ities Act of 1990 (42 U.S.C. 12203(c)) is amend-  
24               ed—

1 (A) by striking “The remedies” and insert-  
2 ing the following:

3 “(1) IN GENERAL.—Except as provided in para-  
4 graph (2), the remedies”; and

5 (B) by adding at the end the following:

6 “(2) CERTAIN ANTIRETALIATION CLAIMS.—Sec-  
7 tion 107(c) shall apply to claims under section  
8 102(e)(1) with respect to title I.”.

9 (2) AGE DISCRIMINATION IN EMPLOYMENT ACT  
10 OF 1967.—Section 4(d) of the Age Discrimination in  
11 Employment Act of 1967 (29 U.S.C. 623(d)) is  
12 amended—

13 (A) by striking “(d) It shall be” and in-  
14 serting “(d)(1) It shall be”; and

15 (B) by adding at the end the following:

16 “(2) Section 7(b)(2) shall apply to claims under sec-  
17 tion 4(g)(1).”.

18 (3) GENETIC INFORMATION NONDISCRIMINA-  
19 TION ACT OF 2008.—Section 207(f) of the Genetic  
20 Information Nondiscrimination Act of 2008 (42  
21 U.S.C. 2000ff–6(f)) is amended—

22 (A) by striking “No” and inserting the fol-  
23 lowing:

24 “(1) IN GENERAL.—No”;

1 (B) in the second sentence, by striking  
2 “The remedies” and inserting “Except as pro-  
3 vided in paragraph (2), the remedies”; and

4 (C) by adding at the end the following:

5 “(2) CERTAIN RETALIATION CLAIMS.—Sub-  
6 section (g) shall apply to claims under section  
7 202(d)(1).”.

8 (d) REMEDIES.—

9 (1) AMERICANS WITH DISABILITIES ACT OF  
10 1990.—Section 107 of the Americans with Disabil-  
11 ities Act of 1990 (42 U.S.C. 12117) is amended by  
12 adding at the end the following:

13 “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a  
14 claim in which an individual demonstrates that disability  
15 was a motivating factor for any employment practice,  
16 under section 102(e)(1), and a respondent demonstrates  
17 that the respondent would have taken the same action in  
18 the absence of the impermissible motivating factor, the  
19 court—

20 “(1) may grant declaratory relief, injunctive re-  
21 lief (except as provided in paragraph (2)), and attor-  
22 ney’s fees and costs demonstrated to be directly at-  
23 tributable only to the pursuit of a claim under sec-  
24 tion 102(e)(1); and

1           “(2) shall not award damages or issue an order  
2           requiring any admission, reinstatement, hiring, pro-  
3           motion, or payment.”.

4           (2) AGE DISCRIMINATION IN EMPLOYMENT ACT  
5           OF 1967.—Section 7 of the Age Discrimination in  
6           Employment Act of 1967 (29 U.S.C. 626) is amend-  
7           ed—

8                   (A) in subsection (b), as amended by sec-  
9           tion 203(b)—

10                   (i) in the second sentence, by striking  
11                   “In” and inserting “Subject to paragraph  
12                   (2), in”;

13                   (ii) in the third sentence, by striking  
14                   “Before” and inserting the following:

15           “(3) Before”; and

16                   (iii) by inserting before paragraph (3),  
17                   as designated by clause (ii), the following:

18           “(2) On a claim in which an individual demonstrates  
19           that age was a motivating factor for any employment prac-  
20           tice, under section 4(g)(1), and a respondent demonstrates  
21           that the respondent would have taken the same action in  
22           the absence of the impermissible motivating factor, the  
23           court—

24                   “(A) may grant declaratory relief, injunctive re-  
25           lief (except as provided in subparagraph (B)), and

1 attorney's fees and costs demonstrated to be directly  
2 attributable only to the pursuit of a claim under sec-  
3 tion 4(g)(1); and

4 “(B) shall not award damages or issue an order  
5 requiring any admission, reinstatement, hiring, pro-  
6 motion, or payment.”; and

7 (B) in subsection (c)—

8 (i) in paragraph (1), by striking  
9 “Any” and inserting “Subject to sub-  
10 section (b)(2), any”; and

11 (ii) in paragraph (2), by striking “of  
12 any issue of fact” and all that follows  
13 through the period and inserting “under  
14 the same circumstances as a trial by jury  
15 is available under title VII of the Civil  
16 Rights Act of 1964 (42 U.S.C. 2000e et  
17 seq.).”.

18 (3) GENETIC INFORMATION NONDISCRIMINA-  
19 TION ACT OF 2008.—Section 207 of the Genetic In-  
20 formation Nondiscrimination Act of 2008 (42 U.S.C.  
21 2000ff–6) is amended—

22 (A) by redesignating subsection (g) as sub-  
23 section (h); and

24 (B) by inserting after subsection (f) the  
25 following:

1       “(g) MOTIVATING FACTOR.—On a claim in which an  
 2 individual demonstrates that genetic information was a  
 3 motivating factor for any employment practice, under sec-  
 4 tion 202(e)(1), including a claim involving an employee or  
 5 applicant described in any of subsections (a) through (e),  
 6 and a respondent demonstrates that the respondent would  
 7 have taken the same action in the absence of the imper-  
 8 missible motivating factor, the court or the corresponding  
 9 decisionmaker specified in subsections (a) through (e)—

10           “(1) may grant declaratory relief, injunctive re-  
 11 lief (except as provided in paragraph (2)), and attor-  
 12 ney’s fees and costs demonstrated to be directly at-  
 13 tributable only to the pursuit of a claim under sec-  
 14 tion 202(d)(1); and

15           “(2) shall not award damages or issue an order  
 16 requiring any admission, reinstatement, hiring, pro-  
 17 motion, or payment.”.

18       (e) FEDERAL EMPLOYEES.—

19           (1) TITLE VII OF THE CIVIL RIGHTS ACT OF  
 20 1964.—Section 717 of the Civil Rights Act of 1964  
 21 (42 U.S.C. 2000e–16) is amended by adding at the  
 22 end the following:

23           “(g) Sections 703(m) and 706(g)(2)(B) shall apply  
 24 to mixed motive cases (involving practices described in sec-  
 25 tion 703(m)) under this section.”.

1           (2) REHABILITATION ACT OF 1973.—The  
2           amendment made by subsection (f) to section 501(f)  
3           of the Rehabilitation Act of 1973 (29 U.S.C. 791(f))  
4           shall be construed to apply to all employees covered  
5           by section 501 of that Act (29 U.S.C. 791).

6           (3) AGE DISCRIMINATION IN EMPLOYMENT ACT  
7           OF 1967.—Section 15 of the Age Discrimination in  
8           Employment Act of 1967 (29 U.S.C. 633a) is  
9           amended—

10                   (A) in subsection (a)—

11                           (i) by striking “States) in” and insert-  
12                           ing “States) shall be made free from any  
13                           discrimination based on age, in—”;

14                           (ii) by striking “military depart-  
15                           ments” and inserting the following:

16                           “(1) military departments”;

17                           (iii) by striking “Code, in executive  
18                           agencies” and inserting the following:

19                           “Code;

20                           “(2) executive agencies”;

21                           (iv) by striking “funds), in the United  
22                           States Postal” and inserting the following:

23                           “funds);

24                           “(3) the United States Postal”;

1 (v) by striking “Commission, in those  
2 units” and inserting the following: “Com-  
3 mission;

4 “(4) those units”;

5 (vi) by striking “competitive service,  
6 and in those units” and inserting the fol-  
7 lowing: “competitive service;

8 “(5) those units”;

9 (vii) by striking “competitive service,  
10 in the Smithsonian” and inserting “com-  
11 petitive service;

12 “(6) the Smithsonian”;

13 (viii) by striking “Institution, and in  
14 the Government” and inserting “Institu-  
15 tion;

16 “(7) the Government”;

17 (ix) by striking “Printing Office, the  
18 General” and inserting “Printing Office;

19 “(8) the General”;

20 (x) by striking “Office, and the Li-  
21 brary” and inserting “Office; and

22 “(9) the Library”; and

23 (xi) by striking “of Congress” and all  
24 that follows and inserting “of Congress.”;



1 (B) in subsection (b), by striking the first,  
2 second, third, fourth, and sixth sentences;

3 (C) in subsection (c), by striking “Any per-  
4 son” and inserting “Notwithstanding any other  
5 provision of this Act, any person”;

6 (D) by striking subsection (g) and insert-  
7 ing the following:

8 “(g) Except as otherwise provided in another sub-  
9 section of this section, section 7, or section 9, the powers,  
10 remedies, and procedures provided in section 717 of the  
11 Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the  
12 Commission, the Attorney General, the Librarian of Con-  
13 gress, or any person, alleging a violation of that section  
14 shall be the powers, remedies, and procedures this Act  
15 provides to the Commission, the Attorney General, the Li-  
16 brarian of Congress, or any person, respectively, alleging  
17 an unlawful employment practice in violation of subsection  
18 (a) against an employee or applicant for employment de-  
19 scribed in subsection (a).”; and

20 (E) by adding at the end the following:

21 “(h) Section 4(g) shall apply to mixed motive claims  
22 (involving practices described in section 4(g)(1)) under  
23 this section.”.

24 (f) ADDITIONAL AMENDMENTS TO THE REHABILITA-  
25 TION ACT OF 1973.—Sections 501(f), 503(d), and 504(d)

1 of the Rehabilitation Act of 1973 (29 U.S.C. 791(f),  
 2 793(d), and 794(d)), are each amended by adding after  
 3 the words “title I of the Americans with Disabilities Act  
 4 of 1990 (42 U.S.C. 12111 et seq.)” the following: “, in-  
 5 cluding the standards of causation and methods of proof  
 6 applied under section 102(e) of that Act (42 U.S.C.  
 7 12112(e)),”.

8 (g) OTHER GOVERNMENT EMPLOYEES.—

9 (1) CONGRESSIONAL ACCOUNTABILITY ACT OF  
 10 1995.—Section 201 of the Congressional Account-  
 11 ability Act of 1995 (2 U.S.C. 1311) is amended—

12 (A) in subsection (a)(2), by striking “sec-  
 13 tion 15 of the Age Discrimination in Employ-  
 14 ment Act of 1967 (29 U.S.C. 633a)” and in-  
 15 serting “sections 4(g) and 15 of the Age Dis-  
 16 crimination in Employment Act of 1967 (29  
 17 U.S.C. 623(g), 633a)”;

18 (B) in subsection (b)—

19 (i) in paragraph (2)(A), by striking  
 20 “section 15(c) of the Age Discrimination in  
 21 Employment Act of 1967 (29 U.S.C.  
 22 633a(c))” and inserting “section 4(d)(2),  
 23 paragraphs (1) and (2) of section 7(b),  
 24 and section 15(c) of the Age Discrimina-

1           tion in Employment Act of 1967 (29  
2           U.S.C. 623(d)(2), 626(b), 633a(c))”; and

3           (ii) in paragraph (3)(A), by striking  
4           “section 107(a) of the Americans with Dis-  
5           abilities Act of 1990 (42 U.S.C.  
6           12117(a))” and inserting “subsections (a)  
7           and (c) of section 107, and section  
8           503(c)(2), of the Americans with Disabil-  
9           ities Act of 1990 (42 U.S.C. 12117,  
10          12203)”.

11          (2) TITLE 3, UNITED STATES CODE.—Section  
12          411 of title 3, United States Code, is amended—

13               (A) in subsection (a)(2), by striking “sec-  
14               tion 15 of the Age Discrimination in Employ-  
15               ment Act of 1967” and inserting “sections 4(g)  
16               and 15 of the Age Discrimination in Employ-  
17               ment Act of 1967”; and

18               (B) in subsection (b)—

19                       (i) in paragraph (2)(A), by striking  
20                       “section 15(c) of the Age Discrimination in  
21                       Employment Act of 1967” and inserting  
22                       “section 4(d)(2), paragraphs (1) and (2) of  
23                       section 7(b), and section 15(c) of the Age  
24                       Discrimination in Employment Act of  
25                       1967”; and

1 (ii) in paragraph (3)(A), by striking  
 2 “section 107(a) of the Americans with Dis-  
 3 abilities Act of 1990” and inserting “sub-  
 4 sections (a) and (c) of section 107, and  
 5 section 503(c)(2), of the Americans with  
 6 Disabilities Act of 1990”.

7 (3) GOVERNMENT EMPLOYEE RIGHTS ACT OF  
 8 1991.—Section 302 of the Government Employee  
 9 Rights Act of 1991 (42 U.S.C. 2000e–16b) is  
 10 amended—

11 (A) in subsection (a)(2), by striking “sec-  
 12 tion 15 of the Age Discrimination in Employ-  
 13 ment Act of 1967 (29 U.S.C. 633a)” and in-  
 14 serting “sections 4(g) and 15 of the Age Dis-  
 15 crimination in Employment Act of 1967 (29  
 16 U.S.C. 623(g), 633a)”; and

17 (B) in subsection (b)—

18 (i) in paragraph (1), by inserting  
 19 “(and, in the case of a violation of sub-  
 20 section (a)(3), sections 107(c) and  
 21 503(c)(2) of the Americans with Disabil-  
 22 ities Act of 1990 (42 U.S.C. 12117(c),  
 23 12203(c)(2)))” before “, and”; and

24 (ii) in paragraph (2), by striking “sec-  
 25 tion 15(c) of the Age Discrimination in

1           Employment Act of 1967 (29 U.S.C.  
 2           633a(c))” and inserting “section 4(d)(2),  
 3           paragraphs (1) and (2) of section 7(b),  
 4           and section 15(c) of the Age Discrimina-  
 5           tion in Employment Act of 1967 (29  
 6           U.S.C. 623(d)(2), 626(b), 633a(c))”.

7           (h) APPLICATION.—This section, and the amend-  
 8           ments made by this section, shall apply to all claims pend-  
 9           ing on or after the date of enactment of this Act.

10   **SEC. 206. SUPERVISOR LIABILITY.**

11           (a) AMENDMENT TO TITLE VII OF THE CIVIL  
 12           RIGHTS ACT OF 1964.—

13           (1) STANDARD FOR EMPLOYER LIABILITY FOR  
 14           HOSTILE WORK ENVIRONMENT.—Section 703 of the  
 15           Civil Rights Act of 1964 (42 U.S.C. 2000e–2), as  
 16           amended by 204(c)(1), is further amended by adding  
 17           at the end the following:

18           “(p) Subject to section 206(j) of the BE HEARD in  
 19           the Workplace Act, an employer shall be liable for the acts  
 20           of any individual whose harassment of an employee has  
 21           created or continued a hostile work environment that con-  
 22           stitutes an unlawful employment practice under this sec-  
 23           tion if, at the time of the harassment—

24           “(1) such individual was authorized by that em-  
 25           ployer—

1           “(A) to undertake or recommend tangible  
2           employment actions affecting the employee; or

3           “(B) to direct the employee’s daily work  
4           activities; or

5           “(2) the negligence of the employer led to the  
6           creation or continuation of that hostile work environ-  
7           ment.”.

