



(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To prevent discrimination, including harassment, in employment.

IN THE HOUSE OF REPRESENTATIVES

Ms. PRESSLEY introduced the following bill; which was referred to the
Committee on _____

A BILL

To prevent discrimination, including 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
DISCRIMINATION, INCLUDING HARASSMENT; TIPPED EMPLOYEES

- Sec. 100. Definitions.

Subtitle A—Preventing Workplace Discrimination, Including 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. Discrimination, including harassment; 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 labor and civil rights laws.

TITLE IV—NATIONWIDE GRANTS TO PREVENT AND RESPOND TO
WORKPLACE DISCRIMINATION, INCLUDING 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, including harassment, in employment;

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

7 (3) to identify and implement best practices in
8 creating a workplace free from discrimination, in-
9 cluding 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, including harassment, and responding
2 to violations of worker’s rights.

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

8 **SEC. 100. DEFINITIONS.**

9 In subtitles A and B:

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

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

17 **Subtitle A—Preventing Workplace**
18 **Discrimination, Including Har-**
19 **assment**

20 **SEC. 101. MANDATORY NONDISCRIMINATION POLICIES.**

21 (a) POLICIES.—

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

1 nondiscrimination policy, which shall establish poli-
2 cies and procedures concerning prohibited discrimi-
3 nation, including harassment, in employment.

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

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

15 (1) a definition of prohibited discrimination, in-
16 cluding harassment, in employment;

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

19 (3) the identification of multiple individuals to
20 whom an employee may report such discrimination,
21 and the contact information for those individuals;

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

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

1 tigungen and respond to complaints regarding such
2 discrimination;

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

6 (7) a description of the confidentiality protec-
7 tions available for such discrimination complaints;

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

10 (9) any additional components required by the
11 Commission for the purpose of preventing such dis-
12 crimination.

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

18 (d) ENFORCEMENT.—

19 (1) IN GENERAL.—Subject to paragraph (2), an
20 employer who fails to comply with this section shall
21 be fined not more than \$1,000 for each separate of-
22 fense.

23 (2) REPEATED OR WILLFUL VIOLATIONS.—An
24 employer who repeatedly or willfully fails to comply

1 with this section shall be fined not less than \$5,000
2 for each separate offense.

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

5 **SEC. 102. NONDISCRIMINATION TRAINING.**

6 (a) IN GENERAL.—The Commission shall promulgate
7 regulations—

8 (1) to require appropriate employers, as deter-
9 mined by the Commission, to provide—

10 (A) in-person or other interactive training
11 for each employee regarding discriminatory, in-
12 cluding harassing, behaviors in employment;
13 and

14 (B) training specifically designed for su-
15 pervisors regarding the prevention of and re-
16 sponse to discrimination (including harassment)
17 in employment, including retaliation; and

18 (2) to identify specific elements of such train-
19 ing.

20 (b) REQUIRED TRAINING.—The requirements de-
21 scribed in subsection (a) shall be based on research on
22 effective training.

23 (c) ENFORCEMENT.—The Commission shall issue
24 remedies for noncompliance by regulation.

1 **SEC. 103. RESOURCE MATERIALS ON POLICIES AND**
2 **TRAININGS FOR SMALL BUSINESSES.**

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

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

10 (1) model comprehensive nondiscrimination
11 policies concerning prohibited discrimination, includ-
12 ing harassment, in employment, as described in sec-
13 tion 101, for use by employers with fewer than 15
14 employees, which shall—

15 (A) be designed to be easily distributed by
16 such employers to employees;

17 (B) take into account the resources avail-
18 able to such employers;

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

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

1 (E) include a definition of prohibited dis-
2 crimination, including harassment, in employ-
3 ment;

4 (F) include examples of prohibited dis-
5 criminatory, including harassing, behaviors;

6 (G) describe how the employer may con-
7 duct prompt, thorough, and impartial investiga-
8 tions and respond to complaints regarding such
9 prohibited discrimination;

10 (H) include a prohibition against retalia-
11 tion related to such discrimination;

12 (I) include policies that reflect the needs of
13 a variety of different types of workplaces, in-
14 cluding those with differing work structures, fa-
15 cilities, or tasks;

16 (J) describe behaviors that would con-
17 stitute retaliation; and

18 (K) include a description of potential con-
19 sequences for violating the comprehensive non-
20 discrimination policy; and

21 (2) model trainings regarding prohibited dis-
22 crimination, including harassment, in employment,
23 as described in section 102, for use by employers
24 with fewer than 15 employees, which shall—

1 (A) take into account the resources avail-
2 able to such employers;

3 (B) take into account the particular needs
4 of employees of such employers;

5 (C) be made available in plain English and
6 in accessible formats for individuals with dis-
7 abilities and for individuals who primarily speak
8 a language other than English;

9 (D) be made available in an online format
10 that is widely available to such employers and
11 employees of such employers;

12 (E) include an explanation of prohibited
13 discrimination, including harassment, in em-
14 ployment, including retaliation related to such
15 discrimination;

16 (F) describe the affirmative behaviors that
17 contribute to preventing and reducing discrimi-
18 nation, including harassment, in employment;

19 (G) include trainings designed to address
20 the needs of a variety of workplaces, including
21 those with differing work structures, facilities,
22 and tasks;

23 (H) include best practices for preventing
24 prohibited discrimination, including harassment,
25 specific to industries in which the Commission

1 determines that discrimination, including har-
2 assment, is particularly prevalent or severe; and

3 (I) include any additional information the
4 Commission determines may prevent discrimi-
5 nation, including harassment, of employees.

6 (c) INDIVIDUALIZATION.—The Commission shall en-
7 sure that resource materials under this section are de-
8 signed to facilitate individual employers to customize
9 training to address the needs of their workplaces, includ-
10 ing differing work structures, facilities, and tasks.

11 **SEC. 104. EDUCATION, TRAINING, AND TECHNICAL ASSIST-**
12 **ANCE TO EMPLOYERS.**

13 The Commission shall have the authority to—

14 (1) reasonably adjust the fees the Commission
15 charges for any education, technical assistance, or
16 training the Commission offers through the Tech-
17 nical Assistance Training Institute established in ac-
18 cordance with section 705(j)(1) of the Civil Rights
19 Act of 1964 (42 U.S.C. 2000e–4(j)(1));

20 (2) use the materials developed by the Commis-
21 sion for any education, technical assistance, or train-
22 ing offered by the Commission in accordance with
23 that section in any education and outreach activities
24 carried out by the Commission; and

1 (3) use funds from the Commission’s EEOC
2 Education, Technical Assistance, and Training Re-
3 volving Fund, established under section 705(k) of
4 the Civil Rights Act of 1964 (42 U.S.C. 2000e-
5 4(k)), to pay the full salaries of any Commission em-
6 ployees that develop and administer any education,
7 technical assistance, or training programs offered by
8 the Commission in connection with activities under
9 this Act.

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

11 (a) IN GENERAL.—The Commission shall establish
12 and periodically convene a harassment prevention task
13 force (referred to in this section as the “Task Force”) to
14 study prohibited harassment in employment.

15 (b) MEMBERSHIP.—The Task Force established
16 under subsection (a) shall include membership that re-
17 flects a broad diversity of experience and expertise relating
18 to prohibited harassment, including—

19 (1) employee advocates;

20 (2) researchers with expertise in organizational
21 culture change or reducing behavior related to har-
22 assment;

23 (3) legal practitioners with professional exper-
24 tise related to harassment litigation on behalf of em-
25 ployees;

1 (4) legal practitioners with experience serving
2 as a chief legal officer or human resource officer in
3 a corporate legal department;

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

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

8 (7) labor organization leaders.

9 (c) DUTIES.—The Task Force shall—

10 (1) identify strategies and recommend proposals
11 to prevent prohibited harassment in employment;
12 and

13 (2) provide guidance on effective strategies to
14 prevent prohibited harassment that are specific to
15 industries in which the Task Force determines that
16 harassment is particularly prevalent or severe.

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

21 (1) a review of the prevalence of prohibited har-
22 assment in employment, including the results of the
23 national prevalence survey described in section 111;

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

4 (3) assessments of the effectiveness of employ-
5 ment policies designed to prevent prohibited harass-
6 ment in employment by changing behavior and cul-
7 ture;

8 (4) assessments of the effectiveness of processes
9 for investigations into prohibited harassment in em-
10 ployment;

11 (5) assessments of the effectiveness of different
12 types of training to reduce and prevent harassment
13 in employment; and

14 (6) assessments of the effectiveness of other
15 proactive initiatives and interventions to reduce and
16 prevent harassment in employment.

17 **SEC. 106. RESOURCE MATERIALS ON EMPLOYMENT CLI-**
18 **MATE ASSESSMENTS.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of this Act, the Commission shall de-
21 velop and make publicly available resource materials for
22 employers on assessing the employment climate, including
23 the occurrence of prohibited harassment in employment,
24 in order to assist such employers in determining the effec-

1 tiveness of measures the employer takes to prevent and
2 address prohibited harassment in employment.

3 (b) EMPLOYMENT CLIMATE SURVEY.—Such resource
4 materials shall include a model survey regarding prohib-
5 ited harassment in employment, which shall be available
6 for an employer to use (at the employer’s discretion and
7 employer’s expense) in order to assess the employment cli-
8 mate. The model survey shall be—

9 (1) designed to assess employees’ experiences
10 related to prohibited harassment in employment;

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

13 (3) designed to solicit confidential submissions
14 and to provide data without revealing personally
15 identifiable information; and

16 (4) inclusive of individuals required to be af-
17 farded protection under section 301.

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

19 (1) questions designed to assess the prevalence
20 of prohibited harassment in employment;

21 (2) questions designed to understand whether
22 employees have access to and are familiar with the
23 employer’s nondiscrimination, including anti-harass-
24 ment, policies and procedures;

1 sion, which shall include disseminating information
2 about—

3 (A) the purpose of the Commission;

4 (B) the resources available through the
5 Commission to prevent prohibited discrimina-
6 tion, including harassment, in employment;

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

9 (D) the process by which the Commission
10 investigates charges of discrimination.

11 (b) INFORMATION DISSEMINATED.—The information
12 disseminated in accordance with subsection (a)(2) shall be
13 made available in plain English and in an accessible man-
14 ner for individuals with disabilities and for individuals who
15 primarily speak a language other than English.

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

17 Compliance with section 101 or 102, or use of mate-
18 rials provided under this subtitle, is not an affirmative de-
19 fense under applicable employment nondiscrimination
20 laws.

21 **SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated to the Com-
23 mission such sums as may be necessary to carry out the
24 Commission's duties and activities, including such duties
25 and activities authorized under this subtitle.

1 **Subtitle B—Research and Addi-**
2 **tional Resources for Harass-**
3 **ment Prevention**

4 **SEC. 111. NATIONAL PREVALENCE SURVEY ON HARASS-**
5 **MENT IN EMPLOYMENT.**

6 (a) SURVEY.—The Bureau of the Census, the Com-
7 mission, and the Bureau of Labor Statistics shall jointly
8 develop a national prevalence survey on the prevalence of
9 prohibited harassment in employment (referred to in this
10 section as the “national prevalence survey”). Such survey
11 shall be administered by the Bureau of the Census not
12 later than 1 year after the date of enactment of this Act,
13 and every 3 years thereafter.

14 (b) CONTENTS.—The national prevalence survey
15 shall include questions designed to collect such informa-
16 tion from individuals as may be necessary to examine ex-
17 isting beliefs, attitudes, and understanding of prohibited
18 harassment in employment, and the extent to which such
19 harassment is experienced or observed by individuals, su-
20 pervisors, and employers, including the information nec-
21 essary for the report described in subsection (c).

22 (c) REPORT.—

23 (1) IN GENERAL.—Not later than 6 months
24 after each national prevalence survey has been ad-
25 ministered, the Bureau of the Census, the Commis-

1 sion, and the Bureau of Labor Statistics shall jointly
2 prepare and submit to the Committee on Health,
3 Education, Labor, and Pensions of the Senate and
4 the Committee on Education and Workforce of the
5 House of Representatives a report on the results of
6 that survey.

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

9 (A) information about the extent to which
10 individuals experience prohibited harassment in
11 employment on the basis of sex (including sex-
12 ual orientation, gender identity, sex stereotype,
13 sex characteristics, and pregnancy, childbirth,
14 or related medical conditions), race, color, reli-
15 gion, national origin, age, disability, genetic in-
16 formation, and uniformed service status, and
17 information about the interaction of different
18 characteristics that may be the basis of harass-
19 ment in employment;

20 (B) information about the prevalence of
21 each such form of prohibited harassment in em-
22 ployment, disaggregated by industry and salary
23 level, including across all wage bands; and

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

1 (3) DISAGGREGATION OF SEX-BASED HARASS-
2 MENT.—The report under this subsection shall sepa-
3 rately, and in the aggregate, report each of the fol-
4 lowing bases of sex harassment:

5 (A) Sexual orientation.

6 (B) Gender identity.

7 (C) Pregnancy.

8 (D) Childbirth.

9 (E) A medical condition related to preg-
10 nancy or childbirth.

11 (F) A sex stereotype.

12 (G) Sexual in nature.

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

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated for the Bureau of the
19 Census to carry out this section such sums as may be nec-
20 essary for each fiscal year the national prevalence survey
21 is to be administered under subsection (a) or the report
22 is to be submitted under subsection (c).

