

112TH CONGRESS
1ST SESSION

H. R. 503

To provide whistleblower protections to certain workers in the offshore oil and gas industry.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2011

Mr. GEORGE MILLER of California (for himself and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To provide whistleblower protections to certain workers in the offshore oil and gas industry.

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 “Offshore Oil and Gas
5 Worker Whistleblower Protection Act of 2011”.

6 **SEC. 2. WHISTLEBLOWER PROTECTIONS; EMPLOYEE PRO-**
7 **TECTION FROM OTHER RETALIATION.**

8 (a) PROHIBITION AGAINST RETALIATION.—

9 (1) IN GENERAL.—No employer may discharge
10 or otherwise discriminate against a covered employee

1 because the covered employee, whether at the cov-
2 ered employee's initiative or in the ordinary course
3 of the covered employee's duties—

4 (A) provided, caused to be provided, or is
5 about to provide or cause to be provided to the
6 employer or to a Federal or State Government
7 official, information relating to any violation of,
8 or any act or omission the covered employee
9 reasonably believes to be a violation of, any pro-
10 vision of the Outer Continental Shelf Lands Act
11 (43 U.S.C. 1301 et seq.), or any order, rule,
12 regulation, standard, or prohibition under that
13 Act, or exercised any rights provided to employ-
14 ees under that Act;

15 (B) testified or is about to testify in a pro-
16 ceeding concerning such violation;

17 (C) assisted or participated or is about to
18 assist or participate in such a proceeding;

19 (D) testified or is about to testify before
20 Congress on any matter covered by such Act;

21 (E) objected to, or refused to participate in
22 any activity, policy, practice, or assigned task
23 that the covered employee reasonably believed
24 to be in violation of any provision of such Act,

1 or any order, rule, regulation, standard, or ban
2 under such Act;

3 (F) reported to the employer or a State or
4 Federal Government official any of the fol-
5 lowing related to the employer's activities de-
6 scribed in section 3(1): an illness, injury, unsafe
7 condition, or information regarding the ade-
8 quacy of any oil spill response plan required by
9 law; or

10 (G) refused to perform the covered employ-
11 ee's duties, or exercised stop work authority, re-
12 lated to the employer's activities described in
13 section 3(1) if the covered employee had a good
14 faith belief that performing such duties could
15 result in injury to or impairment of the health
16 of the covered employee or other employees, or
17 cause an oil spill to the environment.

18 (2) GOOD FAITH BELIEF.—For purposes of
19 paragraph (1)(E), the circumstances causing the
20 covered employee's good faith belief that performing
21 such duties would pose a health and safety hazard
22 shall be of such a nature that a reasonable person
23 under circumstances confronting the covered em-
24 ployee would conclude there is such a hazard.

25 (b) PROCESS.—

1 (1) IN GENERAL.—A covered employee who be-
2 lieves that he or she has been discharged or other-
3 wise discriminated against (hereafter referred to as
4 the “complainant”) by any employer in violation of
5 subsection (a)(1) may, not later than 180 days after
6 the date on which such alleged violation occurs or
7 the date on which the covered employee knows or
8 should reasonably have known that such alleged vio-
9 lation occurred, file (or have any person file on his
10 or her behalf) a complaint with the Secretary of
11 Labor (referred to in this section as the “Sec-
12 retary”) alleging such discharge or discrimination
13 and identifying employer or employers responsible
14 for such act. Upon receipt of such a complaint, the
15 Secretary shall notify, in writing, the employer or
16 employers named in the complaint of the filing of
17 the complaint, of the allegations contained in the
18 complaint, of the substance of evidence supporting
19 the complaint, and of the opportunities that will be
20 afforded to such person under paragraph (2).