8           (2) STANDARD FOR EMPLOYER LIABILITY FOR  
9           RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-  
10          tion 704 of the Civil Rights Act of 1964 (42 U.S.C.  
11          2000e–3), as amended by section 201(a)(3), is fur-  
12          ther amended—

13                 (A) by redesignating subsection (b) as sub-  
14                 section (c); and

15                 (B) by inserting after subsection (a) the  
16                 following:

17          “(b) Subject to section 206(j) of the BE HEARD in  
18          the Workplace Act, an employer shall be liable for the acts  
19          of any individual whose harassment of an employee has  
20          created or continued a retaliatory hostile work environ-  
21          ment that constitutes an unlawful employment practice as  
22          described under subsection (a) if, at the time of the har-  
23          assment—

24                 “(1) such individual was authorized by that em-  
25                 ployer—

1                   “(A) to undertake or recommend tangible  
2                   employment actions affecting the employee; or

3                   “(B) to direct the employee’s daily work  
4                   activities; or

5                   “(2) the negligence of the employer led to the  
6                   creation or continuation of that retaliatory hostile  
7                   work environment.”.

8                   (3) FEDERAL EMPLOYEES.—Section 717 of the  
9                   Civil Rights Act of 1964 (42 U.S.C. 2000e–16), as  
10                  amended by section 205(e)(1), is further amended  
11                  by adding at the end the following:

12                 “(h) The provisions of sections 703(p) and 704(b)  
13                 shall apply to hostile work environment claims and retalia-  
14                 tory hostile work environment claims, respectively, under  
15                 this section.”.

16                 (b) AMENDMENT TO THE AGE DISCRIMINATION IN  
17                 EMPLOYMENT ACT OF 1967.—

18                 (1) STANDARD FOR EMPLOYER LIABILITY FOR  
19                 HOSTILE WORK ENVIRONMENT.—Section 4 of the  
20                 Age Discrimination in Employment Act of 1967 (29  
21                 U.S.C. 623), as amended by section 204(c)(4), is  
22                 further amended by adding at the end the following:

23                 “(o) Subject to section 206(j) of the BE HEARD in  
24                 the Workplace Act, an employer shall be liable for the acts  
25                 of any individual whose harassment of an employee has

1 created or continued a hostile work environment that is  
 2 unlawful under this section if, at the time of the harass-  
 3 ment—

4 “(1) such individual was authorized by that em-  
 5 ployer—

6 “(A) to undertake or recommend tangible  
 7 employment actions affecting the employee; or

8 “(B) to direct the employee’s daily work  
 9 activities; or

10 “(2) the negligence of the employer led to the  
 11 creation or continuation of that hostile work environ-  
 12 ment.”.

13 (2) STANDARD FOR EMPLOYER LIABILITY FOR  
 14 RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-  
 15 tion 4(d)(1) of the Age Discrimination in Employ-  
 16 ment Act of 1967 (29 U.S.C. 623(d)(1)), as amend-  
 17 ed by section 205(c)(2), is further amended by strik-  
 18 ing “or litigation under this Act.” and inserting “or  
 19 litigation under this Act. Subject to section 206(j) of  
 20 the BE HEARD in the Workplace Act, an employer  
 21 shall be liable for the acts of any individual whose  
 22 harassment of an employee has created or continued  
 23 a retaliatory hostile work environment that is unlaw-  
 24 ful under this subsection if, at the time of the har-  
 25 assment—



1           “(A) such individual was authorized by  
2           that employer—

3                   “(i) to undertake or recommend tan-  
4                   gible employment actions affecting the em-  
5                   ployee; or

6                   “(ii) to direct the employee’s daily  
7                   work activities; or

8           “(B) the negligence of the employer led to  
9           the creation or continuation of that retaliatory  
10          hostile work environment.”.

11          (3) FEDERAL EMPLOYEES.—Section 15 of the  
12          Age Discrimination in Employment Act of 1967 (29  
13          U.S.C. 633a), as amended by section 205(e)(3), is  
14          further amended by adding at the end the following:

15          “(i) Subsections (d) and (o) of section 4 shall apply  
16          to retaliatory hostile work environment claims and hostile  
17          work environment claims, respectively, under this sec-  
18          tion.”.

19          (c) AMENDMENT TO THE AMERICANS WITH DISABIL-  
20          ITIES ACT OF 1990.—

21               (1) STANDARD FOR EMPLOYER LIABILITY FOR  
22          HOSTILE WORK ENVIRONMENT.—Section 102 of the  
23          Americans with Disabilities Act of 1990 (42 U.S.C.  
24          12112), as amended by section 205(b)(2), is further  
25          amended by adding at the end the following:

1       “(f) Subject to section 206(j) of the BE HEARD in  
2 the Workplace Act, an employer shall be liable for the acts  
3 of any individual whose harassment of an employee has  
4 created or continued a hostile work environment that con-  
5 stitutes discrimination against a qualified individual on  
6 the basis of disability under this section if, at the time  
7 of the harassment—

8               “(1) such individual was authorized by the em-  
9 ployer—

10               “(A) to undertake or recommend tangible  
11 employment actions affecting the qualified indi-  
12 vidual; or

13               “(B) to direct the qualified individual’s  
14 daily work activities; or

15               “(2) the negligence of the employer led to the  
16 creation or continuation of that hostile work environ-  
17 ment.”.

18               (2) STANDARD FOR EMPLOYER LIABILITY FOR  
19 RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-  
20 tion 503 of the Americans with Disabilities Act of  
21 1990 (42 U.S.C. 12203) is amended—

22               (A) by redesignating subsection (c) as sub-  
23 section (d);

24               (B) by inserting after subsection (b) the  
25 following:

1       “(c) Subject to section 206(j) of the BE HEARD in  
 2 the Workplace Act, an employer shall be liable for the acts  
 3 of any individual whose harassment of an employee has  
 4 created or continued a retaliatory hostile work environ-  
 5 ment that constitutes retaliatory discrimination, as de-  
 6 scribed in subsection (a), or the carrying out of any unlaw-  
 7 ful acts described in subsection (b), if, at the time of the  
 8 harassment—

9               “(1) such individual was authorized by the em-  
 10       ployer—

11               “(A) to undertake or recommend tangible  
 12       employment actions affecting the employee; or

13               “(B) to direct the employee’s daily work  
 14       activities; or

15               “(2) the negligence of the employer led to the  
 16       creation or continuation of that retaliatory hostile  
 17       work environment.”; and

18               (C) in subsection (d), as redesignated by  
 19       subparagraph (A), by striking “subsections (a)  
 20       and (b)” and inserting “subsections (a), (b),  
 21       and (c)”.

22       (d) AMENDMENT TO THE REHABILITATION ACT OF  
 23 1973.—

24               (1) STANDARD FOR EMPLOYER LIABILITY FOR  
 25       HOSTILE WORK ENVIRONMENT AND RETALIATORY

1       HOSTILE WORK ENVIRONMENT.—Section 501 of the  
2       Rehabilitation Act of 1973 (29 U.S.C. 791) is  
3       amended by adding at the end the following:

4       “(h) Subject to section 206(j) of the BE HEARD in  
5       the Workplace Act, each department, agency, and instru-  
6       mentality in the executive branch of Government and the  
7       Smithsonian Institution shall be liable for the acts of any  
8       individual within such department, agency, instrumen-  
9       tality, or the Smithsonian Institution whose harassment  
10      of an individual with a disability has created or continued  
11      a hostile work environment, or a retaliatory hostile work  
12      environment, that constitutes nonaffirmative action em-  
13      ployment discrimination under this section if, at the time  
14      of the harassment—

15               “(1) such individual was authorized by that de-  
16      partment, agency, instrumentality, or the Smithso-  
17      nian Institution—

18                       “(A) to undertake or recommend tangible  
19      employment actions affecting the individual  
20      with a disability; or

21                       “(B) to direct the daily work activities of  
22      the individual with a disability; or

23               “(2) the negligence of that department, agency,  
24      instrumentality, or the Smithsonian Institution led  
25      to the creation or continuation of that hostile work

1 environment or retaliatory hostile work environ-  
2 ment.”.

3 (2) STANDARD FOR EMPLOYER LIABILITY FOR  
4 HOSTILE WORK ENVIRONMENT AND RETALIATORY  
5 HOSTILE WORK ENVIRONMENT.—Section 504 of the  
6 Rehabilitation Act of 1973 (29 U.S.C. 794) is  
7 amended by adding at the end the following:

8 “(e) Subject to section 206(j) of the BE HEARD in  
9 the Workplace Act, an employer described under sub-  
10 section (b) shall be liable for the acts of any individual  
11 whose harassment of a qualified individual with a dis-  
12 ability has created or continued a hostile work environ-  
13 ment, or a retaliatory hostile work environment, that con-  
14 stitutes employment discrimination under this section if,  
15 at the time of the harassment—

16 “(1) such individual was authorized by such  
17 employer—

18 “(A) to undertake or recommend tangible  
19 employment actions affecting the qualified indi-  
20 vidual with a disability; or

21 “(B) to direct the daily work activities of  
22 the qualified individual with a disability; or

23 “(2) the negligence of such employer led to the  
24 creation or continuation of that hostile work environ-  
25 ment or retaliatory hostile work environment.”.

1           (3) REMEDIES.—Section 505 of the Rehabilita-  
2           tion Act of 1973 (29 U.S.C. 794a) is amended by  
3           adding at the end of subsection (a) the following:

4           “(3) Sections 501(h) and 504(e) shall apply to  
5           hostile work environment claims and retaliatory hos-  
6           tile work environment claims under this section.”.

7           (e) AMENDMENT TO SECTION 1977 OF THE REVISED  
8           STATUTES.—Section 1977 of the Revised Statutes (42  
9           U.S.C. 1981) is amended by adding at the end the fol-  
10          lowing:

11          “(d) Subject to section 206(j) of the BE HEARD in  
12          the Workplace Act, a nongovernmental employer shall be  
13          liable for the acts of any individual whose harassment of  
14          an employee has created a hostile work environment or  
15          a retaliatory hostile work environment, constituting an un-  
16          lawful employment practice, if, at the time of the harass-  
17          ment—

18                 “(1) such individual was authorized by the em-  
19          ployer—

20                         “(A) to undertake or recommend tangible  
21                         employment actions affecting the employee; or

22                         “(B) to direct the employee’s daily work  
23                         activities; or

1           “(2) the negligence of the employer led to the  
2           creation or continuation of that hostile work environ-  
3           ment or retaliatory hostile work environment.”.

4           (f) AMENDMENT TO THE GENETIC INFORMATION  
5   NONDISCRIMINATION ACT OF 2008.—

6           (1) STANDARD FOR EMPLOYER LIABILITY FOR  
7           HOSTILE WORK ENVIRONMENT.—Section 202 of the  
8           Genetic Information Nondiscrimination Act of 2008  
9           (42 U.S.C. 2000ff–1), as amended by sections  
10          204(c)(5) and 205(b)(4), is further amended by add-  
11          ing at the end the following:

12          “(f) Subject to section 206(j) of the BE HEARD in  
13          the Workplace Act, an employer shall be liable for the acts  
14          of any individual whose harassment of an employee has  
15          created or continued a hostile work environment that con-  
16          stitutes an unlawful employment practice under this sec-  
17          tion if, at the time of the harassment—

18                  “(1) such individual was authorized by the em-  
19          ployer—

20                          “(A) to undertake or recommend tangible  
21                          employment actions affecting the employee; or

22                          “(B) to direct the employee’s daily work  
23                          activities; or

1 “(2) the negligence of the employer led to the  
2 creation or continuation of that hostile work environ-  
3 ment.”.

4 (2) STANDARD FOR EMPLOYER LIABILITY FOR  
5 RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-  
6 tion 207(f)(1) of the Genetic Information Non-  
7 discrimination Act (42 U.S.C. 2000ff–6(f)(1)), as  
8 amended by section 205(c)(2), is further amended  
9 by striking “violations of this subsection.” and in-  
10 serting “violations of this subsection. Subject to sec-  
11 tion 206(j) of the BE HEARD in the Workplace  
12 Act, an employer shall be liable for the acts of any  
13 individual whose harassment of an employee has cre-  
14 ated or continued a retaliatory hostile work environ-  
15 ment that constitutes discrimination under this sub-  
16 section if, at the time of the harassment—

17 “(A) such individual was authorized by the  
18 employer—

19 “(i) to undertake or recommend tan-  
20 gible employment actions affecting the em-  
21 ployee; or

22 “(ii) to direct the employee’s daily  
23 work activities; or



1                   “(B) the negligence of the employer led to  
2                   the creation or continuation of that retaliatory  
3                   hostile work environment.”.

4           (g) AMENDMENT TO THE GOVERNMENT EMPLOYEE  
5 RIGHTS ACT OF 1991.—Section 302 of the Government  
6 Employee Rights Act of 1991 (42 U.S.C. 2000e–16b) is  
7 amended by adding at the end the following:

8           “(c) Subject to section 206(j) of the BE HEARD in  
9 the Workplace Act, an employer of an individual described  
10 under section 304(a) shall be liable for the acts of any  
11 individual whose harassment of a State employee de-  
12 scribed in section 304 has created or continued a hostile  
13 work environment or a retaliatory hostile work environ-  
14 ment constituting discrimination under this section, if at  
15 the time of the harassment—

16                   “(1) such individual was authorized by such  
17 employer—

18                           “(A) to undertake or recommend tangible  
19 employment actions affecting the employee; or

20                           “(B) to direct the employee’s daily work  
21 activities; or

22                   “(2) the negligence of the employer led to the  
23 creation or continuation of that hostile work environ-  
24 ment or retaliatory hostile work environment.”.

1 (h) AMENDMENT TO TITLE 3, UNITED STATES  
2 CODE.—Section 411 of title 3, United States Code, is  
3 amended—

4 (1) by redesignating subsections (c) through (f)  
5 as subsections (d) through (g), respectively;

6 (2) by inserting after subsection (b) the fol-  
7 lowing:

8 “(c) LIABILITY OF EMPLOYING OFFICE.—Subject to  
9 section 206(j) of the BE HEARD in the Workplace Act,  
10 an employing office shall be liable for the acts of any indi-  
11 vidual whose harassment of a covered employee has cre-  
12 ated or continued a hostile work environment or a retalia-  
13 tory hostile work environment constituting discrimination  
14 under this section if, at the time of the harassment—

15 “(1) such individual was authorized by the em-  
16 ploying office—

17 “(A) to undertake or recommend tangible  
18 employment actions affecting the covered em-  
19 ployee; or

20 “(B) to direct the covered employee’s daily  
21 work activities; or

22 “(2) the negligence of the employing office led  
23 to the creation or continuation of that hostile work  
24 environment or retaliatory hostile work environ-  
25 ment.”; and

1           (3) in subsection (f), as redesignated by para-  
2       graph (1), by striking “subsections (a) through (c)”  
3       and inserting “subsections (a) through (d).”.

