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117TH CONGRESS
1ST SESSION

# H. R. 5994

To prevent discrimination and harassment in employment.

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2021

Ms. CLARK of Massachusetts (for herself, Ms. PRESSLEY, Ms. SLOTKIN, Ms. GARCIA of Texas, Ms. STRICKLAND, Ms. BARRAGÁN, Ms. BASS, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BOWMAN, Ms. BROWNLEY, Mr. CARSON, Mr. CARTWRIGHT, Mr. CASTEN, Ms. CHU, Mr. COHEN, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Mr. DEFAZIO, Ms. DELBENE, Mrs. DINGELL, Mr. ESPAILLAT, Mr. EVANS, Ms. LOIS FRANKEL of Florida, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Mr. GRIJALVA, Mrs. HAYES, Ms. JACKSON LEE, Ms. JACOBS of California, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Mr. KEATING, Ms. KELLY of Illinois, Mr. KILDEE, Mr. KILMER, Ms. KUSTER, Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Ms. LEGER FERNANDEZ, Mr. LEVIN of Michigan, Mr. LIEU, Mr. LOWENTHAL, Mr. LYNCH, Mrs. CAROLYN B. MALONEY of New York, Mrs. MCBATH, Mr. MEEKS, Ms. MENG, Mr. MOULTON, Ms. NEWMAN, Ms. NORTON, Mr. PAYNE, Mr. POCAN, Mr. RASKIN, Miss RICE of New York, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SMITH of Washington, Ms. SPEIER, Mr. SUOZZI, Ms. TITUS, Ms. TLAIB, Mrs. TORRES of California, Mrs. TRAHAN, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. YARMUTH, Mr. AUCHINCLOSS, and Ms. JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on the Judiciary, House Administration, Oversight and Reform, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

To prevent discrimination and harassment in employment.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Bringing an End to Harassment by Enhancing Accountability and Rejecting Discrimination in the Workplace Act'' or the ''BE HEARD in the Workplace Act''.

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

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Sec. 302. Nondisclosure agreements.
Sec. 303. Prohibition on mandatory arbitration and protection of concerted legal action.
Sec. 304. Federal contractor compliance with civil rights laws.

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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.

**SEC. 3. PURPOSES.**

The purposes of this Act are—

(1) to prevent and reduce prohibited discrimination and harassment in employment;

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

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

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

(5) to expand workers' access to counsel and advocacy services to protect the legal and human rights of workers by preventing and reducing discrimination and harassment and responding to violations of worker's rights.

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

**SEC. 100. DEFINITIONS.**

In this title:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission.

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

# Subtitle A—Preventing Workplace Harassment

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

(a) POLICIES.—

(1) IN GENERAL.—Beginning not later than 1 year after the date of enactment of this Act, each employer who has 15 or more employees shall adopt, maintain, and periodically review a comprehensive nondiscrimination policy, which shall establish policies and procedures concerning prohibited discrimination and harassment in employment.

(2) DISSEMINATION AND POSTING.—The employer shall disseminate the comprehensive nondiscrimination policy to each employee at the beginning of employment, annually, and on the issuance of any update to the comprehensive nondiscrimination policy. The employer shall post the comprehensive nondiscrimination policy in prominent locations, including in a prominent location on the employer's website.

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

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

(2) a description of the types of behaviors prohibited by the policy;

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

(4) a description of multiple methods for reporting such discrimination or harassment;

(5) a general description of how the employer will conduct prompt, thorough, and impartial investigations and respond to complaints regarding such discrimination or harassment;

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

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

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

(c) ACCESSIBILITY.—The comprehensive nondiscrimination policy shall be made available in plain English and in an accessible manner for individuals with disabilities and for individuals who primarily speak a language other than English.

(d) ENFORCEMENT.—

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

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

(e) REGULATIONS.—The Commission shall have authority to promulgate regulations to carry out this section.

**SEC. 102. NONDISCRIMINATION TRAINING.**

(a) IN GENERAL.—The Commission shall promulgate regulations to require appropriate employers, as determined by the Commission, to provide—

(1) in-person or other interactive training for each employee regarding discriminatory and harassing behaviors in employment; and

(2) training specifically designed for supervisors regarding the prevention of and response to discrimination and harassment in employment, including retaliation.

(b) REQUIRED TRAINING.—The requirements described in subsection (a) shall—

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

(2) identify specific elements of such training.

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

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

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

(b) CONTENTS.—Such resource materials shall include, at a minimum—

(1) model comprehensive nondiscrimination policies concerning prohibited discrimination and harassment in employment, as described in section 101, for use by employers with fewer than 15 employees, which shall—

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

(B) take into account the resources available to such employers;

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

(D) be made available in plain English and in accessible formats for individuals with dis-

abilities and for individuals who primarily speak a language other than English;

(E) include a definition of prohibited discrimination and harassment in employment;

(F) include examples of prohibited discriminatory and harassing behaviors;

(G) describe how the employer may conduct prompt, thorough, and impartial investigations and respond to complaints regarding such prohibited discrimination and harassment;

(H) include a prohibition against retaliation related to such discrimination or harassment;

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

(J) describe behaviors that would constitute retaliation; and

(K) include a description of potential consequences for violating the comprehensive nondiscrimination policy; and

(2) model trainings regarding prohibited discrimination and harassment in employment, as de-

scribed in section 102, for use by employers with fewer than 15 employees, which shall—

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

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

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

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

(E) include an explanation of prohibited discrimination and harassment in employment, including retaliation related to such discrimination and harassment;

(F) describe the affirmative behaviors that contribute to preventing and reducing harassment and discrimination in employment;

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

(H) include best practices for preventing prohibited discrimination and harassment specific to industries in which the Commission determines that harassment is particularly prevalent or severe; and

(I) include any additional information the Commission determines may prevent discrimination and harassment of employees.

(c) INDIVIDUALIZATION.—The Commission shall ensure that resource materials under this section are designed to facilitate individual employers to customize training to address the needs of their workplaces, including differing work structures, facilities, and tasks.

**SEC. 104. EDUCATION, TRAINING, AND TECHNICAL ASSISTANCE TO EMPLOYERS.**

The Commission shall have the authority to—

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

(2) use the materials developed by the Commission for any education, technical assistance, or training offered by the Commission in accordance with

that section in any education and outreach activities carried out by the Commission; and

(3) use funds from the Commission's EEOC Education, Technical Assistance, and Training Revolving Fund, established under section 705(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(k)), to pay the full salaries of any Commission employees that develop and administer any education, technical assistance, or training programs offered by the Commission.

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

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

(b) MEMBERSHIP.—The Task Force established under paragraph (1) shall include membership that reflects a broad diversity of experience and expertise relating to prohibited harassment, including—

(1) employee advocates;

(2) researchers with expertise in organizational culture change or reducing behavior related to harassment and discrimination;

(3) legal practitioners with professional expertise related to harassment litigation on behalf of employees;

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

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

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

(7) union leaders.

(c) DUTIES.—The Task Force shall—

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

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

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

(1) a review of the prevalence of prohibited harassment in employment, including the results of the national prevalence survey described in section 111;

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

(3) assessments of the effectiveness of employment policies designed to prevent prohibited harassment in employment by changing behavior and culture;

(4) assessments of the effectiveness of processes for investigations into prohibited harassment in employment;

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

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

**SEC. 106. RESOURCE MATERIALS ON EMPLOYMENT CLIMATE ASSESSMENTS.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commission shall develop and make publicly available resource materials for employers on assessing the employment climate, including

the occurrence of prohibited harassment in employment, in order to assist such employers in determining the effectiveness of measures the employer takes to prevent and address prohibited harassment in employment.

(b) EMPLOYMENT CLIMATE SURVEY.—Such resource materials shall include a model survey regarding prohibited harassment in employment, which shall be available for an employer to use (at the employer's discretion and employer's expense) in order to assess the employment climate. The model survey shall be—

(1) designed to assess employees' experiences related to prohibited harassment in employment;

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

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

(4) inclusive of individuals required to be afforded protection under section 301.

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

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

(2) questions designed to understand whether employees have access to and are familiar with the

employer's nondiscrimination and anti-harassment policies and procedures;

(3) questions to assess the employment climate; and

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

(d) MANDATORY EMPLOYEE PARTICIPATION PROHIBITED.—An employer may not compel or require employees to participate in a survey regarding prohibited harassment or discrimination in employment.

(e) REVIEW AND REVISION.—The Commission shall periodically review and revise the resource materials described in subsection (a) and the model survey developed under subsection (b).

**SEC. 107. ESTABLISHING AN OFFICE OF EDUCATION AND OUTREACH WITHIN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.**

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

(1) conduct outreach and education concerning prohibited discrimination and harassment in employment under Federal civil rights laws and available resources and remedies relating to those laws; and

(2) conduct a multi-year public awareness campaign to improve public awareness of the Commission, which shall include disseminating information about—

(A) the purpose of the Commission;

(B) the resources available through the Commission to prevent prohibited discrimination and harassment in employment;

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

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

(b) INFORMATION DISSEMINATED.—The information disseminated in accordance with subsection (a)(2) shall be made available in plain English and in an accessible manner for individuals with disabilities and for individuals who primarily speak a language other than English.

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

Compliance with section 101 or 102, or use of materials provided under subtitle A, is not an affirmative defense under applicable employment nondiscrimination laws.

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

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the

Commission's duties and activities, including such duties and activities authorized under this subtitle.

# Subtitle B—Research and Additional Resources for Harassment Prevention

### SEC. 111. NATIONAL PREVALENCE SURVEY ON HARASSMENT IN EMPLOYMENT.

(a) SURVEY.—The Bureau of the Census, the Commission, and the Bureau of Labor Statistics shall jointly develop a national prevalence survey on the prevalence of prohibited harassment in employment (referred to in this section as the ''national prevalence survey''). Such survey shall be administered by the Bureau of the Census not later than 1 year after the date of enactment of this Act, and every 3 years thereafter.

(b) CONTENTS.—The national prevalence survey shall include questions designed to collect such information from individuals as may be necessary to examine existing beliefs, attitudes, and understanding of prohibited harassment in employment, and the extent to which such harassment is experienced or observed by individuals, supervisors, and employers, including the information necessary for the report described in subsection (c).

(c) REPORT.—

(1) IN GENERAL.—Not later than 6 months after each national prevalence survey has been administered, the Bureau of the Census, the Commission, and the Bureau of Labor Statistics shall jointly prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives a report on the results of that survey.

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

(A) information about the extent to which individuals experience prohibited harassment in employment on the basis of sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), race, color, religion, national origin, age, disability, genetic information, and uniformed service status, and information about the interaction of different characteristics that may be the basis of harassment in employment;

(B) information about the prevalence of each such form of prohibited harassment in em-

ployment, disaggregated by industry and salary level, including across all wage bands; and

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

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

(A) Sexual orientation.

(B) Gender identity.

(C) Pregnancy.

(D) Childbirth.

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

(F) A sex stereotype.

(G) Sexual in nature.

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

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Bureau of the Census to carry out this section such sums as may be necessary for each fiscal year the national prevalence survey

is to be administered under subsection (a) or the report is to be submitted under subsection (c).

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

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

(1) The prevalence of specific behaviors associated with prohibited harassment in employment among Federal employees, including information about such behaviors disaggregated by each wage band.

(2) The impact of prohibited harassment in employment and violations of Federal civil rights laws on the Federal Government, in terms of monetary costs, attrition, and morale.

(3) The particular impact of prohibited harassment in employment on the experience of Federal employees with disabilities.