1 **SEC. 112. STUDY AND REPORT ON HARASSMENT IN THE**
2 **FEDERAL GOVERNMENT.**

3 (a) IN GENERAL.—Not later than 1 year after the
4 date of enactment of this Act, and not less than once every
5 3 years thereafter, the Merit Systems Protection Board
6 shall prepare and submit to the Committee on Health,
7 Education, Labor, and Pensions of the Senate and the
8 Committee on Education and Workforce of the House of
9 Representatives a report containing the following informa-
10 tion:

11 (1) The prevalence of specific behaviors associ-
12 ated with prohibited harassment in employment
13 among Federal employees, including information
14 about such behaviors disaggregated by each wage
15 band.

16 (2) The impact of prohibited harassment in em-
17 ployment and violations of Federal civil rights laws
18 on the Federal Government, in terms of monetary
19 costs, attrition, and morale.

20 (3) The particular impact of prohibited harass-
21 ment in employment on the experience of Federal
22 employees with disabilities.

23 (4) Working in coordination with the Commis-
24 sion's Office of Federal Operations, a description of
25 the differences in Federal agency policies, strategies,
26 reporting mechanisms, training programs, and other

1 practices regarding preventing and addressing pro-
2 hibited harassment in employment.

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

8 (6) Working in coordination with the Commis-
9 sion's Office of Federal Operations, joint rec-
10 ommendations from such Office and the Merit Sys-
11 tems Protection Board to Federal agencies on how
12 to prevent and address prohibited harassment in em-
13 ployment.

14 (b) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to the Merit Systems
16 Protection Board such sums as may be necessary to carry
17 out this section.

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

19 (a) STUDY AND REPORT ON ENFORCEMENT OF NON-
20 DISCRIMINATION LAWS PROHIBITING HARASSMENT
21 LAWS.—Not later than 1 year after the date of enactment
22 of this Act, the United States Commission on Civil Rights
23 shall prepare and submit to the Committee on Health,
24 Education, Labor, and Pensions of the Senate and the
25 Committee on Education and Workforce of the House of

1 Representatives a report that shall examine enforcement
2 of the nondiscrimination laws prohibiting harassment in-
3 cluding—

4 (1) trends in enforcement of such laws;

5 (2) barriers to effective enforcement of such
6 laws;

7 (3) best practices in enforcement of such laws;

8 (4) recommendations about how to improve en-
9 forcement of such laws, including whether estab-
10 lishing individual liability for harassment in employ-
11 ment would improve enforcement of such laws; and

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

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

18 (1) IN GENERAL.—Not later than 60 days after
19 the date of enactment of this Act, the Director of
20 the National Institutes of Health shall seek to enter
21 into an agreement with the National Academies of
22 Sciences, Engineering, and Medicine, through which
23 the National Academies of Sciences, Engineering,
24 and Medicine shall conduct a study on preventing

1 and addressing prohibited harassment in employ-
2 ment.

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

4 (A) an evaluation of the existing research
5 of the causes of prohibited harassment in em-
6 ployment, including retaliation related to such
7 harassment, and gaps in such research;

8 (B) a review of the existing research re-
9 garding how prohibited harassment in employ-
10 ment impacts individuals;

11 (C) an evaluation of the existing research
12 on training to prevent prohibited harassment in
13 employment, including essential components of
14 effective training to prevent such prohibited
15 harassment, including retaliation, and gaps in
16 such research;

17 (D) an assessment of the efficacy and
18 availability of training models and programs to
19 prevent prohibited harassment in employment;

20 (E) the identification of employment or so-
21 cietal factors that increase the likelihood of pro-
22 hibited harassment in employment, particularly
23 across industries with a high number of individ-
24 uals who are vulnerable to experiencing such
25 prohibited harassment, including whether diver-

1 sity in leadership positions within an organiza-
2 tion reduces the likelihood of such prohibited
3 harassment;

4 (F) an examination of methods of induc-
5 ing, scaling, and sustaining institutional or or-
6 ganizational change to prevent prohibited har-
7 assment in employment;

8 (G) an analysis of policies, strategies, and
9 practices that have been the most successful in
10 preventing and addressing prohibited harass-
11 ment in employment; and

12 (H) any other information or analysis nec-
13 essary to identify the gaps in research and
14 other measures described in subsection (c).

15 (3) REPORT.—Through an agreement under
16 paragraph (1), not later than 1 year after the date
17 of enactment of this Act, the National Academies of
18 Sciences, Engineering, and Medicine shall prepare
19 and submit to the Committee on Health, Education,
20 Labor, and Pensions of the Senate, the Committee
21 on Education and Workforce of the House of Rep-
22 resentatives, and the Director of the National Insti-
23 tutes of Health, a report containing the results of
24 the study conducted under this subsection and make
25 recommendations to Congress, executive branch

1 agencies, private employers, and researchers. Such
2 recommendations shall include ways that such train-
3 ing to prevent prohibited harassment in employment
4 could be improved to result in behavioral and cul-
5 tural changes that prevent and reduce behaviors as-
6 sociated with prohibited harassment in employment.
7 The report and recommendations under this para-
8 graph shall be made publicly available.

9 (c) SUPPORTING FURTHER RESEARCH ON PRE-
10 VENTING AND UNDERSTANDING HARASSMENT IN EM-
11 PLOYMENT.—

12 (1) IN GENERAL.—Not later than 6 months
13 after the submission of the report under subsection
14 (b)(3), the Director of the National Institutes of
15 Health, in consultation with the Commission and the
16 Secretary of Labor, shall enter into agreements (in-
17 cluding through the use of grants, contracts, cooper-
18 ative agreements, or other transactions) to support
19 research regarding—

20 (A) the gaps identified in such report in
21 research on the causes of prohibited harassment
22 in employment, including retaliation related to
23 such harassment;

24 (B) the gaps identified in such report in
25 research on the psychological sequelae of pro-

1 hibited harassment in employment, including
2 retaliation related to such harassment;

3 (C) gaps identified in such report in re-
4 search on special populations and the risk for
5 prohibited harassment in employment, including
6 retaliation related to such harassment, includ-
7 ing such research with respect to special popu-
8 lations, including adolescents, older individuals,
9 racial and ethnic minorities, individuals with
10 disabilities, women, and other populations that
11 could be disproportionately affected by such
12 prohibited harassment in employment, and re-
13 taliation related to such harassment;

14 (D) gaps identified in such report in re-
15 search on prohibited harassment in employ-
16 ment, including retaliation related to such har-
17 assment, as a risk factor for various mental
18 health problems;

19 (E) gaps identified in such report in re-
20 search on sociocultural correlations within pro-
21 hibited harassment in employment, including
22 retaliation related to such harassment; and

23 (F) systematic and quantifiable measures
24 to evaluate prevention strategies for victims and
25 perpetrators of prohibited harassment in em-

1 ployment, including retaliation related to such
2 harassment.

3 (2) AUTHORIZATION OF APPROPRIATIONS.—

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

7 **Subtitle C—Preventing Harassment**
8 **of Tipped Employees**

9 **SEC. 121. TIPPED EMPLOYEES.**

10 (a) BASE MINIMUM WAGE FOR TIPPED EMPLOYEES
11 AND TIPS RETAINED BY EMPLOYEES.—Section
12 3(m)(2)(A)(i) of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 203(m)(2)(A)(i)) is amended to read as fol-
14 lows:

15 “(i) the cash wage paid such employee,
16 which for purposes of such determination shall
17 be not less than—

18 “(I) for the 1-year period beginning
19 on the effective date under section 121(e)
20 of the BE HEARD in the Workplace Act,
21 \$3.60 an hour;

22 “(II) for each succeeding 1-year pe-
23 riod until the hourly wage under this
24 clause equals the wage in effect under sec-
25 tion 6(a)(1) for such period, an hourly

1 wage equal to the amount determined
2 under this clause for the preceding year,
3 increased by the lesser of—

4 “(aa) \$1.50; or

5 “(bb) the amount necessary for
6 the wage in effect under this clause to
7 equal the wage in effect under section
8 6(a)(1) for such period; and

9 “(III) for each succeeding 1-year pe-
10 riod after the increase made pursuant to
11 subclause (II)(bb), the minimum wage in
12 effect under section 6(a)(1); and”.

13 (b) TIPS RETAINED BY EMPLOYEES.—Section
14 3(m)(2)(A) of the Fair Labor Standards Act of 1938 (29
15 U.S.C. 203(m)(2)(A)) is amended—

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

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

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

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

10 (d) SCHEDULED REPEAL OF SEPARATE MINIMUM
11 WAGE FOR TIPPED EMPLOYEES.—

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

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

1 (2) UNLAWFUL EMPLOYMENT PRACTICES.—
2 Section 703 of the Civil Rights Act of 1964 (42
3 U.S.C. 2000e-2) is amended—

4 (A) in the section header, by striking
5 “**SEX,**” and inserting “**SEX (INCLUDING SEX-**
6 **UAL ORIENTATION, GENDER IDENTITY,**
7 **SEX STEREOTYPE, SEX CHARACTERISTICS,**
8 **AND PREGNANCY, CHILDBIRTH, OR RE-**
9 **LATED MEDICAL CONDITIONS),”**;

10 (B) except in subsection (e), by striking
11 “sex,” each place it appears and inserting “sex
12 (including sexual orientation, gender identity,
13 sex stereotype, sex characteristics, and preg-
14 nancy, childbirth, or related medical condi-
15 tions),”;

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

22 (D) in subsection (h), by striking “sex”
23 the second place it appears and inserting “sex
24 (including sexual orientation, gender identity,
25 sex stereotype, sex characteristics, and preg-

1 nancy, childbirth, or related medical condi-
2 tions),”.

3 (3) OTHER UNLAWFUL EMPLOYMENT PRAC-
4 TICES.—Section 704(b) of the Civil Rights Act of
5 1964 (42 U.S.C. 2000e–3(b)) is amended—

6 (A) by striking “sex,” the first place it ap-
7 pears and inserting “sex (including sexual ori-
8 entation, gender identity, sex stereotype, sex
9 characteristics, and pregnancy, childbirth, or re-
10 lated medical conditions),”; and

11 (B) by striking “employment.” and insert-
12 ing “employment, if, in a situation in which sex
13 is a bona fide occupational qualification, indi-
14 viduals are recognized as qualified in accord-
15 ance with their gender identity.”.

16 (4) CLAIMS.—Section 706(g)(2)(A) of the Civil
17 Rights Act of 1964 (2000e–5(g)(2)(A)) is amended
18 by striking “sex,” and inserting “sex (including sex-
19 ual orientation, gender identity, sex stereotype, sex
20 characteristics, and pregnancy, childbirth, or related
21 medical conditions),”.

22 (5) EMPLOYMENT BY FEDERAL GOVERN-
23 MENT.—Section 717 of the Civil Rights Act of 1964
24 (42 U.S.C. 2000e–16) is amended—

1 (A) in subsection (a), by striking “sex,”
2 and inserting “sex (including sexual orientation,
3 gender identity, sex stereotype, sex characteris-
4 tics, and pregnancy, childbirth, or related med-
5 ical conditions),”; and

6 (B) in subsection (c), by striking “sex”
7 and inserting “sex (including sexual orientation,
8 gender identity, sex stereotype, sex characteris-
9 tics, and pregnancy, childbirth, or related med-
10 ical conditions),”.

11 (6) GOVERNMENT EMPLOYEE RIGHTS ACT OF
12 1991.—The Government Employee Rights Act of
13 1991 (42 U.S.C. 2000e–16a et seq.) is amended—

14 (A) in section 301(b), by striking “sex,”
15 and inserting “sex (including sexual orientation,
16 gender identity, sex stereotype, sex characteris-
17 tics, and pregnancy, childbirth, or related med-
18 ical conditions),”;

19 (B) in section 302(a)(1), by striking “sex,”
20 and inserting “sex (including sexual orientation,
21 gender identity, sex stereotype, sex characteris-
22 tics, and pregnancy, childbirth, or related med-
23 ical conditions),”; and

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

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

2 “Sections 1101(b), 1106, and 1107 of the Civil
3 Rights Act of 1964 shall apply to this title except that
4 for purposes of that application, a reference in that section
5 1106 to ‘race, color, religion, sex (including sexual orienta-
6 tion, gender identity, sex stereotype, sex characteristics,
7 and pregnancy, childbirth, or related medical conditions),
8 or national origin’ shall be considered to be a reference
9 to ‘race, color, religion, sex (including sexual orientation,
10 gender identity, sex stereotype, sex characteristics, and
11 pregnancy, childbirth, or related medical conditions), na-
12 tional origin, age, or disability’.”.

13 (7) CONGRESSIONAL ACCOUNTABILITY ACT OF
14 1995.—The Congressional Accountability Act of 1995
15 (2 U.S.C. 1301 et seq.) is amended—

16 (A) in section 201(a)(1) (2 U.S.C.
17 1311(a)(1)) by striking “sex,” and inserting
18 “sex (including sexual orientation, gender iden-
19 tity, sex stereotype, sex characteristics, and
20 pregnancy, childbirth, or related medical condi-
21 tions),”; and

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

24 **“SEC. 209. RULES OF CONSTRUCTION AND CLAIMS.**

25 “Sections 1101(b), 1106, and 1107 of the Civil
26 Rights Act of 1964 shall apply to section 201 (and reme-

1 dial provisions of this Act related to section 201) except
2 that for purposes of that application, a reference in that
3 section 1106 to ‘race, color, religion, sex (including sexual
4 orientation, gender identity, sex stereotype, sex character-
5 istics, and pregnancy, childbirth, or related medical condi-
6 tions), or national origin’ shall be considered to be a ref-
7 erence to ‘race, color, religion, sex (including sexual ori-
8 entation, gender identity, sex stereotype, sex characteris-
9 ties, and pregnancy, childbirth, or related medical condi-
10 tions), national origin, age, or disability’.”.