4       (i) AMENDMENT TO THE CONGRESSIONAL ACCOUNT-  
5       ABILITY ACT OF 1995.—Section 201 of the Congressional  
6       Accountability Act of 1995 (2 U.S.C. 1311), as amended  
7       by section 302(a) of the Congressional Accountability Act  
8       of 1995 Reform Act, is further amended—

9           (1) by striking subsection (e); and

10          (2) by adding at the end the following:

11       “(e) OUTSIDE INDIVIDUALS.—Subject to section  
12       206(j) of the BE HEARD in the Workplace Act, an em-  
13       ploying office shall be liable for the acts of any individual  
14       whose harassment of a covered employee has created or  
15       continued a hostile work environment or a retaliatory hos-  
16       tile work environment that constitutes discrimination  
17       under this section if, at the time of the harassment—

18           “(1) such individual was authorized by the em-  
19       ploying office—

20           “(A) to undertake or recommend tangible  
21       employment actions affecting the covered em-  
22       ployee; or

23           “(B) to direct the covered employee’s daily  
24       work activities; or

1           “(2) the negligence of the employing office led  
2           to the creation or continuation of that hostile work  
3           environment or retaliatory hostile work environ-  
4           ment.”.

5           (j) RULE OF CONSTRUCTION.—Nothing in this sec-  
6           tion shall be construed to limit the availability of, or access  
7           to, defenses available under the law.

8           (k) APPLICATION.—This section, and the amend-  
9           ments made by this section, shall apply to all claims pend-  
10          ing on or after the date of enactment of this Act.

11       **SEC. 207. EXTENDING THE STATUTES OF LIMITATIONS.**

12          (a) CIVIL RIGHTS ACT OF 1964; AMERICANS WITH  
13       DISABILITIES ACT OF 1990; GENETIC INFORMATION  
14       NONDISCRIMINATION ACT OF 2008.—Section 706 of the  
15       Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amend-  
16       ed—

17               (1) in subsection (e)—

18                       (A) in paragraph (1)—

19                               (i) by striking “one hundred and  
20                               eighty days after the alleged unlawful em-  
21                               ployment practice occurred” and inserting  
22                               “4 years after the alleged unlawful employ-  
23                               ment practice occurred.”; and

24                               (ii) by striking “three hundred days  
25                               after the alleged unlawful employment

1 practice occurred” and inserting “4 years  
2 and 120 days after the alleged unlawful  
3 employment practice occurred.”; and

4 (B) in paragraph (3)(B), by striking “two  
5 years preceding the filing of the charge” and all  
6 that follows and inserting “4 years preceding  
7 the filing of the charge.”; and

8 (2) in subsection (g)(1), by striking “two years  
9 prior to the filing of a charge” and inserting “4  
10 years preceding the filing of the charge”.

11 (b) AGE DISCRIMINATION IN EMPLOYMENT ACT OF  
12 1967.—Section 7(d) of the Age Discrimination in Employ-  
13 ment Act of 1967 (29 U.S.C. 626(d)) is amended—

14 (1) in the second sentence, by redesignating  
15 paragraphs (1) and (2) as subparagraphs (A) and  
16 (B), respectively;

17 (2) by striking “(d)” and all that follows  
18 through “No” and inserting “(d)(1) No”; and

19 (3) in paragraph (1), as designated by para-  
20 graph (2) of this subsection—

21 (A) by striking “Secretary. Such” and in-  
22 serting “Secretary, and such”;

23 (B) in subparagraph (A), by striking “180  
24 days after the alleged unlawful practice oc-

1 curred” and inserting “4 years after the alleged  
2 unlawful practice occurred”; and

3 (C) in subparagraph (B), by striking “300  
4 days after the alleged unlawful practice oc-  
5 curred” and inserting “4 years and 120 days  
6 after the alleged unlawful practice occurred”.

7 **SEC. 208. EXTENDING THE TIME LIMITATIONS ON FEDERAL**  
8 **EMPLOYEES FILING A COMPLAINT.**

9 (a) IN GENERAL.—The Equal Employment Oppor-  
10 tunity Commission (referred to in this section as “the  
11 Commission”) shall ensure that a covered Federal em-  
12 ployee shall not be required to take any action necessary  
13 to bring a complaint to the department, agency, unit, or  
14 instrumentality involved prior to 4 years from the date of  
15 the matter alleged to be discriminatory or, in the case of  
16 personnel action, 4 years from the effective date of the  
17 personnel action.

18 (b) COVERED EMPLOYEES AND COMPLAINTS.—In  
19 this section, the term “covered Federal employee”  
20 means—

21 (1) an employee or applicant to whom section  
22 717(a) of the Civil Rights Act of 1964 (42 U.S.C.  
23 2000e–16(a)) applies, in the case of a complaint  
24 brought under section 717 of that Act (42 U.S.C.  
25 2000e–16);

1           (2) an employee or applicant to whom section  
 2           15(a) of the Age Discrimination in Employment Act  
 3           of 1967 (29 U.S.C. 633a(a)) applies, in the case of  
 4           a complaint brought under section 15 of that Act  
 5           (29 U.S.C. 633a);

6           (3) an employee or applicant to whom section  
 7           501 of the Rehabilitation Act of 1973 (29 U.S.C.  
 8           791) applies, in the case of a complaint brought to  
 9           enforce that section under section 505 of that Act  
 10          (29 U.S.C. 794a); and

11          (4) an employee or applicant described in sec-  
 12          tion 201(2)(A)(v) of the Genetic Information Non-  
 13          discrimination Act of 2008 (42 U.S.C.  
 14          2000ff(2)(A)(v)), in the case of a complaint brought  
 15          to enforce title II of that Act (42 U.S.C. 2000ff et  
 16          seq.) under section 207(e) of that Act (42 U.S.C.  
 17          2000ff–6(e)).

## 18 **TITLE III—BROADENING PRO-** 19 **TECTIONS AND ENSURING** 20 **TRANSPARENCY**

### 21 **SEC. 301. INDEPENDENT CONTRACTORS, INTERNS, FEL-** 22 **LOWS, VOLUNTEERS, AND TRAINEES.**

23          (a) COVERED EMPLOYER OR ENTITY.—All protec-  
 24          tions afforded to an employee or individual under a provi-  
 25          sion that consists of title VII of the Civil Rights Act of

1 1964 (42 U.S.C. 2000e et seq.), the Government Em-  
 2 ployee Rights Act of 1991 (42 U.S.C. 2000e–16a et seq.),  
 3 the Congressional Accountability Act of 1995 (2 U.S.C.  
 4 1301 et seq.), subchapter II of chapter 5 of title 3, United  
 5 States Code, the Age Discrimination in Employment Act  
 6 of 1967 (29 U.S.C. 621 et seq.), title I and section 503  
 7 (for violations with respect to that title) of the Americans  
 8 with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.,  
 9 12203), sections 501 and 505 of the Rehabilitation Act  
 10 of 1973 (29 U.S.C. 791, 794a), section 6(d) of the Fair  
 11 Labor Standards Act of 1938 (commonly known as the  
 12 “Equal Pay Act of 1963”) (29 U.S.C. 206(d)), title II  
 13 of the Genetic Information Nondiscrimination Act of 2008  
 14 (42 U.S.C. 2000ff et seq.), and section 4311 of title 38,  
 15 United States Code, shall be afforded, in the same manner  
 16 and to the same extent, to—

17           (1) an individual who is engaged by an em-  
 18           ployer or entity covered by that provision (referred  
 19           to in this subsection as a “covered employer or enti-  
 20           ty”) as an independent contractor (regardless of  
 21           business structure, including organization as a legal  
 22           or commercial entity) or as an intern, fellow, volun-  
 23           teer, or trainee, whether or not the individual re-  
 24           ceives compensation, academic credit, or other remu-  
 25           neration from the covered employer or entity; or



1           (2) an individual who applies or seeks to be-  
2           come such an independent contractor (regardless of  
3           business structure, including organization as a legal  
4           or commercial entity), intern, fellow, volunteer, or  
5           trainee, for the covered employer or entity.

6           (b) COVERED ESTABLISHMENTS.—

7           (1) DEFINITION.—In this subsection, the term  
8           “covered establishment” means an individual or enti-  
9           ty that—

10                   (A) is not acting as an employer or entity  
11                   covered by a provision specified in subsection  
12                   (a); and

13                   (B) engages the services (including solici-  
14                   tating such services) of an independent con-  
15                   tractor (regardless of business structure, includ-  
16                   ing organization as a legal or commercial enti-  
17                   ty), intern, fellow, volunteer, or trainee by  
18                   means of an instrument of transportation or  
19                   communication in interstate commerce, or  
20                   through an arrangement that involves the use  
21                   of such an instrument to carry out or be con-  
22                   veyed to carry out those services.

23           (2) PROTECTIONS.—All protections afforded to  
24           an employee or individual under a provision that  
25           consists of title VII of the Civil Rights Act of 1964,

1 the Age Discrimination in Employment Act of 1967,  
2 title I and section 503 (for violations with respect to  
3 that title) of the Americans with Disabilities Act of  
4 1990, section 6(d) of the Fair Labor Standards Act  
5 of 1938, title II of the Genetic Information Non-  
6 discrimination Act of 2008, and section 4311 of title  
7 38, United States Code, shall be afforded, in the  
8 same manner and to the same extent that the provi-  
9 sion covers an individual described in section 701(f)  
10 of the Civil Rights Act of 1964 (42 U.S.C.  
11 2000e(f)), to—

12 (A) an individual who is engaged by a cov-  
13 ered establishment as an independent con-  
14 tractor (regardless of business structure, includ-  
15 ing organization as a legal or commercial enti-  
16 ty) or as an intern, fellow, volunteer, or trainee,  
17 whether or not the individual receives com-  
18 pensation, academic credit, or other remunera-  
19 tion from the covered establishment; or

20 (B) an individual who applies or seeks to  
21 become such an independent contractor (regard-  
22 less of business structure, including organiza-  
23 tion as a legal or commercial entity), intern, fel-  
24 low, volunteer, or trainee, for the covered estab-  
25 lishment.

1       (c) DOMESTIC SERVICE.—For purposes of the provi-  
2       sions listed in subsection (a) and the provisions of this  
3       Act, an individual or entity who engages the services (by  
4       means of an instrument of transportation or communica-  
5       tion in interstate commerce, or through an arrangement  
6       that involves the use of such an instrument to carry out  
7       or be conveyed to carry out those services) of a person  
8       in domestic service in a household, as an employee, or as  
9       an independent contractor, intern, fellow, volunteer, or  
10      trainee, referred to in subsection (a) or (b) shall be consid-  
11      ered to be engaged in interstate commerce.

12      (d) RULE OF CONSTRUCTION.—Nothing in this sec-  
13      tion shall be construed to limit the individuals protected  
14      under any provision described in subsection (a).

15      (e) INTERSTATE COMMERCE.—In this section, the  
16      term “interstate commerce” means Commerce (as defined  
17      in section 3 of the Fair Labor Standards Act of 1938 (29  
18      U.S.C. 203)) among the several States.

19      **SEC. 302. NONDISCLOSURE AGREEMENTS.**

20      (a) DEFINITIONS.—In this section:

21              (1) COMMISSION.—The term “Commission”  
22      means the Equal Employment Opportunity Commis-  
23      sion.

1           (2) COVERED ESTABLISHMENT.—The term  
2       “covered establishment” has the meaning given the  
3       term in section 301.

4           (3) COVERED INDIVIDUAL.—The term “covered  
5       individual” means—

6           (A) in the case of an individual required to  
7       be afforded protections under section 301(a)—

8           (i) an individual required to be af-  
9       forded those protections by an employer  
10      described in paragraph (5)(A);

11          (ii) an individual required to be af-  
12      forded those protections by an employer  
13      described in paragraph (5)(B);

14          (iii) an individual required to be af-  
15      forded those protections by an employer  
16      described in paragraph (5)(C);

17          (iv) an individual required to be af-  
18      forded those protections by an employer  
19      described in paragraph (5)(D); or

20          (v) an individual required to be af-  
21      forded those protections by an employer  
22      described in paragraph (5)(E); and

23          (B) in the case of an individual required to  
24      be afforded protections under section 301(b) by  
25      a covered establishment, that individual.

1           (4)   EMPLOYEE.—The     term     “employee”  
2     means—

3           (A) an employee (including an applicant),  
4           as defined in section 701(f) of the Civil Rights  
5           Act of 1964 (42 U.S.C. 2000e(f));

6           (B) a State employee (including an appli-  
7           cant) described in section 304(a) of the Govern-  
8           ment Employee Rights Act of 1991 (42 U.S.C.  
9           2000e–16c(a));

10          (C) a covered employee (including an appli-  
11          cant), as defined in section 101 of the Congres-  
12          sional Accountability Act of 1995 (2 U.S.C.  
13          1301), including an individual treated as a cov-  
14          ered employee under that section;

15          (D) a covered employee (including an ap-  
16          plicant), as defined in section 411(c) of title 3,  
17          United States Code; or

18          (E) an employee or applicant to which sec-  
19          tion 717(a) of the Civil Rights Act of 1964 (42  
20          U.S.C. 2000e–16(a)) applies.

21          (5)   EMPLOYER.—The     term     “employer”  
22     means—

23           (A) an employer (as defined in section  
24           701(b) of the Civil Rights Act of 1964 (42  
25           U.S.C. 2000e(b)));

1 (B) an entity employing a State employee  
2 described in section 304(a) of the Government  
3 Employee Rights Act of 1991;

4 (C) an employing office, as defined in sec-  
5 tion 101(a) of the Congressional Accountability  
6 Act of 1995 (2 U.S.C. 1301(a));

7 (D) an employing office, as defined in sec-  
8 tion 411(c) of title 3, United States Code; or

9 (E) an entity to which section 717(a) of  
10 the Civil Rights Act of 1964 applies.

11 (6) NONDISCLOSURE CLAUSE.—The term “non-  
12 disclosure clause” means a provision in a contract or  
13 agreement establishing that each party to the con-  
14 tract or agreement agrees not to disclose informa-  
15 tion covered by the terms and conditions of the con-  
16 tract or agreement.