(4) Working in coordination with the Commission's Office of Federal Operations, a description of

the differences in Federal agency policies, strategies, reporting mechanisms, training programs, and other practices regarding preventing and addressing prohibited harassment in employment.

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

(6) Working in coordination with the Commission's Office of Federal Operations, joint recommendations from such Office and the Merit Systems Protection Board to Federal agencies on how to prevent and address prohibited harassment in employment.

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

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

(a) STUDY AND REPORT ON ENFORCEMENT OF NONDISCRIMINATION LAWS PROHIBITING HARASSMENT LAWS.—Not later than 1 year after the date of enactment of this Act, the United States Commission on Civil Rights shall prepare and submit to the Committee on Health,

Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives a report that shall examine enforcement of the nondiscrimination laws prohibiting harassment including—

(1) trends in enforcement of such laws;

(2) barriers to effective enforcement of such laws;

(3) best practices in enforcement of such laws;

(4) recommendations about how to improve enforcement of such laws, including whether establishing individual liability for discrimination and harassment in employment would improve enforcement of such laws; and

(5) how the experience of harassment for employees and individuals required to be afforded protections under section 301 has changed over time since the passage of such laws.

(b) STUDY AND REPORT ON PREVENTION OF HARASSMENT IN EMPLOYMENT.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Director of the National Institutes of Health shall enter into an agreement with the National Academies of Sciences, Engineering, and Medicine, through which the Na-

tional Academies of Science, Engineering, and Medicine shall conduct a study on preventing and addressing prohibited harassment in employment.

(2) CONTENTS.—Such study shall include—

(A) an evaluation of the existing research of the causes of prohibited harassment in employment, including retaliation related to such harassment, and gaps in such research;

(B) a review of the existing research regarding how prohibited harassment in employment impacts individuals;

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

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

(E) the identification of employment or societal factors that increase the likelihood of prohibited harassment in employment, particularly across industries with a high number of individuals who are vulnerable to experiencing such

prohibited harassment, including whether diversity in leadership positions within an organization reduces the likelihood of such prohibited harassment;

(F) an examination of methods of inducing, scaling, and sustaining institutional or organizational change to prevent prohibited harassment in employment;

(G) an analysis of policies, strategies, and practices that have been the most successful in preventing and addressing prohibited harassment in employment; and

(H) any other information or analysis necessary to identify the gaps in research and other measures described in subsection (c).

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the National Academies of Sciences, Engineering, and Medicine shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Education and Labor of the House of Representatives, and the Director of the National Institutes of Health, a report containing the results of the study conducted under this subsection and make recommendations to Congress, executive

branch agencies, private employers, and researchers. Such recommendations shall include ways that such training could be improved to result in behavioral and cultural changes that prevent and reduce behaviors associated with prohibited harassment in employment. The report and recommendations shall be made publicly available.

(c) SUPPORTING FURTHER RESEARCH ON PREVENTING AND UNDERSTANDING HARASSMENT IN EMPLOYMENT.—

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

(A) the gaps identified in the report required under subsection (b)(3) in research on the causes of prohibited harassment in employment, including retaliation related to such harassment;

(B) the gaps identified in the report required under subsection (b)(3) in research on

the psychological sequelae of prohibited harassment in employment, including retaliation related to such harassment;

(C) gaps identified in the report required under subsection (b)(3) in research on special populations and their risk for prohibited harassment in employment, including adolescents, older individuals, racial and ethnic minorities, individuals with disabilities, women, and other populations that could be disproportionately affected by prohibited harassment in employment;

(D) gaps identified in the report required under subsection (b)(3) in research on prohibited harassment in employment, including retaliation related to such harassment, as a risk factor for various mental health problems;

(E) gaps identified in the report required under subsection (b)(3) in research on sociocultural correlations within prohibited harassment in employment, including retaliation related to such harassment; and

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

ployment, including retaliation related to such harassment.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Institutes of Health to carry out this subsection such sums as may be necessary.

# Subtitle C—Preventing Harassment of Tipped Employees

**SEC. 121. TIPPED EMPLOYEES.**

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

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

''(I) for the 1-year period beginning on the effective date under subsection (e), $3.60 an hour;

''(II) for each succeeding 1-year period until the hourly wage under this clause equals the wage in effect under section 6(a)(1) for such period, an hourly wage equal to the amount

determined under this clause for the preceding year, increased by the lesser of—

"(aa) $1.50; or

"(bb) the amount necessary for the wage in effect under this clause to equal the wage in effect under section 6(a)(1) for such period, rounded up to the nearest multiple of $0.05; and

"(III) for each succeeding 1-year period after the increase made pursuant to subclause (II), the minimum wage in effect under section 6(a)(1); and".

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

(1) in the second sentence of the matter following clause (ii), by striking "of this subsection, and all tips received by such employee have been retained by the employee" and inserting "of this subsection. Any employee shall have the right to retain any tips received by such employee"; and

(2) by adding at the end the following: ''An employer shall inform each employee of the right and exception provided under the preceding sentence.''.

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

''(h) Not later than 60 days prior to the effective date of any increase in the required wage determined in accordance with subclause (II) or (III) of section 3(m)(2)(A)(i), the Secretary shall publish in the Federal Register and on the website of the Department of Labor a notice announcing each increase in such required wage.''.

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

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

(2) PUBLICATION OF NOTICE.—Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206),

as amended by subsection (c), is further amended by striking subsection (h).

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect on the date that is one day after the date on which the hourly wage under subclause (III) of section 3(m)(2)(A)(i) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)(A)(i)), as amended by subsection (a), takes effect.

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

# TITLE II—STRENGTHENING WORKPLACE RIGHTS

**SEC. 201. CLARIFYING SEXUAL ORIENTATION DISCRIMINATION AND GENDER IDENTITY DISCRIMINATION ARE UNLAWFUL SEX DISCRIMINATION.**

(a) EMPLOYMENT.—

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

**"SEC. 701A. RULES OF CONSTRUCTION.**

"Section 1106 shall apply to this title except that for purposes of that application, a reference in that section

to an 'unlawful practice' shall be considered to be a reference to an 'unlawful employment practice'.''.

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

(A) in the section header, by striking ''**SEX,**'' and inserting ''**SEX (INCLUDING SEXUAL ORIENTATION, GENDER IDENTITY, PREGNANCY, CHILDBIRTH, A MEDICAL CONDITION RELATED TO PREGNANCY OR CHILDBIRTH, AND A SEX STEREOTYPE),**'';

(B) except in subsections (e), (j) and (m), by striking ''sex,'' each place it appears and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),'';

(C) in subsection (e)(1), by striking ''enterprise,'' and inserting ''enterprise, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity,'';

(D) in subsection (h), by striking ''sex'' the second place it appears and inserting ''sex

(including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),'';

(E) in subsection (j)—

(i) by striking ''sex,'' the first place it appears and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''; and

(ii) by striking ''sex,'' the second and third places it appears and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''; and

(F) in subsection (m), by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''.

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

(A) by striking ''sex,'' the first place it appears and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''; and

(B) by striking ''employment.'' and inserting ''employment, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.''.

(4) CLAIMS.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''.

(5) EMPLOYMENT BY FEDERAL GOVERNMENT.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(A) in subsection (a), by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''; and

(B) in subsection (c), by striking ''sex'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''.

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

(A) in section 301(b), by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),'';

(B) in section 302(a)(1), by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''; and

(C) by adding at the end the following:

**''SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

''Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to 'race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical con-

dition related to pregnancy or childbirth, and a sex stereotype), or national origin' shall be considered to be a reference to 'race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), national origin, age, or disability'.''.

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

(A) in section 201(a)(1) (2 U.S.C. 1311(a)(1)) by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''; and

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

**''SEC. 209. RULES OF CONSTRUCTION AND CLAIMS.**

''Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except that for purposes of that application, a reference in that section 1106 to 'race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex

stereotype), or national origin' shall be considered to be a reference to 'race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), national origin, age, or disability'.''.

(8) CIVIL SERVICE REFORM ACT OF 1978.—Chapter 23 of title 5, United States Code, is amended—

(A) in section 2301(b)(2), by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),'';

(B) in section 2302—

(i) in subsection (b)(1)(A), by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),''; and

(ii) in subsection (d)(1), by striking ''sex,'' and inserting ''sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to

pregnancy or childbirth, and a sex stereotype),''; and

(C) by adding at the end the following:

**''SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

''Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter (and remedial provisions of this title related to this chapter) except that for purposes of that application, a reference in that section 1106 to 'race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), or national origin' shall be considered to be a reference to 'race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), national origin, age, disability, marital status, or political affiliation'.''.

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

(1) by redesignating sections 1101 through 1104 (42 U.S.C. 2000h et seq.) and sections 1105 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections 1102 through 1105 and sections 1108 and 1109, respectively;

(2) by inserting after the title heading the following:

**"SEC. 1101. DEFINITIONS AND RULES.**

"(a) DEFINITIONS.—In title VII:

"(1) RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; GENDER IDENTITY; NATIONAL ORIGIN.—The term 'race', 'color', 'religion', 'sex', or 'national origin', used with respect to an individual, includes—

"(A) the race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), or national origin, respectively, of another person with whom the individual is associated or has been associated; and

"(B) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), or national origin, respectively, of the individual.

"(2) GENDER IDENTITY.—The term 'gender identity' means the gender-related identity, appear-

ance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

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

''(4) SEXUAL ORIENTATION.—The term 'sexual orientation' means homosexuality, heterosexuality, or bisexuality.

''(b) RULES.—In title VII—

''(1) with respect to sex, an individual's pregnancy, childbirth, or related medical condition shall not receive less favorable treatment than other physical conditions; and

''(2) with respect to gender identity, an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual's gender identity.''; and

(3) by inserting after section 1105 the following:

**''SEC. 1106. RULES OF CONSTRUCTION.**

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

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

''(2) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than title VII, prohibiting a practice on the basis of sex.

''(b) CLAIMS AND REMEDIES NOT PRECLUDED.—Nothing in section 1101 or title VII shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the basis of race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), or national origin including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the BE HEARD in the Workplace Act, regulation, or policy.

''(c) NO NEGATIVE INFERENCE.—Nothing in section 1101 or title VII shall be construed to support any inference that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of pregnancy, childbirth, a medical condition related to

pregnancy or childbirth, sexual orientation, gender identity, or a sex stereotype.

**''SEC. 1107. CLAIMS.**

''The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, title VII, or provide a basis for challenging the application or enforcement of title VII.''.

**SEC. 202. COVERED EMPLOYERS.**

Section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)) is amended by striking ''fifteen'' and inserting ''one''.

**SEC. 203. COMPENSATORY AND PUNITIVE DAMAGES AVAILABLE.**

(a) CIVIL RIGHTS; DISABILITY.—

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

''(3) LOSSES.—Compensatory damages are available under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.''.

(2) CONFORMING AMENDMENTS.—

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

(i) by striking ''and, irrespective of the size of the employing office, 1977A(b)(3)(D)'' and inserting ''and 1977A(b)(3)''; and

(ii) by striking ''and 1981a(b)(3)(D)'' and inserting ''and 1981a(b)(3)''.

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

(C) Section 207 of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff–16) is amended, in paragraph (3) of each of subsections (a) through (e), by striking '', including the limitations contained in subsection (b)(3) of such section 1977A,''.

(b) AGE.—Section 7(b) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(b)) is amended—

(1) by striking ''(b) The'' and all that follows through the third sentence and inserting the following:

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

(2) in the second sentence of that subsection (b), as amended by paragraph (1), by striking ''or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section'' and inserting ''and including any type of legal or equitable relief available under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)''.