21 (2) INVESTIGATION.—

22 (A) IN GENERAL.—Not later than 90 days
23 after the date of receipt of a complaint filed
24 under paragraph (1) the Secretary shall initiate
25 an investigation and determine whether there is

1 reasonable cause to believe that the complaint
2 has merit and notify, in writing, the complain-
3 ant and the employer or employers alleged to
4 have committed a violation of subsection (a)(1)
5 of the Secretary's findings. The Secretary shall,
6 during such investigation afford the complain-
7 ant and the employer or employers named in
8 the complaint an opportunity to submit to the
9 Secretary a written response to the complaint
10 and an opportunity to meet with a representa-
11 tive of the Secretary to present statements from
12 witnesses. The complainant shall be provided
13 with an opportunity to review the information
14 and evidence provided by employer or employers
15 to the Secretary, and to review any response or
16 rebuttal by such the complaint, as part of such
17 investigation.

18 (B) REASONABLE CAUSE FOUND; PRELIMI-
19 NARY ORDER.—If the Secretary concludes that
20 there is reasonable cause to believe that a viola-
21 tion of subsection (a)(1) has occurred, the Sec-
22 retary shall accompany the Secretary's findings
23 with a preliminary order providing the relief
24 prescribed by paragraph (3)(B). Not later than
25 30 days after the date of notification of find-

1 ings under this paragraph, the employer or em-
2 ployers alleged to have committed the violation
3 or the complainant may file objections to the
4 findings or preliminary order, or both, and re-
5 quest a hearing on the record before an admin-
6 istrative law judge of the Department of Labor.
7 The filing of such objections shall not operate
8 to stay any reinstatement remedy contained in
9 the preliminary order. Any such hearing shall
10 be conducted expeditiously. If a hearing is not
11 requested in such 30-day period, the prelimi-
12 nary order shall be deemed a final order that is
13 not subject to judicial review. The Secretary of
14 Labor is authorized to enforce preliminary rein-
15 statement orders in the United States district
16 court for the district in which the violation was
17 found to occur, or in the United States district
18 court for the District of Columbia.

19 (C) DISMISSAL OF COMPLAINT.—

20 (i) STANDARD FOR COMPLAINANT.—

21 The Secretary shall dismiss a complaint
22 filed under this subsection and shall not
23 conduct an investigation otherwise required
24 under subparagraph (A) unless the com-
25 plainant makes a prima facie showing that

1 any behavior described in subparagraphs
2 (A) through (G) of subsection (a)(1) was a
3 contributing factor in the adverse action
4 alleged in the complaint.

5 (ii) STANDARD FOR EMPLOYER.—Not-
6 withstanding a finding by the Secretary
7 that the complainant has made the show-
8 ing required under clause (i), no investiga-
9 tion otherwise required under subpara-
10 graph (A) shall be conducted if the em-
11 ployer demonstrates, by clear and con-
12 vincing evidence, that the employer would
13 have taken the same adverse action in the
14 absence of that behavior.

15 (iii) VIOLATION STANDARD.—The
16 Secretary may determine that a violation
17 of subsection (a)(1) has occurred only if
18 the complainant demonstrates that any be-
19 havior described in subparagraphs (A)
20 through (G) of such subsection was a con-
21 tributing factor in the adverse action al-
22 leged in the complaint.

23 (iv) RELIEF STANDARD.—Relief may
24 not be ordered under subparagraph (A) if
25 the employer demonstrates by clear and

1 convincing evidence that the employer
2 would have taken the same adverse action
3 in the absence of that behavior.

4 (3) ORDERS.—

5 (A) IN GENERAL.—Not later than 90 days
6 after the receipt of a request for a hearing
7 under subsection (b)(2)(B), the administrative
8 law judge shall issue findings of fact and order
9 the relief provided under this paragraph or
10 deny the complaint. At any time before issuance
11 of an order, a proceeding under this subsection
12 may be terminated on the basis of a settlement
13 agreement entered into by the Secretary, the
14 complainant, and the person alleged to have
15 committed the violation. Such a settlement may
16 not be agreed by such parties if it contains con-
17 ditions which conflict with rights protected
18 under this Act, are contrary to public policy, or
19 include a restriction on a complainant's right to
20 future employment with employers other than
21 the specific employers named in the complaint.