17 (7) NONDISPARAGEMENT CLAUSE.—The term  
18 “nondisparagement clause” means a provision in a  
19 contract or agreement requiring one or more parties  
20 to the contract or agreement not to make negative  
21 statements about another such party.

22 (8) WORKER.—The term “worker” means an  
23 employee or a covered individual.

24 (b) UNLAWFUL PRACTICES.—

1           (1) NONDISPARAGEMENT AND NONDISCLOSURE  
2           CLAUSES.—Subject to paragraph (3), it shall be an  
3           unlawful practice for an employer to enter into a  
4           contract or agreement with a worker, or for a cov-  
5           ered establishment to enter into a contract or agree-  
6           ment with a covered individual, as a condition of em-  
7           ployment or contracting, promotion, compensation,  
8           benefits, or change in employment status or contrac-  
9           tual relationship, or as a term, condition, or privilege  
10          of employment or contracting, if that contract or  
11          agreement contains a nondisparagement clause or  
12          nondisclosure clause that covers prohibited discrimi-  
13          nation or harassment in employment or contracting,  
14          or retaliation for reporting, resisting, opposing, or  
15          assisting in the investigation of such discrimination  
16          or harassment.

17          (2) PROHIBITION ON ENFORCEMENT.—Subject  
18          to paragraph (3) but notwithstanding any other pro-  
19          vision of law, it shall be an unlawful practice for an  
20          employer or covered establishment to enforce or at-  
21          tempt to enforce a nondisparagement clause or non-  
22          disclosure clause that covers prohibited discrimina-  
23          tion or harassment in employment or contracting, or  
24          retaliation for reporting, resisting, opposing, or as-  
25          sisting in the investigation of such discrimination or

1 harassment. An employer or covered establishment  
2 that enforces or attempts to enforce such a non-  
3 disparagement clause or such a nondisclosure clause  
4 against a worker shall be liable for the reasonable  
5 attorney's fees and costs of the worker.

6 (3) SETTLEMENT OR SEPARATION AGREE-  
7 MENTS.—

8 (A) IN GENERAL.—The provisions of para-  
9 graphs (1) and (2) do not apply to a nondispar-  
10 agement clause or nondisclosure clause con-  
11 tained in a settlement agreement or separation  
12 agreement that resolves legal claims or disputes  
13 if—

14 (i) such legal claims accrued or such  
15 disputes arose before the settlement agree-  
16 ment or separation agreement was exe-  
17 cuted;

18 (ii) the clause involved is mutually  
19 agreed upon by and mutually benefits  
20 both—

21 (I) the employer or covered es-  
22 tablishment, as the case may be; and

23 (II) the worker;



1 (iii) the worker's agreement to such  
2 clause is knowing and voluntary, as de-  
3 scribed in subparagraph (C); and

4 (iv) the settlement agreement or sepa-  
5 ration agreement expressly states that the  
6 agreement involved does not prohibit, pre-  
7 vent, or otherwise restrict a worker from—

8 (I) filing a complaint with the  
9 Commission, any other Federal, State,  
10 or local agency with the authority to  
11 enforce laws (including regulations)  
12 that prohibit discrimination or harass-  
13 ment in employment or contracting,  
14 as the case may be, or law enforce-  
15 ment;

16 (II) testifying at, assisting, or  
17 participating in an investigation or  
18 proceeding conducted by the Commis-  
19 sion, any other Federal, State, or local  
20 agency with the authority to enforce  
21 laws (including regulations) that pro-  
22 hibit discrimination or harassment in  
23 employment or contracting, as the  
24 case may be, or law enforcement; or

1 (III) testifying in a hearing or  
2 trial or complying with a request for  
3 discovery in relation to civil litigation.

4 (B) PROHIBITION ON SOLE BENEFIT.—For  
5 purposes of this paragraph, it shall be an un-  
6 lawful practice for an employer or covered es-  
7 tablishment to unilaterally include a nondispar-  
8 agement clause or nondisclosure clause that  
9 solely benefits the employer or covered estab-  
10 lishment in a separation or settlement agree-  
11 ment.

12 (C) KNOWING AND VOLUNTARY AGREE-  
13 MENT.—For purposes of this paragraph, agree-  
14 ment to a nondisparagement clause or non-  
15 disclosure clause may not be considered know-  
16 ing and voluntary unless at a minimum—

17 (i) the nondisparagement clause or  
18 nondisclosure clause is written in a manner  
19 designed to ensure that the worker under-  
20 stands the content of the clause involved;

21 (ii) the nondisparagement clause or  
22 nondisclosure clause is included only in ex-  
23 change for consideration of value provided  
24 to the worker, in addition to anything of

1 value to which the worker is already enti-  
2 tled;

3 (iii) the nondisparagement clause or  
4 nondisclosure clause does not apply to any  
5 rights or claims that arise after the date  
6 the settlement or separation agreement is  
7 executed;

8 (iv) the worker is advised in writing to  
9 consult with an attorney prior to agreeing  
10 to such an agreement that includes a non-  
11 disparagement clause or nondisclosure  
12 clause;

13 (v) the worker is given a period of at  
14 least 21 days to consider any proposal for  
15 a settlement or separation agreement that  
16 includes a nondisparagement clause or  
17 nondisclosure clause; and

18 (vi) the settlement or separation  
19 agreement provides that for a period of at  
20 least 7 days following the execution of such  
21 agreement the worker may revoke the  
22 agreement, and the agreement shall not be-  
23 come effective or enforceable until the rev-  
24 ocation period has expired.

1           (D) BURDEN OF PROOF.—In any dispute  
2           that may arise over whether any of the require-  
3           ments of subparagraph (A) have been met, the  
4           party asserting the validity of an agreement  
5           shall have the burden of proving that the re-  
6           quirements of subparagraph (A) have been met.

7           (E) PARTICIPATION IN INVESTIGATIONS OR  
8           PROCEEDINGS.—No nondisparagement clause  
9           or nondisclosure clause may affect the ability of  
10          a worker to testify at, assist, or participate in  
11          an investigation or proceeding conducted by the  
12          Commission, any Federal, State, or local agency  
13          with the authority to enforce laws (including  
14          regulations) that prohibit discrimination in em-  
15          ployment or contracting, as the case may be, or  
16          a law enforcement agency.

17          (F) PROHIBITION ON DAMAGES.—Under  
18          no circumstances shall a worker be required to  
19          pay damages for breach of a nondisparagement  
20          clause or nondisclosure clause permitted by this  
21          paragraph in excess of an amount equal to the  
22          consideration of value provided to the worker in  
23          exchange for the workers' agreement to the  
24          nondisparagement clause or nondisclosure  
25          clause.

1 (c) ENFORCEMENT AGAINST EMPLOYERS.—

2 (1) ENFORCEMENT POWERS.—With respect to  
3 the administration and enforcement of this section  
4 in the case of a claim alleged by a worker against  
5 an employer for a violation of this section—

6 (A) the Commission shall have the same  
7 powers as the Commission has to administer  
8 and enforce—

9 (i) title VII of the Civil Rights Act of  
10 1964 (42 U.S.C. 2000e et seq.); or

11 (ii) sections 302 and 304 of the Gov-  
12 ernment Employee Rights Act of 1991 (42  
13 U.S.C. 2000e–16b and 2000e–16c),

14 in the case of a claim alleged by an employee  
15 of the employer for a violation of such title, or  
16 of section 302(a)(1) of the Government Em-  
17 ployee Rights Act of 1991 (42 U.S.C. 2000e–  
18 16b(a)(1)), respectively;

19 (B) the Librarian of Congress shall have  
20 the same powers as the Librarian of Congress  
21 has to administer and enforce title VII of the  
22 Civil Rights Act of 1964 (42 U.S.C. 2000e et  
23 seq.) in the case of a claim alleged by an em-  
24 ployee of the employer for a violation of such  
25 title;

1 (C) the Board (as defined in section  
2 101(a) of the Congressional Accountability Act  
3 of 1995 (2 U.S.C. 1301(a))) shall have the  
4 same powers as the Board has to administer  
5 and enforce the Congressional Accountability  
6 Act of 1995 (2 U.S.C. 1301 et seq.) in the case  
7 of a claim alleged by an employee of the em-  
8 ployer for a violation of section 201(a)(1) of  
9 such Act (2 U.S.C. 1311(a)(1));

10 (D) the Attorney General shall have the  
11 same powers as the Attorney General has to ad-  
12 minister and enforce—

13 (i) title VII of the Civil Rights Act of  
14 1964 (42 U.S.C. 2000e et seq.); or

15 (ii) sections 302 and 304 of the Gov-  
16 ernment Employee Rights Act of 1991 (42  
17 U.S.C. 2000e–16b and 2000e–16c),

18 in the case of a claim alleged by an employee  
19 of the employer for a violation of such title, or  
20 of section 302(a)(1) of the Government Em-  
21 ployee Rights Act of 1991 (42 U.S.C. 2000e–  
22 16b(a)(1)), respectively;

23 (E) the President, the Commission, and  
24 the Merit Systems Protection Board shall have  
25 the same powers as the President, the Commis-

1           sion, and the Board, respectively, have to ad-  
2           minister and enforce chapter 5 of title 3,  
3           United States Code, in the case of a claim al-  
4           leged by an employee of the employer for a vio-  
5           lation of section 411 of such title; and

6           (F) a court of the United States shall have  
7           the same jurisdiction and powers as the court  
8           has to enforce—

9           (i) title VII of the Civil Rights Act of  
10          1964 (42 U.S.C. 2000e et seq.) in the case  
11          of a claim alleged by an employee of the  
12          employer for a violation of such title;

13          (ii) sections 302 and 304 of the Gov-  
14          ernment Employee Rights Act of 1991 (42  
15          U.S.C. 2000e–16b and 2000e–16c) in the  
16          case of a claim alleged by an employee of  
17          the employer for a violation of section  
18          302(a)(1) of such Act (42 U.S.C. 2000e–  
19          16b(a)(1));

20          (iii) the Congressional Accountability  
21          Act of 1995 (2 U.S.C. 1301 et seq.) in the  
22          case of a claim alleged by an employee of  
23          the employer for a violation of section  
24          201(a)(1) of such Act (2 U.S.C.  
25          1311(a)(1)); and

1 (iv) chapter 5 of title 3, United States  
2 Code, in the case of a claim alleged by an  
3 employee of the employer for a violation of  
4 section 411 of such title.

5 (2) PROCEDURES AND REMEDIES.—The proce-  
6 dures and remedies applicable to a claim alleged by  
7 a worker against the employer for a violation of this  
8 section are—

9 (A) the procedures and remedies applicable  
10 for a violation of title VII of the Civil Rights  
11 Act of 1964 (42 U.S.C. 2000e et seq.) in the  
12 case of a claim alleged by an employee of the  
13 employer for a violation of such title;

14 (B) the procedures and remedies applicable  
15 for a violation of section 302(a)(1) of the Gov-  
16 ernment Employee Rights Act of 1991 (42  
17 U.S.C. 2000e–16b(a)(1)) in the case of a claim  
18 alleged by an employee of the employer for a  
19 violation of such section;

20 (C) the procedures and remedies applicable  
21 for a violation of section 201(a)(1) of the Con-  
22 gressional Accountability Act of 1995 (2 U.S.C.  
23 1311(a)(1)) in the case of a claim alleged by an  
24 employee of the employer for a violation of such  
25 section; and



1 (D) the procedures and remedies applicable  
2 for a violation of section 411 of title 3, United  
3 States Code, in the case of a claim alleged by  
4 an employee of the employer for a violation of  
5 such section.

6 (3) OTHER APPLICABLE PROVISIONS.—With re-  
7 spect to a claim alleged by an employee described in  
8 subsection (a)(4)(C) or a covered individual de-  
9 scribed in subsection (a)(3)(A)(iii) for a violation of  
10 this section, title III of the Congressional Account-  
11 ability Act of 1995 (2 U.S.C. 1381 et seq.) shall  
12 apply in the same manner as such title applies with  
13 respect to a claim alleged by such an employee for  
14 a violation of section 201(a)(1) of such Act (2  
15 U.S.C. 1311(a)(1)).

16 (d) ENFORCEMENT AGAINST COVERED ESTABLISH-  
17 MENTS.—

18 (1) ENFORCEMENT POWERS.—With respect to  
19 the administration and enforcement of this section  
20 in the case of a claim alleged by a covered individual  
21 against a covered establishment for a violation of  
22 this section—

23 (A) the Commission shall have the same  
24 powers as the Commission has to administer

1 and enforce title VII of the Civil Rights Act of  
2 1964 (42 U.S.C. 2000e et seq.);

3 (B) the Attorney General shall have the  
4 same powers as the Attorney General has to ad-  
5 minister and enforce title VII of the Civil  
6 Rights Act of 1964; and

7 (C) a court of the United States shall have  
8 the same jurisdiction and powers as the court  
9 has to enforce title VII of the Civil Rights Act  
10 of 1964,

11 in the case of a claim alleged by an employee de-  
12 scribed in subsection (a)(4)(A) for a violation of  
13 such title.

14 (2) PROCEDURES AND REMEDIES.—The proce-  
15 dures and remedies applicable to a claim alleged by  
16 a covered individual against the covered establish-  
17 ment for a violation of this section are the proce-  
18 dures and remedies applicable for a violation of title  
19 VII of the Civil Rights Act of 1964 (42 U.S.C.  
20 2000e et seq.) in the case of a claim alleged by an  
21 employee described in subsection (a)(4)(A) for a vio-  
22 lation of such title.

23 (e) RIGHT TO REPORT RESERVED.—Notwith-  
24 standing signing (before, on, or after the effective date of

1 this Act) any nondisparagement clause or nondisclosure  
2 clause, a worker retains—

3           (1) any right that person would otherwise have  
4       had to report a concern about harassment, including  
5       sexual harassment, in employment or contracting or  
6       another violation of the law to the Commission, an-  
7       other Federal agency (including an office of the leg-  
8       islative or judicial branch), a State or local fair em-  
9       ployment practices agency or any other State or  
10      local agency, or a law enforcement agency; and

11           (2) any right that person would otherwise have  
12      had to bring an action in a court of the United  
13      States.

14      (f) REGULATIONS.—

15           (1) IN GENERAL.—Except as provided in para-  
16      graphs (2), (3), and (4), the Commission shall have  
17      authority to issue regulations to carry out this sec-  
18      tion.

19           (2) LIBRARIAN OF CONGRESS.—The Librarian  
20      of Congress shall have authority to issue regulations  
21      to carry out this section with respect to workers of  
22      the Library of Congress.

