

115TH CONGRESS
2D SESSION

H. R. 6406

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

JULY 17, 2018

Ms. FRANKEL of Florida (for herself, Mr. POE of Texas, Mr. NADLER, Mrs. COMSTOCK, and Ms. BLUNT ROCHESTER) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, Financial Services, House Administration, Oversight and Government 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:

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

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

1 (3) COMMISSION.—The term “Commission”
2 means the Equal Employment Opportunity Commis-
3 sion.

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

6 (A) an individual employed by an employer
7 described in paragraph (5), including an outside
8 worker in such individual’s office or place of
9 employment;

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

15 (C) a State employee to which section
16 302(a)(1) of the Government Employee Rights
17 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) ap-
18 plies, including an outside worker in such a
19 State employee’s office or place of employment;
20 or

21 (D) a covered employee, as defined in sec-
22 tion 101 of the Congressional Accountability
23 Act of 1995 (2 U.S.C. 1301) or section 411(c)
24 of title 3, United States Code, including an out-

1 side worker in such a covered employee’s office
2 or place of employment.

3 (5) EMPLOYER.—The term “employer”
4 means—

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

7 (B) an entity to which section 703, 704, or
8 717(a) of the Civil Rights Act of 1964 applies;

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

12 (D) an employing office, as defined in sec-
13 tion 101 of the Congressional Accountability
14 Act of 1995 or section 411(c) of title 3, United
15 States Code.

16 (6) FAIR EMPLOYMENT PRACTICES AGEN-
17 CIES.—The term “fair employment practices agen-
18 cies” means State and local agencies with the au-
19 thority to enforce laws or regulations to prohibit dis-
20 crimination in employment.

21 (7) INDEPENDENT CONTRACTOR.—The term
22 “independent contractor” means an individual who,
23 with respect to an employer, is a contractor based on
24 the common law of agency.

1 (8) LAW ENFORCEMENT AGENCY.—The term
2 “law enforcement agency” means a government
3 agency with criminal or civil law enforcement pow-
4 ers, which may include a government agency with
5 regulatory or licensing authority.

6 (9) NONDISCLOSURE CLAUSE.—The term “non-
7 disclosure clause” means a provision in a contract or
8 agreement establishing that the parties to the con-
9 tract or agreement agree not to disclose information
10 covered by the terms and conditions of the contract
11 or agreement.

12 (10) NONDISPARAGEMENT CLAUSE.—The term
13 “nondisparagement clause” means a provision in a
14 contract or agreement requiring one or more parties
15 to the contract or agreement not to make negative
16 statements about the other.

17 (11) OUTSIDE WORKER.—The term “outside
18 worker” means—

19 (A) a temporary worker hired through an
20 employment agency (as defined in section 701
21 of the Civil Rights Act of 1964 (42 U.S.C.
22 2000e)) to provide services to an employer pur-
23 suant to an agreement between the employment
24 agency and the employer;

1 (B) an independent contractor for an em-
2 ployer or a subcontractor thereof; or

3 (C) an intern or volunteer, whether paid or
4 unpaid, for an employer.

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

10 (13) SUBCONTRACTOR.—The term “subcon-
11 tractor” means any employer having a contract with
12 a prime contractor or another subcontractor calling
13 for supplies or services required for the performance
14 of a contract or a government contract.

15 (14) WORKPLACE HARASSMENT.—The term
16 “workplace harassment” means unwelcome or offen-
17 sive conduct based on sex (including such conduct
18 based on sexual orientation, gender identity, and
19 pregnancy), race, color, national origin, disability,
20 age, or religion, whether that conduct occurs in-per-
21 son or through an electronic medium (which may in-
22 clude social media), in a work or work-related con-
23 text, which affects any term, condition, or privilege
24 of employment.

1 **SEC. 103. PROHIBITING NONDISPARAGEMENT AND NON-**
2 **DISCLOSURE CLAUSES THAT COVER WORK-**
3 **PLACE HARASSMENT, INCLUDING SEXUAL**
4 **HARASSMENT.**

5 (a) UNLAWFUL PRACTICES.—

6 (1) PROHIBITION ON WORKPLACE HARASSMENT
7 NONDISCLOSURE CLAUSE.—Subject to subsection
8 (b)(1), it shall be an unlawful practice for an em-
9 ployer to enter into a contract or agreement with an
10 employee or applicant, as a condition of employment,
11 promotion, compensation, benefits, or change in em-
12 ployment status or contractual relationship, or as a
13 term, condition, or privilege of employment, if that
14 contract or agreement contains a nondisparagement
15 or nondisclosure clause that covers workplace har-
16 assment, including sexual harassment or retaliation
17 for reporting, resisting, opposing, or assisting in the
18 investigation of workplace harassment.

