

116TH CONGRESS
1ST SESSION

H. R. 135

To amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2019

Mr. CUMMINGS (for himself, Mr. MEADOWS, Ms. NORTON, Mr. SENSENBRENNER, and Ms. JACKSON LEE) introduced the following bill; which was referred to the Committee on Oversight and Reform

A BILL

To amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal Government, 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.**

4 This Act may be cited as the “Federal Employee
5 Antidiscrimination Act of 2019”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 Section 102 of the Notification and Federal Em-
3 ployee Antidiscrimination and Retaliation Act of 2002 (5
4 U.S.C. 2301 note) is amended—

5 (1) in paragraph (4), to read as follows:

6 “(4) accountability in the enforcement of Fed-
7 eral employee rights is furthered when Federal agen-
8 cies take appropriate disciplinary action against
9 Federal employees who have been found to have
10 committed discriminatory or retaliatory acts;” and

11 (2) in paragraph (5)(A)—

12 (A) by striking “nor is accountability” and
13 inserting “but accountability is not”; and

14 (B) by inserting “for what by law the
15 agency is responsible” after “under this Act”.

16 **SEC. 3. NOTIFICATION OF VIOLATION.**

17 Section 202 of the Notification and Federal Em-
18 ployee Antidiscrimination and Retaliation Act of 2002 (5
19 U.S.C. 2301 note) is amended by adding at the end the
20 following:

21 “(d) NOTIFICATION OF FINAL AGENCY ACTION.—

22 “(1) Not later than 30 days after a Federal
23 agency takes final action or the Equal Employment
24 Opportunity Commission issues an appellate decision
25 involving a finding of discrimination or retaliation
26 prohibited by a provision of law covered by para-

1 graph (1) or (2) of section 201(a), as applicable, the
2 head of the agency subject to the finding shall pro-
3 vide notice for at least 1 year on the agency’s inter-
4 net website in a clear and prominent location linked
5 directly from the agency’s internet home page stat-
6 ing that a finding of discrimination or retaliation
7 has been made.

8 “(2) The notification shall identify the date the
9 finding was made, the date or dates on which the
10 discriminatory or retaliatory act or acts occurred,
11 and the law or laws violated by the discriminatory
12 or retaliatory act or acts. The notification shall also
13 advise Federal employees of the rights and protec-
14 tions available under the respective provisions of law
15 covered by paragraph (1) or (2) of section 201(a).”.

16 **SEC. 4. REPORTING REQUIREMENTS.**

17 (a) **ELECTRONIC FORMAT REQUIREMENT.**—

18 (1) **IN GENERAL.**—Section 203(a) of the Notifi-
19 cation and Federal Employee Antidiscrimination and
20 Retaliation Act of 2002 (5 U.S.C. 2301 note) is
21 amended—

22 (A) by inserting “Homeland Security and”
23 before “Governmental Affairs”;

24 (B) by inserting “Oversight and” before
25 “Government Reform”; and

1 (C) by inserting “(in an electronic format
2 prescribed by the Office of Personnel Manage-
3 ment)” after “an annual report”.

4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1)(C) shall take effect on the date
6 that is 1 year after the date of enactment of this
7 Act.

8 (3) TRANSITION PERIOD.—Notwithstanding the
9 requirements of section 203(a) of the Notification
10 and Federal Employee Antidiscrimination and Retal-
11 iation Act of 2002 (5 U.S.C. 2301 note), the report
12 required under such section may be submitted in an
13 electronic format, as prescribed by the Office of Per-
14 sonnel Management, during the period beginning on
15 the date of enactment of this Act and ending on the
16 effective date in paragraph (2).