23           (3) BOARD.—The Board referred to in sub-  
24      section (c)(1)(C) shall have authority to issue regu-  
25      lations to carry out this section, in accordance with

1 section 304 of the Congressional Accountability Act  
2 of 1995 (2 U.S.C. 1384), with respect to employees  
3 described in subsection (a)(4)(C) and covered indi-  
4 viduals described in subsection (a)(3)(A)(iii).

5 (4) PRESIDENT.—The President shall have au-  
6 thority to issue regulations to carry out this section  
7 with respect to employees described in subsection  
8 (a)(4)(D) and covered individuals described in sub-  
9 section (a)(3)(A)(iv).

10 (g) STATE AND FEDERAL IMMUNITY.—

11 (1) ABROGATION OF STATE IMMUNITY.—A  
12 State shall not be immune under the 11th Amend-  
13 ment to the Constitution from a suit brought in a  
14 Federal court of competent jurisdiction for a viola-  
15 tion of this section.

16 (2) WAIVER OF STATE IMMUNITY.—

17 (A) IN GENERAL.—

18 (i) WAIVER.—A State's receipt or use  
19 of Federal financial assistance for any pro-  
20 gram or activity of a State shall constitute  
21 a waiver of sovereign immunity, under the  
22 11th Amendment to the Constitution or  
23 otherwise, to a suit brought by a covered  
24 individual in that program or activity

1 under this section for a remedy authorized  
2 under paragraph (4).

3 (ii) DEFINITION.—In this subpara-  
4 graph, the term “program or activity” has  
5 the meaning given the term in section 606  
6 of the Civil Rights Act of 1964 (42 U.S.C.  
7 2000d–4a).

8 (B) EFFECTIVE DATE.—With respect to a  
9 particular program or activity, subparagraph  
10 (A) applies to conduct occurring on or after the  
11 day, after the date of enactment of this Act, on  
12 which a State first receives or uses Federal fi-  
13 nancial assistance for that program or activity.

14 (3) REMEDIES AGAINST STATE OFFICIALS.—An  
15 official of a State may be sued in the official capac-  
16 ity of the official by a covered individual who has  
17 complied with the applicable procedures of sub-  
18 section (c), for equitable relief that is authorized  
19 under this section. In such a suit the court may  
20 award to the prevailing party those costs authorized  
21 by section 722 of the Revised Statutes (42 U.S.C.  
22 1988).

23 (4) REMEDIES AGAINST THE UNITED STATES  
24 AND THE STATES.—Notwithstanding any other pro-  
25 vision of this Act, in an action or administrative pro-

ceeding against the United States or a State for a violation of this section, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) by an employer described in subsection (a)(5)(A), except that—

(A) punitive damages are not available;

and

(B) compensatory damages are available to the extent specified in section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

**SEC. 303. PROHIBITION ON MANDATORY ARBITRATION AND PROTECTION OF CONCERTED LEGAL ACTION.**

(a) PROTECTION OF CONCERTED ACTIVITY.—

(1) AGREEMENTS.—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(A) in paragraph (5), by striking the period at the end and inserting “; and”; and

(B) by adding at the end the following:

“(6)(A) to enter into or attempt to enforce any agreement, express or implied, whereby prior to a dispute to which the agreement applies, a worker

1 (for purposes of this paragraph, as defined in sec-  
2 tion 401 of title 9, United States Code) undertakes  
3 or promises not to pursue, bring, join, litigate, or  
4 support any kind of joint, class, or collective claim  
5 arising from or relating to the employment of, or  
6 provision of services by, such worker in any forum  
7 that, but for such agreement, is of competent juris-  
8 diction;

9 “(B) to coerce such worker into undertaking or  
10 promising not to pursue, bring, join, litigate, or sup-  
11 port any kind of joint, class, or collective claim aris-  
12 ing from or relating to the employment of, or provi-  
13 sion of services by, such worker; or

14 “(C) to retaliate or threaten to retaliate against  
15 a worker for refusing to undertake or promise not  
16 to pursue, bring, join, litigate, or support any kind  
17 of joint, class, or collective claim arising from or re-  
18 lating to the employment of, or provision or services  
19 by, such worker:

20 *Provided*, That any agreement that violates this  
21 paragraph or results from a violation of this para-  
22 graph shall be to such extent unenforceable and  
23 void: *Provided further*, That this paragraph shall not  
24 apply to any agreement embodied in or expressly

1 permitted by a contract between an employer and a  
2 labor organization.”.

3 (2) CONFORMING AMENDMENT.—Section 10(b)  
4 of the National Labor Relations Act (29 U.S.C.  
5 160(b)) is amended by striking “discharge” and in-  
6 serting “discharge, or unless the person aggrieved  
7 thereby is a worker alleging a violation of section  
8 8(a)(6) whose charge involves a postdispute arbitra-  
9 tion agreement that meets the requirements under  
10 section 402(a)(2) of title 9, United States Code, in  
11 which event the six-month period shall be computed  
12 from the day the waiting period described in sub-  
13 paragraph (C) of such section ends”.

14 (b) ARBITRATION OF WORK DISPUTES.—

15 (1) IN GENERAL.—Title 9 of the United States  
16 Code is amended by adding at the end the following:

17 **“CHAPTER 4—ARBITRATION OF WORK**  
18 **DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

19 **“§ 401. Definitions**

20 “In this chapter—

21 “(1) the terms ‘commerce’, ‘employee’, and ‘em-  
22 ployer’ have the meanings given the terms in section  
23 3 of the Fair Labor Standards Act of 1938 (29  
24 U.S.C. 203);



1 “(2) the term ‘covered entity’ means—

2 “(A) an employer; or

3 “(B) an individual or entity that is not  
4 acting as an employer and engages the services  
5 of a worker;

6 “(3) the term ‘predispute arbitration agree-  
7 ment’ means any agreement to arbitrate a dispute  
8 that had not yet arisen at the time of the making  
9 of the agreement;

10 “(4) the term ‘postdispute arbitration agree-  
11 ment’ means any agreement to arbitrate a dispute  
12 that arose before the time of the making of the  
13 agreement;

14 “(5) the term ‘worker’ means—

15 “(A) an employee; or

16 “(B) an individual who is engaged by a  
17 covered entity to perform services or work as an  
18 independent contractor (regardless of the label  
19 or classification assigned or used by the covered  
20 entity); and

21 “(6) the term ‘work dispute’—

22 “(A) means a dispute between one or more  
23 workers (or their authorized representatives)  
24 and a covered entity arising out of or related to  
25 the work relationship or prospective work rela-

1           tationship between the workers and the covered  
2           entity; and

3           “(B) includes, but is not limited to—

4                   “(i) a dispute regarding the terms of,  
5                   payment for, advertising of, recruitment of,  
6                   referring of, arranging for, or discipline or  
7                   discharge in connection with such work;

8                   “(ii) a dispute arising under any law  
9                   referred to or described in section 62(e) of  
10                  the Internal Revenue Code of 1986, includ-  
11                  ing any part of such a law not explicitly  
12                  referenced in such section that relates to  
13                  protecting individuals on a basis that is  
14                  protected under a law referred to or de-  
15                  scribed in such section; and

16                  “(iii) a dispute in which an individual  
17                  or individuals seek certification—

18                           “(I) as a class under rule 23 of  
19                           the Federal Rules of Civil Procedure;

20                           “(II) as a collective action under  
21                           section 16(b) of the Fair Labor  
22                           Standards Act of 1938 (29 U.S.C.  
23                           216(b)); or

24                           “(III) under a comparable rule or  
25                           provision of State law.

1   **“§ 402. Validity and enforceability**

2           “(a) IN GENERAL.—Notwithstanding any other chap-  
3   ter of this title—

4           “(1) no predispute arbitration agreement shall  
5       be valid or enforceable if it requires arbitration of a  
6       work dispute;

7           “(2) no postdispute arbitration agreement that  
8       requires arbitration of a work dispute shall be valid  
9       or enforceable unless—

10           “(A) the agreement was not required by  
11       the covered entity, obtained by coercion or  
12       threat of adverse action, or made a condition of  
13       employment, work, or any employment-related  
14       or work-related privilege or benefit;

15           “(B) each worker entering into the agree-  
16       ment was informed in writing using sufficiently  
17       plain language likely to be understood by the  
18       average worker of—

19           “(i) the right of the worker under  
20       paragraph (3) to refuse to enter the agree-  
21       ment without retaliation; and

22           “(ii) the protections under section  
23       8(a)(6) of the National Labor Relations  
24       Act (29 U.S.C. 158(a)(6));

25           “(C) each worker entering into the agree-  
26       ment entered the agreement after a waiting pe-

1           riod of not fewer than 45 days, beginning on  
2           the date on which the employee was provided  
3           both the final text of the agreement and the  
4           disclosures required under subparagraph (B);  
5           and

6           “(D) each worker entering into the agree-  
7           ment affirmatively consented to the agreement  
8           in writing; and

9           “(3) no covered entity may retaliate or threaten  
10          to retaliate against a worker for refusing to enter  
11          into an agreement that provides for arbitration of a  
12          work dispute.

13          “(b) STATUTE OF LIMITATIONS.—During the waiting  
14          period described in subsection (a)(2)(C), the statute of  
15          limitations for any claims that arise from or form the basis  
16          for the applicable work dispute shall be tolled.

17          “(c) CIVIL ACTION.—Any person who is injured by  
18          reason of a violation of subsection (a)(3) may bring a civil  
19          action in the appropriate district court of the United  
20          States against the covered entity within 2 years of the vio-  
21          lation, or within 3 years if such violation is willful. Relief  
22          granted in such an action shall include a reasonable attor-  
23          ney’s fee, other reasonable costs associated with maintain-  
24          ing the action, and any appropriate relief authorized by  
25          section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.

1 2000e–5(g)) or by section 1977A(b) of the Revised Stat-  
2 utes (42 U.S.C. 1981a(b)).

3 “(d) APPLICABILITY.—

4 “(1) IN GENERAL.—This chapter applies to cov-  
5 ered entities and workers engaged in activity affect-  
6 ing commerce to the fullest extent permitted by the  
7 Constitution of the United States, including the  
8 work of persons engaged in domestic service in  
9 households, as described in section 2(a) of the Fair  
10 Labor Standards Act of 1938 (29 U.S.C. 202(a)).

11 An issue as to whether this chapter applies to an ar-  
12 bitration agreement shall be determined under Fed-  
13 eral law. The applicability of this chapter to an  
14 agreement to arbitrate and the validity and enforce-  
15 ability of an agreement to which this chapter applies  
16 shall be determined by a court, rather than an arbi-  
17 trator, regardless of whether any contractual provi-  
18 sion purports to delegate such determinations to the  
19 arbitrator and irrespective of whether the party re-  
20 sisting arbitration challenges the arbitration agree-  
21 ment specifically or in conjunction with other terms  
22 of the contract containing such agreement.

23 “(2) COLLECTIVE BARGAINING AGREEMENTS.—

24 Nothing in this chapter shall apply to any arbitra-  
25 tion provision in a contract between a covered entity

1 and a labor organization, except that no such arbi-  
 2 tration provision shall have the effect of waiving the  
 3 right of a worker to seek judicial enforcement of a  
 4 right arising under a provision of the Constitution of  
 5 the United States, the constitution of a State, or a  
 6 Federal or State statute, or public policy arising  
 7 therefrom.”.

8 (2) TECHNICAL AND CONFORMING AMEND-  
 9 MENTS.—

10 (A) IN GENERAL.—Title 9 of the United  
 11 States Code is amended—

12 (i) in section 1, by striking “of sea-  
 13 men,” and all that follows through “inter-  
 14 state commerce”;

15 (ii) in section 2, by inserting “or as  
 16 otherwise provided in chapter 4” before the  
 17 period at the end;

18 (iii) in section 208—

19 (I) in the section heading, by  
 20 striking “**Chapter 1; residual**  
 21 **application**” and inserting “**Ap-**  
 22 **plication**”; and

23 (II) by adding at the end the fol-  
 24 lowing: “This chapter applies to the

1 extent that this chapter is not in con-  
 2 flict with chapter 4.”; and  
 3 (iv) in section 307—

4 (I) in the section heading, by  
 5 striking “**Chapter 1; residual**  
 6 **application**” and inserting “**Ap-**  
 7 **plication**”; and

8 (II) by adding at the end the fol-  
 9 lowing: “This chapter applies to the  
 10 extent that this chapter is not in con-  
 11 flict with chapter 4.”.

12 (B) TABLE OF SECTIONS.—

13 (i) CHAPTER 2.—The table of sections  
 14 for chapter 2 of title 9, United States  
 15 Code, is amended by striking the item re-  
 16 lating to section 208 and inserting the fol-  
 17 lowing:

“208. Application.”.

18 (ii) CHAPTER 3.—The table of sec-  
 19 tions for chapter 3 of title 9, United States  
 20 Code, is amended by striking the item re-  
 21 lating to section 307 and inserting the fol-  
 22 lowing:

“307. Application.”.

1 (C) TABLE OF CHAPTERS.—The table of  
 2 chapters for title 9, United States Code, is  
 3 amended by adding at the end the following:

“4. Arbitration of work disputes ..... 401.”.

4 (c) EFFECTIVE DATE.—This section, and the amend-  
 5 ments made by this section, shall take effect on the date  
 6 of enactment of this Act and shall apply with respect to  
 7 any dispute or claim that arises or accrues on or after  
 8 such date, including any dispute or claim to which an  
 9 agreement predating such date applies.

10 **SEC. 304. FEDERAL CONTRACTOR COMPLIANCE WITH CIVIL**  
 11 **RIGHTS LAWS.**

12 (a) DEFINITIONS.—In this section:

13 (1) COVERED CONTRACT.—The term “covered  
 14 contract” means a Federal contract for the procure-  
 15 ment of property or services, including construction,  
 16 valued in excess of \$500,000.