19 (2) PROHIBITION ON ENFORCEMENT.—Not-
20 withstanding any other provision of law, it shall be
21 an unlawful practice and otherwise unlawful for an
22 employer to enforce or attempt to enforce a non-
23 disparagement clause or nondisclosure clause de-
24 scribed in paragraph (1).

25 (b) SETTLEMENT OR SEPARATION AGREEMENTS.—

1 (1) IN GENERAL.—The provisions of subsection
2 (a) do not apply to a nondisclosure clause or non-
3 disparagement clause contained in a settlement
4 agreement or separation agreement that resolves
5 legal claims or disputes when—

6 (A) such legal claims accrued or such dis-
7 putes arose before the settlement agreement or
8 separation agreement was executed; and

9 (B) such clauses are mutually agreed upon
10 and mutually benefit both the employer and em-
11 ployee.

12 (2) UNLAWFUL PRACTICE.—It shall be an un-
13 lawful practice for an employer to unilaterally in-
14 clude a nondisclosure clause or a nondisparagement
15 clause that solely benefits the employer in a separa-
16 tion or settlement agreement.

17 (c) RIGHT TO REPORT RESERVED.—Notwith-
18 standing signing (before or after the effective date of this
19 title) any nondisparagement or nondisclosure clause in-
20 cluding a clause referred to in subsection (a)(1), an em-
21 ployee or applicant retains any right that person would
22 otherwise have had to report a concern about workplace
23 harassment, including sexual harassment or another viola-
24 tion of the law to the Commission, another Federal agency
25 (including an office of the legislative or judicial branch),

1 a State or local fair employment practices agency or any
2 State or local agency, or a law enforcement agency, and
3 any right that person would otherwise have had to bring
4 an action in a court of the United States.

5 (d) ENFORCEMENT.—

6 (1) ENFORCEMENT POWERS.—With respect to
7 the administration and enforcement of this section
8 in the case of a claim alleged by an employee for a
9 violation of this section—

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

13 (i) title VII of the Civil Rights Act of
14 1964 (42 U.S.C. 2000e et seq.); or

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

18 in the case of a claim alleged by such employee
19 for a violation of such title, or of section
20 302(a)(1) of the Government Employee Rights
21 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), re-
22 spectively;

23 (B) the Librarian of Congress shall have
24 the same powers as the Librarian of Congress
25 has to administer and enforce title VII of the

1 Civil Rights Act of 1964 (42 U.S.C. 2000e et
2 seq.) in the case of a claim alleged by such em-
3 ployee for a violation of such title;

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

12 (D) the Attorney General shall have the
13 same powers as the Attorney General has to ad-
14 minister and enforce—

15 (i) title VII of the Civil Rights Act of
16 1964 (42 U.S.C. 2000e et seq.); or

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

20 in the case of a claim alleged by such employee
21 for a violation of such title, or of section
22 302(a)(1) of the Government Employee Rights
23 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), re-
24 spectively;

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

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

15 (G) a court of the United States shall have
16 the same jurisdiction and powers as the court
17 has to enforce—

18 (i) title VII of the Civil Rights Act of
19 1964 (42 U.S.C. 2000e et seq.) in the case
20 of a claim alleged by such employee for a
21 violation of such title or in the case of a
22 claim described in subparagraph (F);

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

1 case of a claim alleged by such employee
2 for a violation of section 302(a)(1) of such
3 Act (42 U.S.C. 2000e–16b(a)(1));

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

9 (iv) chapter 5 of title 3, United States
10 Code, in the case of a claim alleged by
11 such employee for a violation of section
12 411 of such title.

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

16 (A) the procedures and remedies applicable
17 for a violation of title VII of the Civil Rights
18 Act of 1964 (42 U.S.C. 2000e et seq.) in the
19 case of a claim alleged by such employee for a
20 violation of such title or in the case of a claim
21 described in paragraph (1)(F);

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

1 alleged by such employee for a violation of such
2 section;

3 (C) the procedures and remedies applicable
4 for a violation of section 201(a)(1) of the Con-
5 gressional Accountability Act of 1995 (2 U.S.C.
6 1311(a)(1)) in the case of a claim alleged by
7 such employee for a violation of such section;
8 and

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

13 (3) OTHER APPLICABLE PROVISIONS.—With re-
14 spect to a claim alleged by a covered employee (as
15 defined in section 101 of the Congressional Account-
16 ability Act of 1995 (2 U.S.C. 1301)) for a violation
17 of this section, title III of the Congressional Ac-
18 countability Act of 1995 (2 U.S.C. 1381 et seq.)
19 shall apply in the same manner as such title applies
20 with respect to a claim alleged by such a covered
21 employee for a violation of section 201(a)(1) of such
22 Act (2 U.S.C. 1311(a)(1)).