22 (B) CONTENT OF ORDER.—If, in response
23 to a complaint filed under paragraph (1), the
24 administrative law judge determines that a vio-
25 lation of subsection (a)(1) has occurred, the ad-

1 ministrative law judge shall order the employer
2 or employers who committed such violation—

3 (i) to take affirmative action to abate
4 the violation;

5 (ii) to reinstate the complainant to his
6 or her former position together with com-
7 pensation (including back pay and prejudg-
8 ment interest) and restore the terms, con-
9 ditions, and privileges associated with his
10 or her employment; and

11 (iii) to provide compensatory and con-
12 sequential damages, and, as appropriate,
13 exemplary damages to the complainant.

14 (C) ATTORNEY FEES.—If such an order is
15 issued under this paragraph, the Secretary, at
16 the request of the complainant, shall assess
17 against the employer or employers a sum equal
18 to the aggregate amount of all costs and ex-
19 penses (including attorneys' and expert witness
20 fees) reasonably incurred by the complainant
21 for, or in connection with, the bringing of the
22 complaint upon which the order was issued at
23 the conclusion of any stage of the proceeding.

24 (D) BAD FAITH CLAIM.—If the Secretary
25 finds that a complaint under paragraph (1) is

1 frivolous or has been brought in bad faith, the
2 Secretary may award to the prevailing employer
3 reasonable attorneys' fees, not exceeding
4 \$1,000, to be paid by the complainant.

5 (E) ADMINISTRATIVE APPEAL.—Not later
6 than 30 days after the receipt of findings of
7 fact or an order under subparagraph (B), the
8 employer or employers alleged to have com-
9 mitted the violation or the complainant may
10 file, with objections, an administrative appeal
11 with the Secretary, who may designate such ap-
12 peal to a review board. In reviewing a decision
13 and order of the administrative law judge, the
14 Secretary shall affirm the decision and order if
15 it is determined that the factual findings set
16 forth therein are supported by substantial evi-
17 dence and the decision and order are made in
18 accordance with applicable law. The Secretary
19 shall issue a final decision and order affirming,
20 or reversing, in whole or in part, the decision
21 under review within 90 days after receipt of the
22 administrative appeal under this subparagraph.
23 If it is determined that a violation of subsection
24 (a)(1) has occurred, the Secretary shall order
25 relief provided under subparagraphs (B) and

1 (C). Such decision shall constitute a final agen-
2 cy action with respect to the matter appealed.

3 (4) ACTION IN COURT.—

4 (A) IN GENERAL.—If the Secretary has
5 not issued a final decision within 330 days after
6 the filing of the complaint, the complainant
7 may bring an action at law or equity for de
8 novo review in the appropriate district court of
9 the United States, which action shall, at the re-
10 quest of either party to such action, be tried by
11 the court with a jury. The proceedings shall be
12 governed by the same legal burdens of proof
13 specified in paragraph (2)(C).

14 (B) RELIEF.—The court may award all
15 appropriate relief including injunctive relief,
16 compensatory and consequential damages, in-
17 cluding—

18 (i) reinstatement with the same se-
19 niority status that the covered employee
20 would have had, but for the discharge or
21 discrimination;

22 (ii) the amount of back pay sufficient
23 to make the covered employee whole, with
24 prejudgment interest;

1 (iii) exemplary damages, as appro-
2 priate; and

3 (iv) litigation costs, including reason-
4 able attorney fees and expert witness fees.

5 (5) REVIEW.—

6 (A) IN GENERAL.—Any person aggrieved
7 by a final order issued under paragraph (3) or
8 a judgment or order under paragraph (4) may
9 obtain review of the order in the appropriate
10 United States Court of Appeals. The petition
11 for review must be filed not later than 60 days
12 after the date of the issuance of the final order
13 of the Secretary. Review shall be in accordance
14 with chapter 7 of title 5, United States Code.
15 The commencement of proceedings under this
16 subparagraph shall not, unless ordered by the
17 court, operate as a stay of the order.