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

14 (A) in section 2301(b)(2), by striking
15 “sex,” and inserting “sex (including sexual ori-
16 entation, gender identity, sex stereotype, sex
17 characteristics, and pregnancy, childbirth, or re-
18 lated medical conditions),”;

19 (B) in section 2302—

20 (i) in subsection (b)(1)(A), by striking
21 “sex,” and inserting “sex (including sexual
22 orientation, gender identity, sex stereotype,
23 sex characteristics, and pregnancy, child-
24 birth, or related medical conditions),”; and

1 (ii) in subsection (d)(1), by striking
2 “sex,” and inserting “sex (including sexual
3 orientation, gender identity, sex stereotype,
4 sex characteristics, and pregnancy, child-
5 birth, or related medical conditions),”; and
6 (C) by adding at the end the following:

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

8 “Sections 1101(b), 1106, and 1107 of the Civil
9 Rights Act of 1964 shall apply to this chapter (and reme-
10 dial provisions of this title related to this chapter) except
11 that for purposes of that application, a reference in that
12 section 1106 to ‘race, color, religion, sex (including sexual
13 orientation, gender identity, sex stereotype, sex character-
14 istics, and pregnancy, childbirth, or related medical condi-
15 tions), or national origin’ shall be considered to be a ref-
16 erence to ‘race, color, religion, sex (including sexual ori-
17 entation, gender identity, sex stereotype, sex characteris-
18 ties, and pregnancy, childbirth, or related medical condi-
19 tions), national origin, age, disability, marital status, or
20 political affiliation’.”.

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

23 (1) by redesignating sections 1101 through
24 1104 (42 U.S.C. 2000h et seq.) and sections 1105
25 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections

1 1102 through 1105 and sections 1108 and 1109, re-
2 spectively;

3 (2) by inserting after the title heading the fol-
4 lowing:

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

6 “(a) DEFINITIONS.—In title VII:

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

12 “(A) the race, color, religion, sex (includ-
13 ing sexual orientation, gender identity, sex
14 stereotype, sex characteristics, and pregnancy,
15 childbirth, or related medical conditions), or na-
16 tional origin, respectively, of another person
17 with whom the individual is associated or has
18 been associated; and

19 “(B) a perception or belief, even if inac-
20 curate, concerning the race, color, religion, sex
21 (including sexual orientation, gender identity,
22 sex stereotype, sex characteristics, and preg-
23 nancy, childbirth, or related medical condi-
24 tions), or national origin, respectively, of the in-
25 dividual.

1 “(2) GENDER IDENTITY.—The term ‘gender
2 identity’ means the gender-related identity, appear-
3 ance, mannerisms, or other gender-related character-
4 istics of an individual, regardless of the individual’s
5 designated sex at birth.

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

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

12 “(b) RULES.—In title VII—

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

17 “(2) with respect to gender identity, an indi-
18 vidual shall not be denied access to a shared facility,
19 including a restroom, a locker room, and a dressing
20 room, that is in accordance with the individual’s
21 gender identity.”; and

22 (3) by inserting after section 1105 the fol-
23 lowing:

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

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

5 “(1) to limit the protection against an unlawful
6 practice on the basis of pregnancy, childbirth, a
7 medical condition related to pregnancy or childbirth
8 provided by section 701(k); or

9 “(2) to limit the protection against an unlawful
10 practice on the basis of sex available under any pro-
11 vision of Federal law other than title VII, prohib-
12 iting a practice on the basis of sex, including under
13 the Pregnant Workers Fairness Act (42 U.S.C.
14 2000gg et seq.).

15 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—
16 Nothing in section 1101 or title VII shall be construed
17 to limit the claims or remedies available to any individual
18 for an unlawful practice on the basis of race, color, reli-
19 gion, sex (including sexual orientation, gender identity, sex
20 stereotype, sex characteristics, and pregnancy, childbirth,
21 or related medical conditions), or national origin including
22 claims brought pursuant to section 1979 or 1980 of the
23 Revised Statutes (42 U.S.C. 1983, 1985) or any other
24 law, including a Federal law amended by the BE HEARD
25 in the Workplace Act, regulation, or policy, and including

1 the Pregnant Workers Fairness Act (42 U.S.C. 2000gg
2 et seq.).

3 “(c) NO NEGATIVE INFERENCE.—Nothing in section
4 1101 or title VII shall be construed to support any infer-
5 ence that any Federal law prohibiting a practice on the
6 basis of sex (including the Pregnant Workers Fairness Act
7 (42 U.S.C. 2000gg et seq.)), does not prohibit discrimina-
8 tion on the basis of gender identity, sex stereotype, and
9 pregnancy, childbirth, or related medical conditions.

10 **“SEC. 1107. CLAIMS.**

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

16 **SEC. 202. COVERED EMPLOYERS.**

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

20 **SEC. 203. COMPENSATORY AND PUNITIVE DAMAGES AVAIL-**
21 **ABLE.**

22 (a) CIVIL RIGHTS; DISABILITY.—

23 (1) IN GENERAL.—Section 1977A of the Re-
24 vised Statutes (42 U.S.C. 1981a(b)) is amended—

1 (A) in subsection (b), by striking para-
2 graph (3) and inserting the following:

3 “(3) LOSSES.—Compensatory damages are
4 available under this section for future pecuniary
5 losses, emotional pain, suffering, inconvenience,
6 mental anguish, loss of enjoyment of life, and other
7 nonpecuniary losses.”; and

8 (B) in subsection (c)—

9 (i) by striking paragraph (2);

10 (ii) by striking “this section” and all
11 that follows through “party” and inserting
12 “this section, any party”; and

13 (iii) by striking “; and” and inserting
14 a period.

15 (2) CONFORMING AMENDMENTS.—

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

19 (i) by striking “and, irrespective of
20 the size of the employing office,
21 1977A(b)(3)(D)” and inserting “and
22 1977A(b)(3)”; and

23 (ii) by striking “and 1981a(b)(3)(D)”
24 and inserting “and 1981a(b)(3)”.

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

6 (C) Section 207 of the Genetic Information
7 Nondiscrimination Act of 2008 (42 U.S.C.
8 2000ff–16) is amended, in paragraph (3) of
9 each of subsections (a) through (e), by striking
10 “, including the limitations contained in sub-
11 section (b)(3) of such section 1977A,”.

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

15 (1) by striking “(b) The” and all that follows
16 through the third sentence and inserting the fol-
17 lowing:

18 “(b)(1) Except as otherwise provided in another sub-
19 section of this section, or section 9, the powers, remedies,
20 and procedures set forth in sections 705, 706, 707, 709,
21 and 710 of the Civil Rights Act of 1964 (42 U.S.C.
22 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9)
23 shall be the powers, remedies, and procedures this Act
24 provides to the Commission, to the Attorney General, or
25 to any person alleging discrimination on the basis of age

1 in violation of section 4, or regulations promulgated under
2 section 9.”; and

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

11 **SEC. 204. DISCRIMINATION, INCLUDING HARASSMENT;**
12 **STANDARDS OF PROOF.**

13 (a) FINDINGS.—Congress finds that—

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

16 (2) workers are harassed because of their sex
17 (including sexual orientation, gender identity, sex
18 stereotype, sex characteristics, and pregnancy, child-
19 birth, or related medical conditions), race, color, reli-
20 gion, national origin, age, disability, genetic informa-
21 tion, and uniformed services status;

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

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

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

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

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

21 (B) "submission to or rejection of such
22 conduct by an individual is used as the basis for
23 employment decisions"; or

24 (C) the conduct "has the purpose or effect
25 of unreasonably interfering with an individual's

1 work performance or creating an intimidating,
2 hostile, or offensive working environment”;

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

12 (8) six years later, the Supreme Court in
13 *Meritor Savings Bank v. Vinson*, 477 U.S. 57
14 (1986), recognized that the protections under title
15 VII of the Civil Rights Act of 1964 are not limited
16 to discrimination that causes “economic” or “tan-
17 gible” loss, and held that the phrase “terms, condi-
18 tions, or privileges of employment” in title VII of
19 such Act is an “expansive concept that sweeps with-
20 in its protective ambit” the practice of creating a
21 hostile work environment based on discrimination in
22 the form of harassment;

23 (9) in reaching this conclusion in the *Meritor*
24 decision, the Supreme Court cited and approved the
25 Guidelines;

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

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

10 (B) *Firefighters Institute for Racial
11 Equality v. City of St. Louis*, 549 F.2d 506
12 (8th Cir. 1977);

13 (C) *Gray v. Greyhound Lines*, 545 F.2d
14 169 (D.C. Cir. 1976);

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

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

19 (11) in defining the evidence required to prove
20 a violation of title VII of the Civil Rights Act of
21 1964, in the Meritor decision, the Supreme Court
22 noted that harassment would be actionable when it
23 is “sufficiently severe or pervasive ‘to alter the con-
24 ditions of [the victim’s] employment and create an

1 abusive working environment’” (quoting *Rogers v.*
2 *EEOC*, 454 F.2d 234 (5th Cir. 1971));

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

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

17 (14) in *National Railroad Passenger Corp. v.*
18 *Morgan*, 536 U.S. 101 (2002), the Supreme Court
19 reaffirmed the *Harris* decision and further held that
20 the hostility or abusiveness of each harassing act
21 should be considered in the aggregate, not in isola-
22 tion, regardless of whether such acts occur over days
23 or even years;

24 (15) notwithstanding the rulings of the Su-
25 preme Court specified in this subsection, some lower

1 court decisions have treated harassing conduct’s se-
2 verity or pervasiveness as the only 2 relevant factors
3 in evaluating whether such conduct violates title VII
4 of the Civil Rights Act of 1964;

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

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

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

21 (A) *Singleton v. Department of Correc-*
22 *tional Education*, 115 Fed. Appx. 119 (4th Cir.
23 2004);

24 (B) *Black v. Zaring Homes, Inc.*, 104 F.3d
25 822 (6th Cir. 1997);

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

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

5 (E) Mitchell v. Pope, 189 F. Appx. 911
6 (11th Cir. 2006); and

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

9 (19) lower courts have made similar erroneous
10 decisions in the context of harassment on the basis
11 of race, national origin, age, and disability such as
12 in Crawford v. Medina General Hospital, 96 F.3d
13 830 (6th Cir. 1996), Shaver v. Independent Stave
14 Co., 350 F.3d 716 (8th Cir. 2003), and Motley v.
15 Parker-Hannifan Corp., No. 1: 94–CV–639 (W.D.
16 Mich. 1995);

17 (20) in contrast, other lower court decisions ap-
18 plying the Meritor case and its progeny have appro-
19 priately recognized that a wide range of harassing
20 behavior may alter the terms, conditions, or privi-
21 leges of employment, with no single type, frequency,
22 or duration of conduct required to make a showing
23 of severe or pervasive harassment;

24 (21) for example, in the context of harassment
25 based on sex, those decisions have recognized that—

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

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

9 (C) power disparities, such as the young
10 age of the individual harassed, compound the
11 conduct's harmful effects, as in *EEOC v. R&R*
12 *Ventures*, 244 F.3d 334 (4th Cir. 2001);

13 (D) gender-based epithets were based on
14 sex and supported a finding that the workplace
15 was objectively hostile, as in *Gallagher v. C.H.*
16 *Robinson Worldwide, Inc.*, 567 F.3d 263 (6th
17 Cir. 2009); and

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

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

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

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

12 (C) a single incident of calling an African-
13 American individual the “n word” by a super-
14 visor is sufficient to support a finding of a hos-
15 tile work environment based on race, as in *Rod-*
16 *gers v. Western-Southern Life Insurance Co.*,
17 12 F.3d 668 (7th Cir. 1993); and

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

24 (b) PURPOSES.—The purposes of this section are
25 to—

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

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

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

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

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

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

23 (2) establish a liability standard for workplace
24 harassment that fulfills Congress’ intent of providing
25 broad protection from discrimination in employment

1 on the basis of race, color, religion, sex (including
2 sexual orientation, gender identity, sex stereotype,
3 sex characteristics, and pregnancy, childbirth, or re-
4 lated medical conditions), national origin, age, dis-
5 ability, genetic information, and uniformed services
6 status.

7 (c) ENACTING INTO STATUTORY LAW PROVISIONS
8 ESTABLISHING WORKPLACE HARASSMENT AS AN UNLAW-
9 FUL EMPLOYMENT PRACTICE.—

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

13 “(o)(1)(A) In this subsection, the term ‘workplace
14 harassment’ means conduct based on race, color, religion,
15 sex (including sexual orientation, gender identity, sex
16 stereotype, sex characteristics, and pregnancy, childbirth,
17 or related medical conditions), or national origin, regard-
18 less of whether it is direct or indirect, or verbal or non-
19 verbal, that unreasonably alters an individual’s terms, con-
20 ditions, or privileges of employment, including by creating
21 an intimidating, hostile, or offensive work environment.

22 “(B)(i) In this subsection, the term also means sexual
23 harassment, which is conduct that takes place in a cir-
24 cumstance described in clause (ii) and that takes the form
25 of—

1 “(I) a sexual advance;

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

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

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

6 “(I) submission to the conduct involved is made
7 either explicitly or implicitly a term or condition of
8 employment;

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

12 “(III) such conduct unreasonably alters an indi-
13 vidual’s terms, conditions, or privileges of employ-
14 ment, including by creating an intimidating hostile,
15 or offensive work environment.