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

(a) FINDINGS.—Congress finds that—

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

(2) workers are harassed because of their sex (including sexual orientation, gender identity, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, and a sex stereotype), race, color, religion, national origin, age, disability, genetic information, and uniformed services status;

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

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

(5) in 1980, the Equal Employment Opportunity Commission (referred to in this section as ''the Commission'') amended its Guidelines on Discrimination Because of Sex (referred to in this section as ''the Guidelines'') to specify that sexual har-

assment is a form of sex discrimination prohibited by title VII of the Civil Rights Act of 1964;

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

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

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

(C) the conduct ''has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment'';

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

(8) six years later, the Supreme Court in Meritor Savings Bank v. Vinson, 477 U.S. 57

(1986), recognized that the protections under title VII of the Civil Rights Act of 1964 are not limited to discrimination that causes ''economic'' or ''tangible'' loss, and held that the phrase ''terms, conditions, or privileges of employment'' in title VII of such Act is an ''expansive concept that sweeps within its protective ambit'' the practice of creating a hostile work environment based on discrimination in the form of harassment;

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

(10) in the Meritor decision, the Supreme Court cited with approval lower court decisions that concluded that a hostile work environment based on race, religion, or national origin violates the prohibition of discrimination in the terms, conditions, or privileges of employment under title VII of the Civil Rights Act of 1964, which decisions included—

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

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

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

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

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

(11) in defining the evidence required to prove a violation of title VII of the Civil Rights Act of 1964, in the Meritor decision, the Supreme Court noted that harassment would be actionable when it is ''sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment' '' (quoting Rogers v. EEOC, 454 F.2d 234 (5th Cir. 1971));

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

(13) in Harris v. Forklift Systems, Inc., the Supreme Court held that whether a work environment is unlawfully hostile or abusive does not depend on

any mathematically precise test, but rather, is to be determined by looking at all of the circumstances, with no single factor required;

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

(15) notwithstanding the rulings of the Supreme Court specified in this subsection, some lower court decisions have treated harassing conduct's severity or pervasiveness as the only 2 relevant factors in evaluating whether such conduct violates title VII of the Civil Rights Act of 1964;

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

(17) some lower court decisions further have interpreted the ''severe or pervasive'' language in the Meritor decision so narrowly as to recognize only the most egregious conduct as unlawful, despite Con-

gress' intent that title VII of the Civil Rights Act of 1964 afford a broad scope of protection from discrimination;

(18) examples of decisions that use the erroneous analysis described in paragraphs (15) through (17) in the context of harassment on the basis of sex include—

(A) Singleton v. Department of Correctional Education, 115 Fed. Appx. 119 (4th Cir. 2004);

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

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

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

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

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

(19) lower courts have made similar erroneous decisions in the context of harassment on the basis of race, national origin, age, and disability such as in Crawford v. Medina General Hospital, 96 F.3d 830 (6th Cir. 1996), Shaver v. Independent Stave

Co., 350 F.3d 716 (8th Cir. 2003), and Motley v. Parker-Hannifan Corp., No. 1: 94–CV–639 (W.D. Mich. 1995);

(20) in contrast, other lower court decisions applying the Meritor case and its progeny have appropriately recognized that a wide range of harassing behavior may alter the terms, conditions, or privileges of employment, with no single type, frequency, or duration of conduct required to make a showing of severe or pervasive harassment;

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

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

(B) an individual need not be the target of sexually demeaning conduct in order to experience unlawful harassment, as in Petrosino v. Bell Atlantic, 385 F.3d 210 (2d Cir. 2004);

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

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

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

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

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

(B) repeatedly calling an individual with mental illness ''crazy'' and stating that the individual is a threat to security is sufficient to support a finding of a hostile work environment based on disability, as in Quiles-Quiles v. Henderson, 439 F.3d 1 (1st Cir. 2006); and

(C) a single incident of calling an African-American individual the ''n word'' by a super-

visor is sufficient to support a finding of a hostile work environment based on race, as in Rodgers v. Western-Southern Life Insurance Co., 12 F.3d 668 (7th Cir. 1993); and

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

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

(1) enact into statutory law provisions that establish that workplace harassment is a violation of the—

(A) protections from discrimination in the ''terms, conditions, or privileges of employment'' found in title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(B) protections from disability discrimination found in title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a);

(C) protections from age discrimination found in the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

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

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

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

(c) ENACTING INTO STATUTORY LAW PROVISIONS ESTABLISHING WORKPLACE HARASSMENT AS AN UNLAWFUL EMPLOYMENT PRACTICE.—

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

''(o)(1)(A) In this subsection, the term 'workplace harassment' means conduct based on race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), or national origin, regardless of whether it is direct or indirect, or verbal or nonverbal, that unreasonably alters an individual's terms, conditions, or privileges of employment, including by creating an intimidating, hostile, or offensive work environment.

''(B)(i) In this subsection, the term also means sexual harassment, which is conduct that takes place in a circumstance described in clause (ii) and that takes the form of—

''(I) a sexual advance;

''(II) a request for sexual favors; or

''(III) any other conduct of a sexual nature.

''(ii) A circumstance described in this clause is a situation in which—

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

''(II) submission to or rejection of such conduct is used as the basis for an employment decision affecting an individual's employment; or

''(III) such conduct unreasonably alters an individual's terms, conditions, or privileges of employment, including by creating an intimidating hostile, or offensive work environment.

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

''(3) In determining, for purposes of this subsection, whether conduct constitutes workplace harassment because the conduct unreasonably alters an individual's terms, conditions, or privileges of employment, including by creating an intimidating, hostile, or offensive work environment, the following rules shall apply:

''(A) That determination shall be made on the basis of the record as a whole, according to the totality of the circumstances. A single incident may constitute workplace harassment.

''(B) Incidents that may be workplace harassment shall be considered in the aggregate, with—

''(i) conduct of varying types (such as expressions of sex-based hostility, requests for sexual favors, and denial of employment opportunities due to sexual orientation) viewed in totality, rather than in isolation; and

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

''(C) The factors specified in this subparagraph are among the factors to be considered in determining whether conduct constitutes workplace harassment and are not meant to be exhaustive. No one of those factors shall be considered to be determinative in establishing whether conduct constitutes workplace harassment. Such factors are each of the following:

''(i) The frequency of the conduct.

''(ii) The duration of the conduct.

''(iii) The location where the conduct occurred.

''(iv) The number of individuals engaged in the conduct.

''(v) The nature of the conduct, which may include physical, verbal, pictorial, or visual conduct, and conduct that occurs in person or is transmitted, such as electronically.

''(vi) Whether the conduct is threatening.

''(vii) Any power differential between the alleged harasser and the person allegedly harassed.

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

''(ix) Whether the conduct reflects stereotypes about individuals in the protected class involved.

''(4) In determining, for purposes of this subsection, whether conduct constitutes workplace harassment, conduct may be workplace harassment regardless of whether, for example—

''(A) the complaining party is not the individual being harassed;

''(B) the complaining party acquiesced or otherwise submitted to, or participated in, the conduct;

''(C) the conduct is also experienced by others outside the protected class involved;

''(D) the complaining party was able to continue carrying out duties and responsibilities of the party's job despite the conduct;

''(E) the conduct did not cause a tangible injury or psychological injury; or

''(F) the conduct occurred outside of the workplace.''.

(2) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 102(b) of the Americans with Disabilities Act (42 U.S.C. 12112(b)) is amended—

(A) in paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

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

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

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

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

(4) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end the following:

''(n) It shall be unlawful under subsection (a) to engage in workplace harassment, which is conduct based on age, regardless of whether it is direct or indirect, or verbal or nonverbal, that—

''(1) unreasonably alters an individual's terms, conditions, or privileges of employment, including by creating an intimidating, hostile, or offensive work environment; and

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

(5) GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 202 of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff–1) is amended by adding at the end the following:

''(d) WORKPLACE HARASSMENT.—It shall be an unlawful employment practice under subsection (a) to engage in workplace harassment, which is conduct based on genetic information, regardless of whether it is direct or indirect, or verbal or nonverbal, that—

''(1) unreasonably alters an individual's terms, conditions, or privileges of employment, including by

creating an intimidating, hostile, or offensive work environment; and

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

(6) CHAPTER 43 OF TITLE 38, UNITED STATES CODE.—Section 4311 of title 38, United States Code, is amended by adding at the end the following:

''(e) It shall be an unlawful employment practice under subsection (a) to engage in workplace harassment, which is conduct based on uniformed services status (meaning the membership, application for membership, performance of service, application for service, or obligation, described in subsection (a)), regardless of whether it is direct or indirect, or verbal or nonverbal, that—

''(1) unreasonably alters an individual's benefits of employment, including by creating an intimidating, hostile, or offensive work environment; and

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

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

(a) AMENDMENTS TO DEFINITIONS.—

(1) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) is amended by adding at the end the following:

''(11) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.''.

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

''(m) The term 'demonstrates' means meets the burdens of production and persuasion.''.

(3) GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 201 of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff) is amended by adding at the end the following:

''(8) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.''.

(b) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION IN EMPLOYMENT PRACTICES.—

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

''(m) Except as otherwise provided in this title, an unlawful employment practice is established under this title when the complaining party demonstrates that race, color, religion, sex, or national origin or an activity protected by section 704(a) was a motivating factor for any employment practice, even though other factors also motivated the practice.''.

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

''(e) PROOF.—

''(1) ESTABLISHMENT.—Except as otherwise provided in this Act, a discriminatory practice is established under this Act when the complaining party demonstrates that disability or an activity protected by subsection (a) or (b) of section 503 was a motivating factor for any employment practice, even though other factors also motivated the practice.

''(2) DEMONSTRATION.—In establishing a discriminatory practice under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to find that a discriminatory practice occurred under this Act; and

''(B) shall not be required to demonstrate that disability or an activity protected by subsection (a) or (b) of section 503 was the sole cause of an employment practice.''.

(3) AGE.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by inserting after subsection (f) the following:

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

''(2) In establishing an unlawful practice under this Act, including under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence and need only produce evidence suffi-

cient for a reasonable trier of fact to find that an unlawful practice occurred under this Act; and

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

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

''(e) PROOF.—

''(1) ESTABLISHMENT.—Except as otherwise provided in this title, an unlawful employment practice is established under this title when the complaining party demonstrates that genetic information or an activity protected by section 207(f) was a motivating factor for any employment practice, even though other factors also motivated the practice.

''(2) DEMONSTRATION.—In establishing an unlawful employment practice under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to

find that an unlawful employment practice occurred under this title; and

''(B) shall not be required to demonstrate that genetic information or an activity protected by section 207(f) was the sole cause of an employment practice.''.

(c) CERTAIN RETALIATION CLAIMS.—

(1) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 503(c) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12203(c)) is amended—

(A) by striking ''The remedies'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the remedies''; and

(B) by adding at the end the following:

''(2) CERTAIN ANTIRETALIATION CLAIMS.—Section 107(c) shall apply to claims under section 102(e)(1) with respect to title I.''.

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

(A) by striking ''(d) It shall be'' and inserting ''(d)(1) It shall be''; and

(B) by adding at the end the following:

''(2) Section 7(b)(2) shall apply to claims under section 4(g)(1).''.

