

116TH CONGRESS
2D SESSION

S. 4738

To provide a right to flexibility and to broaden and increase employee protections at work, to protect small businesses through shared responsibility for workers' rights, to provide public transparency on workers' rights violations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2020

Mrs. MURRAY (for herself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide a right to flexibility and to broaden and increase employee protections at work, to protect small businesses through shared responsibility for workers' rights, to provide public transparency on workers' rights violations, 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 “Worker Flexibility and
5 Small Business Protection Act of 2020”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—RIGHT TO FLEXIBILITY AND EMPLOYEE PROTECTIONS
AT WORK

- Sec. 101. Right to flexibility.
- Sec. 102. Right to employee protections at work.

TITLE II—SMALL BUSINESS PROTECTION THROUGH SHARED
RESPONSIBILITY FOR WORKERS’ RIGHTS

- Sec. 201. General shared responsibility for workers’ rights.
- Sec. 202. Massive corporations.
- Sec. 203. Franchisors.
- Sec. 204. Temporary staffing companies.
- Sec. 205. Licensors.
- Sec. 206. Labor contractors.
- Sec. 207. Supply chain responsibility plan.
- Sec. 208. Conforming amendments.

TITLE III—PUBLIC TRANSPARENCY ON WORKERS’ RIGHTS
VIOLATIONS

- Sec. 301. Consumer right to know about compliance with workers’ rights.

TITLE IV—CREATING BROAD AND INCREASING WORKER
PROTECTIONS

- Sec. 401. General standards for applying and interpreting workers’ rights.
- Sec. 402. Statutes of limitation.

TITLE V—GENERAL PROVISIONS

- Sec. 501. Severability.

1 **TITLE I—RIGHT TO FLEXIBILITY**
 2 **AND EMPLOYEE PROTEC-**
 3 **TIONS AT WORK**

4 **SEC. 101. RIGHT TO FLEXIBILITY.**

5 (a) IN GENERAL.—The Fair Labor Standards Act of
 6 1938 (29 U.S.C. 201 et seq.) is amended—

7 (1) by inserting after section 7 (29 U.S.C. 207)
 8 the following:

9 **“SEC. 8. RIGHT TO FLEXIBILITY.**

10 **“(a) DEFINITIONS.—**In this section:

1 “(1) COVERED EMPLOYEE.—The term ‘covered
2 employee’ means, with respect to an employer, an
3 employee who—

4 “(A) prior to the date of enactment of the
5 Worker Flexibility and Small Business Protec-
6 tion Act of 2020, was classified by the employer
7 as an independent contractor; and

8 “(B) in any workweek is engaged in com-
9 merce or in the production of goods for com-
10 merce, or is employed by an enterprise engaged
11 in commerce or in the production of goods for
12 commerce.

13 “(2) SCHEDULE AND SCHEDULING FLEXI-
14 BILITY.—The term ‘schedule and scheduling flexi-
15 bility’, with respect to the work of a covered em-
16 ployee under subsection (b), includes—

17 “(A) the timing of the work throughout an
18 hour, day, week, month, or year;

19 “(B) the total duration of the work in any
20 given period;

21 “(C) the location where the work is per-
22 formed; and

23 “(D) the ability to perform work for any
24 entity other than the employer of the covered

1 employee, including any direct competitor of the
2 employer.

3 “(b) RIGHT TO KEEP FLEXIBILITY.—

4 “(1) IN GENERAL.—Any covered employee of
5 an employer has the right to maintain the same
6 schedule and scheduling flexibility that the covered
7 employee possessed at any time while performing
8 labor for such employer as an independent con-
9 tractor in the 12-month period prior to the date of
10 enactment of the Worker Flexibility and Small Busi-
11 ness Protection Act of 2020.

12 “(2) DURATION OF RIGHT.—A covered em-
13 ployee shall continue to possess the right to main-
14 tain the same schedule and scheduling flexibility de-
15 scribed in paragraph (1) for the duration of the em-
16 ployment of the covered employee with the employer.

17 “(3) NONRETALIATION.—

18 “(A) IN GENERAL.—An employer of a cov-
19 ered employee—

20 “(i) may not discharge the covered
21 employee for any reason except upon a
22 showing of just cause; and

23 “(ii) may not otherwise discriminate
24 against the covered employee because of or

1 with relation to the schedule or scheduling
2 flexibility of the employee.

3 “(B) DISCRIMINATION.—For the purposes
4 of subparagraph (A)(ii), the term ‘discriminate’,
5 with respect to a covered employee, shall in-
6 clude—

7 “(i) reducing the amount or number
8 of hours of work of the covered employee;

9 “(ii) restricting or limiting the work
10 of the covered employee for the employer;
11 or

12 “(iii) removing the covered employee
13 from the workplace, including by sus-
14 pending or deactivating an account the
15 covered employee uses to perform work for
16 the employer.

17 “(C) MOTIVATING FACTOR.—For the pur-
18 poses of subparagraph (A)(ii), unlawful dis-
19 crimination is established when a covered em-
20 ployee demonstrates that the schedule or sched-
21 uling flexibility of the covered employee was a
22 motivating factor for any adverse employment
23 action taken by an employer, even if such action
24 was also motivated by other factors.

25 “(c) RIGHT TO REQUEST FUTURE FLEXIBILITY.—

1 “(1) RIGHT TO REQUEST.—An employee shall
2 have the right to request to have the schedule that
3 the employee desires, including—

4 “(A) the number of shifts or other units of
5 work per day or week;

6 “(B) the number of hours of work per day;

7 “(C) the number of days of work per week;

8 “(D) the location where the employee per-
9 forms the work; and

10 “(E) any unpaid time off the employee de-
11 sires to take.