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

18 “(3) In determining, for purposes of this subsection,
19 whether conduct constitutes workplace harassment be-
20 cause the conduct unreasonably alters an individual’s
21 terms, conditions, or privileges of employment, including
22 by creating an intimidating, hostile, or offensive work en-
23 vironment, the following rules shall apply:

24 “(A) That determination shall be made on the
25 basis of the record as a whole, according to the to-

1 tality of the circumstances. A single incident may
2 constitute workplace harassment.

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

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

10 “(ii) conduct based on multiple protected
11 characteristics (such as sex and race) viewed in
12 totality, rather than in isolation.

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

21 “(i) The frequency of the conduct.

22 “(ii) The duration of the conduct.

23 “(iii) The location where the conduct oc-
24 curred.

1 “(iv) The number of individuals engaged in
2 the conduct.

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

7 “(vi) Whether the conduct is threatening.

8 “(vii) Any power differential between the
9 alleged harasser and the person allegedly har-
10 assed.

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

13 “(ix) Whether the conduct reflects stereo-
14 types about individuals in the protected class
15 involved.

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

20 “(A) the complaining party is not the individual
21 being harassed;

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

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

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

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

6 “(F) the conduct occurred outside of the work-
7 place.”.

8 (2) AMERICANS WITH DISABILITIES ACT OF
9 1990.—Section 102(b) of the Americans with Disabil-
10 ities Act (42 U.S.C. 12112(b)) is amended—

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

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

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

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

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

23 (B) is determined to be such harassment
24 in accordance with paragraphs (3) and (4) of

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

3 (3) REHABILITATION ACT OF 1973.—Section
4 501(f) of the Rehabilitation Act of 1973 (29 U.S.C.
5 791(f)) is amended by inserting “, including section
6 102(b) of that Act (42 U.S.C. 12112(b))”, before
7 “and the provisions”.

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

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

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

20 “(2) is determined to be such harassment in ac-
21 cordance with paragraphs (3) and (4) of section
22 703(o) of the Civil Rights Act of 1964 (42 U.S.C.
23 2000e-2(o)).”.

24 (5) GENETIC INFORMATION NONDISCRIMINA-
25 TION ACT OF 2008.—Section 202 of the Genetic In-

1 formation Nondiscrimination Act of 2008 (42 U.S.C.
2 2000ff–1) is amended by adding at the end the fol-
3 lowing:

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

9 “(1) unreasonably alters an individual’s terms,
10 conditions, or privileges of employment, including by
11 creating an intimidating, hostile, or offensive work
12 environment; and

13 “(2) is determined to be such harassment in ac-
14 cordance with paragraphs (3) and (4) of section
15 703(o) of the Civil Rights Act of 1964 (42 U.S.C.
16 2000e–2(o)).”.

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

21 “(e) It shall be an unlawful employment practice
22 under subsection (a) to engage in workplace harassment,
23 which is conduct based on uniformed services status
24 (meaning the membership, application for membership,
25 performance of service, application for service, or obliga-

1 tion, described in subsection (a)), regardless of whether
2 it is direct or indirect, or verbal or nonverbal, that—

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

6 “(2) is determined to be such harassment in ac-
7 cordance with paragraphs (3) and (4) of section
8 703(o) of the Civil Rights Act of 1964 (42 U.S.C.
9 2000e–2(o)).”.

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

11 (a) AMENDMENTS TO DEFINITIONS.—

12 (1) AMERICANS WITH DISABILITIES ACT OF
13 1990.—Section 101 of the Americans with Disabil-
14 ities Act of 1990 (42 U.S.C. 12111) is amended by
15 adding at the end the following:

16 “(11) DEMONSTRATES.—The term ‘dem-
17 onstrates’ means meets the burdens of production
18 and persuasion.”.

19 (2) AGE DISCRIMINATION IN EMPLOYMENT ACT
20 OF 1967.—Section 11 of the Age Discrimination in
21 Employment Act of 1967 (29 U.S.C. 630) is amend-
22 ed by adding at the end the following:

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

1 (3) GENETIC INFORMATION NONDISCRIMINA-
2 TION ACT OF 2008.—Section 201 of the Genetic In-
3 formation Nondiscrimination Act of 2008 (42 U.S.C.
4 2000ff) is amended by adding at the end the fol-
5 lowing:

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

9 (b) CLARIFYING PROHIBITION AGAINST IMPERMIS-
10 SIBLE CONSIDERATION IN EMPLOYMENT PRACTICES.—

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

15 “(m) Except as otherwise provided in this title, an
16 unlawful employment practice is established under this
17 title when the complaining party demonstrates that race,
18 color, religion, sex (including sexual orientation, gender
19 identity, sex stereotype, sex characteristics, and preg-
20 nancy, childbirth, or related medical conditions), or na-
21 tional origin or an activity protected by section 704(a) was
22 a motivating factor for any employment practice, even
23 though other factors also motivated 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 criminatory 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(e)) 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 establishes a discriminatory
15 practice under section 102(e)(1), and a respondent dem-
16 onstrates that the respondent would have taken the same
17 action in the absence of the impermissible motivating fac-
18 tor, the court—

19 “(1) may grant declaratory relief, injunctive re-
20 lief (except as provided in paragraph (2)), and attor-
21 ney’s fees and costs demonstrated to be directly at-
22 tributable only to the pursuit of a claim under sec-
23 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 establishes
19 an unlawful practice under section 4(g)(1), and a respond-
20 ent demonstrates that the respondent would have taken
21 the same action in the absence of the impermissible moti-
22 vating factor, the court—

23 “(A) may grant declaratory relief, injunctive re-
24 lief (except as provided in subparagraph (B)), and
25 attorney’s fees and costs demonstrated to be directly

1 attributable only to the pursuit of a claim under sec-
2 tion 4(g)(1); and

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

6 (B) in subsection (c)—

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

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

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

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

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

1 “(g) MOTIVATING FACTOR.—On a claim in which an
2 individual establishes an unlawful employment practice
3 under section 202(e)(1), including a claim involving an
4 employee or applicant described in any of subsections (a)
5 through (e), and a respondent demonstrates that the re-
6 spondent would have taken the same action in the absence
7 of the impermissible motivating factor, the court or the
8 corresponding decisionmaker specified in subsections (a)
9 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(e)(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(e)(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(e)(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) is amended—

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

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

9 “(e) OUTSIDE INDIVIDUALS.—Subject to section
10 206(j) of the BE HEARD in the Workplace Act, an em-
11 ploying office shall be liable for the acts of any individual
12 whose harassment of a covered employee has created or
13 continued a hostile work environment or a retaliatory hos-
14 tile work environment that constitutes discrimination
15 under this section if, at the time of the harassment—

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

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

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

23 “(2) the negligence of the employing office led
24 to the creation or continuation of that hostile work

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

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

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

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

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

15 (1) in subsection (e)—

16 (A) in paragraph (1)—

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

22 (ii) by striking “three hundred days
23 after the alleged unlawful employment
24 practice occurred” and inserting “4 years

1 and 120 days after the alleged unlawful
2 employment practice occurred.”; and

3 (B) in paragraph (3)(B), by striking “two
4 years preceding the filing of the charge” and all
5 that follows and inserting “4 years and 120
6 days preceding the filing of the charge.”; and

7 (2) in subsection (g)(1), by striking “two years
8 prior to the filing of a charge” and inserting “4
9 years and 120 days preceding the filing of the
10 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 remun-
25 eration 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 ting 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(e) 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 proffer or to
4 enter into a contract or agreement with a worker, or
5 for a covered establishment to proffer or to enter
6 into a contract or agreement with a covered indi-
7 vidual, as a condition of employment or contracting,
8 promotion, compensation, benefits, or change in em-
9 ployment status or contractual relationship, or as a
10 term, condition, or privilege of employment or con-
11 tracting, if that contract or agreement contains a
12 nondisparagement clause or nondisclosure clause
13 that covers prohibited harassment or other prohib-
14 ited discrimination in employment or contracting, or
15 retaliation for reporting, resisting, opposing, or as-
16 sisting in the investigation of such harassment or
17 other discrimination.

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

1 opposing, or assisting in the investigation of such
2 harassment or other discrimination. An employer or
3 covered establishment that enforces or attempts to
4 enforce such a nondisparagement clause or such a
5 nondisclosure clause against a worker shall be liable
6 for the reasonable attorney's fees and costs of the
7 worker.

8 (3) SETTLEMENT OR SEPARATION AGREE-
9 MENTS.—

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

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

20 (ii) the clause involved is mutually
21 agreed upon by both—

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

24 (II) the worker;

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

4 (iv) the clause involved is limited to
5 statements made with knowledge of their
6 falsity or with reckless disregard for their
7 truth or falsity;

8 (v) the clause involved prohibits the
9 employer or covered establishment from
10 publicly disclosing the name of a victim of
11 an alleged act of prohibited harassment or
12 other prohibited discrimination, or dis-
13 closing any information that would reason-
14 ably lead to the disclosure of the identity
15 of such a victim; and

16 (vi) the settlement agreement or sepa-
17 ration agreement expressly states that the
18 agreement involved does not prohibit, pre-
19 vent, or otherwise restrict a worker from—

20 (I) filing a charge or complaint
21 with the Commission, any other Fed-
22 eral, State, or local agency with the
23 authority to enforce laws (including
24 regulations) that prohibit discrimina-
25 tion, including harassment, in employ-

1 ment or contracting, as the case may
2 be, or law enforcement;

3 (II) testifying at, assisting, or
4 participating in an investigation or
5 proceeding conducted by the Commis-
6 sion, any other Federal, State, or local
7 agency with the authority to enforce
8 laws (including regulations) that pro-
9 hibit discrimination, including harass-
10 ment, in employment or contracting,
11 as the case may be, or law enforce-
12 ment; or

13 (III) testifying in a hearing or
14 trial or complying with a request for
15 discovery in relation to civil litigation.

16 (B) PROHIBITION ON SOLE BENEFIT.—For
17 purposes of this paragraph, it shall be an un-
18 lawful practice for an employer or covered es-
19 tablishment to unilaterally include a nondispar-
20 agement clause or nondisclosure clause that
21 solely benefits the employer or covered estab-
22 lishment in a separation or settlement agree-
23 ment.

24 (C) KNOWING AND VOLUNTARY AGREE-
25 MENT.—For purposes of this paragraph, agree-

1 ment to a nondisparagement clause or non-
2 disclosure clause may not be considered know-
3 ing and voluntary unless at a minimum—

4 (i) the nondisparagement clause or
5 nondisclosure clause is written in a manner
6 designed to ensure that the worker under-
7 stands the content of the clause involved;

8 (ii) the nondisparagement clause or
9 nondisclosure clause is included only in ex-
10 change for consideration of value provided
11 to the worker, in addition to anything of
12 value to which the worker is already enti-
13 tled;

14 (iii) the nondisparagement clause or
15 nondisclosure clause does not apply to any
16 rights or claims that arise after the date
17 the settlement or separation agreement is
18 executed;

19 (iv) the worker is advised in writing to
20 consult with an attorney prior to agreeing
21 to such an agreement that includes a non-
22 disparagement clause or nondisclosure
23 clause;

24 (v) the worker is given a period of at
25 least 21 days to consider any proposal for

1 a settlement or separation agreement that
2 includes a nondisparagement clause or
3 nondisclosure clause; and

4 (vi) the settlement or separation
5 agreement provides that for a period of at
6 least 7 days following the execution of such
7 agreement the worker may revoke the
8 agreement, and the agreement shall not be-
9 come effective or enforceable until the rev-
10 ocation period has expired.

11 (D) BURDEN OF PROOF.—In any dispute
12 that may arise over whether any of the require-
13 ments of subparagraph (A) have been met, the
14 party asserting the validity of an agreement
15 shall have the burden of proving that the re-
16 quirements of subparagraph (A) have been met.

17 (E) FINANCIAL TERMS.—Notwithstanding
18 subparagraph (A)(iv), the financial terms of the
19 settlement or separation covered by the agree-
20 ment may be included in a nondisclosure clause
21 of the agreement if the nondisclosure of the fi-
22 nancial terms is limited to a specified period of
23 time. The nondisclosure clause shall not pro-
24 hibit discussion of the financial terms of the

1 settlement or separation with an accountant or
2 financial advisor.

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

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

22 (c) ENFORCEMENT AGAINST EMPLOYERS.—

23 (1) ENFORCEMENT POWERS.—With respect to
24 the administration and enforcement of this section

1 in the case of a claim alleged by a worker against
2 an employer for a violation of this section—

3 (A) the Commission shall have the same
4 powers as the Commission has to administer
5 and enforce—

6 (i) title VII of the Civil Rights Act of
7 1964 (42 U.S.C. 2000e et seq.); or

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

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

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

23 (C) the Board (as defined in section
24 101(a) of the Congressional Accountability Act
25 of 1995 (2 U.S.C. 1301(a))) shall have the

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

7 (D) the Attorney General shall have the
8 same powers as the Attorney General has to ad-
9 minister and enforce—

10 (i) title VII of the Civil Rights Act of
11 1964 (42 U.S.C. 2000e et seq.); or

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

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

20 (E) the President, the Commission, and
21 the Merit Systems Protection Board shall have
22 the same powers as the President, the Commis-
23 sion, and the Board, respectively, have to ad-
24 minister and enforce chapter 5 of title 3,
25 United States Code, in the case of a claim al-

1 leged by an employee of the employer for a vio-
2 lation of section 411 of such title; and

3 (F) a court of the United States shall have
4 the same jurisdiction and powers as the court
5 has to enforce—

6 (i) title VII of the Civil Rights Act of
7 1964 (42 U.S.C. 2000e et seq.) in the case
8 of a claim alleged by an employee of the
9 employer for a violation of such title;

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

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

23 (iv) chapter 5 of title 3, United States
24 Code, in the case of a claim alleged by an

1 employee of the employer for a violation of
2 section 411 of such title.