(3) GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 207(f) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff–6(f)) is amended—

(A) by striking ''No'' and inserting the following:

''(1) IN GENERAL.—No'';

(B) in the second sentence, by striking ''The remedies'' and inserting ''Except as provided in paragraph (2), the remedies''; and

(C) by adding at the end the following:

''(2) CERTAIN RETALIATION CLAIMS.—Subsection (g) shall apply to claims under section 202(d)(1).''.

(d) REMEDIES.—

(1) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) is amended by adding at the end the following:

''(c) DISCRIMINATORY MOTIVATING FACTOR.—On a claim in which an individual proves a violation under section 102(e)(1), and a respondent demonstrates that the

respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(1) may grant declaratory relief, injunctive relief (except as provided in paragraph (2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 102(e)(1); and

''(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''.

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended—

(A) in subsection (b), as amended by section 203(b)—

(i) in the second sentence, by striking ''In'' and inserting ''Subject to paragraph (2), in'';

(ii) in the third sentence, by striking ''Before'' and inserting the following:

''(3) Before''; and

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

''(2) On a claim in which an individual proves a violation under section 4(g)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(A) may grant declaratory relief, injunctive relief (except as provided in subparagraph (B)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 4(g)(1); and

''(B) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''; and

(B) in subsection (c)—

(i) in paragraph (1), by striking ''Any'' and inserting ''Subject to subsection (b)(2), any''; and

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

(3) GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 207 of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff–6) is amended—

(A) by redesignating subsection (g) as subsection (h); and

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

''(g) MOTIVATING FACTOR.—On a claim in which an individual proves a violation under section 202(e)(1), including a claim involving an employee or applicant described in any of subsections (a) through (e), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court or the corresponding decision-maker specified in subsections (a) through (e)—

''(1) may grant declaratory relief, injunctive relief (except as provided in paragraph (2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 202(d)(1); and

''(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''.

(e) FEDERAL EMPLOYEES.—

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

''(g) Sections 703(m) and 706(g)(2)(B) shall apply to mixed motive cases (involving practices described in section 703(m)) under this section.''.

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

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

(A) in subsection (a)—

(i) by striking ''States) in'' and inserting ''States) shall be made free from any discrimination based on age, in—'';

(ii) by striking ''military departments'' and inserting the following:

''(1) military departments'';

(iii) by striking ''Code, in executive agencies'' and inserting the following: ''Code;

''(2) executive agencies'';

(iv) by striking ''funds), in the United States Postal'' and inserting the following: ''funds);

''(3) the United States Postal'';

(v) by striking ''Commission, in those units'' and inserting the following: ''Commission;

''(4) those units'';

(vi) by striking ''competitive service, and in those units'' and inserting the following: ''competitive service;

''(5) those units'';

(vii) by striking ''competitive service, in the Smithsonian'' and inserting ''competitive service;

''(6) the Smithsonian'';

(viii) by striking ''Institution, and in the Government'' and inserting ''Institution;

''(7) the Government'';

(ix) by striking ''Printing Office, the General'' and inserting ''Printing Office;

''(8) the General'';

(x) by striking ''Office, and the Library'' and inserting ''Office; and

''(9) the Library''; and

(xi) by striking ''of Congress'' and all that follows and inserting ''of Congress.'';

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

(C) in subsection (c), by striking ''Any person'' and inserting ''Notwithstanding any other provision of this Act, any person'';

(D) by striking subsection (g) and inserting the following:

''(g) Except as otherwise provided in another subsection of this section, section 7, or section 9, the powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this Act provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of subsection

(a) against an employee or applicant for employment described in subsection (a).''; and

(E) by adding at the end the following:

''(h) Section 4(g) shall apply to mixed motive claims (involving practices described in section 4(g)(1)) under this section.''.

(f) ADDITIONAL AMENDMENTS TO THE REHABILITATION ACT OF 1973.—Sections 501(f), 503(d), and 504(d) of the Rehabilitation Act of 1973 (29 U.S.C. 791(f), 793(d), and 794(d)), are each amended by adding after the words ''title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.)'' the following: '', including the standards of causation and methods of proof applied under section 102(e) of that Act (42 U.S.C. 12112(e)),''.

(g) OTHER GOVERNMENT EMPLOYEES.—

(1) CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—Section 201 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311) is amended—

(A) in subsection (a)(2), by striking ''section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a)'' and inserting ''sections 4(g) and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g), 633a)''; and

(B) in subsection (b)—

(i) in paragraph (2)(A), by striking ''section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c))'' and inserting ''section 4(d)(2), paragraphs (1) and (2) of section 7(b), and section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(d)(2), 626(b), 633a(c))''; and

(ii) in paragraph (3)(A), by striking ''section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a))'' and inserting ''subsections (a) and (c) of section 107, and section 503(c)(2), of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117, 12203)''.

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

(A) in subsection (a)(2), by striking ''section 15 of the Age Discrimination in Employment Act of 1967'' and inserting ''sections 4(g) and 15 of the Age Discrimination in Employment Act of 1967''; and

(B) in subsection (b)—

(i) in paragraph (2)(A), by striking ''section 15(c) of the Age Discrimination in Employment Act of 1967'' and inserting ''section 4(d)(2), paragraphs (1) and (2) of section 7(b), and section 15(c) of the Age Discrimination in Employment Act of 1967''; and

(ii) in paragraph (3)(A), by striking ''section 107(a) of the Americans with Disabilities Act of 1990'' and inserting ''subsections (a) and (c) of section 107, and section 503(c)(2), of the Americans with Disabilities Act of 1990''.

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

(A) in subsection (a)(2), by striking ''section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a)'' and inserting ''sections 4(g) and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g), 633a)''; and

(B) in subsection (b)—

(i) in paragraph (1), by inserting ''(and, in the case of a violation of subsection (a)(3), sections 107(c) and 503(c)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(c), 12203(c)(2)))'' before '', and''; and

(ii) in paragraph (2), by striking ''section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c))'' and inserting ''section 4(d)(2), paragraphs (1) and (2) of section 7(b), and section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(d)(2), 626(b), 633a(c))''.

(h) APPLICATION.—This section, and the amendments made by this section, shall apply to all claims pending on or after the date of enactment of this Act.

**SEC. 206. SUPERVISOR LIABILITY.**

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

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

''(p) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a hostile work environment that constitutes an unlawful employment practice under this section if, at the time of the harassment—

''(1) such individual was authorized by that employer—

''(A) to undertake or recommend tangible employment actions affecting the employee; or

''(B) to direct the employee's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that hostile work environment.''.

(2) STANDARD FOR EMPLOYER LIABILITY FOR RETALIATORY HOSTILE WORK ENVIRONMENT.—Section 704 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3), as amended by section 201(a)(3), is further amended—

(A) by redesignating subsection (b) as subsection (c); and

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

''(b) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a retaliatory hostile work environment that constitutes an unlawful employment practice as described under subsection (a) if, at the time of the harassment—

''(1) such individual was authorized by that employer—

''(A) to undertake or recommend tangible employment actions affecting the employee; or

''(B) to direct the employee's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that retaliatory hostile work environment.''.

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

''(h) The provisions of sections 703(p) and 704(b) shall apply to hostile work environment claims and retaliatory hostile work environment claims, respectively, under this section.''.

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

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

''(o) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a hostile work environment that is unlawful under this section if, at the time of the harassment—

''(1) such individual was authorized by that employer—

''(A) to undertake or recommend tangible employment actions affecting the employee; or

''(B) to direct the employee's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that hostile work environment.''.

(2) STANDARD FOR EMPLOYER LIABILITY FOR RETALIATORY HOSTILE WORK ENVIRONMENT.—Section 4(d)(1) of the Age Discrimination in Employ-

ment Act of 1967 (29 U.S.C. 623(d)(1)), as amended by section 205(c)(2), is further amended by striking ''or litigation under this Act.'' and inserting ''or litigation under this Act. Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a retaliatory hostile work environment that is unlawful under this subsection if, at the time of the harassment—

''(A) such individual was authorized by that employer—

''(i) to undertake or recommend tangible employment actions affecting the employee; or

''(ii) to direct the employee's daily work activities; or

''(B) the negligence of the employer led to the creation or continuation of that retaliatory hostile work environment.''.

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

''(i) Subsections (d) and (o) of section 4 shall apply to retaliatory hostile work environment claims and hostile work environment claims, respectively, under this section.''.

(c) AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990.—

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

''(f) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a hostile work environment that constitutes discrimination against a qualified individual on the basis of disability under this section if, at the time of the harassment—

''(1) such individual was authorized by the employer—

''(A) to undertake or recommend tangible employment actions affecting the qualified individual; or

''(B) to direct the qualified individual's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that hostile work environment.''.

(2) STANDARD FOR EMPLOYER LIABILITY FOR RETALIATORY HOSTILE WORK ENVIRONMENT.—Section 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12203) is amended—

(A) by redesignating subsection (c) as subsection (d);

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

''(c) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a retaliatory hostile work environment that constitutes retaliatory discrimination, as described in subsection (a), or the carrying out of any unlawful acts described in subsection (b), if, at the time of the harassment—

''(1) such individual was authorized by the employer—

''(A) to undertake or recommend tangible employment actions affecting the employee; or

''(B) to direct the employee's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that retaliatory hostile work environment.''; and

(C) in subsection (d), as redesignated by subparagraph (A), by striking ''subsections (a) and (b)'' and inserting ''subsections (a), (b), and (c)''.

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

(1) STANDARD FOR EMPLOYER LIABILITY FOR HOSTILE WORK ENVIRONMENT AND RETALIATORY HOSTILE WORK ENVIRONMENT.—Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) is amended by adding at the end the following:

''(h) Subject to section 206(j) of the BE HEARD in the Workplace Act, each department, agency, and instrumentality in the executive branch of Government and the Smithsonian Institution shall be liable for the acts of any individual within such department, agency, instrumentality, or the Smithsonian Institution whose harassment of an individual with a disability has created or continued a hostile work environment, or a retaliatory hostile work environment, that constitutes nonaffirmative action employment discrimination under this section if, at the time of the harassment—

''(1) such individual was authorized by that department, agency, instrumentality, or the Smithsonian Institution—

''(A) to undertake or recommend tangible employment actions affecting the individual with a disability; or

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

''(2) the negligence of that department, agency, instrumentality, or the Smithsonian Institution led to the creation or continuation of that hostile work environment or retaliatory hostile work environment.''.

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

''(e) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer described under subsection (b) shall be liable for the acts of any individual whose harassment of a qualified individual with a disability has created or continued a hostile work environment, or a retaliatory hostile work environment, that con-

stitutes employment discrimination under this section if, at the time of the harassment—

''(1) such individual was authorized by such employer—

''(A) to undertake or recommend tangible employment actions affecting the qualified individual with a disability; or

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

''(2) the negligence of such employer led to the creation or continuation of that hostile work environment or retaliatory hostile work environment.''.

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

''(3) Sections 501(h) and 504(e) shall apply to hostile work environment claims and retaliatory hostile work environment claims under this section.''.

(e) AMENDMENT TO SECTION 1977 OF THE REVISED STATUTES.—Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end the following:

''(d) Subject to section 206(j) of the BE HEARD in the Workplace Act, a nongovernmental employer shall be liable for the acts of any individual whose harassment of

an employee has created a hostile work environment or a retaliatory hostile work environment, constituting an unlawful employment practice, if, at the time of the harassment—

''(1) such individual was authorized by the employer—

''(A) to undertake or recommend tangible employment actions affecting the employee; or

''(B) to direct the employee's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that hostile work environment or retaliatory hostile work environment.''.

