

#### 115TH CONGRESS 1ST SESSION

# H. R. 4729

To require annual reporting by employers of the number of settlements with employees regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment, and for other purposes.

#### IN THE HOUSE OF REPRESENTATIVES

December 21, 2017

Mrs. Carolyn B. Maloney of New York (for herself, Mr. Khanna, Mr. Cummings, Ms. Norton, Ms. Shea-Porter, Mr. Connolly, Mr. David Scott of Georgia, Mr. Raskin, Mr. Suozzi, Ms. Kuster of New Hampshire, Ms. Moore, Mrs. Dingell, and Mr. Pallone) introduced the following bill; which was referred to the Committee on Education and the Workforce

## A BILL

To require annual reporting by employers of the number of settlements with employees regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment, and for other purposes.

- 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; FINDINGS.
- 4 (a) Short Title.—This Act may be cited as the
- 5 "Ending Secrecy About Workplace Sexual Harassment
- 6 Act".

- (b) FINDINGS.—Congress finds that the following:
- (1) Thirty years after the United States Supreme Court held in Meritor Savings Bank v. Vinson that sexual harassment creates a hostile or abusive work environment and is a violation of title VII of the Civil Rights Act of 1964, sexual harassment remains a widespread problem, affecting victims in every industry, at every level of employment.
  - (2) In fiscal year 2015, almost one-third of the 90,000 charges filed with the Equal Employment Opportunity Commission involved harassment, and nearly a quarter of those harassment charges involved sexual harassment. Of the total number of charges received that alleged harassment from employees working for private employers or for State and local government employers, approximately 45 percent alleged harassment on the basis of sex.
  - (3) According to the Commission's Select Task Force in 2016, on the Study of Harassment in the Workplace, the prevalence of such harassment—
    - (A) causes mental and physical harm to the victim, as the study concluded that "employees experiencing sexual harassment are more likely to report symptoms of depression, general stress and anxiety, posttraumatic stress

- disorder (PTSD), and overall impaired psychological well-being";
  - (B) results in harms, which are not limited to victims, as the study concluded that "employees, female and male alike, who observed hostility directed toward female coworkers (both incivility and sexually harassing behavior) were more likely to experience lower psychological well-being", which were "in turn linked to lower physical well-being".
    - (4) Prevalence of sexual harassment in the workplace causes substantial financial harm to victims, as they often try to avoid the harassing behavior by taking leave without pay or leaving the workplace entirely, resulting in a loss of wages. The U.S. Merit Systems Protection Board's 1995 report on Sexual Harassment in the Federal Workplace found sexual harassment cost Federal employees \$4.4 million between 1992 and 1994.
    - (5) According to Commission records, from fiscal year 2010 to 2016, U.S. companies have paid out more than \$295 million in public penalties over sexual harassment claims. This sum does not include any private settlements or internally resolved com-

- plaints about which there is limited public information.
- Go The Commission is responsible for enforcing Federal anti-discrimination laws that protect job applicants and employees, and has the authority to investigate charges of discrimination against employers who are covered by the law.
- 8 (7) The Commission does not currently receive 9 disclosures from employers on annual EEO-1 re-10 ports regarding claims of discrimination on the basis 11 of sex, including verbal and physical sexual harass-12 ment made directly to the employer and resolved in-13 ternally through out-of-court settlements or other 14 mediation.

#### 15 SEC. 2. EMPLOYER REPORTING REQUIREMENT.

- 16 (a) REPORTING REQUIREMENT.—Every employer re-
- 17 quired to submit to the Equal Employment Opportunity
- 18 Commission an Employer Information Report EEO-1
- 19 shall include in such report the number of settlements
- 20 reached by the employer with an employee in the resolu-
- 21 tion of claims pertaining to discrimination on the basis
- 22 of sex, including verbal and physical sexual harassment.
- 23 (b) REQUIRED REPORTING.—Examples of settle-
- 24 ments required to be reported under this section include
- 25 any agreement where anything of value is conferred to the

- 1 individual raising the claim in return for such individual
- 2 declining to further pursue the claim, any internal medi-
- 3 ation or other workplace resolution that results in the indi-
- 4 vidual declining to further pursue the claim.
- 5 (c) Examples of Offensive Conduct That Con-
- 6 STITUTE SEXUAL HARASSMENT.—Claims pertaining to
- 7 sexual harassment are those that complain of acts such
- 8 as the following—
- 9 (1) inappropriate or unwanted touching;
- 10 (2) verbal comments about sex or of a sexual
- 11 nature, which may include comments to an indi-
- vidual about her or his body or sexual or romantic
- activity or the body or sexual or romantic activity of
- the individual making the comments;
- 15 (3) referring to another individual by a name or
- nickname of a romantic, demeaning, or sexual na-
- ture;
- 18 (4) inappropriate gestures of a sexual nature;
- 19 (5) unwanted proposals for sexual activity;
- 20 (6) showing another individual photos or other
- 21 images that are sexually explicit or are otherwise of
- a sexual nature; or
- 23 (7) undue attention to or questions about a per-
- son's sexual relationships, sexual history, sexual ori-
- entation, or gender identity.