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

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

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

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

24 (D) the procedures and remedies applicable
25 for a violation of section 411 of title 3, United

1 States Code, in the case of a claim alleged by
2 an employee of the employer for a violation of
3 such section.

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

14 (d) ENFORCEMENT AGAINST COVERED ESTABLISH-
15 MENTS.—

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

21 (A) the Commission shall have the same
22 powers as the Commission has to administer
23 and enforce title VII of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e et seq.);

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

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

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

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

21 (e) RIGHT TO REPORT RESERVED.—Notwith-
22 standing signing (before, on, or after the effective date of
23 this Act) any nondisparagement clause or nondisclosure
24 clause, a worker retains—

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

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

12 (f) REGULATIONS.—

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

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

21 (3) BOARD.—The Board referred to in sub-
22 section (c)(1)(C) shall have authority to issue regu-
23 lations to carry out this section, in accordance with
24 section 304 of the Congressional Accountability Act
25 of 1995 (2 U.S.C. 1384), with respect to employees

1 described in subsection (a)(4)(C) and covered indi-
2 viduals described in subsection (a)(3)(A)(iii).

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

8 (g) STATE AND FEDERAL IMMUNITY.—

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

14 (2) WAIVER OF STATE IMMUNITY.—

15 (A) IN GENERAL.—

16 (i) WAIVER.—A State's receipt or use
17 of Federal financial assistance for any pro-
18 gram or activity of a State shall constitute
19 a waiver of sovereign immunity, under the
20 11th Amendment to the Constitution or
21 otherwise, to a suit brought by a covered
22 individual in that program or activity
23 under this section for a remedy authorized
24 under paragraph (4).

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

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

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

21 (4) REMEDIES AGAINST THE UNITED STATES
22 AND THE STATES.—Notwithstanding any other pro-
23 vision of this Act, in an action or administrative pro-
24 ceeding against the United States or a State for a
25 violation of this section, remedies (including rem-

1 edies at law and in equity, and interest) are avail-
2 able for the violation to the same extent as the rem-
3 edies are available for a violation of title VII of the
4 Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
5 by an employer described in subsection (a)(5)(A),
6 except that—

7 (A) punitive damages are not available;
8 and

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

12 (h) RELATIONSHIP TO OTHER LAWS.—Nothing in
13 this section shall invalidate or limit the rights and rem-
14 edies available to workers under the National Labor Rela-
15 tions Act (29 U.S.C. 151 et seq.).

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

18 (a) PROTECTION OF CONCERTED ACTIVITY.—

19 (1) AGREEMENTS.—Section 8(e) of the Na-
20 tional Labor Relations Act (29 U.S.C. 158(e)) is
21 amended to read as follows:

22 “(e) Notwithstanding chapter 1 of title 9, United
23 States Code (commonly known as the ‘Federal Arbitration
24 Act’), or any other provision of law, it shall be an unfair
25 labor practice under subsection (a)(1) for any employer—

1 “(1) to enter into or attempt to enforce any
2 agreement, express or implied, whereby prior to or
3 after a dispute to which the agreement applies, an
4 employee undertakes or promises not to pursue,
5 bring, join, litigate, or support any kind of joint,
6 class, or collective claim arising from or relating to
7 the employment of such employee in any forum that,
8 but for such agreement, is of competent jurisdiction;

9 “(2) to coerce an employee 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 such em-
13 ployee; or

14 “(3) to retaliate or threaten to retaliate against
15 an employee for refusing to undertake or promise
16 not to pursue, bring, join, litigate, or support any
17 kind of joint, class, or collective claim arising from
18 or relating to the employment of such employee:

19 *Provided*, That any agreement that violates this subsection
20 or results from a violation of this subsection shall be to
21 such extent unenforceable and void: *Provided further*, That
22 this subsection shall not apply to any agreement embodied
23 in or expressly permitted by a contract between an em-
24 ployer and a labor organization.”.

1 “(2) COVERED ENTITY.—The term ‘covered en-
2 tity’ means—

3 “(A) an employer; or

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

7 “(3) PRESDISPUTE ARBITRATION AGREE-
8 MENT.—The term ‘predispute arbitration agreement’
9 has the meaning given the term in section 401.

10 “(4) POSTDISPUTE ARBITRATION AGREE-
11 MENT.—The term ‘postdispute arbitration agree-
12 ment’ means any agreement to arbitrate a dispute
13 that arose before the time of the making of the
14 agreement.

15 “(5) WORKER.—The term ‘worker’ means—

16 “(A) an employee engaged in an activity
17 affecting commerce; or

18 “(B) an individual, engaged in an activity
19 affecting commerce, who is engaged by a cov-
20 ered entity to perform services or work as an
21 independent contractor (regardless of the label
22 or classification assigned or used by the covered
23 entity).

24 “(6) WORK DISPUTE.—The term ‘work dis-
25 pute’—

1 “(A) means a dispute between one or more
2 workers (or their authorized representatives)
3 and a covered entity arising out of or related to
4 the work relationship or prospective work rela-
5 tionship between the workers and the covered
6 entity; and

7 “(B) includes—

8 “(i) a dispute regarding the terms of,
9 payment for, advertising of, recruitment of,
10 referring of, arranging for, or discipline or
11 discharge in connection with work per-
12 formed in connection with such work rela-
13 tionship;

14 “(ii) a dispute arising under any law
15 referred to or described in section 62(e) of
16 the Internal Revenue Code of 1986, includ-
17 ing any part of such a law not explicitly
18 referenced in such section that relates to
19 protecting individuals on a basis that is
20 protected under a law referred to or de-
21 scribed in such section; and

22 “(iii) a dispute in which an individual
23 or individuals seek certification—

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

1 “(II) as a collective action under
2 section 16(b) of the Fair Labor
3 Standards Act of 1938 (29 U.S.C.
4 216(b)); or
5 “(III) under a comparable rule or
6 provision of State law.

7 **“§ 502. No validity or enforceability**

8 “(a) IN GENERAL.—Notwithstanding any other pro-
9 vision of this title—

10 “(1) no predispute arbitration agreement shall
11 be valid or enforceable if it requires arbitration of a
12 work dispute;

13 “(2) no postdispute arbitration agreement that
14 requires arbitration of a work dispute shall be valid
15 or enforceable unless—

16 “(A) the agreement was not required by
17 the covered entity, obtained by coercion or
18 threat of adverse action, or made a condition of
19 employment, work, or any employment-related
20 or work-related privilege or benefit;

21 “(B) each worker entering into the agree-
22 ment was informed in writing using sufficiently
23 plain language likely to be understood by the
24 average worker of—

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

4 “(ii) as applicable, the protections
5 under section 8(a)(6) of the National
6 Labor Relations Act (29 U.S.C.
7 158(a)(6));

8 “(C) each worker entering into the agree-
9 ment entered the agreement after a waiting pe-
10 riod of not fewer than 45 days, beginning on
11 the date on which the employee was provided
12 both the final text of the agreement and the
13 disclosures required under subparagraph (B);
14 and

15 “(D) each worker entering into the agree-
16 ment affirmatively consented to the agreement
17 in writing; and

18 “(3) no covered entity may retaliate or threaten
19 to retaliate against a worker for refusing to enter
20 into an agreement that provides for arbitration of a
21 work dispute.

22 “(b) STATUTE OF LIMITATIONS.—The statute of lim-
23 itations for bringing an action that arises from or forms
24 the basis for the applicable work dispute shall be tolled

1 during the waiting period described in subsection
2 (a)(2)(C).

3 “(c) CIVIL ACTION.—Any person who is injured by
4 reason of a violation of subsection (a)(3) may bring a civil
5 action in the appropriate district court of the United
6 States against the covered entity within 2 years of the vio-
7 lation, or within 3 years if such violation is willful. Relief
8 granted in such an action shall include a reasonable attor-
9 ney’s fee, other reasonable costs associated with maintain-
10 ing the action, and any appropriate relief authorized by
11 section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.
12 2000e–5(g)) or by section 1977A(b) of the Revised Stat-
13 utes (42 U.S.C. 1981a(b)).

14 “(d) APPLICABILITY.—

15 “(1) IN GENERAL.—This chapter applies to cov-
16 ered entities and workers to the fullest extent per-
17 mitted by the Constitution of the United States, in-
18 cluding the work of persons engaged in domestic
19 service in households, as described in section 2(a) of
20 the Fair Labor Standards Act of 1938 (29 U.S.C.
21 202(a)). An issue as to whether this chapter applies
22 to an arbitration agreement shall be determined
23 under Federal law. The applicability of this chapter
24 to an agreement to arbitrate and the validity and en-
25 forceability of an agreement to which this chapter

1 applies shall be determined by a court, rather than
2 an arbitrator, regardless of whether any contractual
3 provision purports to delegate such determinations
4 to the arbitrator and irrespective of whether the
5 party resisting arbitration challenges the arbitration
6 agreement specifically or in conjunction with other
7 terms of the contract containing such agreement.

8 “(2) COLLECTIVE BARGAINING AGREEMENTS.—
9 Nothing in this chapter shall apply to any arbitra-
10 tion provision in a contract between a covered entity
11 and a labor organization, except that no such arbi-
12 tration provision shall have the effect of waiving the
13 right of a worker to seek judicial enforcement of a
14 right arising under a provision of the Constitution of
15 the United States, the constitution of a State, or a
16 Federal or State statute, or public policy arising
17 therefrom.”.

18 (2) TECHNICAL AND CONFORMING AMEND-
19 MENTS.—

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

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

1 (ii) in section 2, by inserting “or 5”
2 before the period at the end;

3 (iii) in section 208, in the second sen-
4 tence, by inserting “or 5” before the period
5 at the end; and

6 (iv) in section 307, in the second sen-
7 tence, by inserting “or 5” before the period
8 at the end;

9 (B) TABLE OF CHAPTERS.—The table of
10 chapters for title 9, United States Code, is
11 amended by adding at the end the following:

“5. Arbitration of work disputes 501.”.

12 (c) EFFECTIVE DATE.—This section, and the amend-
13 ments made by this section, shall take effect on the date
14 of enactment of this Act and shall apply with respect to
15 any dispute or claim that arises or accrues on or after
16 such date, including any dispute or claim to which an
17 agreement predating such date applies.

18 **SEC. 304. FEDERAL CONTRACTOR COMPLIANCE WITH**
19 **LABOR AND CIVIL RIGHTS LAWS.**

20 (a) DEFINITIONS.—In this section:

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

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

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

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

9 (3) EXECUTIVE AGENCY.—The term “executive
10 agency” has the meaning given the term in section
11 133 of title 41, United States Code.

12 (b) REQUIRED PRE-CONTRACT AWARD ACTIONS.—

13 (1) DISCLOSURES.—The head of an executive
14 agency shall ensure that the solicitation for a cov-
15 ered contract requires the offeror—

16 (A) to represent, to the best of the
17 offeror’s knowledge and belief, whether there
18 has been any administrative merits determina-
19 tion, arbitral award or decision, or civil judg-
20 ment, as defined in guidance issued by the Sec-
21 retary of Labor, rendered against the offeror in
22 the preceding 3 years for violations of—

23 (i) the Fair Labor Standards Act of
24 1938 (29 U.S.C. 201 et seq.);

1 (ii) the Occupational Safety and
2 Health Act of 1970 (29 U.S.C. 651 et
3 seq.);

4 (iii) the Migrant and Seasonal Agri-
5 cultural Worker Protection Act (29 U.S.C.
6 1801 et seq.);

7 (iv) the National Labor Relations Act
8 (29 U.S.C. 151 et seq.);

9 (v) subchapter IV of chapter 31 of
10 title 40, United States Code (commonly
11 known as the “Davis-Bacon Act”);

12 (vi) chapter 67 of title 41, United
13 States Code (commonly known as the
14 “Service Contract Act”);

15 (vii) section 503 or 505 of the Reha-
16 bilitation Act of 1973 (29 U.S.C. 793 or
17 794a);

18 (viii) section 4212 of title 38, United
19 States Code;

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

22 (x) title VII of the Civil Rights Act of
23 1964 (42 U.S.C. 2000e et seq.);

24 (xi) the Pregnant Workers Fairness
25 Act (42 U.S.C. 2000gg et seq.);

1 (xii) title I and section 503 (for viola-
2 tions with respect to that title) of the
3 Americans with Disabilities Act of 1990
4 (42 U.S.C. 12111 et seq.; 12203);

5 (xiii) the Age Discrimination in Em-
6 ployment Act of 1967 (29 U.S.C. 621 et
7 seq.);

8 (xiv) title II of the Genetic Informa-
9 tion Nondiscrimination Act of 2008 (42
10 U.S.C. 2000ff et seq.);

11 (xv) Executive Order 13658 (79 Fed.
12 Reg. 9851; relating to establishing a min-
13 imum wage for contractors); or

14 (xvi) equivalent State laws, as defined
15 in guidance issued by the Secretary of
16 Labor;

17 (B) to require each subcontractor for a
18 covered subcontract—

19 (i) to represent to the offeror, and the
20 executive agency's Labor Compliance Advi-
21 sor designated under subsection (d), to the
22 best of the subcontractor's knowledge and
23 belief, whether there has been any adminis-
24 trative merits determination, arbitral
25 award or decision, or civil judgment, as de-

1 fined in guidance issued by the Secretary
2 of Labor, rendered against the subcon-
3 tractor in the preceding 3 years for viola-
4 tions of any of the labor or civil rights laws
5 listed under subparagraph (A); and

6 (ii) to update such information every
7 6 months for the duration of the sub-
8 contract; and

9 (C) to consider the advice rendered by the
10 executive agency's Labor Compliance Advisor
11 designated under subsection (d), or information
12 submitted by a subcontractor pursuant to sub-
13 paragraph (B), in determining whether the sub-
14 contractor is a responsible source with a satis-
15 factory record of integrity and business ethics—

16 (i) prior to awarding the subcontract;

17 or

18 (ii) in the case of a subcontract that
19 is awarded or will become effective within
20 5 days of the prime contract being award-
21 ed, not later than 30 days after awarding
22 the subcontract.