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

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

''(f) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a hostile work environment that con-

stitutes an unlawful employment practice under this section if, at the time of the harassment—

''(1) such individual was authorized by the employer—

''(A) to undertake or recommend tangible employment actions affecting the employee; or

''(B) to direct the employee's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that hostile work environment.''.

(2) STANDARD FOR EMPLOYER LIABILITY FOR RETALIATORY HOSTILE WORK ENVIRONMENT.—Section 207(f)(1) of the Genetic Information Nondiscrimination Act (42 U.S.C. 2000ff–6(f)(1)), as amended by section 205(c)(2), is further amended by striking ''violations of this subsection.'' and inserting ''violations of this subsection. Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer shall be liable for the acts of any individual whose harassment of an employee has created or continued a retaliatory hostile work environment that constitutes discrimination under this subsection if, at the time of the harassment—

''(A) such individual was authorized by the employer—

''(i) to undertake or recommend tangible employment actions affecting the employee; or

''(ii) to direct the employee's daily work activities; or

''(B) the negligence of the employer led to the creation or continuation of that retaliatory hostile work environment.''.

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

''(c) Subject to section 206(j) of the BE HEARD in the Workplace Act, an employer of an individual described under section 304(a) shall be liable for the acts of any individual whose harassment of a State employee described in section 304 has created or continued a hostile work environment or a retaliatory hostile work environment constituting discrimination under this section, if at the time of the harassment—

''(1) such individual was authorized by such employer—

''(A) to undertake or recommend tangible employment actions affecting the employee; or

''(B) to direct the employee's daily work activities; or

''(2) the negligence of the employer led to the creation or continuation of that hostile work environment or retaliatory hostile work environment.''.

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

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

(2) by inserting after subsection (b) the following:

''(c) LIABILITY OF EMPLOYING OFFICE.—Subject to section 206(j) of the BE HEARD in the Workplace Act, an employing office shall be liable for the acts of any individual whose harassment of a covered employee has created or continued a hostile work environment or a retaliatory hostile work environment constituting discrimination under this section if, at the time of the harassment—

''(1) such individual was authorized by the employing office—

''(A) to undertake or recommend tangible employment actions affecting the covered employee; or

''(B) to direct the covered employee's daily work activities; or

''(2) the negligence of the employing office led to the creation or continuation of that hostile work environment or retaliatory hostile work environment.''; and

(3) in subsection (f), as redesignated by paragraph (1), by striking ''subsections (a) through (c)'' and inserting ''subsections (a) through (d).''.

(i) AMENDMENT TO THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—Section 201 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311) is amended—

(1) by striking subsection (e); and

(2) by adding at the end the following:

''(e) OUTSIDE INDIVIDUALS.—Subject to section 206(j) of the BE HEARD in the Workplace Act, an employing office shall be liable for the acts of any individual whose harassment of a covered employee has created or continued a hostile work environment or a retaliatory hostile work environment that constitutes discrimination under this section if, at the time of the harassment—

''(1) such individual was authorized by the employing office—

''(A) to undertake or recommend tangible employment actions affecting the covered employee; or

''(B) to direct the covered employee's daily work activities; or

''(2) the negligence of the employing office led to the creation or continuation of that hostile work environment or retaliatory hostile work environment.''.

(j) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the availability of, or access to, defenses available under the law.

(k) APPLICATION.—This section, and the amendments made by this section, shall apply to all claims pending on or after the date of enactment of this Act.

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

(a) CIVIL RIGHTS ACT OF 1964; AMERICANS WITH DISABILITIES ACT OF 1990; GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended—

(1) in subsection (e)—

(A) in paragraph (1)—

(i) by striking ''one hundred and eighty days after the alleged unlawful employment practice occurred'' and inserting ''4 years after the alleged unlawful employment practice occurred.''; and

(ii) by striking ''three hundred days after the alleged unlawful employment practice occurred'' and inserting ''4 years and 120 days after the alleged unlawful employment practice occurred.''; and

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

(2) in subsection (g)(1), by striking ''two years prior to the filing of a charge'' and inserting ''4 years and 120 days preceding the filing of the charge''.

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

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

(2) by striking ''(d)'' and all that follows through ''No'' and inserting ''(d)(1) No''; and

(3) in paragraph (1), as designated by paragraph (2) of this subsection—

(A) by striking ''Secretary. Such'' and inserting ''Secretary, and such'';

(B) in subparagraph (A), by striking ''180 days after the alleged unlawful practice occurred'' and inserting ''4 years after the alleged unlawful practice occurred''; and

(C) in subparagraph (B), by striking ''300 days after the alleged unlawful practice occurred'' and inserting ''4 years and 120 days after the alleged unlawful practice occurred''.

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

(a) IN GENERAL.—The Equal Employment Opportunity Commission (referred to in this section as ''the Commission'') shall ensure that a covered Federal employee shall not be required to take any action necessary to bring a complaint to the department, agency, unit, or instrumentality involved prior to 4 years from the date of the matter alleged to be discriminatory or, in the case of personnel action, 4 years from the effective date of the personnel action.

(b) COVERED EMPLOYEES AND COMPLAINTS.—In this section, the term ''covered Federal employee'' means—

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

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

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

(4) an employee or applicant described in section 201(2)(A)(v) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff(2)(A)(v)), in the case of a complaint brought to enforce title II of that Act (42 U.S.C. 2000ff et seq.) under section 207(e) of that Act (42 U.S.C. 2000ff–6(e)).

# TITLE III—BROADENING PROTECTIONS AND ENSURING TRANSPARENCY

## SEC. 301. INDEPENDENT CONTRACTORS, INTERNS, FELLOWS, VOLUNTEERS, AND TRAINEES.

(a) COVERED EMPLOYER OR ENTITY.—All protections afforded to an employee or individual under a provision that consists of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16a et seq.), the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.), subchapter II of chapter 5 of title 3, United States Code, the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), title I and section 503 (for violations with respect to that title) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203), sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), section 6(d) of the Fair Labor Standards Act of 1938 (commonly known as the ''Equal Pay Act of 1963'') (29 U.S.C. 206(d)), title II of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff et seq.), and section 4311 of title 38, United States Code, shall be afforded, in the same manner and to the same extent, to—

(1) an individual who is engaged by an employer or entity covered by that provision (referred to in this subsection as a ''covered employer or entity'') as an independent contractor (regardless of business structure, including organization as a legal or commercial entity) or as an intern, fellow, volunteer, or trainee, whether or not the individual receives compensation, academic credit, or other remuneration from the covered employer or entity; or

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

(b) COVERED ESTABLISHMENTS.—

(1) DEFINITION.—In this subsection, the term ''covered establishment'' means an individual or entity that—

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

(B) engages the services (including soliciting such services) of an independent contractor (regardless of business structure, including organization as a legal or commercial enti-

ty), intern, fellow, volunteer, or trainee by means of an instrument of transportation or communication in interstate commerce, or through an arrangement that involves the use of such an instrument to carry out or be conveyed to carry out those services.

(2) PROTECTIONS.—All protections afforded to an employee or individual under a provision that consists of title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, title I and section 503 (for violations with respect to that title) of the Americans with Disabilities Act of 1990, section 6(d) of the Fair Labor Standards Act of 1938, title II of the Genetic Information Nondiscrimination Act of 2008, and section 4311 of title 38, United States Code, shall be afforded, in the same manner and to the same extent that the provision covers an individual described in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)), to—

(A) an individual who is engaged by a covered establishment as an independent contractor (regardless of business structure, including organization as a legal or commercial entity) or as an intern, fellow, volunteer, or trainee,

whether or not the individual receives compensation, academic credit, or other remuneration from the covered establishment; or

(B) an individual who applies or seeks to become such an independent contractor (regardless of business structure, including organization as a legal or commercial entity), intern, fellow, volunteer, or trainee, for the covered establishment.

(c) DOMESTIC SERVICE.—For purposes of the provisions listed in subsection (a) and the provisions of this Act, an individual or entity who engages the services (by means of an instrument of transportation or communication in interstate commerce, or through an arrangement that involves the use of such an instrument to carry out or be conveyed to carry out those services) of a person in domestic service in a household, as an employee, or as an independent contractor, intern, fellow, volunteer, or trainee, referred to in subsection (a) or (b) shall be considered to be engaged in interstate commerce.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the individuals protected under any provision described in subsection (a).

(e) INTERSTATE COMMERCE.—In this section, the term ''interstate commerce'' means Commerce (as defined

in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203)) among the several States.

**SEC. 302. NONDISCLOSURE AGREEMENTS.**

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission.

(2) COVERED ESTABLISHMENT.—The term ''covered establishment'' has the meaning given the term in section 301.

(3) COVERED INDIVIDUAL.—The term ''covered individual'' means—

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

(i) an individual required to be afforded those protections by an employer described in paragraph (5)(A);

(ii) an individual required to be afforded those protections by an employer described in paragraph (5)(B);

(iii) an individual required to be afforded those protections by an employer described in paragraph (5)(C);

(iv) an individual required to be afforded those protections by an employer described in paragraph (5)(D); or

(v) an individual required to be afforded those protections by an employer described in paragraph (5)(E); and

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

(4) EMPLOYEE.—The term ''employee'' means—

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

(B) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(C) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), including an individual treated as a covered employee under that section;

(D) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(E) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(5) EMPLOYER.—The term ''employer'' means—

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

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

(C) an employing office, as defined in section 101(a) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(a));

(D) an employing office, as defined in section 411(c) of title 3, United States Code; or

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

(6) NONDISCLOSURE CLAUSE.—The term ''nondisclosure clause'' means a provision in a contract or agreement establishing that each party to the contract or agreement agrees not to disclose informa-

tion covered by the terms and conditions of the contract or agreement.

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

(8) WORKER.—The term ''worker'' means an employee or a covered individual.

(b) UNLAWFUL PRACTICES.—

(1) NONDISPARAGEMENT AND NONDISCLOSURE CLAUSES.—Subject to paragraph (3), it shall be an unlawful practice for an employer to enter into a contract or agreement with a worker, or for a covered establishment to enter into a contract or agreement with a covered individual, as a condition of employment or contracting, promotion, compensation, benefits, or change in employment status or contractual relationship, or as a term, condition, or privilege of employment or contracting, if that contract or agreement contains a nondisparagement clause or nondisclosure clause that covers prohibited discrimination or harassment in employment or contracting, or retaliation for reporting, resisting, opposing, or

assisting in the investigation of such discrimination or harassment.

(2) PROHIBITION ON ENFORCEMENT.—Subject to paragraph (3) but notwithstanding any other provision of law, it shall be an unlawful practice for an employer or covered establishment to enforce or attempt to enforce a nondisparagement clause or nondisclosure clause that covers prohibited discrimination or harassment in employment or contracting, or retaliation for reporting, resisting, opposing, or assisting in the investigation of such discrimination or harassment. An employer or covered establishment that enforces or attempts to enforce such a nondisparagement clause or such a nondisclosure clause against a worker shall be liable for the reasonable attorney's fees and costs of the worker.

