

116TH CONGRESS
1ST SESSION

H. R. 1521

To deter, prevent, reduce, and respond to harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories; and to amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2019

Ms. FRANKEL (for herself, Mr. KATKO, Mr. NADLER, Mr. FITZPATRICK, Ms. BLUNT ROCHESTER, Ms. UNDERWOOD, Ms. STEFANIK, Ms. MOORE, Miss GONZÁLEZ-COLÓN of Puerto Rico, Ms. SPEIER, Ms. WASSERMAN SCHULTZ, Ms. WILD, Mrs. DINGELL, Ms. HAALAND, Ms. KUSTER of New Hampshire, Mr. DESAULNIER, Mrs. DAVIS of California, Ms. CLARKE of New York, Ms. MENG, Ms. WILSON of Florida, Ms. ROYBAL-ALLARD, Mr. LOWENTHAL, Mrs. DEMINGS, Ms. LEE of California, Ms. NORTON, Ms. VELÁZQUEZ, Ms. MCCOLLUM, Mrs. WATSON COLEMAN, Ms. JACKSON LEE, Mr. HASTINGS, Mr. CASTEN of Illinois, Ms. KAPTUR, Mr. RASKIN, Ms. DEAN, Ms. SCHAKOWSKY, Ms. HILL of California, Ms. PORTER, Ms. DELAURO, Mr. CISNEROS, Ms. CASTOR of Florida, Mrs. LAWRENCE, Mr. COHEN, Mr. ESPAILLAT, Mr. HARDER of California, Miss RICE of New York, Mr. COOPER, Mr. RUSH, Ms. JOHNSON of Texas, Ms. OMAR, Mr. SABLAN, Mr. COX of California, Ms. TLAIB, Mr. POCAN, Ms. CLARK of Massachusetts, and Ms. PRESSLEY) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on Ways and Means, Financial Services, House Administration, Oversight and Reform, and the Judiciary, 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

A BILL

To deter, prevent, reduce, and respond to harassment in

the workplace, including sexual harassment, sexual assault, and harassment based on protected categories; and to amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ending the Monopoly
 5 of Power Over Workplace harassment through Education
 6 and Reporting Act” or the “EMPOWER Act”.

7 **TITLE I—PREVENTING AND RE-**
 8 **SPONDING TO WORKPLACE**
 9 **HARASSMENT**

10 **SEC. 101. PURPOSE AND AUTHORITY.**

11 It is the purpose of this title, through the exercise
 12 by Congress of its power to regulate commerce among the
 13 several States, to deter, prevent, reduce, and respond to
 14 harassment in the workplace, including sexual harass-
 15 ment, sexual assault, and harassment based on other pro-
 16 tected categories.

17 **SEC. 102. DEFINITIONS.**

18 In this title:

1 (1) APPLICANT.—The term “applicant” means
2 an applicant for employment as an employee, inde-
3 pendent contractor, or outside worker.

4 (2) CHARGE OF DISCRIMINATION.—The term
5 “Charge of Discrimination” means a charge of dis-
6 crimination filed pursuant to section 706 of the Civil
7 Rights Act of 1964 (42 U.S.C. 2000e–5).

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

11 (4) EMPLOYEE.—The term “employee”
12 means—

13 (A) an individual employed by an employer
14 described in paragraph (5), including an outside
15 worker in such individual’s office or place of
16 employment;

17 (B) an employee to which section 703, 704
18 or 717(a) of the Civil Rights Act of 1964 (42
19 U.S.C. 2000e–2; 2000e–3; 2000e–16(a)) ap-
20 plies, including an outside worker in such an
21 employee’s office or place of employment;

22 (C) a State employee to which section
23 302(a)(1) of the Government Employee Rights
24 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) ap-
25 plies, including an outside worker in such a

1 State employee's office or place of employment;
2 or

3 (D) a covered employee, as defined in sec-
4 tion 101 of the Congressional Accountability
5 Act of 1995 (2 U.S.C. 1301) or section 411(c)
6 of title 3, United States Code, including an out-
7 side worker in such a covered employee's office
8 or place of employment.

9 (5) EMPLOYER.—The term “employer”
10 means—

11 (A) a person engaged in an industry affect-
12 ing commerce, and any agent of such a person;

13 (B) an entity to which section 703, 704, or
14 717(a) of the Civil Rights Act of 1964 applies;

15 (C) an employing authority to which sec-
16 tion 302(a)(1) of the Government Employee
17 Rights Act of 1991 applies; or

18 (D) an employing office, as defined in sec-
19 tion 101 of the Congressional Accountability
20 Act of 1995 or section 411(c) of title 3, United
21 States Code.