23 (2) PRE-AWARD CORRECTIVE MEASURES.—

24 (A) IN GENERAL.—A contracting officer,
25 prior to awarding a covered contract, shall, as

1 part of the responsibility determination, provide
2 an offeror who makes a disclosure pursuant to
3 paragraph (1) an opportunity to report any
4 steps taken to correct the violations of or im-
5 prove compliance with the labor or civil rights
6 laws listed in subparagraph (A) of such para-
7 graph, including any agreements entered into
8 with an enforcement agency.

9 (B) CONSULTATION.—The executive agen-
10 cy’s Labor Compliance Advisor designated
11 under subsection (d), in consultation with rel-
12 evant enforcement agencies, shall advise the
13 contracting officer whether agreements are in
14 place or are otherwise needed to address appro-
15 priate remedial measures, compliance assist-
16 ance, steps to resolve issues to avoid further
17 violations, or other related matters concerning
18 the offeror.

19 (C) RESPONSIBILITY DETERMINATION.—
20 The contracting officer, in consultation with the
21 executive agency’s Labor Compliance Advisor
22 designated under subsection (d), shall consider
23 information provided by the offeror under this
24 subsection in determining whether the offeror is
25 a responsible source with a satisfactory record

1 of integrity and business ethics. The determina-
2 tion shall be based on the guidance reissued
3 under subsection (e)(2)(A) and the final rule
4 reissued under subsection (e)(1).

5 (3) REFERRAL OF INFORMATION TO SUSPEN-
6 SION AND DEBARMENT OFFICIALS.—As appropriate,
7 contracting officers, in consultation with their execu-
8 tive agency’s Labor Compliance Advisor, shall refer
9 matters related to information provided under sub-
10 paragraphs (A) and (B) of paragraph (1) to the ex-
11 ecutive agency’s suspension and debarment official
12 in accordance with agency procedures.

13 (c) POST-AWARD CONTRACT ACTIONS.—

14 (1) INFORMATION UPDATES.—The contracting
15 officer for a covered contract shall require that the
16 contractor update the information provided under
17 subparagraphs (A) and (B) of subsection (b)(1)
18 every 6 months.

19 (2) CORRECTIVE ACTIONS.—

20 (A) PRIME CONTRACT.—The contracting
21 officer, in consultation with the Labor Compli-
22 ance Advisor designated pursuant to subsection
23 (d), shall determine whether any information
24 provided under paragraph (1) warrants correc-
25 tive action. Such action may include—

- 1 (i) an agreement requiring appro-
2 priate remedial measures;
3 (ii) compliance assistance;
4 (iii) resolving issues to avoid further
5 violations;
6 (iv) the decision not to exercise an op-
7 tion on a contract or to terminate the con-
8 tract; or
9 (v) referral to the agency suspending
10 and debaring official.

11 (B) SUBCONTRACTS.—The prime con-
12 tractor for a covered contract, in consultation
13 with the Labor Compliance Advisor, shall deter-
14 mine whether any information provided under
15 subsection (b)(1)(B) warrants corrective action,
16 including remedial measures, compliance assist-
17 ance, and resolving issues to avoid further viola-
18 tions.

19 (C) DEPARTMENT OF LABOR.—The Sec-
20 retary of Labor shall, as appropriate, inform
21 executive agencies of its investigations of con-
22 tractors and subcontractors on covered con-
23 tracts for purposes of determining the appro-
24 priateness of actions described under subpara-
25 graphs (A) and (B).

1 (d) LABOR COMPLIANCE ADVISORS.—

2 (1) IN GENERAL.—Each executive agency shall
3 designate a senior official to act as the agency’s
4 Labor Compliance Advisor.

5 (2) DUTIES.—The Labor Compliance Advisor
6 shall—

7 (A) meet quarterly with the Deputy Sec-
8 retary, Deputy Administrator, or equivalent ex-
9 ecutive agency official with regard to matters
10 covered under this section;

11 (B) work with the acquisition workforce,
12 agency officials, and agency contractors to pro-
13 mote greater awareness and understanding of
14 the requirements of the labor and civil rights
15 laws listed in subsection (b)(1)(A), including
16 record keeping, reporting, and notice require-
17 ments, as well as best practices for obtaining
18 compliance with these requirements;

19 (C) coordinate assistance for executive
20 agency contractors seeking help in addressing
21 and preventing violations of such laws;

22 (D) in consultation with the Secretary of
23 Labor or other relevant enforcement agencies,
24 and pursuant to subsection (b)(2) as necessary,
25 provide assistance to contracting officers re-

1 regarding appropriate actions to be taken in re-
2 sponse to violations of the labor or civil rights
3 laws listed in subsection (b)(1)(A) identified
4 prior to or after contracts are awarded, and ad-
5 dress complaints in a timely manner, by—

6 (i) providing assistance to contracting
7 officers and other executive agency officials
8 in reviewing the information provided
9 under paragraphs (1) and (2) of subsection
10 (b) and subsection (c)(1), or other infor-
11 mation indicating such a violation, in order
12 to assess the serious, repeated, willful, or
13 pervasive nature of any such violation and
14 evaluate steps contractors have taken to
15 correct such violations or improve compli-
16 ance with relevant requirements;

17 (ii) helping agency officials determine
18 the appropriate response to address viola-
19 tions of the labor or civil rights laws listed
20 in subsection (b)(1)(A) or other informa-
21 tion indicating such a violation (particu-
22 larly a serious, repeated, willful, or perva-
23 sive violation), including an agreement re-
24 quiring appropriate remedial measures, a
25 decision not to award a contract or exer-

1 cise an option on a contract, contract ter-
2 mination, or a referral to the executive
3 agency suspension and debarment official;
4 (iii) providing assistance to appro-
5 priate executive agency officials in receiv-
6 ing and responding to, or making referrals
7 of, complaints alleging violations by agency
8 contractors and subcontractors of the labor
9 or civil rights laws listed in subsection
10 (b)(1)(A); and
11 (iv) supporting contracting officers,
12 suspension and debarment officials, and
13 other agency officials in the coordination of
14 actions taken pursuant to this subsection
15 to ensure agency-wide consistency, to the
16 extent practicable;
17 (E) as appropriate, send information to
18 agency suspension and debarment officials in
19 accordance with agency procedures;
20 (F) consult with the agency's Chief Acqui-
21 sition Officer and Senior Procurement Execu-
22 tive, and the Department of Labor and other
23 relevant enforcement agencies as necessary, in
24 the development of regulations, policies, and
25 guidance addressing compliance by contractors

1 and subcontractors with the labor and civil
2 rights laws listed in subsection (b)(1)(A);

3 (G) make recommendations to the agency
4 to strengthen agency management of contractor
5 compliance with such labor and civil rights
6 laws;

7 (H) publicly report, on an annual basis, a
8 summary of agency actions taken to promote
9 greater compliance with such laws, including
10 the agency's response under this section to seri-
11 ous, repeated, willful, or pervasive violations of
12 such laws; and

13 (I) participate in the interagency meetings
14 regularly convened by the Secretary of Labor
15 under subsection (e)(2)(B)(iii).

16 (e) MEASURES TO ENSURE GOVERNMENTWIDE CON-
17 SISTENCY.—

18 (1) FEDERAL ACQUISITION REGULATION.—

19 (A) IN GENERAL.—Notwithstanding the
20 Joint Resolution disapproving the rule sub-
21 mitted by the Department of Defense, the Gen-
22 eral Services Administration, and the National
23 Aeronautics and Space Administration relating
24 to the Federal Acquisition Regulation (Public
25 Law 115–11; 131 Stat. 75) and section 553 of

1 title 5, United States Code, not later than 1
2 year after the date of enactment of this Act, the
3 Secretary of Defense, the Administrator of the
4 General Services Administration, and the Ad-
5 ministrator of the National Aeronautics and
6 Space Administration shall reissue the final rule
7 entitled “Federal Acquisition Regulation; Fair
8 Pay and Safe Workplaces” (81 Fed. Reg.
9 58562 (Aug. 25, 2016)), subject to subpara-
10 graph (B).

11 (B) UPDATED DATES.—The agencies de-
12 scribed in subparagraph (A) may, in reissuing
13 the final rule under such subparagraph—

14 (i) update any date provided in such
15 final rule as reasonable and necessary; and

16 (ii) revise any provision in such rule
17 for consistency with the requirements of
18 this section.

19 (2) DEPARTMENT OF LABOR.—

20 (A) GUIDANCE.—Not later than 1 year
21 after the date of enactment of this Act, the Sec-
22 retary of Labor shall reissue the guidance enti-
23 tled “Guidance for Executive Order 13673,
24 ‘Fair Pay and Safe Workplaces’” (81 Fed.

1 Reg. 58654 (Aug. 25, 2016)). In reissuing such
2 guidance, the Secretary of Labor may—

3 (i) update any date provided in such
4 guidance as reasonable and necessary; and

5 (ii) revise any provision in such guid-
6 ance for consistency with the requirements
7 of this section.

8 (B) **ADDITIONAL ACTIVITIES.**—The Sec-
9 retary of Labor shall—

10 (i) develop a process—

11 (I) for the Labor Compliance Ad-
12 visors designated pursuant to sub-
13 section (d) to consult with the Sec-
14 retary of Labor in carrying out the re-
15 sponsibilities of such Labor Compli-
16 ance Advisors under subsection
17 (d)(2)(D);

18 (II) by which contracting officers
19 and Labor Compliance Advisors may
20 give appropriate consideration to de-
21 terminations and agreements made by
22 the Secretary of Labor and the heads
23 of other executive agencies; and

24 (III) by which contractors may
25 enter into agreements with the Sec-

1 retary of Labor, or the head of an-
2 other executive agency, prior to being
3 considered for a contract;

4 (ii) review data collection require-
5 ments and processes, and work with the
6 Director of the Office of Management and
7 Budget, the Administrator of General
8 Services, and other agency heads to im-
9 prove such requirements and processes, as
10 necessary, to reduce the burden on con-
11 tractors and increase the amount of infor-
12 mation available to executive agencies;

13 (iii) regularly convene interagency
14 meetings of Labor Compliance Advisors to
15 share and promote best practices for im-
16 proving compliance with the labor and civil
17 rights laws listed in subsection (b)(1)(A);
18 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 DISCRIMINA-**
8 **TION, INCLUDING HARASS-**
9 **MENT**

10 **SEC. 401. DEFINITIONS.**

11 In this title:

12 (1) COMMISSION.—The term “Commission”
13 means the Equal Employment Opportunity Commis-
14 sion.

15 (2) COVERED ESTABLISHMENT.—The term
16 “covered establishment” has the meaning given the
17 term in section 302(a)(2).

18 (3) EMPLOYMENT DISCRIMINATION.—The term
19 “employment discrimination” means discrimination
20 that is in violation of applicable Federal, State, or
21 local employment law, including each of the fol-
22 lowing:

23 (A) Title VII of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e et seq.).

1 (B) The Government Employee Rights Act
2 of 1991 (42 U.S.C. 2000e–16a et seq.).

3 (C) The Congressional Accountability Act
4 of 1995 (2 U.S.C. 1301 et seq.).

5 (D) Subchapter II of chapter 5 of title 3,
6 United States Code.

7 (E) The Age Discrimination in Employ-
8 ment Act of 1967 (29 U.S.C. 621 et seq.).

9 (F) Title I and section 503 (for violations
10 with respect to that title) of the Americans with
11 Disabilities Act of 1990 (42 U.S.C. 12111 et
12 seq.; 12203).

13 (G) Sections 501 and 505 of the Rehabili-
14 tation Act of 1973 (29 U.S.C. 791, 794a).

15 (H) Section 6(d) of the Fair Labor Stand-
16 ards Act of 1938 (commonly known as the
17 “Equal Pay Act of 1963”) (29 U.S.C. 206(d)).

18 (I) Title II of the Genetic Information
19 Nondiscrimination Act of 2008 (42 U.S.C.
20 2000ff et seq.).

21 (J) Section 4311 of title 38, United States
22 Code.

23 (K) The Pregnant Workers Fairness Act
24 (42 U.S.C. 2000gg et seq.).

1 (L) Other Federal, State, or local employ-
2 ment law.