(3) SETTLEMENT OR SEPARATION AGREEMENTS.—

(A) IN GENERAL.—The provisions of paragraphs (1) and (2) do not apply to a nondisparagement clause or nondisclosure clause contained in a settlement agreement or separation agreement that resolves legal claims or disputes if—

(i) such legal claims accrued or such disputes arose before the settlement agreement or separation agreement was executed;

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

(I) the employer or covered establishment, as the case may be; and

(II) the worker;

(iii) the worker's agreement to such clause is knowing and voluntary, as described in subparagraph (C); and

(iv) the settlement agreement or separation agreement expressly states that the agreement involved does not prohibit, prevent, or otherwise restrict a worker from—

(I) filing a complaint with the Commission, any other Federal, State, or local agency with the authority to enforce laws (including regulations) that prohibit discrimination or harassment in employment or contracting, as the case may be, or law enforcement;

(II) testifying at, assisting, or participating in an investigation or proceeding conducted by the Commission, any other Federal, State, or local agency with the authority to enforce laws (including regulations) that prohibit discrimination or harassment in employment or contracting, as the case may be, or law enforcement; or

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

(B) PROHIBITION ON SOLE BENEFIT.—For purposes of this paragraph, it shall be an unlawful practice for an employer or covered establishment to unilaterally include a nondisparagement clause or nondisclosure clause that solely benefits the employer or covered establishment in a separation or settlement agreement.

(C) KNOWING AND VOLUNTARY AGREEMENT.—For purposes of this paragraph, agreement to a nondisparagement clause or nondisclosure clause may not be considered knowing and voluntary unless at a minimum—

(i) the nondisparagement clause or nondisclosure clause is written in a manner designed to ensure that the worker understands the content of the clause involved;

(ii) the nondisparagement clause or nondisclosure clause is included only in exchange for consideration of value provided to the worker, in addition to anything of value to which the worker is already entitled;

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

(iv) the worker is advised in writing to consult with an attorney prior to agreeing to such an agreement that includes a nondisparagement clause or nondisclosure clause;

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

(vi) the settlement or separation agreement provides that for a period of at least 7 days following the execution of such agreement the worker may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired.

(D) BURDEN OF PROOF.—In any dispute that may arise over whether any of the requirements of subparagraph (A) have been met, the party asserting the validity of an agreement shall have the burden of proving that the requirements of subparagraph (A) have been met.

(E) PARTICIPATION IN INVESTIGATIONS OR PROCEEDINGS.—No nondisparagement clause or nondisclosure clause may affect the ability of a worker to testify at, assist, or participate in an investigation or proceeding conducted by the Commission, any Federal, State, or local agency with the authority to enforce laws (including regulations) that prohibit discrimination in employment or contracting, as the case may be, or a law enforcement agency.

(F) PROHIBITION ON DAMAGES.—Under no circumstances shall a worker be required to

pay damages for breach of a nondisparagement clause or nondisclosure clause permitted by this paragraph in excess of an amount equal to the consideration of value provided to the worker in exchange for the workers' agreement to the nondisparagement clause or nondisclosure clause.

(c) ENFORCEMENT AGAINST EMPLOYERS.—

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

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

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

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

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

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

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

(D) the Attorney General shall have the same powers as the Attorney General has to administer and enforce—

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

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

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

(E) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of a claim alleged by an employee of the employer for a violation of section 411 of such title; and

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

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

(ii) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c) in the case of a claim alleged by an employee of the employer for a violation of section

302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1));

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

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

(2) PROCEDURES AND REMEDIES.—The procedures and remedies applicable to a claim alleged by a worker against the employer for a violation of this section are—

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

(B) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) in the case of a claim

alleged by an employee of the employer for a violation of such section;

(C) the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in the case of a claim alleged by an employee of the employer for a violation of such section; and

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

(3) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleged by an employee described in subsection (a)(4)(C) or a covered individual described in subsection (a)(3)(A)(iii) for a violation of this section, title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleged by such an employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) ENFORCEMENT AGAINST COVERED ESTABLISHMENTS.—

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

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

(B) the Attorney General shall have the same powers as the Attorney General has to administer and enforce title VII of the Civil Rights Act of 1964; and

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

in the case of a claim alleged by an employee described in subsection (a)(4)(A) for a violation of such title.

(2) PROCEDURES AND REMEDIES.—The procedures and remedies applicable to a claim alleged by a covered individual against the covered establishment for a violation of this section are the procedures and remedies applicable for a violation of title

VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by an employee described in subsection (a)(4)(A) for a violation of such title.

(e) RIGHT TO REPORT RESERVED.—Notwithstanding signing (before, on, or after the effective date of this Act) any nondisparagement clause or nondisclosure clause, a worker retains—

(1) any right that person would otherwise have had to report a concern about harassment, including sexual harassment, in employment or contracting or another violation of the law to the Commission, another Federal agency (including an office of the legislative or judicial branch), a State or local fair employment practices agency or any other State or local agency, or a law enforcement agency; and

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

(f) REGULATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), the Commission shall have authority to issue regulations to carry out this section.

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

(3) BOARD.—The Board referred to in subsection (c)(1)(C) shall have authority to issue regulations to carry out this section, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to employees described in subsection (a)(4)(C) and covered individuals described in subsection (a)(3)(A)(iii).

(4) PRESIDENT.—The President shall have authority to issue regulations to carry out this section with respect to employees described in subsection (a)(4)(D) and covered individuals described in subsection (a)(3)(A)(iv).

(g) STATE AND FEDERAL IMMUNITY.—

(1) ABROGATION OF STATE IMMUNITY.—A State shall not be immune under the 11th Amendment to the Constitution from a suit brought in a Federal court of competent jurisdiction for a violation of this section.

(2) WAIVER OF STATE IMMUNITY.—

(A) IN GENERAL.—

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

(ii) DEFINITION.—In this subparagraph, the term ''program or activity'' has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

(B) EFFECTIVE DATE.—With respect to a particular program or activity, subparagraph (A) applies to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

(3) REMEDIES AGAINST STATE OFFICIALS.—An official of a State may be sued in the official capacity of the official by a covered individual who has complied with the applicable procedures of subsection (c), for equitable relief that is authorized

under this section. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).

(4) REMEDIES AGAINST THE UNITED STATES AND THE STATES.—Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this section, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) by an employer described in subsection (a)(5)(A), except that—

(A) punitive damages are not available; and

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

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

(a) PROTECTION OF CONCERTED ACTIVITY.—

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

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

(B) by adding at the end the following:

''(6)(A) to enter into or attempt to enforce any agreement, express or implied, whereby prior to a dispute to which the agreement applies, a worker (for purposes of this paragraph, as defined in section 401 of title 9, United States Code) undertakes or promises not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of, or provision of services by, such worker in any forum that, but for such agreement, is of competent jurisdiction;

''(B) to coerce such worker into undertaking or promising not to pursue, bring, join, litigate, or support any kind of joint, class, or collective claim arising from or relating to the employment of, or provision of services by, such worker; or

''(C) to retaliate or threaten to retaliate against a worker for refusing to undertake or promise not to pursue, bring, join, litigate, or support any kind

of joint, class, or collective claim arising from or relating to the employment of, or provision or services by, such worker: *Provided*, That any agreement that violates this paragraph or results from a violation of this paragraph shall be to such extent unenforceable and void: *Provided further*, That this paragraph shall not apply to any agreement embodied in or expressly permitted by a contract between an employer and a labor organization.''.

(2) CONFORMING AMENDMENT.—Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) is amended by striking ''discharge'' and inserting ''discharge, or unless the person aggrieved thereby is a worker alleging a violation of section 8(a)(6) whose charge involves a postdispute arbitration agreement that meets the requirements under section 402(a)(2) of title 9, United States Code, in which event the six-month period shall be computed from the day the waiting period described in subparagraph (C) of such section ends''.

(b) ARBITRATION OF WORK DISPUTES.—

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

# "CHAPTER 4—ARBITRATION OF WORK DISPUTES

''Sec.
''401. Definitions.
''402. Validity and enforceability.

## "§ 401. Definitions

''In this chapter—

''(1) the terms 'commerce', 'employee', and 'employer' have the meanings given the terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203);

''(2) the term 'covered entity' means—

''(A) an employer; or

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

''(3) the term 'predispute arbitration agreement' means any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement;

''(4) the term 'postdispute arbitration agreement' means any agreement to arbitrate a dispute that arose before the time of the making of the agreement;

''(5) the term 'worker' means—

''(A) an employee; or

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

"(6) the term 'work dispute'—

"(A) means a dispute between one or more workers (or their authorized representatives) and a covered entity arising out of or related to the work relationship or prospective work relationship between the workers and the covered entity; and

"(B) includes—

"(i) a dispute regarding the terms of, payment for, advertising of, recruitment of, referring of, arranging for, or discipline or discharge in connection with work performed in connection with such work relationship;

"(ii) a dispute arising under any law referred to or described in section 62(e) of the Internal Revenue Code of 1986, including any part of such a law not explicitly referenced in such section that relates to protecting individuals on a basis that is

protected under a law referred to or described in such section; and

''(iii) a dispute in which an individual or individuals seek certification—

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

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

''(III) under a comparable rule or provision of State law.

**''§ 402. Validity and enforceability**

''(a) IN GENERAL.—Notwithstanding any other chapter of this title—

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

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

''(A) the agreement was not required by the covered entity, obtained by coercion or threat of adverse action, or made a condition of

employment, work, or any employment-related or work-related privilege or benefit;

"(B) each worker entering into the agreement was informed in writing using sufficiently plain language likely to be understood by the average worker of—

"(i) the right of the worker under paragraph (3) to refuse to enter the agreement without retaliation; and

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

"(C) each worker entering into the agreement entered the agreement after a waiting period of not fewer than 45 days, beginning on the date on which the employee was provided both the final text of the agreement and the disclosures required under subparagraph (B); and

"(D) each worker entering into the agreement affirmatively consented to the agreement in writing; and

"(3) no covered entity may retaliate or threaten to retaliate against a worker for refusing to enter

into an agreement that provides for arbitration of a work dispute.

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

''(c) CIVIL ACTION.—Any person who is injured by reason of a violation of subsection (a)(3) may bring a civil action in the appropriate district court of the United States against the covered entity within 2 years of the violation, or within 3 years if such violation is willful. Relief granted in such an action shall include a reasonable attorney's fee, other reasonable costs associated with maintaining the action, and any appropriate relief authorized by section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(g)) or by section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

''(d) APPLICABILITY.—

''(1) IN GENERAL.—This chapter applies to covered entities and workers engaged in activity affecting commerce to the fullest extent permitted by the Constitution of the United States, including the work of persons engaged in domestic service in households, as described in section 2(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 202(a)).

An issue as to whether this chapter applies to an arbitration agreement shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, regardless of whether any contractual provision purports to delegate such determinations to the arbitrator and irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this chapter shall apply to any arbitration provision in a contract between a covered entity and a labor organization, except that no such arbitration provision shall have the effect of waiving the right of a worker to seek judicial enforcement of a right arising under a provision of the Constitution of the United States, the constitution of a State, or a Federal or State statute, or public policy arising therefrom.''.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

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

(i) in section 1, by striking ''of seamen,'' and all that follows through ''interstate commerce'';

(ii) in section 2, by inserting ''or as otherwise provided in chapter 4'' before the period at the end;

(iii) in section 208—

(I) in the section heading, by striking ''**Chapter 1; residual application**'' and inserting ''**Application**''; and

(II) by adding at the end the following: ''This chapter applies to the extent that this chapter is not in conflict with chapter 4.''; and

(iv) in section 307—

(I) in the section heading, by striking ''**Chapter 1; residual application**'' and inserting ''**Application**''; and

(II) by adding at the end the following: ''This chapter applies to the

extent that this chapter is not in conflict with chapter 4.''.

(B) TABLE OF SECTIONS.—

(i) CHAPTER 2.—The table of sections for chapter 2 of title 9, United States Code, is amended by striking the item relating to section 208 and inserting the following:

''208. Application.''.