17 (2) COVERED SUBCONTRACT.—The term “cov-  
 18 ered subcontract”—

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

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



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

4       (b) REQUIRED PRE-CONTRACT AWARD ACTIONS.—

5           (1) DISCLOSURES.—The head of an executive  
6       agency shall ensure that the solicitation for a cov-  
7       ered contract requires the offeror—

8           (A) to represent, to the best of the  
9           offeror’s knowledge and belief, whether there  
10          has been any administrative merits determina-  
11          tion, arbitral award or decision, or civil judg-  
12          ment, as defined in guidance issued by the Sec-  
13          retary of Labor, rendered against the offeror in  
14          the preceding 3 years for violations of—

15               (i) the Fair Labor Standards Act of  
16               1938 (29 U.S.C. 201 et seq.);

17               (ii) the Occupational Safety and  
18               Health Act of 1970 (29 U.S.C. 651 et  
19               seq.);

20               (iii) the Migrant and Seasonal Agri-  
21               cultural Worker Protection Act (29 U.S.C.  
22               1801 et seq.);

23               (iv) the National Labor Relations Act  
24               (29 U.S.C. 151 et seq.);

1 (v) subchapter IV of chapter 31 of  
2 title 40, United States Code (commonly  
3 known as the “Davis-Bacon Act”);

4 (vi) chapter 67 of title 41, United  
5 States Code (commonly known as the  
6 “Service Contract Act”);

7 (vii) Executive Order 11246 (42  
8 U.S.C. 2000e note; relating to equal em-  
9 ployment opportunity);

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

12 (ix) section 4212 of title 38, United  
13 States Code;

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

16 (xi) title VII of the Civil Rights Act of  
17 1964 (42 U.S.C. 2000e et seq.);

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

20 (xiii) the Age Discrimination in Em-  
21 ployment Act of 1967 (29 U.S.C. 621 et  
22 seq.);

23 (xiv) title II of the Genetic Informa-  
24 tion Nondiscrimination Act of 2008 (42  
25 U.S.C. 2000ff et seq.);

1 (xv) Executive Order 13658 (79 Fed.  
2 Reg. 9851; relating to establishing a min-  
3 imum wage for contractors); or

4 (xvi) equivalent State laws, as defined  
5 in guidance issued by the Secretary of  
6 Labor;

7 (B) to require each subcontractor for a  
8 covered subcontract—

9 (i) to represent to the offeror, and the  
10 entity designated by the final rule reissued  
11 under subsection (e)(1), to the best of the  
12 subcontractor's knowledge and belief,  
13 whether there has been any administrative  
14 merits determination, arbitral award or de-  
15 cision, or civil judgment, as defined in  
16 guidance issued by the Secretary of Labor,  
17 rendered against the subcontractor in the  
18 preceding 3 years for violations of any of  
19 the labor laws listed under subparagraph  
20 (A); and

21 (ii) to update such information every  
22 6 months for the duration of the sub-  
23 contract; and

24 (C) to consider the advice rendered by the  
25 entity designated by the final rule reissued

1 under subsection (e)(1), or information sub-  
2 mitted by a subcontractor pursuant to subpara-  
3 graph (B), in determining whether the subcon-  
4 tractor is a responsible source with a satisfac-  
5 tory record of integrity and business ethics—

6 (i) prior to awarding the subcontract;

7 or

8 (ii) in the case of a subcontract that  
9 is awarded or will become effective within  
10 5 days of the prime contract being award-  
11 ed, not later than 30 days after awarding  
12 the subcontract.

13 (2) PRE-AWARD CORRECTIVE MEASURES.—

14 (A) IN GENERAL.—A contracting officer,  
15 prior to awarding a covered contract, shall, as  
16 part of the responsibility determination, provide  
17 an offeror who makes a disclosure pursuant to  
18 paragraph (1) an opportunity to report any  
19 steps taken to correct the violations of or im-  
20 prove compliance with the labor laws listed in  
21 subparagraph (A) of such paragraph, including  
22 any agreements entered into with an enforce-  
23 ment agency.

24 (B) CONSULTATION.—The executive agen-  
25 cy's Labor Compliance Advisor designated

1 under subsection (d), in consultation with rel-  
2 evant enforcement agencies, shall advise the  
3 contracting officer whether agreements are in  
4 place or are otherwise needed to address appro-  
5 priate remedial measures, compliance assist-  
6 ance, steps to resolve issues to avoid further  
7 violations, or other related matters concerning  
8 the offeror.

9 (C) RESPONSIBILITY DETERMINATION.—

10 The contracting officer, in consultation with the  
11 executive agency's Labor Compliance Advisor  
12 designated under subsection (d), shall consider  
13 information provided by the offeror under this  
14 subsection in determining whether the offeror is  
15 a responsible source with a satisfactory record  
16 of integrity and business ethics. The determina-  
17 tion shall be based on the guidance reissued  
18 under subsection (e)(2)(A) and the final rule  
19 reissued under subsection (e)(1).

20 (3) REFERRAL OF INFORMATION TO SUSPEN-

21 SION AND DEBARMENT OFFICIALS.—As appropriate,  
22 contracting officers, in consultation with their execu-  
23 tive agency's Labor Compliance Advisor, shall refer  
24 matters related to information provided under sub-  
25 paragraphs (A) and (B) of paragraph (1) to the ex-

1 executive agency's suspension and debarment official  
2 in accordance with agency procedures.

3 (c) POST-AWARD CONTRACT ACTIONS.—

4 (1) INFORMATION UPDATES.—The contracting  
5 officer for a covered contract shall require that the  
6 contractor update the information provided under  
7 subparagraphs (A) and (B) of subsection (b)(1)  
8 every 6 months.

9 (2) CORRECTIVE ACTIONS.—

10 (A) PRIME CONTRACT.—The contracting  
11 officer, in consultation with the Labor Compli-  
12 ance Advisor designated pursuant to subsection  
13 (d), shall determine whether any information  
14 provided under paragraph (1) warrants correc-  
15 tive action. Such action may include—

16 (i) an agreement requiring appro-  
17 priate remedial measures;

18 (ii) compliance assistance;

19 (iii) resolving issues to avoid further  
20 violations;

21 (iv) the decision not to exercise an op-  
22 tion on a contract or to terminate the con-  
23 tract; or

24 (v) referral to the agency suspending  
25 and debarring official.

1 (B) SUBCONTRACTS.—The prime con-  
2 tractor for a covered contract, in consultation  
3 with the Labor Compliance Advisor, shall deter-  
4 mine whether any information provided under  
5 subsection (b)(1)(B) warrants corrective action,  
6 including remedial measures, compliance assist-  
7 ance, and resolving issues to avoid further viola-  
8 tions.

9 (C) DEPARTMENT OF LABOR.—The Sec-  
10 retary of Labor shall, as appropriate, inform  
11 executive agencies of its investigations of con-  
12 tractors and subcontractors on current Federal  
13 contracts for purposes of determining the ap-  
14 propriateness of actions described under sub-  
15 paragraphs (A) and (B).

16 (d) LABOR COMPLIANCE ADVISORS.—

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

20 (2) DUTIES.—The Labor Compliance Advisor  
21 shall—

22 (A) meet quarterly with the Deputy Sec-  
23 retary, Deputy Administrator, or equivalent ex-  
24 ecutive agency official with regard to matters  
25 covered under this section;

1 (B) work with the acquisition workforce,  
2 agency officials, and agency contractors to pro-  
3 mote greater awareness and understanding of  
4 the requirements of the labor laws listed in sub-  
5 section (b)(1)(A), including record keeping, re-  
6 porting, and notice requirements, as well as  
7 best practices for obtaining compliance with  
8 these requirements;

9 (C) coordinate assistance for executive  
10 agency contractors seeking help in addressing  
11 and preventing violations of such laws;

12 (D) in consultation with the Secretary of  
13 Labor or other relevant enforcement agencies,  
14 and pursuant to subsection (b)(2) as necessary,  
15 provide assistance to contracting officers re-  
16 garding appropriate actions to be taken in re-  
17 sponse to violations of the labor laws listed in  
18 subsection (b)(1)(A) identified prior to or after  
19 contracts are awarded, and address complaints  
20 in a timely manner, by—

21 (i) providing assistance to contracting  
22 officers and other executive agency officials  
23 in reviewing the information provided  
24 under paragraphs (1) and (2) of subsection  
25 (b) and subsection (c)(1), or other infor-



1           mation indicating such a violation, in order  
2           to assess the serious, repeated, willful, or  
3           pervasive nature of any such violation and  
4           evaluate steps contractors have taken to  
5           correct such violations or improve compli-  
6           ance with relevant requirements;

7           (ii) helping agency officials determine  
8           the appropriate response to address viola-  
9           tions of the labor laws listed in subsection  
10          (b)(1)(A) or other information indicating  
11          such a violation (particularly a serious, re-  
12          peated, willful, or pervasive violation), in-  
13          cluding an agreement requiring appro-  
14          priate remedial measures, a decision not to  
15          award a contract or exercise an option on  
16          a contract, contract termination, or a re-  
17          ferral to the executive agency suspension  
18          and debarment official;

19          (iii) providing assistance to appro-  
20          priate executive agency officials in receiv-  
21          ing and responding to, or making referrals  
22          of, complaints alleging violations by agency  
23          contractors and subcontractors of the labor  
24          laws listed in subsection (b)(1)(A); and

1 (iv) supporting contracting officers,  
2 suspension and debarment officials, and  
3 other agency officials in the coordination of  
4 actions taken pursuant to this subsection  
5 to ensure agency-wide consistency, to the  
6 extent practicable;

7 (E) as appropriate, send information to  
8 agency suspension and debarment officials in  
9 accordance with agency procedures;

10 (F) consult with the agency's Chief Acqui-  
11 sition Officer and Senior Procurement Execu-  
12 tive, and the Department of Labor as nec-  
13 essary, in the development of regulations, poli-  
14 cies, and guidance addressing compliance by  
15 contractors and subcontractors with the labor  
16 laws listed in subsection (b)(1)(A);

17 (G) make recommendations to the agency  
18 to strengthen agency management of contractor  
19 compliance with such labor laws;

20 (H) publicly report, on an annual basis, a  
21 summary of agency actions taken to promote  
22 greater compliance with such laws, including  
23 the agency's response under this section to seri-  
24 ous, repeated, willful, or pervasive violations of  
25 such laws; and

1 (I) participate in the interagency meetings  
2 regularly convened by the Secretary of Labor  
3 under subsection (e)(2)(B)(iii).

4 (e) MEASURES TO ENSURE GOVERNMENT-WIDE  
5 CONSISTENCY.—

6 (1) FEDERAL ACQUISITION REGULATION.—

7 (A) IN GENERAL.—Notwithstanding Public  
8 Law 115–11 (131 Stat. 75) and section 553 of  
9 title 5, United States Code, not later than 1  
10 year after the date of enactment of this Act, the  
11 Secretary of Defense, the Administrator of the  
12 General Services Administration, and the Ad-  
13 ministrator of the National Aeronautics and  
14 Space Administration shall reissue the final rule  
15 entitled “Federal Acquisition Regulation; Fair  
16 Pay and Safe Workplaces” (81 Fed. Reg.  
17 58,562 (Aug. 25, 2016)), subject to subpara-  
18 graph (B).

19 (B) UPDATED DATES.—The agencies de-  
20 scribed in subparagraph (A) may, in reissuing  
21 the final rule under such subparagraph, update  
22 any date provided in such final rule as reason-  
23 able and necessary.

24 (2) DEPARTMENT OF LABOR.—

1           (A) GUIDANCE.—Not later than 1 year  
2 after the date of enactment of this Act, the Sec-  
3 retary of Labor shall reissue the guidance enti-  
4 tled “Guidance for Executive Order 13673,  
5 ‘Fair Pay and Safe Workplaces’” (81 Fed.  
6 Reg. 58,654 (Aug. 25, 2016)). In reissuing  
7 such guidance, the Secretary of Labor may up-  
8 date any date provided in such guidance as rea-  
9 sonable.

10           (B) ADDITIONAL ACTIVITIES.—The Sec-  
11 retary of Labor shall—

12                   (i) develop a process—

13                           (I) for the Labor Compliance Ad-  
14 visors designated pursuant to sub-  
15 section (d) to consult with the Sec-  
16 retary of Labor in carrying out their  
17 responsibilities under subsection  
18 (d)(2)(D);

19                           (II) by which contracting officers  
20 and Labor Compliance Advisors may  
21 give appropriate consideration to de-  
22 terminations and agreements made by  
23 the Secretary of Labor and the heads  
24 of other executive agencies; and

1 (III) by which contractors may  
2 enter into agreements with the Sec-  
3 retary of Labor, or the head of an-  
4 other executive agency, prior to being  
5 considered for a contract;

6 (ii) review data collection require-  
7 ments and processes, and work with the  
8 Director of the Office of Management and  
9 Budget, the Administrator of General  
10 Services, and other agency heads to im-  
11 prove such requirements and processes, as  
12 necessary, to reduce the burden on con-  
13 tractors and increase the amount of infor-  
14 mation available to executive agencies;

15 (iii) regularly convene interagency  
16 meetings of Labor Compliance Advisors to  
17 share and promote best practices for im-  
18 proving labor law compliance; and

19 (iv) designate an appropriate contact  
20 for executive agencies seeking to consult  
21 with the Secretary of Labor with respect to  
22 the requirements and activities under this  
23 section.

1 (3) OFFICE OF MANAGEMENT AND BUDGET.—

2 The Director of the Office of Management and  
3 Budget shall—

4 (A) work with the Administrator of Gen-  
5 eral Services to include in the Federal Awardee  
6 Performance and Integrity Information System  
7 the information provided by contractors pursu-  
8 ant to subsections (b)(1)(A) and (c)(1) and  
9 data on the resolution of any issues related to  
10 such information; and

11 (B) designate an appropriate contact for  
12 agencies seeking to consult with the Office of  
13 Management and Budget on matters arising  
14 under this section.

15 (4) GENERAL SERVICES ADMINISTRATION.—

16 (A) IN GENERAL.—The Administrator of  
17 General Services, in consultation with other rel-  
18 evant executive agencies, shall establish a single  
19 Internet website for Federal contractors to use  
20 for all Federal contract reporting requirements  
21 under this section, as well as any other Federal  
22 contract reporting requirements to the extent  
23 practicable.

24 (B) AGENCY COOPERATION.—The heads of  
25 executive agencies with covered contracts shall

1 provide the Administrator of General Services  
2 with the data necessary to maintain the Inter-  
3 net website established under subparagraph  
4 (A).

5 (5) MINIMIZING COMPLIANCE BURDEN.—After  
6 reissuing the guidance under paragraph (2)(A) or  
7 the final rule under paragraph (1), the Secretary of  
8 Labor or the Secretary of Defense, the Adminis-  
9 trator of the General Services Administration, and  
10 the Administrator of the National Aeronautics and  
11 Space Administration may, respectively, amend such  
12 guidance or final rule consistent with the require-  
13 ments under chapter 5 of title 5, United States  
14 Code.

15 (f) IMPLEMENTING REGULATIONS.—Not later than 9  
16 months after the date of enactment of this Act, the Fed-  
17 eral Acquisition Regulatory Council shall amend the Fed-  
18 eral Acquisition Regulation to carry out the provisions of  
19 this section.