3 (4) EMPLOYER.—The term “employer” has the
4 meaning given the term in section 302(a)(5).

5 (5) WORKER.—The term “worker” has the
6 meaning given the term in section 302(a)(8).

7 **Subtitle A—National Grants for**
8 **Preventing and Addressing Em-**
9 **ployment Discrimination, In-**
10 **cluding Harassment**

11 **SEC. 411. DEFINITIONS.**

12 In this subtitle:

13 (1) DIRECTOR.—The term “Director” means
14 the Director of the Women’s Bureau of the Depart-
15 ment of Labor.

16 (2) ELIGIBLE ENTITY.—The term “eligible enti-
17 ty” means any of the following:

18 (A) A nonprofit organization, including a
19 community-based organization, nonprofit legal
20 aid organization, or labor organization, that
21 provides services and support to workers, in-
22 cluding by assisting workers in filing charges of
23 employment discrimination.

1 (B) An institution of higher education, as
2 defined in section 101 of the Higher Education
3 Act of 1965 (20 U.S.C. 1001).

4 **SEC. 412. GRANTS.**

5 (a) GRANTS.—The Director, in consultation with the
6 Commission, shall award grants under this section, on a
7 competitive basis, to eligible entities to assist such entities
8 in carrying out a program for preventing and addressing
9 employment discrimination, including harassment,
10 through activities authorized under subsection (b).

11 (b) USE OF FUNDS.—

12 (1) PERMISSIBLE ACTIVITIES.—A grant award-
13 ed under this section shall be used for activities to
14 prevent and address employment discrimination, in-
15 cluding harassment, which may include—

16 (A) educating workers about their rights
17 related to employment discrimination, including
18 harassment;

19 (B) educating employers and covered es-
20 tablishments about their obligations to prevent
21 and address employment discrimination, includ-
22 ing harassment;

23 (C) providing assistance to workers in
24 bringing complaints (including filing charges) of

1 employment discrimination, including harass-
2 ment;

3 (D) establishing networks for education,
4 communication, and participation in the work-
5 place and community;

6 (E) monitoring compliance of employers
7 and covered establishments with Federal, State,
8 and local civil rights, labor, and employment
9 laws;

10 (F) recruiting and hiring of staff and vol-
11 unteers; and

12 (G) any other activity the Director, in con-
13 sultation with the Commission, may reasonably
14 prescribe for the purpose of preventing and ad-
15 dressing employment discrimination, including
16 harassment.

17 (2) PROHIBITED ACTIVITIES.—Notwithstanding
18 paragraph (1), an eligible entity receiving a grant
19 under this section may not use the grant funds for
20 any purpose reasonably prohibited by the Director,
21 in consultation with the Commission, through notice
22 and comment rulemaking.

23 (c) TERM OF GRANTS.—Each grant awarded under
24 this section shall be available for expenditure for a period
25 not to exceed 3 years.

1 (d) APPLICATIONS.—

2 (1) IN GENERAL.—An eligible entity seeking a
3 grant under this section shall submit an application
4 for such grant to the Director in accordance with
5 this subsection.

6 (2) PARTNERSHIPS.—Multiple eligible entities
7 may submit a joint application under this subsection
8 that designates a single entity as the lead entity for
9 the purposes of receiving and disbursing funds re-
10 ceived through a grant under this section.

11 (3) CONTENTS.—An application under this sub-
12 section shall include—

13 (A) a description of a plan for the program
14 that the eligible entity proposes to carry out
15 with a grant under this section, including a
16 long-term strategy and detailed implementation
17 plan;

18 (B) information on the prevalence of viola-
19 tions of prohibitions on employment discrimina-
20 tion, including harassment, in the population
21 served by the eligible entity;

22 (C) information on any industry or geo-
23 graphic area targeted by the plan for such pro-
24 gram;

1 (D) information on the type of outreach
2 and relationship building that will be conducted
3 under such program;

4 (E) information on the training and edu-
5 cation that will be provided to workers, employ-
6 ers, and covered establishments under such pro-
7 gram; and

8 (F) the method by which the eligible entity
9 will measure the results of such program.

10 (e) SELECTION.—

11 (1) COMPETITIVE BASIS.—In accordance with
12 this section, the Director, in consultation with the
13 Commission, shall, on a competitive basis, select
14 grant recipients from among eligible entities that
15 have submitted an application meeting the require-
16 ments under subsection (d).

17 (2) PRIORITY.—The Director, in consultation
18 with the Commission, in selecting grant recipients
19 under paragraph (1), shall give priority to eligible
20 entities that—

21 (A) serve workers in any industry or geo-
22 graphic area that is most highly at risk for em-
23 ployment discrimination, including harassment,
24 as identified by the Director, in consultation
25 with the Commission; and

1 (B) demonstrate past and ongoing work to
2 prevent employment discrimination, including
3 harassment.

4 (f) PERFORMANCE EVALUATIONS.—

5 (1) IN GENERAL.—Each grant recipient under
6 this section shall develop procedures for reporting,
7 monitoring, measuring, and evaluating the activities
8 of each program or activity funded under this sec-
9 tion.

10 (2) GUIDELINES.—The procedures required
11 under paragraph (1) shall be in accordance with
12 guidelines established by the Director, in consulta-
13 tion with the Commission.

14 **SEC. 413. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated to the Direc-
16 tor such sums as may be necessary to carry out this sub-
17 title.

18 **Subtitle B—Grants for Legal Assist-**
19 **ance for Low-Income Workers**

20 **SEC. 421. DEFINITIONS.**

21 In this subtitle:

22 (1) COVERED CLIENT.—The term “covered cli-
23 ent” means an individual who—

24 (A) is an eligible client; and

1 (B) faces legal issues related to harass-
2 ment or other employment discrimination.

3 (2) ELIGIBLE CLIENT.—The term “eligible cli-
4 ent” has the meaning given the term in section 1002
5 of the Legal Services Corporation Act (42 U.S.C.
6 2996a) and the regulations of the Legal Services
7 Corporation.

8 (3) ELIGIBLE ENTITY.—The term “eligible enti-
9 ty” means—

10 (A) a nonprofit organization; and

11 (B) an individual who is licensed to prac-
12 tice law.

13 (4) SECRETARY.—The term “Secretary” means
14 the Secretary of Labor.

15 **SEC. 422. GRANTS FOR CIVIL LEGAL NEEDS RELATED TO**
16 **EMPLOYMENT DISCRIMINATION.**

17 (a) GRANTS AUTHORIZED.—

18 (1) IN GENERAL.—The Secretary is authorized
19 to provide financial assistance to eligible entities to
20 enable those eligible entities to provide for the civil
21 legal needs of covered clients that are related to em-
22 ployment discrimination, and to provide for those cli-
23 ents such other services as are necessary to carry
24 out the purposes of this subtitle, including any of
25 the following activities:

1 (A) Providing covered clients advice, legal
2 services, or representation.

3 (B) Assisting covered clients in utilizing
4 the employment discrimination complaint proc-
5 ess of the Commission or any other Federal,
6 State, or local agency enforcing an employment
7 discrimination law.

8 (C) Assisting covered clients in utilizing a
9 private employment discrimination complaint
10 process.

11 (D) Conducting outreach activities to pub-
12 licize the services offered under this section.

13 (2) CITIZENSHIP STATUS.—An eligible entity
14 receiving a grant under this section shall provide
15 services to a covered client without regard to the
16 citizenship status or authorization to work of the
17 covered client.

18 (b) APPLICATION.—In order to be eligible to receive
19 a grant under this section, an eligible entity shall submit
20 an application to the Secretary at such time and in such
21 manner as the Secretary may require. Such application
22 shall include—

23 (1) a description of the services that the eligible
24 entity proposes to provide, implement, improve, or
25 expand;

1 (2) a description of the covered clients the eligi-
2 ble entity intends to serve;

3 (3) evidence of the eligible entity's capacity to
4 provide services to covered clients, such as the eligi-
5 ble entity's record of success representing eligible cli-
6 ents in legal matters relating to employment dis-
7 crimination, or the eligible entity's prior experience
8 serving clients who cannot afford legal counsel;

9 (4) an explanation of how the services the eligi-
10 ble entity intends to provide will assist covered cli-
11 ents in addressing legal issues related to employment
12 discrimination; and

13 (5) any other information that the Secretary
14 may require.

15 (c) AWARD BASIS.—The Secretary shall, in consulta-
16 tion with the Legal Services Corporation, award and over-
17 see grants under this section pursuant to such procedures
18 and criteria as the Secretary may require. Such proce-
19 dures and criteria shall include consideration of—

20 (1) whether the eligible entity has demonstrated
21 an understanding of the legal needs of covered cli-
22 ents;

23 (2) the eligible entity's capacity to provide serv-
24 ices to covered clients, which may be demonstrated
25 through evidence described in subsection (b)(3);

1 (3) the eligible entity's knowledge of applicable
2 Federal, State, and local employment discrimination
3 laws;

4 (4) the eligible entity's capacity and ability to
5 access other resources;

6 (5) the eligible entity's ability to ensure con-
7 tinuity of service to covered clients with pending
8 legal issues; and

9 (6) other factors that the Secretary determines
10 are relevant.

11 (d) **EQUITABLE DISTRIBUTION.**—To the extent prac-
12 ticable, in awarding grants under this section, the Sec-
13 retary, in consultation with the Legal Services Corpora-
14 tion, shall ensure that the grants are made so as to provide
15 the most economical and effective delivery of services de-
16 scribed in subsection (a)(1) to covered clients in both
17 urban and rural areas, with consideration of the geo-
18 graphic distribution of persons in poverty.

19 (e) **DURATION OF THE GRANT.**—

20 (1) **IN GENERAL.**—A grant under this section
21 shall be for a term of not less than 1 year and not
22 more than 5 years.

23 (2) **RENEWAL.**—The Secretary may renew a
24 grant awarded under this section for a period of not
25 more than 2 additional years if the eligible entity

1 demonstrates that the eligible entity is effectively
2 using funds and that the renewal of the grant will
3 allow the eligible entity to scale up the provision of
4 services, replicate the program involved, or provide
5 continuity of service to covered clients.

6 (f) REPORT.—Not later than 2 years after the date
7 of enactment of this section, the Secretary shall provide
8 to the Committee on Health, Education, Labor, and Pen-
9 sions of the Senate and the Committee on Education and
10 Workforce of the House of Representatives a report on
11 the implementation of the grant program under this sec-
12 tion, including—

13 (1) a description of the services provided using
14 grant assistance under this section, including a de-
15 tailed description of the types of legal issues ad-
16 dressed by eligible entities and the number of cov-
17 ered clients served; and

18 (2) an assessment of the number of individuals
19 facing one or more legal issues related to employ-
20 ment discrimination who cannot afford adequate
21 legal counsel, and the largest areas of unmet need
22 for that counsel.

23 **SEC. 423. AUTHORIZATION OF APPROPRIATIONS.**

24 There are authorized to be appropriated to carry out
25 this subtitle such sums as may be necessary.

1 **Subtitle C—Grants for a System of**
2 **State Advocacy**

3 **SEC. 431. PURPOSE.**

4 The purpose of this subtitle is to provide allotments
5 to support a system of advocacy (referred to in this sub-
6 title as a “system”) in each State to protect the legal and
7 human rights of workers in accordance with applicable
8 Federal, State, and local employment discrimination law.

9 **SEC. 432. DEFINITIONS.**

10 In this subtitle:

11 (1) RECORD.—The term “record” includes—

12 (A) a report prepared by an employer, cov-
13 ered establishment, or staff person charged with
14 investigating reports of employment discrimina-
15 tion that describes incidents of possible dis-
16 crimination and the steps taken to investigate
17 those incidents;

18 (B) statistical information related to em-
19 ployment decisions and the race, sex (including
20 sexual orientation and gender identity), religion,
21 national origin, age, disability, genetic informa-
22 tion, or other protected characteristics of work-
23 ers;

1 (C) records described in section 11(c) of
2 the Fair Labor Standards Act (29 U.S.C.
3 211(c)); and

4 (D) any such similar record, as may be
5 necessary to carry out the purposes of this sub-
6 title.

7 (2) SECRETARY.—The term “Secretary” means
8 the Secretary of Labor.

9 (3) STATE.—The term “State”, except as oth-
10 erwise provided, includes, in addition to each of the
11 several States of the United States, the District of
12 Columbia, the Commonwealth of Puerto Rico, the
13 United States Virgin Islands, Guam, American
14 Samoa, and the Commonwealth of the Northern
15 Mariana Islands.

16 **SEC. 433. ALLOTMENTS AND PAYMENTS.**

17 (a) ALLOTMENTS.—

18 (1) IN GENERAL.—To assist States in carrying
19 out a system meeting the requirements under section
20 434, including the activities for which the system
21 has authority as described in that section, the Sec-
22 retary shall make allotments, on a fiscal year basis,
23 to States from the amounts appropriated under sec-
24 tion 436 and not reserved under paragraph (5).

1 (2) MINIMUM ALLOTMENTS.—In any case in
2 which—

3 (A) the total amount appropriated under
4 section 436 for a fiscal year is not less than
5 \$20,000,000, the allotment under paragraph
6 (1) for such fiscal year—

7 (i) to each of American Samoa,
8 Guam, the United States Virgin Islands,
9 and the Commonwealth of the Northern
10 Mariana Islands may not be less than
11 \$100,000; and

12 (ii) to any State not described in
13 clause (i) may not be less than \$200,000;
14 and

15 (B) the total amount appropriated under
16 section 436 for a fiscal year is less than
17 \$20,000,000, the allotment under paragraph
18 (1) for such fiscal year—

19 (i) to each of American Samoa,
20 Guam, the United States Virgin Islands,
21 and the Commonwealth of the Northern
22 Mariana Islands may not be less than
23 \$50,000; and

24 (ii) to any State not described in
25 clause (i) may not be less than \$150,000.