18 (B) NO OTHER JUDICIAL REVIEW.—An
19 order of the Secretary with respect to which re-
20 view could have been obtained under subpara-
21 graph (A) shall not be subject to judicial review
22 in any other proceeding.

23 (6) FAILURE TO COMPLY WITH ORDER.—When-
24 ever any employer has failed to comply with an order
25 issued under paragraph (3), the Secretary may ob-

1 tain in a civil action in the United States district
2 court for the district in which the violation was
3 found to occur, or in the United States district court
4 for the District of Columbia, all appropriate relief
5 including, but not limited to, injunctive relief and
6 compensatory damages.

7 (7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

8 (A) IN GENERAL.—Whenever an employer
9 has failed to comply with an order issued under
10 paragraph (3), the complainant on whose behalf
11 the order was issued may obtain in a civil ac-
12 tion in an appropriate United States district
13 court against the employer to whom the order
14 was issued, all appropriate relief.

15 (B) AWARD.—The court, in issuing any
16 final order under this paragraph, may award
17 costs of litigation (including reasonable attor-
18 neys' and expert witness fees) to any party
19 whenever the court determines such award is
20 appropriate.

21 (c) CONSTRUCTION.—

22 (1) EFFECT ON OTHER LAWS.—Nothing in this
23 section preempts or diminishes any other safeguards
24 against discrimination, demotion, discharge, suspen-
25 sion, threats, harassment, reprimand, retaliation, or

1 any other manner of discrimination provided by Fed-
2 eral or State law.

3 (2) RIGHTS OF EMPLOYEES.—Nothing in this
4 section shall be construed to diminish the rights,
5 privileges, or remedies of any employee under any
6 Federal or State law or under any collective bar-
7 gaining agreement. The rights and remedies in this
8 section may not be waived by any agreement, policy,
9 form, or condition of employment.

10 (d) ENFORCEMENT OF NONDISCRETIONARY DU-
11 TIES.—Any nondiscretionary duty imposed by this section
12 shall be enforceable in a mandamus proceeding brought
13 under section 1361 of title 28, United States Code.

14 (e) POSTING OF NOTICE AND TRAINING.—All em-
15 ployers shall post a notice which has been approved as to
16 form and content by the Secretary of Labor in a con-
17 spicuous location in the place of employment where cov-
18 ered employees frequent which explains employee rights
19 and remedies under this section. Each employer shall pro-
20 vide training to covered employees of their rights under
21 this section within 30 days of employment, and at not less
22 than once every 12 months thereafter, and provide covered
23 employees with a card which contains a toll free telephone
24 number at the Department of Labor which covered em-

1 ployees can call to get information or file a complaint
2 under this section.

3 (f) DESIGNATION BY THE SECRETARY.—The Sec-
4 retary of Labor shall, within 30 days of the date of enact-
5 ment of this Act, designate by order the appropriate agen-
6 cy officials to receive, investigate, and adjudicate com-
7 plaints of violations of subsection (a)(1).

8 **SEC. 3. DEFINITIONS.**

9 As used in this Act the following definitions apply:

10 (1) The term “covered employee”—

11 (A) means an individual performing serv-
12 ices on behalf of an employer that is engaged
13 in activities on or in waters above the Outer
14 Continental Shelf related to—

15 (i) supporting, or carrying out explo-
16 ration, development, production, proc-
17 essing, or transportation of oil or gas; or

18 (ii) oil spill cleanup, emergency re-
19 sponse, environmental surveillance, protec-
20 tion, or restoration, or other oil spill activi-
21 ties related to occupational safety and
22 health; and

23 (B) includes an applicant for such employ-
24 ment.

1 (2) The term “employer” means one or more
2 individuals, partnerships, associations, corporations,
3 trusts, unincorporated organizations, nongovern-
4 mental organizations, or trustees, and includes any
5 agent, contractor, subcontractor, grantee or consult-
6 ant of such employer.

7 (3) The term “Outer Continental Shelf” has
8 the meaning that the term “outer Continental Shelf”
9 has in the Outer Continental Shelf Lands Act (43
10 U.S.C. 1331 et seq.).

○