23 (e) REGULATIONS.—

24 (1) IN GENERAL.—Except as provided in para-
25 graphs (2), (3), and (4), the Commission shall have

1 authority to issue regulations to carry out this sec-
2 tion.

3 (2) LIBRARIAN OF CONGRESS.—The Librarian
4 of Congress shall have authority to issue regulations
5 to carry out this section with respect to employees
6 and applicants for employment of the Library of
7 Congress.

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

15 (4) PRESIDENT.—The President shall have au-
16 thority to issue regulations to carry out this section
17 with respect to covered employees, as defined in sec-
18 tion 411(e) of title 3, United States Code, and appli-
19 cants for employment as such employees.

20 (f) STATE AND FEDERAL IMMUNITY.—

21 (1) ABROGATION OF STATE IMMUNITY.—A
22 State shall not be immune under the 11th Amend-
23 ment to the Constitution from a suit brought in a
24 Federal court of competent jurisdiction for a viola-
25 tion of this section.

1 (2) WAIVER OF STATE IMMUNITY.—

2 (A) IN GENERAL.—

3 (i) WAIVER.—A State’s receipt or use
4 of Federal financial assistance for any pro-
5 gram or activity of a State shall constitute
6 a waiver of sovereign immunity, under the
7 11th Amendment to the Constitution or
8 otherwise, to a suit brought by an em-
9 ployee or applicant for employment of that
10 program or activity under this section for
11 a remedy authorized under subsection (d).

12 (ii) DEFINITION.—In this paragraph,
13 the term “program or activity” has the
14 meaning given the term in section 606 of
15 the Civil Rights Act of 1964 (42 U.S.C.
16 2000d–4a).

17 (B) EFFECTIVE DATE.—With respect to a
18 particular program or activity, subparagraph
19 (A) applies to conduct occurring on or after the
20 day, after the date of enactment of this Act, on
21 which a State first receives or uses Federal fi-
22 nancial assistance for that program or activity.

23 (3) REMEDIES AGAINST STATE OFFICIALS.—An
24 official of a State may be sued in the official capac-
25 ity of the official by any employee or applicant for

1 employment who has complied with the applicable
2 procedures of subsection (d), for equitable relief that
3 is authorized under this section. In such a suit the
4 court may award to the prevailing party those costs
5 authorized by section 722 of the Revised Statutes
6 (42 U.S.C. 1988).

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

17 (A) punitive damages are not available;

18 and

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

22 **SEC. 104. CONFIDENTIAL TIP-LINE ADDRESSING EMPLOY-**
23 **ERS WITH WIDESPREAD AND SYSTEMIC**
24 **WORKPLACE HARASSMENT.**

25 (a) CONFIDENTIAL TIP-LINE ESTABLISHED.—

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

7 (A) receive, log, and acknowledge the re-
8 ceipt of reports by employees, applicants, by-
9 standers, or other individuals who attest that
10 they have experienced or witnessed workplace
11 harassment, including sexual assault and other
12 forms of sexual harassment;

13 (B) provide informational materials to re-
14 porting individuals described in subparagraph
15 (A); and

16 (C) make available reports described in
17 subparagraph (A) to—

18 (i) the Commission; and

19 (ii) Commission-approved fair employ-
20 ment practices agencies for potential inves-
21 tigation.

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

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

12 (B) provide an option for reporting individ-
13 uals to make a report that would not identify
14 individual employees, but would identify the en-
15 tity, employer, division, or subdivision respon-
16 sible for the workplace harassment, including
17 sexual assault and other forms of sexual harass-
18 ment;

19 (C) educate reporting individuals about
20 how to preserve the right to make any reports,
21 complaints, or charges that the individuals
22 would otherwise have been eligible to make,
23 independent of any report to the tip-line, in-
24 cluding—

1 (i) the right of the reporting indi-
2 vidual to file a Charge of Discrimination
3 that will result in the Commission or a
4 Commission-approved fair employment
5 practices agency taking action (and the
6 risk of losing that right if the reporting in-
7 dividual fails to file a timely Charge of
8 Discrimination); and