17 (b) REPORTING REQUIREMENT FOR DISCIPLINARY
18 ACTION.—Section 203 of such Act is amended by adding
19 at the end the following:

20 “(c) DISCIPLINARY ACTION REPORT.—Not later
21 than 60 days after the date on which a Federal agency
22 takes final action or a Federal agency receives an appel-
23 late decision issued by the Equal Employment Oppor-
24 tunity Commission involving a finding of discrimination
25 or retaliation in violation of a provision of law covered by

1 paragraph (1) or (2) of section 201(a), as applicable, the
2 employing Federal agency shall submit to the Commission
3 a report stating whether disciplinary action has been initi-
4 ated against a Federal employee as a result of the viola-
5 tion.”.

6 **SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL**
7 **AGENCIES.**

8 Section 301(b) of the Notification and Federal Em-
9 ployee Antidiscrimination and Retaliation Act of 2002 (5
10 U.S.C. 2301 note) is amended—

11 (1) in paragraph (9)—

12 (A) in subparagraph (A), by striking
13 “and” at the end;

14 (B) in subparagraph (B)(ii), by striking
15 the period at the end and inserting “, and”;
16 and

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

18 “(C) for each such finding counted under
19 subparagraph (A), the agency shall specify—

20 “(i) the date of the finding;

21 “(ii) the affected agency;

22 “(iii) the law violated; and

23 “(iv) whether a decision has been
24 made regarding necessary disciplinary ac-
25 tion as a result of the finding.”; and

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

2 “(11) Data regarding each class action com-
3 plaint filed against the agency alleging discrimina-
4 tion or retaliation, including—

5 “(A) information regarding the date on
6 which each complaint was filed;

7 “(B) a general summary of the allegations
8 alleged in the complaint;

9 “(C) an estimate of the total number of
10 plaintiffs joined in the complaint if known;

11 “(D) the current status of the complaint,
12 including whether the class has been certified;
13 and

14 “(E) the case numbers for the civil actions
15 in which discrimination or retaliation has been
16 found.”.

17 **SEC. 6. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT**
18 **OPPORTUNITY COMMISSION.**

19 Section 302(b) of the Notification and Federal Em-
20 ployee Antidiscrimination and Retaliation Act of 2002 (5
21 U.S.C. 2301 note) is amended by striking “(10)” and in-
22 serting “(11)”.

1 **SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
2 **DISCRIMINATION AND RETALIATION ACT**
3 **AMENDMENTS.**

4 (a) NOTIFICATION REQUIREMENTS.—The Notifica-
5 tion and Federal Employee Antidiscrimination and Retal-
6 iation Act of 2002 (5 U.S.C. 2301 note) is amended by
7 adding after section 206 the following:

8 **“SEC. 207. COMPLAINT TRACKING.**

9 “Not later than 1 year after the date of enactment
10 of the Federal Employee Antidiscrimination Act of 2019,
11 each Federal agency shall establish a system to track each
12 complaint of discrimination arising under section
13 2302(b)(1) of title 5, United States Code, and adjudicated
14 through the Equal Employment Opportunity process from
15 inception to resolution of the complaint, including whether
16 a decision has been made regarding necessary disciplinary
17 action as the result of a finding of discrimination.

18 **“SEC. 208. NOTATION IN PERSONNEL RECORD.**

19 “If a Federal agency takes an adverse action covered
20 under section 7512 of title 5, United States Code, against
21 a Federal employee for an act of discrimination or retalia-
22 tion prohibited by a provision of law covered by paragraph
23 (1) or (2) of section 201(a), the agency shall, after all
24 appeals relating to such action have been exhausted, in-
25 clude a notation of the adverse action and the reason for
26 the action in the employee’s personnel record.”.

1 (b) PROCESSING AND REFERRAL.—The Notification
2 and Federal Employee Antidiscrimination and Retaliation
3 Act of 2002 (5 U.S.C. 2301 note) is amended by adding
4 at the end the following:

5 **“TITLE IV—PROCESSING AND**
6 **REFERRAL**

7 **“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.**

8 “Each Federal agency is responsible for the fair, im-
9 partial processing and resolution of complaints of employ-
10 ment discrimination and retaliation arising in the Federal
11 administrative process and shall establish a model Equal
12 Employment Opportunity Program that—

13 “(1) is not under the control, either structurally
14 or practically, of a Human Capital or General Coun-
15 sel office;

16 “(2) is devoid of internal conflicts of interest
17 and ensures fairness and inclusiveness within the or-
18 ganization; and

19 “(3) ensures the efficient and fair resolution of
20 complaints alleging discrimination or retaliation.