22 (6) FAIR EMPLOYMENT PRACTICES AGEN-
23 CIES.—The term “fair employment practices agen-
24 cies” means State and local agencies with the au-

1 thority to enforce laws or regulations to prohibit dis-
2 crimination in employment.

3 (7) INDEPENDENT CONTRACTOR.—The term
4 “independent contractor” means an individual who,
5 with respect to an employer, is a contractor based on
6 the common law of agency.

7 (8) LAW ENFORCEMENT AGENCY.—The term
8 “law enforcement agency” means a government
9 agency with criminal or civil law enforcement pow-
10 ers, which may include a government agency with
11 regulatory or licensing authority.

12 (9) NONDISCLOSURE CLAUSE.—The term “non-
13 disclosure clause” means a provision in a contract or
14 agreement establishing that the parties to the con-
15 tract or agreement agree not to disclose information
16 covered by the terms and conditions of the contract
17 or agreement.

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

23 (11) OUTSIDE WORKER.—The term “outside
24 worker” means—

1 (A) a temporary worker hired through an
2 employment agency (as defined in section 701
3 of the Civil Rights Act of 1964 (42 U.S.C.
4 2000e)) to provide services to an employer pur-
5 suant to an agreement between the employment
6 agency and the employer;

7 (B) an independent contractor for an em-
8 ployer or a subcontractor thereof; or

9 (C) an intern or volunteer, whether paid or
10 unpaid, for an employer.

11 (12) SEXUAL ASSAULT.—The term “sexual as-
12 sault” means any nonconsensual sexual act pro-
13 scribed by Federal, tribal, or State law, including
14 such an act that occurs when the victim lacks capac-
15 ity to consent.

16 (13) SUBCONTRACTOR.—The term “subcon-
17 tractor” means any employer having a contract with
18 a prime contractor or another subcontractor calling
19 for supplies or services required for the performance
20 of a contract or a government contract.

21 (14) WORKPLACE HARASSMENT.—The term
22 “workplace harassment” means unwelcome or offen-
23 sive conduct based on sex (including such conduct
24 based on sexual orientation, gender identity, and
25 pregnancy), race, color, national origin, disability,

age, or religion, whether that conduct occurs in-person or through an electronic medium (which may include social media), in a work or work-related context, which affects any term, condition, or privilege of employment.

SEC. 103. PROHIBITING NONDISPARAGEMENT AND NONDISCLOSURE CLAUSES THAT COVER WORKPLACE HARASSMENT, INCLUDING SEXUAL HARASSMENT.

(a) UNLAWFUL PRACTICES.—

(1) PROHIBITION ON WORKPLACE HARASSMENT NONDISCLOSURE CLAUSE.—Subject to subsection (b)(1), it shall be an unlawful practice for an employer to enter into a contract or agreement with an employee or applicant, as a condition of employment, promotion, compensation, benefits, or change in employment status or contractual relationship, or as a term, condition, or privilege of employment, if that contract or agreement contains a nondisparagement or nondisclosure clause that covers workplace harassment, including sexual harassment or retaliation for reporting, resisting, opposing, or assisting in the investigation of workplace harassment.

(2) PROHIBITION ON ENFORCEMENT.—Notwithstanding any other provision of law, it shall be

1 an unlawful practice and otherwise unlawful for an
2 employer to enforce or attempt to enforce a non-
3 disparagement clause or nondisclosure clause de-
4 scribed in paragraph (1).

5 (b) SETTLEMENT OR SEPARATION AGREEMENTS.—

6 (1) IN GENERAL.—The provisions of subsection
7 (a) do not apply to a nondisclosure clause or non-
8 disparagement clause contained in a settlement
9 agreement or separation agreement that resolves
10 legal claims or disputes when—

11 (A) such legal claims accrued or such dis-
12 putes arose before the settlement agreement or
13 separation agreement was executed; and

14 (B) such clauses are mutually agreed upon
15 and mutually benefit both the employer and em-
16 ployee.

17 (2) UNLAWFUL PRACTICE.—It shall be an un-
18 lawful practice for an employer to unilaterally in-
19 clude a nondisclosure clause or a nondisparagement
20 clause that solely benefits the employer in a separa-
21 tion or settlement agreement.

22 (c) RIGHT TO REPORT RESERVED.—Notwith-
23 standing signing (before or after the effective date of this
24 title) any nondisparagement or nondisclosure clause in-
25 cluding a clause referred to in subsection (a)(1), an em-

1 ployee or applicant retains any right that person would
2 otherwise have had to report a concern about workplace
3 harassment, including sexual harassment or another viola-
4 tion of the law to the Commission, another Federal agency
5 (including an office of the legislative or judicial branch),
6 a State or local fair employment practices agency or any
7 State or local agency, or a law enforcement agency, and
8 any right that person would otherwise have had to bring
9 an action in a court of the United States.