1 (3) REDUCTION OF ALLOTMENT.—Notwith-
2 standing paragraphs (1) and (2), if the aggregate of
3 the amounts to be allotted to the States pursuant to
4 such paragraphs for any fiscal year exceeds the total
5 amount appropriated for such allotments under sec-
6 tion 436 for such fiscal year, the amount to be allot-
7 ted to each State for such fiscal year shall be pro-
8 portionately reduced.

9 (4) INCREASE IN ALLOTMENTS.—If the sum ap-
10 appropriated under section 436 and not reserved under
11 paragraph (5) for any fiscal year exceeds the aggre-
12 gate of the minimum allotments for all States under
13 this subsection for that fiscal year, such excess
14 amount shall be allotted among the States, including
15 American Samoa, Guam, the United States Virgin
16 Islands, and the Commonwealth of the Northern
17 Mariana Islands, so as to increase proportionately
18 the minimum allotment for each State.

19 (5) TECHNICAL ASSISTANCE; AMERICAN INDIAN
20 CONSORTIUMS.—In any case in which the total
21 amount appropriated under section 436 for a fiscal
22 year is more than \$24,500,000, the Secretary
23 shall—

24 (A) use not more than 2 percent of the
25 amount appropriated to provide technical assist-

1 ance to systems that meet the requirements
2 under section 434 with respect to activities car-
3 ried out under this subtitle (consistent with re-
4 quests by such systems for such assistance for
5 the year); and

6 (B) provide a grant in accordance with sec-
7 tion 434(d) and in an amount described in
8 paragraph (2)(A)(i), to an American Indian
9 consortium to provide protection and advocacy
10 services.

11 (6) REALLOTMENTS.—

12 (A) IN GENERAL.—If the Secretary deter-
13 mines that an amount of an allotment to a
14 State for a use in a fiscal year (or the following
15 fiscal year, as provided in subsection (c)) will
16 not be required by the State during the fiscal
17 year (or during such following fiscal year) for
18 the purpose for which the allotment was made,
19 the Secretary shall reallocate the amount as de-
20 scribed in this paragraph.

21 (B) TIMING.—The Secretary may make
22 such a reallocation from time to time, on such
23 date as the Secretary may fix, but not earlier
24 than 30 days after the Secretary has published

1 notice of the intention of the Secretary to make
2 the reallocation in the Federal Register.

3 (C) AMOUNTS.—The Secretary shall reallocate
4 the amount to other States with respect to
5 which the Secretary has not made the deter-
6 mination described in subparagraph (A). The
7 Secretary shall reallocate that amount in propor-
8 tion to the original allotments of the other
9 States for such fiscal year, but shall reduce
10 such proportionate amount for any of the other
11 States by the sum (if any) of the proportionate
12 amount that exceeds the total that the Sec-
13 retary estimates the State needs and will be
14 able to use in a fiscal year (or the following fis-
15 cal year, as provided in subsection (c)) and
16 shall proportionately reallocate such sum to the re-
17 maining States.

18 (D) TREATMENT.—Any amount reallocated
19 to a State under this subsection for a fiscal
20 year shall be deemed to be a part of the allot-
21 ment of the State under paragraph (1) for such
22 fiscal year.

23 (b) PAYMENT TO SYSTEMS.—The Secretary shall pay
24 directly to each State that has a system in the State that
25 complies with the provisions of this subtitle the amount

1 of the allotment made for the State under this section,
2 unless the system specifies otherwise, to be used in sup-
3 port of the system.

4 (c) UNOBLIGATED FUNDS.—Any amount paid to a
5 State under this subtitle for a fiscal year and remaining
6 unobligated at the end of such year shall remain available
7 to such State for the next fiscal year, for the purposes
8 for which such amount was paid.

9 **SEC. 434. SYSTEM REQUIRED.**

10 (a) IN GENERAL.—In order for a State to receive an
11 allotment under this subtitle, the State shall—

12 (1) have in effect a system to protect and advo-
13 cate for the rights of workers within the State who
14 are or who may be eligible for relief from applicable
15 employment discrimination laws; and

16 (2) designate a private nonprofit entity (re-
17 ferred to in this subtitle as an “lead entity”) to sup-
18 port and carry out the activities of that system.

19 (b) LEAD ENTITY REQUIREMENTS.—

20 (1) CHARACTERISTICS OF LEAD ENTITY.—The
21 State shall ensure that the lead entity designated
22 under subsection (a) shall—

23 (A) not be administered by the State, or
24 an agency or instrumentality of a State; and

1 (B) be independent of any entity that rep-
2 represents the interest of the State, employers,
3 covered establishments, or other corporations.

4 (2) NO REDESIGNATION OF LEAD ENTITY.—
5 The lead entity designated under subsection (a) shall
6 not be redesignated unless—

7 (A) there is good cause for the redesigna-
8 tion;

9 (B) the State has given the lead entity no-
10 tice of the intention to make such redesigna-
11 tion, including notice regarding the good cause
12 for such redesignation, and given the lead entity
13 an opportunity to respond to the assertion that
14 good cause has been shown;

15 (C) the lead entity has given timely notice
16 of the intended redesignation directly to clients
17 of the lead entity;

18 (D) the State has provided, in plain
19 English and in accessible formats for individ-
20 uals with disabilities and for individuals who
21 primarily speak a language other than English,
22 an opportunity for public comment; and

23 (E) the lead entity has an opportunity to
24 appeal the redesignation to the Secretary, on

1 the basis that the redesignation was not for
2 good cause.

3 (3) COSTS OF NOTICE.—The costs of the notice
4 required under paragraph (2)(C) shall be paid by
5 the State.

6 (c) SYSTEM REQUIRED.—The system described in
7 subsection (a) shall—

8 (1) have the authority to—

9 (A) pursue legal, administrative, and other
10 appropriate remedies or approaches, as applica-
11 ble, to ensure the protection of, and advocacy
12 for, the rights of individuals within the State
13 who are or who may be eligible for relief from
14 employment discrimination; and

15 (B) provide information on and referral to
16 programs and services addressing the needs of
17 such individuals;

18 (2) have the authority—

19 (A) to investigate incidents of employment
20 discrimination, including harassment, and to
21 conduct investigations of systemic employment
22 discrimination, of such individuals if the inci-
23 dents are reported to the lead entity or if there
24 is probable cause to believe that the incidents
25 occurred; and

1 (B) to, as necessary and appropriate, in-
2 vestigate and gather data regarding the wages,
3 hours, and other conditions and practices of
4 employment, enter and inspect such places and
5 such records (and make such transcriptions
6 thereof), question individuals described in para-
7 graph (1)(A), and investigate facts, conditions,
8 practices, or matters;

9 (3) on an annual basis, develop, submit to the
10 Secretary, and take action with regard to goals and
11 priorities developed through data driven strategic
12 planning for the system's activities;

13 (4) on an annual basis, provide to the public,
14 including individuals described in paragraph (1)(A),
15 the regional office of the Commission that serves the
16 State, and any State agency whose purpose is to re-
17 duce, eliminate, or redress employment discrimina-
18 tion, an opportunity to comment on—

19 (A) the goals and priorities established by
20 the lead entity and the rationale for the estab-
21 lishment of such goals; and

22 (B) the activities of the lead entity, includ-
23 ing the coordination of services with the Dis-
24 trict office of the Commission that serves the
25 State, any State agency whose purpose is to re-

1 duce, eliminate, or redress employment dis-
2 crimination, and entities carrying out other re-
3 lated programs;

4 (5) establish a grievance procedure for clients
5 or prospective clients of the lead entity to ensure
6 that individuals described in paragraph (1)(A) have
7 full access to services of the lead entity;

8 (6) have access at reasonable times to any indi-
9 vidual described in paragraph (1)(A) in a location in
10 which services and other assistance are provided to
11 such an individual, in order to carry out the purpose
12 of this subtitle;

13 (7) have access, not later than 3 business days
14 after the lead entity makes a written request, to the
15 records of any individual described in paragraph
16 (1)(A) (including Federal and State workers) who is
17 a client of the lead entity if such individual, or other
18 legal representative of such individual, has author-
19 ized the lead entity to have such access;

20 (8) hire and maintain sufficient numbers and
21 types of staff (qualified by training and experience)
22 to carry out the lead entity's functions, except that
23 the State involved shall not apply hiring freezes, re-
24 ductions in force, prohibitions on travel, or other
25 policies to the staff of the lead entity, to the extent

1 that such policies would impact the staff or func-
2 tions of the lead entity funded with Federal funds
3 or would prevent the lead entity from carrying out
4 the functions of the system under this subtitle;

5 (9) have the authority to educate policymakers;
6 and

7 (10) provide assurances to the Secretary that
8 funds allotted to the State under section 433 will be
9 used to supplement, and not supplant, the non-Fed-
10 eral funds that would otherwise be made available
11 for the purposes for which the allotted funds are
12 provided.

13 (d) AMERICAN INDIAN CONSORTIUM.—

14 (1) IN GENERAL.—Upon application to the Sec-
15 retary, the Secretary shall allot funds to one or more
16 American Indian consortiums established to provide
17 services under this subtitle, in accordance with sec-
18 tion 433(a)(5). Such funds shall be used to support
19 services under this subtitle.

20 (2) COORDINATION OF SYSTEMS.—An American
21 Indian consortium under paragraph (1) shall be con-
22 sidered to be a system for purposes of this subtitle
23 and shall coordinate those services with other sys-
24 tems serving the same geographic area.

1 (3) RESPONSIBLE PARTY.—The Tribal council
2 that designates the consortium shall carry out the
3 responsibilities and exercise the authorities specified
4 for a State in this subtitle, with regard to the con-
5 sortium.

6 **SEC. 435. ADMINISTRATION.**

7 (a) GOVERNING BOARD.—The system described in
8 section 434 shall be organized as a private nonprofit entity
9 with a multimember governing board, and such governing
10 board shall be selected according to the policies and proce-
11 dures of the system, except that—

12 (1) the governing board shall be composed of
13 members who broadly represent or are knowledge-
14 able about the needs of the individuals served by the
15 system;

16 (2) a majority of the members of the board
17 shall be—

18 (A) attorneys representing the interests of
19 workers;

20 (B) advocates for workers with experience
21 working to protect or expand workers' rights; or

22 (C) workers who have experienced employ-
23 ment discrimination;

24 (3) not more than $\frac{1}{3}$ of the members of the
25 governing board may be appointed by the chief execu-

1 utive officer of the State involved, in the case of any
2 State in which such officer has the authority to ap-
3 point members of the board;

4 (4) the membership of the governing board
5 shall be subject to term limits set by the system to
6 ensure rotating membership; and

7 (5) any vacancy in the board shall be filled not
8 later than 60 days after the date on which the va-
9 cancy occurs.

10 (b) LEGAL ACTION.—

11 (1) IN GENERAL.—Nothing in this subtitle shall
12 preclude a system from bringing a suit on behalf of
13 individuals described in section 434(c)(1)(A) against
14 a State, or an agency or instrumentality of a State.

15 (2) USE OF AMOUNTS FROM JUDGMENT.—An
16 amount received pursuant to a suit described in
17 paragraph (1) through a court judgment may only
18 be used by the system to further the purpose of this
19 subtitle and shall not be used to augment payments
20 to legal contractors or to award personal bonuses.

21 (c) PUBLIC NOTICE OF FEDERAL ONSITE REVIEW.—

22 The Secretary shall provide advance public notice of, and
23 solicit public comments regarding, any Federal pro-
24 grammatic or administrative onsite review of a system
25 conducted under this subtitle. The Secretary shall prepare

1 an onsite visit report containing the results of such review,
2 which shall be distributed to the Governor of the State
3 and to other interested public and private parties. The
4 comments received in response to the notice and public
5 comment solicitation shall be included in the onsite visit
6 report.

7 (d) REPORTS.—

8 (1) IN GENERAL.—Beginning for the fiscal year
9 after the fiscal year during which this Act is en-
10 acted, each system established in a State pursuant
11 to this subtitle shall annually prepare and transmit
12 to the Secretary a report that describes the activi-
13 ties, accomplishments, and expenditures of the sys-
14 tem during the preceding fiscal year, including—

15 (A) a description of the system’s goals, the
16 extent to which the goals were achieved, and
17 barriers to that achievement; and

18 (B) the process used to obtain public
19 input, the nature of such input, and how such
20 input was used.

21 (2) DISCLOSURE OF INFORMATION.—For pur-
22 poses of the report described in paragraph (1), the
23 Secretary shall not require the system to disclose the
24 identity of, or any other personally identifiable infor-

1 mation related to, any individual requesting assist-
2 ance from the system.

3 **SEC. 436. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated for allot-
5 ments under section 433 such sums as may be necessary.

6 **TITLE V—GENERAL PROVISIONS**

7 **SEC. 501. SEVERABILITY.**

8 If any provision of this Act, an amendment made by
9 this Act, or the application of such provision or amend-
10 ment to any person or circumstance is held to be unconsti-
11 tutional, the remainder of this Act and the amendments
12 made by this Act, and the application of the provision or
13 amendment to any other person or circumstance, shall not
14 be affected.