21 **“SEC. 402. NO LIMITATION ON HUMAN CAPITAL OR GEN-**
22 **ERAL COUNSEL ADVICE.**

23 “Nothing in this title shall prevent a Federal agency’s
24 Human Capital or General Counsel office from providing
25 advice or counsel to Federal agency personnel on the proc-

1 essing and resolution of a complaint, including providing
2 legal representation to a Federal agency in any pro-
3 ceeding.

4 **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF**
5 **AGENCY.**

6 “The head of each Federal agency’s Equal Employ-
7 ment Opportunity Program shall report directly to the
8 head of the agency.

9 **“SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.**

10 “(a) EEOC FINDINGS OF DISCRIMINATION.—Not
11 later than 30 days after the Equal Employment Oppor-
12 tunity Commission issues an appellate decision involving
13 a finding of discrimination or retaliation within a Federal
14 agency, the Commission shall refer the matter to the Of-
15 fice of Special Counsel.

16 “(b) REFERRALS TO SPECIAL COUNSEL.—The Office
17 of Special Counsel shall accept and review a referral from
18 the Commission under subsection (a) for purposes of seek-
19 ing disciplinary action under its authority against a Fed-
20 eral employee who commits an act of discrimination or re-
21 taliation.

22 “(c) NOTIFICATION.—The Office of Special Counsel
23 shall notify the Commission in a case in which the Office
24 of Special Counsel initiates disciplinary action.

1 “(d) SPECIAL COUNSEL APPROVAL.—A Federal
 2 agency may not take disciplinary action against a Federal
 3 employee for an alleged act of discrimination or retaliation
 4 referred by the Commission under this section except in
 5 accordance with the requirements of section 1214(f) of
 6 title 5, United States Code.”.

7 (c) CONFORMING AMENDMENTS.—The table of con-
 8 tents in section 1(b) of the Notification and Federal Em-
 9 ployee Antidiscrimination and Retaliation Act of 2002 (5
 10 U.S.C. 2301 note) is amended—

11 (1) by inserting after the item relating to sec-
 12 tion 206 the following:

“Sec. 207. Complaint tracking.
 “Sec. 208. Notation in personnel record.”;

13 and

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

“TITLE IV—PROCESSING AND REFERRAL

“Sec. 401. Processing and resolution of complaints.
 “Sec. 402. No limitation on Human Capital or General Counsel advice.
 “Sec. 403. Head of Program reports to head of agency.
 “Sec. 404. Referrals of findings of discrimination.”.

15 **SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.**

16 Section 2302(b) of title 5, United States Code, is
 17 amended—

18 (1) in paragraph (13)—

19 (A) by inserting “or the Office of Special
 20 Counsel” after “Inspector General”;

1 (B) by striking “implement” and inserting
2 “(A) implement”; and

3 (C) by striking the period that follows the
4 quoted material and inserting “; or”; and

5 (2) by adding after subparagraph (A), as added
6 by paragraph (1)(B), and preceding the flush left
7 matter that follows paragraph (13), the following:

8 “(B) implement or enforce any nondisclo-
9 sure policy, form, or agreement, if such policy,
10 form, or agreement prohibits or restricts an em-
11 ployee from disclosing to Congress, the Office of
12 Special Counsel, or an Office of the Inspector
13 General any information that relates to any vio-
14 lation of any law, rule, or regulation, or mis-
15 management, a gross waste of funds, an abuse
16 of authority, or a substantial, and specific dan-
17 ger to public health or safety, or any other
18 whistleblower protection.”.

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