10 (d) ENFORCEMENT.—

11 (1) ENFORCEMENT POWERS.—With respect to
12 the administration and enforcement of this section
13 in the case of a claim alleged by an employee for a
14 violation of this section—

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

18 (i) title VII of the Civil Rights Act of
19 1964 (42 U.S.C. 2000e et seq.); or

20 (ii) sections 302 and 304 of the Gov-
21 ernment Employee Rights Act of 1991 (42
22 U.S.C. 2000e–16b and 2000e–16c),
23 in the case of a claim alleged by such employee
24 for a violation of such title, or of section
25 302(a)(1) of the Government Employee Rights

1 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), re-
2 spectively;

3 (B) the Librarian of Congress shall have
4 the same powers as the Librarian of Congress
5 has to administer and enforce title VII of the
6 Civil Rights Act of 1964 (42 U.S.C. 2000e et
7 seq.) in the case of a claim alleged by such em-
8 ployee for a violation of such title;

9 (C) the Board (as defined in section 101 of
10 the Congressional Accountability Act of 1995 (2
11 U.S.C. 1301)) shall have the same powers as
12 the Board has to administer and enforce the
13 Congressional Accountability Act of 1995 (2
14 U.S.C. 1301 et seq.) in the case of a claim al-
15 leged by such employee for a violation of section
16 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

17 (D) the Attorney General shall have the
18 same powers as the Attorney General has to ad-
19 minister and enforce—

20 (i) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.); or

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

1 in the case of a claim alleged by such employee
2 for a violation of such title, or of section
3 302(a)(1) of the Government Employee Rights
4 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), re-
5 spectively;

6 (E) the President, the Commission, and
7 the Merit Systems Protection Board shall have
8 the same powers as the President, the Commis-
9 sion, and the Board, respectively, have to ad-
10 minister and enforce chapter 5 of title 3,
11 United States Code, in the case of a claim al-
12 leged by such employee for a violation of section
13 411 of such title;

14 (F) the Commission shall have the same
15 powers as described in subparagraph (A) to ad-
16 minister and enforce a claim by any employee
17 who is not otherwise able to seek remedy for a
18 claim through an enforcement entity described
19 in subparagraph (A) through (E); and

20 (G) a court of the United States shall have
21 the same jurisdiction and powers as the court
22 has to enforce—

23 (i) title VII of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e et seq.) in the case
25 of a claim alleged by such employee for a

1 violation of such title or in the case of a
2 claim described in subparagraph (F);

3 (ii) sections 302 and 304 of the Gov-
4 ernment Employee Rights Act of 1991 (42
5 U.S.C. 2000e–16b and 2000e–16c) in the
6 case of a claim alleged by such employee
7 for a violation of section 302(a)(1) of such
8 Act (42 U.S.C. 2000e–16b(a)(1));

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

14 (iv) chapter 5 of title 3, United States
15 Code, in the case of a claim alleged by
16 such employee for a violation of section
17 411 of such title.

18 (2) PROCEDURES AND REMEDIES.—The proce-
19 dures and remedies applicable to a claim alleged by
20 an employee for a violation of this section are—

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

1 violation of such title or in the case of a claim
2 described in paragraph (1)(F);

3 (B) the procedures and remedies applicable
4 for a violation of section 302(a)(1) of the Gov-
5 ernment Employee Rights Act of 1991 (42
6 U.S.C. 2000e–16b(a)(1)) in the case of a claim
7 alleged by such employee for a violation of such
8 section;

9 (C) the procedures and remedies applicable
10 for a violation of section 201(a)(1) of the Con-
11 gressional Accountability Act of 1995 (2 U.S.C.
12 1311(a)(1)) in the case of a claim alleged by
13 such employee for a violation of such section;
14 and

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

19 (3) OTHER APPLICABLE PROVISIONS.—With re-
20 spect to a claim alleged by a covered employee (as
21 defined in section 101 of the Congressional Account-
22 ability Act of 1995 (2 U.S.C. 1301)) for a violation
23 of this section, title III of the Congressional Ac-
24 countability Act of 1995 (2 U.S.C. 1381 et seq.)
25 shall apply in the same manner as such title applies

1 with respect to a claim alleged by such a covered
2 employee for a violation of section 201(a)(1) of such
3 Act (2 U.S.C. 1311(a)(1)).