9 (ii) a clear explanation of any dead-
10 lines or limitations periods;

11 (D) instruct reporting individuals about
12 how to file a Charge of Discrimination with the
13 Commission and encourage reporting individ-
14 uals to file a Charge of Discrimination in order
15 to allow the Commission to more effectively in-
16 vestigate the workplace harassment;

17 (E) emphasize that reports to the confiden-
18 tial tip-line—

19 (i) will not prompt individualized in-
20 vestigations, except in the limited cir-
21 cumstances described in clause (ii), sub-
22 paragraph (I), and subsection (b), and
23 such investigations will fully comport with
24 applicable due process requirements;

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

10 (iii) shall not be discoverable in civil
11 cases, unless the reporting individual
12 waives the confidentiality of the submitted
13 reports; and

14 (iv) shall not be shared with other
15 Federal agencies;

16 (F) engage fair employment practices
17 agencies at the State and local level to apply
18 and be thoroughly vetted and reviewed for ap-
19 proved access to the confidential tip-line;

20 (G) share information from the tip-line, in-
21 cluding information on opened investigations,
22 only between and among participating approved
23 fair employment practices agencies and the
24 Commission to facilitate coordination and avoid
25 conflicts in investigations and resolutions;

1 (H) offer an option to each reporting indi-
2 vidual, at the time of reporting, to elect to be
3 informed, to the extent practicable, if the indi-
4 vidual's report leads to an investigation, so that
5 the reporting individual may choose to provide
6 further information or participate in any result-
7 ing investigation; and

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

18 (b) CHARGE OF DISCRIMINATION.—In the event that
19 a member of the Commission determines that information
20 received from the tip-line warrants an investigation, the
21 member may initiate an investigation by filing a Charge
22 of Discrimination in accordance with section 706 of the
23 Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

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

4 (d) UNLAWFUL PRACTICES WITH RESPECT TO THE
5 TIP-LINE.—

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

18 (2) CONFIDENTIALITY.—It shall be unlawful
19 for any officer or employee of the Commission, or
20 any Commission-approved fair employment practices
21 agencies, to make public in any manner whatever
22 any information obtained by the Commission pursu-
23 ant to its authority under this section, prior to insti-
24 tution of any proceeding under section 706 of the
25 Civil Rights Act of 1964 (42 U.S.C. 2000e–5), ex-

1 cept that the Commission, or any Commission-ap-
 2 proved fair employment practices agency, shall offer
 3 information to reporting individuals in accordance
 4 with this section.

5 (3) ENFORCEMENT.—The enforcement provi-
 6 sions described in section 4(d) shall apply in the
 7 same manner to the enforcement of a violation de-
 8 scribed in paragraph (1) or (2).

9 (e) EFFECTIVE DATE.—This section shall first take
 10 effect on the first day of the first fiscal year for which
 11 \$1,500,000 is appropriated to carry out this section.

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

16 **SEC. 105. SEC FILINGS AND MATERIAL DISCLOSURES AT**
 17 **PUBLIC COMPANIES.**

18 (a) DEFINITIONS.—In this section—

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

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

25 (b) FINDINGS.—Congress finds that—

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

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

6 (B) along with the executives and man-
7 agers of those corporations—

8 (i) are complying with prohibitions
9 against workplace harassment, including
10 sexual harassment; and

11 (ii) facilitate a culture of silence, dis-
12 respect, intimidation, and abuse that nega-
13 tively impacts the health and safety of the
14 workers of those corporations and the
15 value of those corporations; and

16 (2) the requirements of this section will—

17 (A) establish necessary transparency and
18 accountability; and

19 (B) provide an incentive for corporations
20 to—

21 (i) promptly address workplace har-
22 assment, including sexual harassment, as
23 that misconduct occurs; and

1 (ii) foster a culture in which work-
2 place harassment is not protected and does
3 not occur.

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

10 (1) during the period covered by the submis-
11 sion—

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

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

20 (ii) whether any judgments or awards
21 (including awards through arbitration or
22 administrative proceedings) were entered
23 against the issuer in part or in whole, or
24 any payments made in connection with a
25 release of claims; and

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

3 (i) the settlements described in sub-
4 paragraph (A)(i); and

5 (ii) the judgments described in sub-
6 paragraph (A)(ii); and

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

17 **SEC. 106. PROFESSIONAL TRAINING, INCLUDING BY-**
18 **STANDER TRAINING, AND PUBLIC EDU-**
19 **CATION CAMPAIGNS.**

20 (a) COMMISSION AUTHORITY.—The Commission
21 shall have the authority to—

22 (1) reasonably adjust the fees the Commission
23 charges for any education, technical assistance, or
24 training the Commission offers in accordance with