20 (g) RULES OF CONSTRUCTION.—Nothing in this sec-  
21 tion shall be construed as—

22 (1) impairing or otherwise affecting the author-  
23 ity granted by law to an executive agency or the  
24 head thereof; or

1           (2) impairing or otherwise affecting the func-  
2           tions of the Director of the Office of Management  
3           and Budget relating to budgetary, administrative, or  
4           legislative proposals.

5 **TITLE IV—NATIONWIDE GRANTS**  
6 **TO PREVENT AND RESPOND**  
7 **TO WORKPLACE HARASS-**  
8 **MENT**

9 **SEC. 401. DEFINITIONS.**

10       In this title:

11           (1) COMMISSION.—The term “Commission”  
12           means the Equal Employment Opportunity Commis-  
13           sion.

14           (2) EMPLOYEE.—The term “employee” has the  
15           meaning given the term in section 302(a)(4).

16           (3) EMPLOYMENT DISCRIMINATION.—The term  
17           “employment discrimination” means discrimination  
18           that is in violation of applicable Federal, State, or  
19           local employment law, including:

20                   (A) Title VII of the Civil Rights Act of  
21                   1964 (42 U.S.C. 2000e et seq.).

22                   (B) The Government Employee Rights Act  
23                   of 1991 (42 U.S.C. 2000e–16a et seq.).

24                   (C) The Congressional Accountability Act  
25                   of 1995 (2 U.S.C. 1301 et seq.).



1 (D) Subchapter II of chapter 5 of title 3,  
2 United States Code.

3 (E) The Age Discrimination in Employ-  
4 ment Act of 1967 (29 U.S.C. 621 et seq.).

5 (F) Title I and section 503 (for violations  
6 with respect to that title) of the Americans with  
7 Disabilities Act of 1990 (42 U.S.C. 12111 et  
8 seq., 12203).

9 (G) Sections 501 and 505 of the Rehabili-  
10 tation Act of 1973 (29 U.S.C. 791, 794a).

11 (H) Section 6(d) of the Fair Labor Stand-  
12 ards Act of 1938 (commonly known as the  
13 “Equal Pay Act of 1963”) (29 U.S.C. 206(d)).

14 (I) Title II of the Genetic Information  
15 Nondiscrimination Act of 2008 (42 U.S.C.  
16 2000ff et seq.).

17 (J) Section 4311 of title 38, United States  
18 Code.

19 (K) Other Federal, State, or local employ-  
20 ment law.

21 (4) WORKER.—The term “worker” has the  
22 meaning given the term in section 302(a)(7).

1 **Subtitle A—National Grants for**  
2 **Preventing and Addressing Em-**  
3 **ployment Discrimination, In-**  
4 **cluding Harassment**

5 **SEC. 411. DEFINITIONS.**

6 In this subtitle:

7 (1) **DIRECTOR.**—The term “Director” means  
8 the Director of the Women’s Bureau of the Depart-  
9 ment of Labor.

10 (2) **ELIGIBLE ENTITY.**—The term “eligible enti-  
11 ty” means any of the following:

12 (A) A nonprofit organization, including a  
13 community-based organization, nonprofit legal  
14 aid organization, or labor organization, that  
15 provides services and support to workers, in-  
16 cluding by assisting workers in filing charges of  
17 employment discrimination.

18 (B) An institution of higher education, as  
19 defined in section 101 of the Higher Education  
20 Act of 1965 (20 U.S.C. 1001).

21 **SEC. 412. GRANTS.**

22 (a) **GRANTS.**—The Director, in consultation with the  
23 Commission, shall award grants under this section, on a  
24 competitive basis, to eligible entities to assist such entities  
25 in carrying out a program for preventing and addressing

1 employment discrimination, including harassment,  
2 through activities authorized under subsection (b).

3 (b) USE OF FUNDS.—

4 (1) PERMISSIBLE ACTIVITIES.—A grant award-  
5 ed under this section shall be used for activities to  
6 prevent and address employment discrimination, in-  
7 cluding harassment, which may include—

8 (A) educating workers about their rights  
9 related to harassment in employment under  
10 Federal, State, and local civil rights, labor, and  
11 employment laws;

12 (B) educating employers about their obli-  
13 gations to prevent and address harassment in  
14 employment under Federal, State, and local  
15 civil rights, labor, and employment laws;

16 (C) providing assistance to workers in  
17 bringing complaints of employment discrimina-  
18 tion, including filing charges of harassment;

19 (D) establishing networks for education,  
20 communication, and participation in the work-  
21 place and community;

22 (E) monitoring employer compliance with  
23 Federal, State, and local civil rights, labor, and  
24 employment laws;

1 (F) recruiting and hiring of staff and vol-  
2 unteers; and

3 (G) any other activity the Director, in con-  
4 sultation with the Commission, may reasonably  
5 prescribe for the purpose of preventing and ad-  
6 dressing employment discrimination, including  
7 harassment.

8 (2) PROHIBITED ACTIVITIES.—Notwithstanding  
9 paragraph (1), an eligible entity receiving a grant  
10 under this section may not use the grant funds for  
11 any purpose reasonably prohibited by the Director,  
12 in consultation with the Commission, through notice  
13 and comment rulemaking.

14 (c) TERM OF GRANTS.—Each grant awarded under  
15 this section shall be available for expenditure for a period  
16 not to exceed 3 years.

17 (d) APPLICATIONS.—

18 (1) IN GENERAL.—An eligible entity seeking a  
19 grant under this section shall submit an application  
20 for such grant to the Director in accordance with  
21 this subsection.

22 (2) PARTNERSHIPS.—Multiple eligible entities  
23 may submit a joint application under this subsection  
24 that designates a single entity as the lead entity for

1 the purposes of receiving and disbursing funds re-  
2 ceived through a grant under this section.

3 (3) CONTENTS.—An application under this sub-  
4 section shall include—

5 (A) a description of a plan for the program  
6 that the eligible entity proposes to carry out  
7 with a grant under this section, including a  
8 long-term strategy and detailed implementation  
9 plan;

10 (B) information on the prevalence of viola-  
11 tions of prohibitions on employment discrimina-  
12 tion, including harassment, under Federal,  
13 State, and local civil rights, labor, and employ-  
14 ment laws in the population served by the eligi-  
15 ble entity;

16 (C) information on any industry or geo-  
17 graphic area targeted by the plan for such pro-  
18 gram;

19 (D) information on the type of outreach  
20 and relationship building that will be conducted  
21 under such program;

22 (E) information on the training and edu-  
23 cation that will be provided to workers and em-  
24 ployers under such program; and

1 (F) the method by which the eligible entity  
2 will measure the results of such program.

3 (e) SELECTION.—

4 (1) COMPETITIVE BASIS.—In accordance with  
5 this section, the Director, in consultation with the  
6 Commission, shall, on a competitive basis, select  
7 grant recipients from among eligible entities that  
8 have submitted an application meeting the require-  
9 ments under subsection (d).

10 (2) PRIORITY.—The Director, in consultation  
11 with the Commission, in selecting grant recipients  
12 under paragraph (1), shall give priority to eligible  
13 entities that—

14 (A) serve workers in any industry or geo-  
15 graphic area that is most highly at risk for em-  
16 ployment discrimination, including harassment,  
17 as identified by the Director, in consultation  
18 with the Commission; and

19 (B) demonstrate past and ongoing work to  
20 prevent employment discrimination, including  
21 harassment.

22 (f) PERFORMANCE EVALUATIONS.—

23 (1) IN GENERAL.—Each grant recipient under  
24 this section shall develop procedures for reporting,  
25 monitoring, measuring, and evaluating the activities

1 of each program or activity funded under this sec-  
2 tion.

3 (2) GUIDELINES.—The procedures required  
4 under paragraph (1) shall be in accordance with  
5 guidelines established by the Director, in consulta-  
6 tion with the Commission.

7 **SEC. 413. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated to the Direc-  
9 tor such sums as may be necessary to carry out this sub-  
10 title.

11 **Subtitle B—Grants for Legal Assist-**  
12 **ance for Low-Income Workers**

13 **SEC. 421. DEFINITIONS.**

14 In this subtitle:

15 (1) SECRETARY.—The term “Secretary” means  
16 the Secretary of Labor.

17 (2) COVERED CLIENT.—The term “covered cli-  
18 ent” means an individual who—

19 (A) is an eligible client; and

20 (B) faces legal issues related to employ-  
21 ment discrimination, including harassment.

22 (3) ELIGIBLE CLIENT.—The term “eligible cli-  
23 ent” has the meaning given the term in section 1002  
24 of the Legal Services Corporation Act (42 U.S.C.

1       2996a) and the regulations of the Legal Services  
2       Corporation.

3               (4) ELIGIBLE ENTITY.—The term “eligible enti-  
4       ty” means—

5                       (A) a nonprofit organization; and

6                       (B) an individual who is licensed to prac-  
7       tice law.

8       **SEC. 422. GRANTS FOR CIVIL LEGAL NEEDS RELATED TO**  
9               **EMPLOYMENT DISCRIMINATION.**

10       (a) GRANTS AUTHORIZED.—

11               (1) IN GENERAL.—The Secretary is authorized  
12       to provide financial assistance to eligible entities to  
13       enable those eligible entities to provide for the civil  
14       legal needs of covered clients that are related to em-  
15       ployment discrimination, and to provide for those cli-  
16       ents such other services as are necessary to carry  
17       out the purposes of this subtitle, including any of  
18       the following activities:

19                       (A) Providing covered clients advice, legal  
20       services, or representation.

21                       (B) Assisting covered clients in utilizing  
22       the Commission employment discrimination  
23       complaint process.

24                       (C) Assisting covered clients in utilizing a  
25       private employment complaint process.



1 (D) Conducting outreach activities to pub-  
2 licize the services offered under this section.

3 (2) CITIZENSHIP STATUS.—An eligible entity  
4 receiving a grant under this section shall provide  
5 services to a covered client without regard to the  
6 citizenship status or authorization to work of the  
7 covered client.

8 (b) APPLICATION.—In order to be eligible to receive  
9 a grant under this section, an eligible entity shall submit  
10 an application to the Secretary at such time and in such  
11 manner as the Secretary may require. Such application  
12 shall include—

13 (1) a description of the services that the eligible  
14 entity proposes to provide, implement, improve, or  
15 expand;

16 (2) a description of the covered clients the eligi-  
17 ble entity intends to serve;

18 (3) evidence of the eligible entity's capacity to  
19 provide services to covered clients with legal issues  
20 related to employment discrimination, such as the el-  
21 igible entity's record of success representing eligible  
22 clients in employment-related legal matters, or the  
23 eligible entity's prior experience serving clients who  
24 cannot afford legal counsel;

1           (4) an explanation of how the services the eligi-  
2       ble entity intends to provide will assist covered cli-  
3       ents in addressing legal issues related to employment  
4       discrimination; and

5           (5) any other information that the Secretary  
6       may require.

7       (c) AWARD BASIS.—The Secretary shall, in consulta-  
8       tion with the Legal Services Corporation, award and over-  
9       see grants under this section pursuant to such procedures  
10      and criteria as the Secretary may require. Such proce-  
11      dures and criteria shall include consideration of—

12           (1) whether the eligible entity has demonstrated  
13      an understanding of the legal needs of covered cli-  
14      ents;

15           (2) the eligible entity's capacity to provide serv-  
16      ices to covered clients with legal issues related to  
17      employment discrimination, which may be dem-  
18      onstrated through evidence described in subsection

19      (b)(3);

20           (3) the eligible entity's knowledge of applicable  
21      Federal, State, and local employment laws;

22           (4) the eligible entity's capacity and ability to  
23      access other resources;

1           (5) the eligible entity's ability to ensure con-  
2       tinuity of service to covered clients with pending  
3       legal issues; and

4           (6) other factors that the Secretary determines  
5       are relevant.

6       (d) **EQUITABLE DISTRIBUTION.**—To the extent prac-  
7       ticable, in awarding grants under this section, the Sec-  
8       retary, in consultation with the Legal Services Corpora-  
9       tion, shall ensure that grants are made so as to provide  
10      the most economical and effective delivery of legal assist-  
11      ance to covered clients in both urban and rural areas, with  
12      consideration of the geographic distribution of persons in  
13      poverty.

14      (e) **DURATION OF THE GRANT.**—

15           (1) **IN GENERAL.**—A grant under this section  
16      shall be for a term of not less than 1 year and not  
17      more than 5 years.

18           (2) **RENEWAL.**—The Secretary may renew a  
19      grant awarded under this section for a period of not  
20      more than 2 additional years if the eligible entity  
21      demonstrates that the eligible entity is effectively  
22      using funds and that the renewal of funds will allow  
23      the eligible entity to scale up the provision of serv-  
24      ices, replicate the program, or provide continuity of  
25      service to covered clients.

1 (f) REPORT.—Two years after the enactment of this  
2 section, the Secretary shall provide to the Committee on  
3 Health, Education, Labor, and Pensions of the Senate and  
4 the Committee on Education and Labor of the House of  
5 Representatives a report on the implementation of the  
6 grant program under this section, including—

7 (1) a description of the services provided using  
8 grant assistance under this section, including a de-  
9 tailed description of the types of legal issues ad-  
10 dressed by eligible entities and the number of cov-  
11 ered clients served; and

12 (2) an assessment of the number of individuals  
13 facing one or more legal issues related to employ-  
14 ment discrimination who cannot afford adequate  
15 legal counsel, and the largest areas of unmet need.

16 **SEC. 423. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated to carry out  
18 this subtitle such sums as may be necessary.

19 **Subtitle C—Grants for a System of**  
20 **State Advocacy**

21 **SEC. 431. PURPOSE.**

22 The purpose of this subtitle is to provide allotments  
23 to support a system of advocacy (referred to in this sub-  
24 title as a “system”) in each State to protect the legal and

1 human rights of workers in accordance with applicable  
2 Federal, State, and local employment discrimination laws.

3 **SEC. 432. DEFINITIONS.**

4 In this subtitle:

5 (1) RECORD.—The term “record” includes—

6 (A) a report prepared by an employer or  
7 staff person charged with investigating reports  
8 of employment discrimination that describes in-  
9 cidents of possible discrimination and the steps  
10 taken to investigate those incidents;

11 (B) statistical information related to em-  
12 ployment decisions and the race, sex (including  
13 sexual orientation and gender identity), religion,  
14 national origin, age, disability, genetic informa-  
15 tion, or other protected characteristics of work-  
16 ers;

17 (C) records described in section 11(c) of  
18 the Fair Labor Standards Act (29 U.S.C.  
19 211(c)); and

20 (D) any such similar record, as may be  
21 necessary to carry out the purposes of this sub-  
22 title.

23 (2) SECRETARY.—The term “Secretary” means  
24 the Secretary of Labor.