4 (e) REGULATIONS.—

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

9 (2) LIBRARIAN OF CONGRESS.—The Librarian
10 of Congress shall have authority to issue regulations
11 to carry out this section with respect to employees
12 and applicants for employment of the Library of
13 Congress.

14 (3) BOARD.—The Board referred to in sub-
15 section (d)(1)(C) shall have authority to issue regu-
16 lations to carry out this section, in accordance with
17 section 304 of the Congressional Accountability Act
18 of 1995 (2 U.S.C. 1384), with respect to covered
19 employees, as defined in section 101 of such Act (2
20 U.S.C. 1301).

21 (4) PRESIDENT.—The President shall have au-
22 thority to issue regulations to carry out this section
23 with respect to covered employees, as defined in sec-
24 tion 411(c) of title 3, United States Code, and appli-
25 cants for employment as such employees.

1 (f) STATE AND FEDERAL IMMUNITY.—

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

7 (2) WAIVER OF STATE IMMUNITY.—

8 (A) IN GENERAL.—

9 (i) WAIVER.—A State’s receipt or use
10 of Federal financial assistance for any pro-
11 gram or activity of a State shall constitute
12 a waiver of sovereign immunity, under the
13 11th Amendment to the Constitution or
14 otherwise, to a suit brought by an em-
15 ployee or applicant for employment of that
16 program or activity under this section for
17 a remedy authorized under subsection (d).

18 (ii) DEFINITION.—In this paragraph,
19 the term “program or activity” has the
20 meaning given the term in section 606 of
21 the Civil Rights Act of 1964 (42 U.S.C.
22 2000d–4a).

23 (B) EFFECTIVE DATE.—With respect to a
24 particular program or activity, subparagraph
25 (A) applies to conduct occurring on or after the

1 day, after the date of enactment of this Act, on
2 which a State first receives or uses Federal fi-
3 nancial assistance for that program or activity.

4 (3) REMEDIES AGAINST STATE OFFICIALS.—An
5 official of a State may be sued in the official capac-
6 ity of the official by any employee or applicant for
7 employment who has complied with the applicable
8 procedures of subsection (d), for equitable relief that
9 is authorized under this section. In such a suit the
10 court may award to the prevailing party those costs
11 authorized by section 722 of the Revised Statutes
12 (42 U.S.C. 1988).

13 (4) REMEDIES AGAINST THE UNITED STATES
14 AND THE STATES.—Notwithstanding any other pro-
15 vision of this title, in an action or administrative
16 proceeding against the United States or a State for
17 a violation of this section, remedies (including rem-
18 edies at law and in equity, and interest) are avail-
19 able for the violation to the same extent as the rem-
20 edies are available for a violation of title VII of the
21 Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
22 by a private entity, except that—

23 (A) punitive damages are not available;
24 and

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

4 **SEC. 104. CONFIDENTIAL TIP-LINE ADDRESSING EMPLOY-**
5 **ERS WITH WIDESPREAD AND SYSTEMIC**
6 **WORKPLACE HARASSMENT.**

7 (a) CONFIDENTIAL TIP-LINE ESTABLISHED.—

8 (1) IN GENERAL.—Not later than 1 year after
9 the date of enactment of this Act, the Commission
10 shall establish a confidential tip-line that supple-
11 ments the Commission’s existing process for submit-
12 ting a Charge of Discrimination, and that has the
13 characteristics described in paragraph (2), to—

14 (A) receive, log, and acknowledge the re-
15 ceipt of reports by employees, applicants, by-
16 standers, or other individuals who attest that
17 they have experienced or witnessed workplace
18 harassment, including sexual assault and other
19 forms of sexual harassment;

20 (B) provide informational materials to re-
21 porting individuals described in subparagraph
22 (A); and

23 (C) make available reports described in
24 subparagraph (A) to—

25 (i) the Commission; and

1 (ii) Commission-approved fair employ-
2 ment practices agencies for potential inves-
3 tigation.

4 (2) OPERATION OF THE TIP-LINE.—The Com-
5 mission shall ensure that the tip-line established
6 under this section will—

7 (A) explicitly notify reporting individuals
8 that the tip-line does not allow anonymous re-
9 porting, but does allow the submission of con-
10 fidential reports, independent of a Charge of
11 Discrimination or a Federal or State adminis-
12 trative complaint, by those employees or appli-
13 cants who have experienced workplace harass-
14 ment, including sexual assault and other forms
15 of sexual harassment, and by those employees,
16 applicants, bystanders, or other individuals who
17 have witnessed such conduct;

18 (B) provide an option for reporting individ-
19 uals to make a report that would not identify
20 individual employees, but would identify the en-
21 tity, employer, division, or subdivision respon-
22 sible for the workplace harassment, including
23 sexual assault and other forms of sexual harass-
24 ment;