(ii) CHAPTER 3.—The table of sections for chapter 3 of title 9, United States Code, is amended by striking the item relating to section 307 and inserting the following:

''307. Application.''.

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

''4. Arbitration of work disputes ..... 401.''.

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

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

(a) DEFINITIONS.—In this section:

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

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

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

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

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

(b) REQUIRED PRE-CONTRACT AWARD ACTIONS.—

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

(A) to represent, to the best of the offeror's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil judg-

ment, as defined in guidance issued by the Secretary of Labor, rendered against the offeror in the preceding 3 years for violations of—

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

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

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

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

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

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

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

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

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

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

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

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

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

(xiv) title II of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff et seq.);

(xv) as applicable, Executive Order 13658 (79 Fed. Reg. 9851; relating to establishing a minimum wage for contractors) or Executive Order 14026 (86 Fed. Reg. 22835; relating to increasing the minimum wage for Federal contractors); or

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

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

(i) to represent to the offeror, and the executive agency's Labor Compliance Advisor designated under subsection (d), to the best of the subcontractor's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil judgment, as defined in guidance issued by the Secretary of Labor, rendered against the subcontractor in the preceding 3 years for violations of any of the labor laws listed under subparagraph (A); and

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

(C) to consider the advice rendered by the executive agency's Labor Compliance Advisor designated under subsection (d), or information submitted by a subcontractor pursuant to subparagraph (B), in determining whether the subcontractor is a responsible source with a satisfactory record of integrity and business ethics—

(i) prior to awarding the subcontract; or

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

(2) PRE-AWARD CORRECTIVE MEASURES.—

(A) IN GENERAL.—A contracting officer, prior to awarding a covered contract, shall, as part of the responsibility determination, provide an offeror who makes a disclosure pursuant to paragraph (1) an opportunity to report any steps taken to correct the violations of or improve compliance with the labor laws listed in subparagraph (A) of such paragraph, including any agreements entered into with an enforcement agency.

(B) CONSULTATION.—The executive agency's Labor Compliance Advisor designated under subsection (d), in consultation with relevant enforcement agencies, shall advise the contracting officer whether agreements are in place or are otherwise needed to address appropriate remedial measures, compliance assistance, steps to resolve issues to avoid further

violations, or other related matters concerning the offeror.

(C) RESPONSIBILITY DETERMINATION.—The contracting officer, in consultation with the executive agency's Labor Compliance Advisor designated under subsection (d), shall consider information provided by the offeror under this subsection in determining whether the offeror is a responsible source with a satisfactory record of integrity and business ethics. The determination shall be based on the guidance reissued under subsection (e)(2)(A) and the final rule reissued under subsection (e)(1).

(3) REFERRAL OF INFORMATION TO SUSPENSION AND DEBARMENT OFFICIALS.—As appropriate, contracting officers, in consultation with their executive agency's Labor Compliance Advisor, shall refer matters related to information provided under subparagraphs (A) and (B) of paragraph (1) to the executive agency's suspension and debarment official in accordance with agency procedures.

(c) POST-AWARD CONTRACT ACTIONS.—

(1) INFORMATION UPDATES.—The contracting officer for a covered contract shall require that the contractor update the information provided under

subparagraphs (A) and (B) of subsection (b)(1) every 6 months.

(2) CORRECTIVE ACTIONS.—

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

(i) an agreement requiring appropriate remedial measures;

(ii) compliance assistance;

(iii) resolving issues to avoid further violations;

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

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

(B) SUBCONTRACTS.—The prime contractor for a covered contract, in consultation with the Labor Compliance Advisor, shall determine whether any information provided under subsection (b)(1)(B) warrants corrective action, including remedial measures, compliance assist-

ance, and resolving issues to avoid further violations.

(C) DEPARTMENT OF LABOR.—The Secretary of Labor shall, as appropriate, inform executive agencies of its investigations of contractors and subcontractors on current Federal contracts for purposes of determining the appropriateness of actions described under subparagraphs (A) and (B).

(d) LABOR COMPLIANCE ADVISORS.—

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

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

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

(B) work with the acquisition workforce, agency officials, and agency contractors to promote greater awareness and understanding of the requirements of the labor laws listed in subsection (b)(1)(A), including record keeping, reporting, and notice requirements, as well as

best practices for obtaining compliance with these requirements;

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

(D) in consultation with the Secretary of Labor or other relevant enforcement agencies, and pursuant to subsection (b)(2) as necessary, provide assistance to contracting officers regarding appropriate actions to be taken in response to violations of the labor laws listed in subsection (b)(1)(A) identified prior to or after contracts are awarded, and address complaints in a timely manner, by—

(i) providing assistance to contracting officers and other executive agency officials in reviewing the information provided under paragraphs (1) and (2) of subsection (b) and subsection (c)(1), or other information indicating such a violation, in order to assess the serious, repeated, willful, or pervasive nature of any such violation and evaluate steps contractors have taken to correct such violations or improve compliance with relevant requirements;

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

(iii) providing assistance to appropriate executive agency officials in receiving and responding to, or making referrals of, complaints alleging violations by agency contractors and subcontractors of the labor laws listed in subsection (b)(1)(A); and

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

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

(F) consult with the agency's Chief Acquisition Officer and Senior Procurement Executive, and the Department of Labor as necessary, in the development of regulations, policies, and guidance addressing compliance by contractors and subcontractors with the labor laws listed in subsection (b)(1)(A);

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

(H) publicly report, on an annual basis, a summary of agency actions taken to promote greater compliance with such laws, including the agency's response under this section to serious, repeated, willful, or pervasive violations of such laws; and

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

(e) MEASURES TO ENSURE GOVERNMENTWIDE CONSISTENCY.—

(1) FEDERAL ACQUISITION REGULATION.—

(A) IN GENERAL.—Notwithstanding the Joint Resolution disapproving the rule submitted by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration relating to the Federal Acquisition Regulation (Public Law 115–11; 131 Stat. 75) and section 553 of title 5, United States Code, not later than 1 year after the date of enactment of this Act, the Secretary of Defense, the Administrator of the General Services Administration, and the Administrator of the National Aeronautics and Space Administration shall reissue the final rule entitled ''Federal Acquisition Regulation; Fair Pay and Safe Workplaces'' (81 Fed. Reg. 58562 (Aug. 25, 2016)), subject to subparagraph (B).

(B) UPDATED DATES.—The agencies described in subparagraph (A) may, in reissuing the final rule under such subparagraph—

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

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

(2) DEPARTMENT OF LABOR.—

(A) GUIDANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Labor shall reissue the guidance entitled ''Guidance for Executive Order 13673, 'Fair Pay and Safe Workplaces' '' (81 Fed. Reg. 58654 (Aug. 25, 2016)). In reissuing such guidance, the Secretary of Labor may—

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

(ii) revise any provision in such guidance for consistency with the requirements of this section.

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

(i) develop a process—

(I) for the Labor Compliance Advisors designated pursuant to subsection (d) to consult with the Secretary of Labor in carrying out their responsibilities under subsection (d)(2)(D);

(II) by which contracting officers and Labor Compliance Advisors may give appropriate consideration to de-

terminations and agreements made by the Secretary of Labor and the heads of other executive agencies; and

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

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

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

(iv) designate an appropriate contact for executive agencies seeking to consult with the Secretary of Labor with respect to

the requirements and activities under this section.

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

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

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

(4) GENERAL SERVICES ADMINISTRATION.—

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

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

(5) MINIMIZING COMPLIANCE BURDEN.—After reissuing the guidance under paragraph (2)(A) or the final rule under paragraph (1), the Secretary of Labor or the Secretary of Defense, the Administrator of the General Services Administration, and the Administrator of the National Aeronautics and Space Administration may, respectively, amend such guidance or final rule consistent with the requirements under chapter 5 of title 5, United States Code.

(f) IMPLEMENTING REGULATIONS.—Not later than 9 months after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation to carry out the provisions of this section.

(g) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as—

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

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

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

**SEC. 401. DEFINITIONS.**

In this title:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission.

(2) EMPLOYEE.—The term ''employee'' has the meaning given the term in section 302(a)(4).

(3) EMPLOYMENT DISCRIMINATION.—The term ''employment discrimination'' means discrimination that is in violation of applicable Federal, State, or local employment law, including:

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

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

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

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

(E) The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.).

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

(G) Sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a).

(H) Section 6(d) of the Fair Labor Standards Act of 1938 (commonly known as the ''Equal Pay Act of 1963'') (29 U.S.C. 206(d)).

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

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

(K) Other Federal, State, or local employment law.

(4) WORKER.—The term ''worker'' has the meaning given the term in section 302(a)(8).

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

**SEC. 411. DEFINITIONS.**

In this subtitle:

(1) DIRECTOR.—The term ''Director'' means the Director of the Women's Bureau of the Department of Labor.

(2) ELIGIBLE ENTITY.—The term ''eligible entity'' means any of the following:

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

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

**SEC. 412. GRANTS.**

(a) GRANTS.—The Director, in consultation with the Commission, shall award grants under this section, on a

competitive basis, to eligible entities to assist such entities in carrying out a program for preventing and addressing employment discrimination, including harassment, through activities authorized under subsection (b).

(b) USE OF FUNDS.—

(1) PERMISSIBLE ACTIVITIES.—A grant awarded under this section shall be used for activities to prevent and address employment discrimination, including harassment, which may include—

(A) educating workers about their rights related to harassment in employment under Federal, State, and local civil rights, labor, and employment laws;

(B) educating employers about their obligations to prevent and address harassment in employment under Federal, State, and local civil rights, labor, and employment laws;

(C) providing assistance to workers in bringing complaints of employment discrimination, including filing charges of harassment;

(D) establishing networks for education, communication, and participation in the workplace and community;

(E) monitoring employer compliance with Federal, State, and local civil rights, labor, and employment laws;

(F) recruiting and hiring of staff and volunteers; and

(G) any other activity the Director, in consultation with the Commission, may reasonably prescribe for the purpose of preventing and addressing employment discrimination, including harassment.

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

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

(d) APPLICATIONS.—

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

(2) PARTNERSHIPS.—Multiple eligible entities may submit a joint application under this subsection that designates a single entity as the lead entity for the purposes of receiving and disbursing funds received through a grant under this section.

(3) CONTENTS.—An application under this subsection shall include—

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

(B) information on the prevalence of violations of prohibitions on employment discrimination, including harassment, under Federal, State, and local civil rights, labor, and employment laws in the population served by the eligible entity;

(C) information on any industry or geographic area targeted by the plan for such program;

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

(E) information on the training and education that will be provided to workers and employers under such program; and

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

(e) SELECTION.—

(1) COMPETITIVE BASIS.—In accordance with this section, the Director, in consultation with the Commission, shall, on a competitive basis, select grant recipients from among eligible entities that have submitted an application meeting the requirements under subsection (d).

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

(A) serve workers in any industry or geographic area that is most highly at risk for employment discrimination, including harassment, as identified by the Director, in consultation with the Commission; and

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

(f) PERFORMANCE EVALUATIONS.—

(1) IN GENERAL.—Each grant recipient under this section shall develop procedures for reporting, monitoring, measuring, and evaluating the activities of each program or activity funded under this section.

(2) GUIDELINES.—The procedures required under paragraph (1) shall be in accordance with guidelines established by the Director, in consultation with the Commission.

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

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

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

**SEC. 421. DEFINITIONS.**

In this subtitle:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(2) COVERED CLIENT.—The term ''covered client'' means an individual who—

(A) is an eligible client; and

(B) faces legal issues related to employment discrimination, including harassment.