1           (3) STATE.—The term “State”, except as oth-  
2       erwise provided, includes, in addition to each of the  
3       several States of the United States, the District of  
4       Columbia, the Commonwealth of Puerto Rico, the  
5       United States Virgin Islands, Guam, American  
6       Samoa, and the Commonwealth of the Northern  
7       Mariana Islands.

8   **SEC. 433. ALLOTMENTS AND PAYMENTS.**

9       (a) ALLOTMENTS.—

10           (1) IN GENERAL.—To assist States in meeting  
11       the requirements of section 434, the Secretary shall  
12       make allotments to States from the amounts appro-  
13       priated under section 436 and not reserved under  
14       paragraph (5).

15           (2) MINIMUM ALLOTMENTS.—In any case in  
16       which—

17                (A) the total amount appropriated under  
18       section 436 for a fiscal year is not less than  
19       \$20,000,000, the allotment under paragraph  
20       (1) for such fiscal year—

21                   (i) to each of American Samoa,  
22                   Guam, the United States Virgin Islands,  
23                   and the Commonwealth of the Northern  
24                   Mariana Islands may not be less than  
25                   \$100,000; and

1 (ii) to any State not described in  
2 clause (i) may not be less than \$200,000;  
3 and

4 (B) the total amount appropriated under  
5 section 436 for a fiscal year is less than  
6 \$20,000,000, the allotment under paragraph  
7 (1) for such fiscal year—

8 (i) to each of American Samoa,  
9 Guam, the United States Virgin Islands,  
10 and the Commonwealth of the Northern  
11 Mariana Islands may not be less than  
12 \$50,000; and

13 (ii) to any State not described in  
14 clause (i) may not be less than \$150,000.

15 (3) REDUCTION OF ALLOTMENT.—Notwith-  
16 standing paragraphs (1) and (2), if the aggregate of  
17 the amounts to be allotted to the States pursuant to  
18 such paragraphs for any fiscal year exceeds the total  
19 amount appropriated for such allotments under sec-  
20 tion 436 for such fiscal year, the amount to be allot-  
21 ted to each State for such fiscal year shall be pro-  
22 portionately reduced.

23 (4) INCREASE IN ALLOTMENTS.—If the sum ap-  
24 propriated under section 436 and not reserved under  
25 paragraph (5) for any fiscal year exceeds the aggre-

1 gate of the minimum allotments for all States under  
2 this subsection for that fiscal year, such excess  
3 amount shall be allotted among the States, including  
4 American Samoa, Guam, the United States Virgin  
5 Islands, and the Commonwealth of the Northern  
6 Mariana Islands, so as to increase proportionately  
7 the minimum allotment for each such State.

8 (5) TECHNICAL ASSISTANCE.—In any case in  
9 which the total amount appropriated under section  
10 436 for a fiscal year is more than \$24,500,000, the  
11 Secretary shall—

12 (A) use not more than 2 percent of the  
13 amount appropriated to provide technical assist-  
14 ance to eligible systems with respect to activi-  
15 ties carried out under this subtitle (consistent  
16 with requests by such systems for such assist-  
17 ance for the year); and

18 (B) provide a grant in accordance with sec-  
19 tion 434(d) and in an amount described in  
20 paragraph (2)(A)(i), to an American Indian  
21 consortium to provide protection and advocacy  
22 services.

23 (6) REALLOTMENTS.—

24 (A) IN GENERAL.—If the Secretary deter-  
25 mines that an amount of an allotment to a



1 State for a period (of a fiscal year or longer)  
2 will not be required by the State during the pe-  
3 riod for the purpose for which the allotment  
4 was made, the Secretary shall reallocate the  
5 amount.

6 (B) TIMING.—The Secretary may make  
7 such a reallocation from time to time, on such  
8 date as the Secretary may fix, but not earlier  
9 than 30 days after the Secretary has published  
10 notice of the intention of the Secretary to make  
11 the reallocation in the Federal Register.

12 (C) AMOUNTS.—The Secretary shall reallocate  
13 the amount to other States with respect to  
14 which the Secretary has not made that deter-  
15 mination. The Secretary shall reallocate the  
16 amount in proportion to the original allotments  
17 of the other States for such fiscal year, but  
18 shall reduce such proportionate amount for any  
19 of the other States to the extent the propor-  
20 tionate amount exceeds the sum that the Sec-  
21 retary estimates the State needs and will be  
22 able to use during such period.

23 (D) REALLOTMENT OF REDUCTIONS.—The  
24 Secretary shall similarly reallocate the total of the

1           reductions among the States whose propor-  
2           tionate amounts were not so reduced.

3           (E) TREATMENT.—Any amount reallocated  
4           to a State under this subsection for a fiscal  
5           year shall be deemed to be a part of the allot-  
6           ment of the State under paragraph (1) for such  
7           fiscal year.

8           (b) PAYMENT TO SYSTEMS.—The Secretary shall pay  
9           directly to each State that has a system in the State that  
10          complies with the provisions of this subtitle the amount  
11          of the allotment made for the State under this section,  
12          unless the system specifies otherwise, to be used in sup-  
13          port of the system.

14          (c) UNOBLIGATED FUNDS.—Any amount paid to a  
15          State under this subtitle for a fiscal year and remaining  
16          unobligated at the end of such year shall remain available  
17          to such State for the next fiscal year, for the purposes  
18          for which such amount was paid.

19   **SEC. 434. SYSTEM REQUIRED.**

20          (a) IN GENERAL.—In order for a State to receive an  
21          allotment under this subtitle the State shall—

22               (1) have in effect a system to protect and advo-  
23               cate for the rights of workers within the State who  
24               are or who may be eligible for relief from applicable  
25               employment discrimination laws; and

1           (2) designate a private nonprofit entity (re-  
2       ferred to in this subtitle as an “agency”) to support  
3       and carry out the activities of that system.

4       (b) AGENCY REQUIREMENTS.—

5           (1) CHARACTERISTICS OF AGENCY.—The State  
6       shall ensure that the agency designated under sub-  
7       section (a) shall—

8           (A) not be administered by the State, or  
9       an agency or instrumentality of a State; and

10          (B) be independent of any entity that rep-  
11       resents the interest of the State, employers, or  
12       other corporations.

13          (2) NO REDESIGNATION OF AGENCY.—The  
14       agency implementing the system shall not be red-  
15       esignated unless—

16          (A) there is good cause for the redesigna-  
17       tion;

18          (B) the State has given the agency notice  
19       of the intention to make such redesignation, in-  
20       cluding notice regarding the good cause for  
21       such redesignation, and given the agency an op-  
22       portunity to respond to the assertion that good  
23       cause has been shown;

1 (C) the agency has given timely notice of  
2 the intended redesignation directly to clients of  
3 the agency;

4 (D) the State has provided, in plain  
5 English and in accessible formats for individ-  
6 uals with disabilities and for individuals who  
7 primarily speak a language other than English,  
8 an opportunity for public comment; and

9 (E) the agency has an opportunity to ap-  
10 peal the redesignation to the Secretary, on the  
11 basis that the redesignation was not for good  
12 cause.

13 (3) COSTS OF NOTICE.—The costs of the notice  
14 required under paragraph (2)(C) shall be paid by  
15 the State.

16 (c) SYSTEM REQUIRED.—The system described in  
17 subsection (a) shall—

18 (1) have the authority to—

19 (A) pursue legal, administrative, and other  
20 appropriate remedies or approaches, as applica-  
21 ble, to ensure the protection of, and advocacy  
22 for, the rights of individuals within the State  
23 who are or who may be eligible for relief from  
24 employment discrimination; and

1 (B) provide information on and referral to  
2 programs and services addressing the needs of  
3 such individuals;

4 (2) have the authority—

5 (A) to investigate incidents of employment  
6 discrimination, including harassment, and to  
7 conduct investigations of systemic employment  
8 discrimination, of such individuals if the inci-  
9 dents are reported to the agency or if there is  
10 probable cause to believe that the incidents oc-  
11 curred; and

12 (B) to investigate and gather data in the  
13 same manner as the Secretary under section  
14 11(a) of the Fair Labor Standards Act (29  
15 U.S.C. 211(a));

16 (3) on an annual basis, develop, submit to the  
17 Secretary, and take action with regard to goals and  
18 priorities developed through data driven strategic  
19 planning for the system's activities;

20 (4) on an annual basis, provide to the public,  
21 including individuals described in paragraph (1)(A),  
22 the regional office of the Commission that serves the  
23 State, and any State agency whose purpose is to re-  
24 duce or eliminate employment discrimination, an op-  
25 portunity to comment on—

1 (A) the goals and priorities established by  
2 the agency and the rationale for the establish-  
3 ment of such goals; and

4 (B) the activities of the agency, including  
5 the coordination of services with the District of-  
6 fice of the Commission that serves the State,  
7 and any State agency whose purpose is to re-  
8 duce, eliminate, or redress employment dis-  
9 crimination, and with entities carrying out  
10 other related programs;

11 (5) establish a grievance procedure for clients  
12 or prospective clients of the agency to ensure that  
13 individuals described in paragraph (1)(A) have full  
14 access to services of the agency;

15 (6) have access at reasonable times to any indi-  
16 vidual described in paragraph (1)(A) in a location in  
17 which services and other assistance are provided to  
18 such an individual, in order to carry out the purpose  
19 of this subtitle;

20 (7) have access, not later than 3 business days  
21 after the agency makes a written request, to the  
22 records of any individual described in paragraph  
23 (1)(A) (including Federal and State workers) who is  
24 a client of the agency if such individual, or other

1 legal representative of such individual, has author-  
2 ized the agency to have such access;

3 (8) hire and maintain sufficient numbers and  
4 types of staff (qualified by training and experience)  
5 to carry out the agency's functions, except that the  
6 State involved shall not apply hiring freezes, reduc-  
7 tions in force, prohibitions on travel, or other poli-  
8 cies to the staff of the agency, to the extent that  
9 such policies would impact the staff or functions of  
10 the agency funded with Federal funds or would pre-  
11 vent the agency from carrying out the functions of  
12 the system under this subtitle;

13 (9) have the authority to educate policymakers;  
14 and

15 (10) provide assurances to the Secretary that  
16 funds allotted to the State under section 433 will be  
17 used to supplement, and not supplant, the non-Fed-  
18 eral funds that would otherwise be made available  
19 for the purposes for which the allotted funds are  
20 provided.

21 (d) AMERICAN INDIAN CONSORTIUM.—

22 (1) IN GENERAL.—Upon application to the Sec-  
23 retary, the Secretary shall allot funds to one or more  
24 American Indian consortium established to provide  
25 services under this subtitle, in accordance with sec-

1       tion 433(a)(5). Such funds shall be used to support  
2       services under this subtitle.

3               (2) COORDINATION OF SYSTEMS.—An American  
4       Indian consortium under paragraph (1) shall be con-  
5       sidered to be a system for purposes of this subtitle  
6       and shall coordinate those services with other sys-  
7       tems serving the same geographic area.

8               (3) RESPONSIBLE PARTY.—The tribal council  
9       that designates the consortium shall carry out the  
10      responsibilities and exercise the authorities specified  
11      for a State in this subtitle, with regard to the con-  
12      sortium.

13   **SEC. 435. ADMINISTRATION.**

14      (a) GOVERNING BOARD.—The system described in  
15      section 434 shall be organized as a private nonprofit entity  
16      with a multimember governing board, and such governing  
17      board shall be selected according to the policies and proce-  
18      dures of the system, except that—

19              (1) the governing board shall be composed of  
20      members who broadly represent or are knowledge-  
21      able about the needs of the individuals served by the  
22      system;

23              (2) a majority of the members of the board  
24      shall be—



1 (A) attorneys representing the interests of  
2 workers;

3 (B) advocates for workers with experience  
4 working to protect or expand workers' rights; or

5 (C) workers who have experienced employ-  
6 ment discrimination;

7 (3) not more than  $\frac{1}{3}$  of the members of the  
8 governing board may be appointed by the chief exec-  
9 utive officer of the State involved, in the case of any  
10 State in which such officer has the authority to ap-  
11 point members of the board;

12 (4) the membership of the governing board  
13 shall be subject to term limits set by the system to  
14 ensure rotating membership; and

15 (5) any vacancy in the board shall be filled not  
16 later than 60 days after the date on which the va-  
17 cancy occurs.

18 (b) LEGAL ACTION.—

19 (1) IN GENERAL.—Nothing in this subtitle shall  
20 preclude a system from bringing a suit on behalf of  
21 individuals described in section 434(c)(1)(A) against  
22 a State, or an agency or instrumentality of a State.

23 (2) USE OF AMOUNTS FROM JUDGMENT.—An  
24 amount received pursuant to a suit described in  
25 paragraph (1) through a court judgment may only

1 be used by the system to further the purpose of this  
2 subtitle and shall not be used to augment payments  
3 to legal contractors or to award personal bonuses.

4 (c) PUBLIC NOTICE OF FEDERAL ONSITE REVIEW.—

5 The Secretary shall provide advance public notice of, and  
6 solicit public comments regarding, any Federal pro-  
7 grammatic or administrative onsite review of a system  
8 conducted under this subtitle. The Secretary shall prepare  
9 an onsite visit report containing the results of such review,  
10 which shall be distributed to the Governor of the State  
11 and to other interested public and private parties. The  
12 comments received in response to the notice and public  
13 comment solicitation shall be included in the onsite visit  
14 report.

15 (d) REPORTS.—

16 (1) IN GENERAL.—Beginning for the fiscal year  
17 after the fiscal year during which this Act is en-  
18 acted, each system established in a State pursuant  
19 to this subtitle shall annually prepare and transmit  
20 to the Secretary a report that describes the activi-  
21 ties, accomplishments, and expenditures of the sys-  
22 tem during the preceding fiscal year, including—

23 (A) a description of the system's goals, the  
24 extent to which the goals were achieved, and  
25 barriers to that achievement; and

1 (B) the process used to obtain public  
2 input, the nature of such input, and how such  
3 input was used.

4 (2) DISCLOSURE OF INFORMATION.—For pur-  
5 poses of the report described in paragraph (1) the  
6 Secretary shall not require the system disclose the  
7 identity of, or any other personally identifiable infor-  
8 mation related to, any individual requesting assist-  
9 ance from the system.

10 **SEC. 436. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated for allot-  
12 ments under section 433 such sums as may be necessary.

13 **TITLE V—GENERAL PROVISIONS**

14 **SEC. 501. SEVERABILITY.**

15 If any provision of this Act, an amendment made by  
16 this Act, or the application of such provision or amend-  
17 ment to any person or circumstance is held to be unconsti-  
18 tutional, the remainder of this Act and the amendments  
19 made by this Act, and the application of the provision or  
20 amendment to any other person or circumstance, shall not  
21 be affected.

○