1 (C) educate reporting individuals about
2 how to preserve the right to make any reports,
3 complaints, or charges that the individuals
4 would otherwise have been eligible to make,
5 independent of any report to the tip-line, in-
6 cluding—

7 (i) the right of the reporting indi-
8 vidual to file a Charge of Discrimination
9 that will result in the Commission or a
10 Commission-approved fair employment
11 practices agency taking action (and the
12 risk of losing that right if the reporting in-
13 dividual fails to file a timely Charge of
14 Discrimination); and

15 (ii) a clear explanation of any dead-
16 lines or limitations periods;

17 (D) instruct reporting individuals about
18 how to file a Charge of Discrimination with the
19 Commission and encourage reporting individ-
20 uals to file a Charge of Discrimination in order
21 to allow the Commission to more effectively in-
22 vestigate the workplace harassment;

23 (E) emphasize that reports to the confiden-
24 tial tip-line—

1 (i) will not prompt individualized in-
2 vestigations, except in the limited cir-
3 cumstances described in clause (ii), sub-
4 paragraph (I), and subsection (b), and
5 such investigations will fully comport with
6 applicable due process requirements;

7 (ii) will be monitored by the Commis-
8 sion and Commission-approved fair em-
9 ployment practices agencies to identify
10 trends and determine whether investiga-
11 tions should be undertaken, for instance,
12 when the Commission has received multiple
13 complaints regarding a particular employer
14 or there is evidence of a broader pattern or
15 practice of workplace harassment;

16 (iii) shall not be discoverable in civil
17 cases, unless the reporting individual
18 waives the confidentiality of the submitted
19 reports; and

20 (iv) shall not be shared with other
21 Federal agencies;

22 (F) engage fair employment practices
23 agencies at the State and local level to apply
24 and be thoroughly vetted and reviewed for ap-
25 proved access to the confidential tip-line;

1 (G) share information from the tip-line, in-
2 cluding information on opened investigations,
3 only between and among participating approved
4 fair employment practices agencies and the
5 Commission to facilitate coordination and avoid
6 conflicts in investigations and resolutions;

7 (H) offer an option to each reporting indi-
8 vidual, at the time of reporting, to elect to be
9 informed, to the extent practicable, if the indi-
10 vidual's report leads to an investigation, so that
11 the reporting individual may choose to provide
12 further information or participate in any result-
13 ing investigation; and

14 (I) protect the identity of individuals mak-
15 ing reports and employers by making such re-
16 ports confidential within the tip-line and only
17 available to the Commission and Commission-
18 approved fair employment practices agencies,
19 and require that information obtained can be
20 used only for the purpose of investigation re-
21 lated to the submitted complaint or complaints,
22 in full compliance with applicable due process
23 requirements.

24 (b) CHARGE OF DISCRIMINATION.—In the event that
25 a member of the Commission determines that information

1 received from the tip-line warrants an investigation, the
2 member may initiate an investigation by filing a Charge
3 of Discrimination in accordance with section 706 of the
4 Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

5 (c) EDUCATION ABOUT THE TIP-LINE.—The Com-
6 mission shall disseminate information and educate the
7 public about the tip-line established under this section.

8 (d) UNLAWFUL PRACTICES WITH RESPECT TO THE
9 TIP-LINE.—

10 (1) OTHER UNLAWFUL PRACTICE.—It shall be
11 unlawful to engage in any unlawful employment
12 practice described in section 704 of the Civil Rights
13 Act of 1964 (42 U.S.C. 2000e-3) with respect to the
14 tip-line under this section, including contacting or
15 making threats to contact law enforcement authori-
16 ties, such as the police, immigration officials, or
17 other officials, with respect to an employee or appli-
18 cant because that employee or applicant has made a
19 charge, testified, assisted, or participated in any
20 manner in an investigation, proceeding or hearing
21 under this section.

22 (2) CONFIDENTIALITY.—It shall be unlawful
23 for any officer or employee of the Commission, or
24 any Commission-approved fair employment practices
25 agencies, to make public in any manner whatever

1 any information obtained by the Commission pursu-
 2 ant to its authority under this section, prior to insti-
 3 tution of any proceeding under section 706 of the
 4 Civil Rights Act of 1964 (42 U.S.C. 2000e-5), ex-
 5 cept that the Commission, or any Commission-ap-
 6 proved fair employment practices agency, shall offer
 7 information to reporting individuals in accordance
 8 with this section.

9 (3) ENFORCEMENT.—The enforcement provi-
 10 sions described in section 4(d) shall apply in the
 11 same manner to the enforcement of a violation de-
 12 scribed in paragraph (1) or (2).