### 1 SEC. 3. RIGHTS OF EMPLOYEES.

2	(a) Protection From Retaliation.—
3	(1) CONDUCT PROHIBITED.—An employer may
4	not terminate any employee nor discriminate against
5	any such employee with regards to terms and condi-
6	tions of employment because such employee—
7	(A) inquires about an employer's meeting
8	of the requirements of this Act; or
9	(B) complains about an employer's failure
10	to meet the requirements of this Act.
11	(2) Enforcement.—
12	(A) Liability.—In addition to civil rights
13	protections and remedies for retaliation avail-
14	able under other Federal, State, or local law,
15	any employer who violates paragraph (1) shall
16	be liable to any eligible employee affected for—
17	(i) damages equal to the amount of
18	any wages, salary, employment benefits, or
19	other compensation denied or lost to such
20	employee by reason of the violation;
21	(ii) the interest on the amount de-
22	scribed in clause (i) calculated at the pre-
23	vailing rate;
24	(iii) an additional amount as liq-
25	uidated damages equal to the sum of the

1	amount described in clause (i) and the in-
2	terest described in clause (ii); and
3	(iv) such equitable relief as may be
4	appropriate, including employment, rein-
5	statement, and promotion.
6	(B) RIGHT OF ACTION.—An action to re-
7	cover the damages or equitable relief prescribed
8	in subparagraph (1) may be maintained against
9	any employer in any Federal or State court of
10	competent jurisdiction by any one or more em-
11	ployees for and on behalf of—
12	(i) the employee or employees; or
13	(ii) the employees and other employ-
14	ees similarly situated.
15	(C) FEES AND COSTS.—The court in such
16	an action shall, in addition to any judgment
17	awarded to the plaintiff, allow a reasonable at-
18	torney's fee, reasonable expert witness fees, and
19	other costs of the action to be paid by the de-
20	fendant.
21	(b) Confidentiality Agreements and Settle-
22	MENTS.—
23	(1) Rule of Construction.—Nothing in this
24	Act shall be construed to interfere with the right of
25	an employee to enter into a confidentiality agree-

ment with his or her employer with respect to a claim of discrimination on the basis of sex, including verbal and physical sexual harassment, the investigation of such a claim, or the out-of-court settlement of such a claim.

#### (2) Limitations on agreements.—

- (A) An employer may not use a confidentiality agreement described in paragraph (1) as a basis for not submitting the information required by section 2.
- (B) A confidentiality agreement described in paragraph (1) shall not be construed as prohibiting any party to such agreement from cooperating with law enforcement investigations into any claims of discrimination on the basis of sex, including verbal and physical sexual harassment.

#### 18 SEC. 4. EEOC REPORT TO CONGRESS.

- The Equal Employment Opportunity Commission 20 shall annually report to Congress information relating to 21 claims of discrimination on the basis of sex, including 22 verbal and physical sexual harassment, including—
- 23 (1) the number of settlements that were re-24 ported to the Commission as defined by and re-25 ported pursuant to section 2;

6

7

8

9

10

11

12

13

14

15

16

17

- 1 (2) the number of charges alleging discrimina-2 tion on the basis of sex that were reported to the 3 Equal Employment Opportunity Commission, includ-4 ing verbal and physical sexual harassment made di-5 rectly to the Commission; and
- (3) a summary of any action taken by the Commission based upon any such charges or complaints
  collected pursuant to this Act, such as litigation or
  settlements facilitated by the Commission pertaining
  to discrimination on the basis of sex, including
  verbal and physical sexual harassment, including a
  brief description of any outcome of such actions.

#### 13 SEC. 5. GAO STUDY AND REPORT.

14 The Comptroller General of the United States shall 15 conduct a comprehensive study of discrimination on the basis of sex, including verbal and physical sexual harass-16 ment involving Federal employees and shall report to Con-17 18 gress not later than one year after the date of enactment of this Act the results of such study and recommendations 19 20 for legislation or other action for improving transparency 21 regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment, and recommendations for legislation or other action for improving

- 1 employer accountability and transparency regarding such
- 2 claims.

 $\bigcirc$