(3) ELIGIBLE CLIENT.—The term ''eligible client'' has the meaning given the term in section 1002 of the Legal Services Corporation Act (42 U.S.C. 2996a) and the regulations of the Legal Services Corporation.

(4) ELIGIBLE ENTITY.—The term ''eligible entity'' means—

(A) a nonprofit organization; and

(B) an individual who is licensed to practice law.

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

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to provide financial assistance to eligible entities to enable those eligible entities to provide for the civil legal needs of covered clients that are related to employment discrimination, and to provide for those clients such other services as are necessary to carry out the purposes of this subtitle, including any of the following activities:

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

(B) Assisting covered clients in utilizing the Commission employment discrimination complaint process.

(C) Assisting covered clients in utilizing a private employment complaint process.

(D) Conducting outreach activities to publicize the services offered under this section.

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

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

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

(2) a description of the covered clients the eligible entity intends to serve;

(3) evidence of the eligible entity's capacity to provide services to covered clients with legal issues related to employment discrimination, such as the el-

igible entity's record of success representing eligible clients in employment-related legal matters, or the eligible entity's prior experience serving clients who cannot afford legal counsel;

(4) an explanation of how the services the eligible entity intends to provide will assist covered clients in addressing legal issues related to employment discrimination; and

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

(c) AWARD BASIS.—The Secretary shall, in consultation with the Legal Services Corporation, award and oversee grants under this section pursuant to such procedures and criteria as the Secretary may require. Such procedures and criteria shall include consideration of—

(1) whether the eligible entity has demonstrated an understanding of the legal needs of covered clients;

(2) the eligible entity's capacity to provide services to covered clients with legal issues related to employment discrimination, which may be demonstrated through evidence described in subsection (b)(3);

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

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

(5) the eligible entity's ability to ensure continuity of service to covered clients with pending legal issues; and

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

(d) EQUITABLE DISTRIBUTION.—To the extent practicable, in awarding grants under this section, the Secretary, in consultation with the Legal Services Corporation, shall ensure that grants are made so as to provide the most economical and effective delivery of legal assistance to covered clients in both urban and rural areas, with consideration of the geographic distribution of persons in poverty.

(e) DURATION OF THE GRANT.—

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

(2) RENEWAL.—The Secretary may renew a grant awarded under this section for a period of not more than 2 additional years if the eligible entity demonstrates that the eligible entity is effectively using funds and that the renewal of funds will allow the eligible entity to scale up the provision of serv-

ices, replicate the program, or provide continuity of service to covered clients.

(f) REPORT.—Two years after the enactment of this section, the Secretary shall provide to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives a report on the implementation of the grant program under this section, including—

(1) a description of the services provided using grant assistance under this section, including a detailed description of the types of legal issues addressed by eligible entities and the number of covered clients served; and

(2) an assessment of the number of individuals facing one or more legal issues related to employment discrimination who cannot afford adequate legal counsel, and the largest areas of unmet need.

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

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

# Subtitle C—Grants for a System of State Advocacy

**SEC. 431. PURPOSE.**

The purpose of this subtitle is to provide allotments to support a system of advocacy (referred to in this sub-

title as a ''system'') in each State to protect the legal and human rights of workers in accordance with applicable Federal, State, and local employment discrimination laws.

**SEC. 432. DEFINITIONS.**

In this subtitle:

(1) RECORD.—The term ''record'' includes—

(A) a report prepared by an employer or staff person charged with investigating reports of employment discrimination that describes incidents of possible discrimination and the steps taken to investigate those incidents;

(B) statistical information related to employment decisions and the race, sex (including sexual orientation and gender identity), religion, national origin, age, disability, genetic information, or other protected characteristics of workers;

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

(D) any such similar record, as may be necessary to carry out the purposes of this subtitle.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(3) STATE.—The term ''State'', except as otherwise provided, includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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

(a) ALLOTMENTS.—

(1) IN GENERAL.—To assist States in meeting the requirements of section 434, the Secretary shall make allotments to States from the amounts appropriated under section 436 and not reserved under paragraph (5).

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

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

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

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

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

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

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

(3) REDUCTION OF ALLOTMENT.—Notwithstanding paragraphs (1) and (2), if the aggregate of the amounts to be allotted to the States pursuant to such paragraphs for any fiscal year exceeds the total amount appropriated for such allotments under section 436 for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

(4) INCREASE IN ALLOTMENTS.—If the sum appropriated under section 436 and not reserved under paragraph (5) for any fiscal year exceeds the aggre-

gate of the minimum allotments for all States under this subsection for that fiscal year, such excess amount shall be allotted among the States, including American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, so as to increase proportionately the minimum allotment for each such State.

(5) TECHNICAL ASSISTANCE.—In any case in which the total amount appropriated under section 436 for a fiscal year is more than $24,500,000, the Secretary shall—

(A) use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems with respect to activities carried out under this subtitle (consistent with requests by such systems for such assistance for the year); and

(B) provide a grant in accordance with section 434(d) and in an amount described in paragraph (2)(A)(i), to an American Indian consortium to provide protection and advocacy services.

(6) REALLOTMENTS.—

(A) IN GENERAL.—If the Secretary determines that an amount of an allotment to a

State for a period (of a fiscal year or longer) will not be required by the State during the period for the purpose for which the allotment was made, the Secretary shall reallot the amount.

(B) TIMING.—The Secretary may make such a reallotment from time to time, on such date as the Secretary may fix, but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make the reallotment in the Federal Register.

(C) AMOUNTS.—The Secretary shall reallot the amount to other States with respect to which the Secretary has not made that determination. The Secretary shall reallot the amount in proportion to the original allotments of the other States for such fiscal year, but shall reduce such proportionate amount for any of the other States to the extent the proportionate amount exceeds the sum that the Secretary estimates the State needs and will be able to use during such period.

(D) REALLOTMENT OF REDUCTIONS.—The Secretary shall similarly reallot the total of the

reductions among the States whose proportionate amounts were not so reduced.

(E) TREATMENT.—Any amount reallotted to a State under this subsection for a fiscal year shall be deemed to be a part of the allotment of the State under paragraph (1) for such fiscal year.

(b) PAYMENT TO SYSTEMS.—The Secretary shall pay directly to each State that has a system in the State that complies with the provisions of this subtitle the amount of the allotment made for the State under this section, unless the system specifies otherwise, to be used in support of the system.

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

**SEC. 434. SYSTEM REQUIRED.**

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

(1) have in effect a system to protect and advocate for the rights of workers within the State who are or who may be eligible for relief from applicable employment discrimination laws; and

(2) designate a private nonprofit entity (referred to in this subtitle as an ''agency'') to support and carry out the activities of that system.

(b) AGENCY REQUIREMENTS.—

(1) CHARACTERISTICS OF AGENCY.—The State shall ensure that the agency designated under subsection (a) shall—

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

(B) be independent of any entity that represents the interest of the State, employers, or other corporations.

(2) NO REDESIGNATION OF AGENCY.—The agency implementing the system shall not be redesignated unless—

(A) there is good cause for the redesignation;

(B) the State has given the agency notice of the intention to make such redesignation, including notice regarding the good cause for such redesignation, and given the agency an opportunity to respond to the assertion that good cause has been shown;

(C) the agency has given timely notice of the intended redesignation directly to clients of the agency;

(D) the State has provided, in plain English and in accessible formats for individuals with disabilities and for individuals who primarily speak a language other than English, an opportunity for public comment; and

(E) the agency has an opportunity to appeal the redesignation to the Secretary, on the basis that the redesignation was not for good cause.

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

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

(1) have the authority to—

(A) pursue legal, administrative, and other appropriate remedies or approaches, as applicable, to ensure the protection of, and advocacy for, the rights of individuals within the State who are or who may be eligible for relief from employment discrimination; and

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

(2) have the authority—

(A) to investigate incidents of employment discrimination, including harassment, and to conduct investigations of systemic employment discrimination, of such individuals if the incidents are reported to the agency or if there is probable cause to believe that the incidents occurred; and

(B) to investigate and gather data in the same manner as the Secretary under section 11(a) of the Fair Labor Standards Act (29 U.S.C. 211(a));

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

(4) on an annual basis, provide to the public, including individuals described in paragraph (1)(A), the regional office of the Commission that serves the State, and any State agency whose purpose is to reduce or eliminate employment discrimination, an opportunity to comment on—

(A) the goals and priorities established by the agency and the rationale for the establishment of such goals; and

(B) the activities of the agency, including the coordination of services with the District office of the Commission that serves the State, and any State agency whose purpose is to reduce, eliminate, or redress employment discrimination, and with entities carrying out other related programs;

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

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

(7) have access, not later than 3 business days after the agency makes a written request, to the records of any individual described in paragraph (1)(A) (including Federal and State workers) who is a client of the agency if such individual, or other

legal representative of such individual, has authorized the agency to have such access;

(8) hire and maintain sufficient numbers and types of staff (qualified by training and experience) to carry out the agency's functions, except that the State involved shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the agency, to the extent that such policies would impact the staff or functions of the agency funded with Federal funds or would prevent the agency from carrying out the functions of the system under this subtitle;

(9) have the authority to educate policymakers; and

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

(d) AMERICAN INDIAN CONSORTIUM.—

(1) IN GENERAL.—Upon application to the Secretary, the Secretary shall allot funds to one or more American Indian consortium established to provide services under this subtitle, in accordance with sec-

tion 433(a)(5). Such funds shall be used to support services under this subtitle.

(2) COORDINATION OF SYSTEMS.—An American Indian consortium under paragraph (1) shall be considered to be a system for purposes of this subtitle and shall coordinate those services with other systems serving the same geographic area.

(3) RESPONSIBLE PARTY.—The tribal council that designates the consortium shall carry out the responsibilities and exercise the authorities specified for a State in this subtitle, with regard to the consortium.

**SEC. 435. ADMINISTRATION.**

(a) GOVERNING BOARD.—The system described in section 434 shall be organized as a private nonprofit entity with a multimember governing board, and such governing board shall be selected according to the policies and procedures of the system, except that—

(1) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system;

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

(A) attorneys representing the interests of workers;

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

(C) workers who have experienced employment discrimination;

(3) not more than ⅓ of the members of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint members of the board;

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

(5) any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs.

(b) LEGAL ACTION.—

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

(2) USE OF AMOUNTS FROM JUDGMENT.—An amount received pursuant to a suit described in paragraph (1) through a court judgment may only

be used by the system to further the purpose of this subtitle and shall not be used to augment payments to legal contractors or to award personal bonuses.

(c) PUBLIC NOTICE OF FEDERAL ONSITE REVIEW.—The Secretary shall provide advance public notice of, and solicit public comments regarding, any Federal programmatic or administrative onsite review of a system conducted under this subtitle. The Secretary shall prepare an onsite visit report containing the results of such review, which shall be distributed to the Governor of the State and to other interested public and private parties. The comments received in response to the notice and public comment solicitation shall be included in the onsite visit report.

(d) REPORTS.—

(1) IN GENERAL.—Beginning for the fiscal year after the fiscal year during which this Act is enacted, each system established in a State pursuant to this subtitle shall annually prepare and transmit to the Secretary a report that describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including—

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

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

(2) DISCLOSURE OF INFORMATION.—For purposes of the report described in paragraph (1) the Secretary shall not require the system disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance from the system.

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

There are authorized to be appropriated for allotments under section 433 such sums as may be necessary.

# TITLE V—GENERAL PROVISIONS

**SEC. 501. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of the provision or amendment to any other person or circumstance, shall not be affected.

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