13 (e) EFFECTIVE DATE.—This section shall first take
 14 effect on the first day of the first fiscal year for which
 15 \$1,500,000 is appropriated to carry out this section.

16 (f) ANNUAL MINIMUM.—The Commission shall not
 17 be required to implement this section in any fiscal year
 18 for which less than \$1,000,000 is appropriated to carry
 19 out this section.

20 **SEC. 105. SEC FILINGS AND MATERIAL DISCLOSURES AT**
 21 **PUBLIC COMPANIES.**

22 (a) DEFINITIONS.—In this section—

23 (1) the term “Form 10-K” means the form de-
 24 scribed in section 249.310 of title 17, Code of Fed-
 25 eral Regulations, or any successor regulation; and

1 (2) the term “issuer” has the meaning given
2 the term in section 3(a) of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78c(a)).

4 (b) FINDINGS.—Congress finds that—

5 (1) shareholders and the public should know
6 whether corporations—

7 (A) are expending company funds to re-
8 solve, settle, or litigate claims of workplace har-
9 assment, including sexual harassment; and

10 (B) along with the executives and man-
11 agers of those corporations—

12 (i) are complying with prohibitions
13 against workplace harassment, including
14 sexual harassment; and

15 (ii) facilitate a culture of silence, dis-
16 respect, intimidation, and abuse that nega-
17 tively impacts the health and safety of the
18 workers of those corporations and the
19 value of those corporations; and

20 (2) the requirements of this section will—

21 (A) establish necessary transparency and
22 accountability; and

23 (B) provide an incentive for corporations
24 to—

(i) promptly address workplace harassment, including sexual harassment, as that misconduct occurs; and

(ii) foster a culture in which workplace harassment is not protected and does not occur.

(c) INFORMATION REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall promulgate a regulation that requires any issuer that is required to submit an annual report using Form 10-K to include in any such submission—

(1) during the period covered by the submission—

(A) with respect to workplace harassment, including sexual harassment, and retaliation for reporting, resisting, opposing, or assisting in the investigation of workplace harassment—

(i) the number of settlements reached by the issuer as a signatory or when the issuer is a beneficiary of a release of claims; and

(ii) whether any judgments or awards (including awards through arbitration or administrative proceedings) were entered

1 against the issuer in part or in whole, or
 2 any payments made in connection with a
 3 release of claims; and

4 (B) the total amount paid by the issuer or
 5 another party as a result of—

6 (i) the settlements described in sub-
 7 paragraph (A)(i); and

8 (ii) the judgments described in sub-
 9 paragraph (A)(ii); and

10 (2) information regarding whether, in the ag-
 11 gregate, including the period covered by the submis-
 12 sion, there have been three or more settlements
 13 reached by, or judgments against, the issuer with re-
 14 spect to workplace harassment, including sexual har-
 15 assment, or retaliation for reporting, resisting, op-
 16 posing, or assisting in the investigation of workplace
 17 harassment that relate to a particular individual em-
 18 ployed by the issuer, without identifying that indi-
 19 vidual by name.

20 **SEC. 106. PROFESSIONAL TRAINING, INCLUDING BY-**
 21 **STANDER TRAINING, AND PUBLIC EDU-**
 22 **CATION CAMPAIGNS.**

23 (a) COMMISSION AUTHORITY.—The Commission
 24 shall have the authority to—

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

6 (2) use the materials developed by the Commis-
7 sion for any education, technical assistance, or train-
8 ing offered by the Commission in accordance with
9 section 705(j)(1) of the Civil Rights Act of 1964 in
10 any education and outreach activities carried out by
11 the Commission; and

12 (3) use funds from the EEOC Education, Tech-
13 nical Assistance, and Training Revolving Fund, es-
14 tablished under section 705(k) of the Civil Rights
15 Act of 1964, to pay the full salaries of any Commis-
16 sion employees that develop and administer any edu-
17 cation, technical assistance, or training programs of-
18 fered by the Commission.

19 (b) WORKPLACE TRAINING.—

20 (1) IN GENERAL.—The Commission shall pro-
21 vide for the development and dissemination of work-
22 place training programs and information regarding
23 workplace harassment, including sexual harassment.

24 (2) CONTENTS OF TRAINING.—The training
25 provided by the Commission under this subsection to

1 managers and nonmanagers shall be consistent with
2 the findings of the Commission, on matters includ-
3 ing—

4 (A) what constitutes workplace harass-
5 ment, including sexual harassment;

6 (B) the rights of individuals with respect
7 to workplace harassment and how to report
8 workplace harassment;

9 (C) how individuals, including bystanders,
10 who encounter workplace harassment can inter-
11 vene or report the harassment; and

12 (D) how employers and managers can pre-
13 vent workplace harassment, including sexual
14 harassment, from occurring in the workplace.