1 section 705(j)(1) of the Civil Rights Act of 1964 (42
2 U.S.C. 2000e-4(j)(1));

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

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

16 (b) WORKPLACE TRAINING.—

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

21 (2) CONTENTS OF TRAINING.—The training
22 provided by the Commission under this subsection to
23 managers and nonmanagers shall be consistent with
24 the findings of the Commission, on matters includ-
25 ing—

1 (A) what constitutes workplace harass-
2 ment, including sexual harassment;

3 (B) the rights of individuals with respect
4 to workplace harassment and how to report
5 workplace harassment;

6 (C) how individuals, including bystanders,
7 who encounter workplace harassment can inter-
8 vene or report the harassment; and

9 (D) how employers and managers can pre-
10 vent workplace harassment, including sexual
11 harassment, from occurring in the workplace.

12 (3) CONTENTS OF INFORMATION.—In providing
13 information under this subsection, the Commission
14 shall—

15 (A) prepare and distribute information
16 that is consistent with the findings of the Com-
17 mission;

18 (B) develop and disseminate a public serv-
19 ice advertisement campaign that—

20 (i) distributes information with re-
21 spect to the matters described in para-
22 graph (2); and

23 (ii) advertises the confidential com-
24 plaint database established under section
25 5.

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

4 **TITLE II—MODIFICATION OF TAX**
 5 **TREATMENT OF AMOUNTS**
 6 **RELATED TO EMPLOYMENT**
 7 **DISCRIMINATION AND WORK-**
 8 **PLACE HARASSMENT**

9 **SEC. 201. TAX TREATMENT OF AMOUNTS RELATED TO**
 10 **JUDGMENTS.**

11 (a) DENIAL OF DEDUCTION.—

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

16 **“SEC. 280I. AMOUNTS RELATED TO JUDGMENTS WITH RE-**
 17 **SPECT TO WORKPLACE HARASSMENT, IN-**
 18 **CLUDING SEXUAL HARASSMENT.**

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

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

24 “(2) for expenses and attorney’s fees in connec-
 25 tion with the litigation resulting in the judgment or

1 award described in paragraph (1) (other than ex-
2 penses or attorney’s fees paid by the workplace har-
3 assment plaintiff or claimant), or for any insurance
4 covering the defense or liability of the underlying
5 claims with respect to such litigation.”.

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

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

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

12 (4) EFFECTIVE DATE.—The amendments made
13 by this subsection shall apply to amounts paid or in-
14 curred in taxable years beginning after the date of
15 the enactment of this Act.

16 (b) EXCLUSION FROM INCOME.—

17 (1) IN GENERAL.—Part III of subchapter B of
18 chapter 1 of the Internal Revenue Code of 1986 is
19 amended by inserting after section 139G the fol-
20 lowing new section:

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

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

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

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

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

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for part III of subchapter B of chapter 1 of
18 such Code is amended by inserting after the item re-
19 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.”.

20 (3) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply to amounts received in
22 taxable years beginning after the date of the enact-
23 ment of this Act.

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

5 (a) IN GENERAL.—Part I of subchapter Q of chapter
6 1 of the Internal Revenue Code of 1986 (relating to in-
7 come averaging) is amended by adding at the end the fol-
8 lowing new section:

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

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

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

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

21 “(B) no deduction were allowed for such
22 year for expenses otherwise allowable as a de-
23 duction to the taxpayer for such year in connec-
24 tion with making or prosecuting any claim of
25 unlawful employment discrimination by or on
26 behalf of the taxpayer, plus

1 “(2) the product of—

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

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

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

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

15 were included in gross income for such year.

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

17 “(1) EMPLOYMENT DISCRIMINATION COM-
18 PENSATION.—The term ‘employment discrimination
19 compensation’ means any backpay or foregone com-
20 pensation receivable (whether as lump sums or peri-
21 odic payments) on account of a judgment or settle-
22 ment resulting from a claim of unlawful discrimina-
23 tion (as defined in section 62(e)) in violation of law
24 which relates to employment.

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

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

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

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

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

14 “(A) the excess of—

15 “(i) employment discrimination com-
 16 pensation attributable to such period, over

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

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

22 (b) CLERICAL AMENDMENT.—The table of sections
 23 for part I of subchapter Q of chapter 1 of the Internal
 24 Revenue Code of 1986 is amended by inserting after sec-
 25 tion 1301 the following new item:

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

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

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

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

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