15 (3) CONTENTS OF INFORMATION.—In providing
16 information under this subsection, the Commission
17 shall—

18 (A) prepare and distribute information
19 that is consistent with the findings of the Com-
20 mission;

21 (B) develop and disseminate a public serv-
22 ice advertisement campaign that—

23 (i) distributes information with re-
24 spect to the matters described in para-
25 graph (2); and

1 (ii) advertises the confidential com-
 2 plaint database established under section
 3 5.

4 (c) EFFECTIVE DATE.—This section shall not take
 5 effect in any fiscal year for which less than \$1,500,000
 6 is appropriated to carry out this section.

7 **TITLE II—MODIFICATION OF TAX**
 8 **TREATMENT OF AMOUNTS**
 9 **RELATED TO EMPLOYMENT**
 10 **DISCRIMINATION AND WORK-**
 11 **PLACE HARASSMENT**

12 **SEC. 201. TAX TREATMENT OF AMOUNTS RELATED TO**
 13 **JUDGMENTS.**

14 (a) DENIAL OF DEDUCTION.—

15 (1) IN GENERAL.—Part IX of subchapter B of
 16 chapter 1 of the Internal Revenue Code of 1986 is
 17 amended by adding at the end the following new sec-
 18 tion:

19 **“SEC. 280I. AMOUNTS RELATED TO JUDGMENTS WITH RE-**
 20 **SPECT TO WORKPLACE HARASSMENT, IN-**
 21 **CLUDING SEXUAL HARASSMENT.**

22 “No deduction shall be allowed under this chapter for
 23 amounts paid or incurred by the taxpayer—

1 “(1) pursuant to any judgment or award in liti-
 2 gation related to workplace harassment, including
 3 sexual harassment, or

4 “(2) for expenses and attorney’s fees in connec-
 5 tion with the litigation resulting in the judgment or
 6 award described in paragraph (1) (other than ex-
 7 penses or attorney’s fees paid by the workplace har-
 8 assment plaintiff or claimant), or for any insurance
 9 covering the defense or liability of the underlying
 10 claims with respect to such litigation.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-
 12 tions for part IX of subchapter B of chapter 1 of
 13 such Code is amended by adding at the end the fol-
 14 lowing new item:

“Sec. 280I. Amounts related to judgments with respect to workplace harass-
 ment, including sexual harassment.”.

15 (3) CONFORMING AMENDMENT.—Section 162
 16 of such Code is amended by striking subsection (q).

17 (4) EFFECTIVE DATE.—The amendments made
 18 by this subsection shall apply to amounts paid or in-
 19 curred in taxable years beginning after the date of
 20 the enactment of this Act.

21 (b) EXCLUSION FROM INCOME.—

22 (1) IN GENERAL.—Part III of subchapter B of
 23 chapter 1 of the Internal Revenue Code of 1986 is

1 amended by inserting after section 139G the fol-
 2 lowing new section:

3 **“SEC. 139H. AMOUNTS RECEIVED IN CONNECTION WITH**
 4 **JUDGMENTS, AWARDS, AND SETTLEMENTS**
 5 **WITH RESPECT TO WORKPLACE HARASS-**
 6 **MENT.**

7 “Gross income shall not include any amount received
 8 in connection with a judgment or award in, or a settlement
 9 of—

10 “(1) a claim related to workplace harassment,
 11 including sexual harassment or other unlawful dis-
 12 crimination, or

13 “(2) any other claim of unlawful discrimination
 14 (as defined by section 62(e)).

15 The preceding sentence shall not include any employment
 16 discrimination compensation to which section 1302 ap-
 17 plies.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-
 19 tions for part III of subchapter B of chapter 1 of
 20 such Code is amended by inserting after the item re-
 21 lating to section 139G the following new item:

 “Sec. 139H. Amounts received in connection with judgments, awards, and set-
 tlements with respect to workplace harassment.”.

22 (3) EFFECTIVE DATE.—The amendments made
 23 by this subsection shall apply to amounts received in

1 taxable years beginning after the date of the enact-
 2 ment of this Act.

3 **SEC. 202. LIMITATION ON TAX BASED ON INCOME AVER-**
 4 **AGING FOR COMPENSATION RECEIVED ON**
 5 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**
 6 **MENT DISCRIMINATION.**

7 (a) IN GENERAL.—Part I of subchapter Q of chapter
 8 1 of the Internal Revenue Code of 1986 (relating to in-
 9 come averaging) is amended by adding at the end the fol-
 10 lowing new section:

11 **“SEC. 1302. INCOME FROM COMPENSATION RECEIVED ON**
 12 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**
 13 **MENT DISCRIMINATION.**

14 “(a) GENERAL RULE.—In the case of any employ-
 15 ment discrimination compensation received during any
 16 taxable year, the tax imposed by this chapter for such tax-
 17 able year with respect to such compensation shall not ex-
 18 ceed the sum of—

19 “(1) the tax which would be so imposed if—

20 “(A) no amount of such compensation
 21 were included in gross income for such year,
 22 and

23 “(B) no deduction were allowed for such
 24 year for expenses otherwise allowable as a de-
 25 duction to the taxpayer for such year in connec-

tion with making or prosecuting any claim of
unlawful employment discrimination by or on
behalf of the taxpayer, plus

“(2) the product of—

“(A) the combined number of years in the
backpay period and the foregone compensation
period, and

“(B) the amount by which the tax deter-
mined under paragraph (1) would increase if
the sum of—

“(i) the average of the average annual
net employment discrimination compensa-
tion in the backpay period, and

“(ii) the average of the average an-
nual net employment discrimination com-
pensation in the foregone compensation pe-
riod,

were included in gross income for such year.

“(b) DEFINITIONS.—For purposes of this section—

“(1) EMPLOYMENT DISCRIMINATION COM-
PENSATION.—The term ‘employment discrimination
compensation’ means any backpay or foregone com-
pensation receivable (whether as lump sums or peri-
odic payments) on account of a judgment or settle-
ment resulting from a claim of unlawful discrimina-

1 tion (as defined in section 62(e)) in violation of law
2 which relates to employment.

3 “(2) BACKPAY.—The term ‘backpay’ means
4 amounts which are includible in gross income for the
5 taxable year as compensation which is attributable
6 to services performed (or which would have been
7 performed but for the violation of law described in
8 paragraph (1)) as an employee, former employee, or
9 prospective employee in years before such taxable
10 year for the taxpayer’s employer, former employer,
11 or prospective employer.

12 “(3) FOREGONE COMPENSATION.—The term
13 ‘foregone compensation’ means amounts which are
14 includible in gross income for the taxable year as
15 compensation which is attributable to services which
16 would have been performed in years after such tax-
17 able year but for the violation of law described in
18 paragraph (1).

19 “(4) BACKPAY PERIOD.—The term ‘backpay pe-
20 riod’ means the period during which services de-
21 scribed in paragraph (2) were performed or would
22 have been performed but for the violation of law de-
23 scribed in paragraph (1). If such period is not equal
24 to a whole number of taxable years, such period

1 shall be increased to the next highest number of
 2 whole taxable years.

3 “(5) FOREGONE COMPENSATION PERIOD.—The
 4 term ‘foregone compensation period’ means the pe-
 5 riod during which services described in paragraph
 6 (3) would have been performed but for the violation
 7 of law described in paragraph (1). If such period is
 8 not equal to a whole number of taxable years, such
 9 period shall be increased to the next highest number
 10 of whole taxable years.

11 “(6) AVERAGE ANNUAL NET EMPLOYMENT DIS-
 12 CRIMINATION COMPENSATION.—The term ‘average
 13 annual net employment discrimination compensation’
 14 with respect to any period means the amount equal
 15 to—

16 “(A) the excess of—

17 “(i) employment discrimination com-
 18 pensation attributable to such period, over

19 “(ii) the amount of the deductions de-
 20 scribed in subsection (a)(1)(B), divided by

21 “(B) the total number of years in the
 22 backpay period and the foregone compensation
 23 period.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
 25 for part I of subchapter Q of chapter 1 of the Internal

1 Revenue Code of 1986 is amended by inserting after sec-
2 tion 1301 the following new item:

“Sec. 1302. Income from compensation received on account of certain unlawful
employment discrimination.”.

3 (c) INCOME AVERAGING NOT TO INCREASE ALTER-
4 NATIVE MINIMUM TAX LIABILITY.—Section 55(c) of the
5 Internal Revenue Code of 1986 is amended by redesign-
6 ating paragraph (3) as paragraph (4) and by inserting
7 after paragraph (2) the following new paragraph:

8 “(3) COORDINATION WITH INCOME AVERAGING
9 FOR AMOUNTS RECEIVED ON ACCOUNT OF EMPLOY-
10 MENT DISCRIMINATION.—Solely for purposes of this
11 section, section 1302 shall not apply in computing
12 the regular tax liability.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to amounts paid or incurred in tax-
15 able years beginning after the date of the enactment of
16 this Act.

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