12 “(2) NONRETALIATION.—

13 “(A) IN GENERAL.—An employer shall not
14 discharge or in any other manner discriminate
15 against an employee for making a request de-
16 scribed in paragraph (1).

17 “(B) MOTIVATING FACTOR.—Unlawful dis-
18 charge or discrimination against an employee is
19 established under subparagraph (A) when the
20 complaining party demonstrates that the re-
21 quest described in paragraph (1) was a moti-
22 vating factor for such discharge or discrimina-
23 tion, even if such discharge or discrimination
24 was also motivated by other factors.

25 “(3) RESPONSE.—

1 “(A) IN GENERAL.—An employer shall re-
2 spond to a request described in paragraph (1)
3 by either granting the request in full or pro-
4 viding the employee with a written justification
5 for any portion of the request that the employer
6 denies based on a compelling business necessity.

7 “(B) REVIEW BY SECRETARY.—If the em-
8 ployer does not grant a request described in
9 paragraph (1) in full, the employee may request
10 review by the Secretary. The Secretary may—

11 “(i) issue an order to overrule the em-
12 ployer’s denial of the employee’s request,
13 or any portion of the employee’s request, if
14 the Secretary finds that the employer does
15 not have a compelling business necessity
16 for the denial; or

17 “(ii) issue an order to confirm the em-
18 ployer’s denial of the employee’s request,
19 or any portion of the employee’s request, if
20 the Secretary finds that the employer has
21 a compelling business necessity for the de-
22 nial.

23 “(C) APPEALS.—

24 “(i) IN GENERAL.—An aggrieved em-
25 ployer or employee may—

1 “(I) appeal an order of the Sec-
2 retary under subparagraph (B) to an
3 administrative law judge; and

4 “(II) appeal an order of an ad-
5 ministrative law judge under sub-
6 clause (I) to a Federal or State court
7 of competent jurisdiction.

8 “(ii) COMPLIANCE WITH ORDER DUR-
9 ING APPEAL.—For the duration of an ap-
10 peal described in clause (i)(I), the em-
11 ployer and employee shall comply with the
12 order of the Secretary until and unless the
13 order is overturned by an administrative
14 law judge. For the duration of an appeal
15 described in clause (i)(II), the employer
16 and employee shall comply with the order
17 of the administrative law judge until and
18 unless the order is overturned by a Federal
19 or State court of competent jurisdiction.

20 “(D) COMPELLING BUSINESS NECES-
21 SITY.—For purposes of this paragraph, the
22 term ‘compelling business necessity’ means only
23 any of the following:

1 “(i) A significant burden of additional
2 costs to the employer that would be prohib-
3 itive of continuing to conduct business.

4 “(ii) A complete inability of the em-
5 ployer to reorganize work amongst existing
6 employees.

7 “(iii) A complete inability of the em-
8 ployer to recruit additional employees.

9 “(iv) A significant detrimental effect
10 on the ability of the employer to meet cus-
11 tomer demand.

12 “(v) A lack of work during the period
13 the employee proposes to work.

14 “(vi) A planned structural change to
15 the employer’s business, which was
16 planned before the request was made.

17 “(vii) Any other grounds as deter-
18 mined by the Secretary through regulation
19 that the Secretary demonstrates satisfy the
20 high bar of being compellingly necessary
21 for an employer to continue conducting
22 business and being more than merely a le-
23 gitimate business reason.”;

24 (2) by striking section 10 (29 U.S.C. 210); and

1 (3) by redesignating section 9 (29 U.S.C. 209)
2 as section 10.

3 (b) ENFORCEMENT.—

4 (1) PROHIBITED ACTS.—Section 15(a)(2) of the
5 Fair Labor Standards Act of 1938 (29 U.S.C.
6 215(a)(2)) is amended by striking “section 6 or 7”
7 and inserting “section 6, 7, or 8”.

8 (2) PENALTIES.—Section 16(e) of the Fair
9 Labor Standards Act of 1938 (29 U.S.C. 216(e)) is
10 amended by adding at the end the following:

11 “(6) PENALTIES FOR VIOLATING RIGHT TO FLEXI-
12 BILITY.—Any person who violates section 8 shall be sub-
13 ject to a civil penalty, for each employee aggrieved by the
14 violation and for each day in which the employer is in such
15 violation, of—

16 “(A) \$1,000; or

17 “(B) if the violation is repeated or willful,
18 \$5,000.”.

19 (c) CONFORMING AMENDMENTS TO OTHER LAWS.—

20 (1) AGE DISCRIMINATION IN EMPLOYMENT ACT
21 OF 1967.—Section 7(a) of the Age Discrimination in
22 Employment Act of 1967 (29 U.S.C. 626(a)) is
23 amended by striking “sections 9 and 11 of the Fair
24 Labor Standards Act of 1938, as amended (29
25 U.S.C. 209 and 211)” and inserting “sections 10

1 and 11 of the Fair Labor Standards Act of 1938,
2 as amended (29 U.S.C. 210 and 211)”.

3 (2) FAMILY AND MEDICAL LEAVE ACT OF
4 1993.—Section 106(d) of the Family and Medical
5 Leave Act of 1993 (29 U.S.C. 2616(d)) is amended
6 by striking “section 9 of the Fair Labor Standards
7 Act of 1938 (29 U.S.C. 209)” and inserting “section
8 10 of the Fair Labor Standards Act of 1938 (29
9 U.S.C. 210)”.

10 **SEC. 102. RIGHT TO EMPLOYEE PROTECTIONS AT WORK.**

11 (a) FAIR LABOR STANDARDS ACT OF 1938.—

12 (1) STRENGTHENING EMPLOYEE TEST.—Sec-
13 tion 3(e) of the Fair Labor Standards Act of 1938
14 (29 U.S.C. 203(e)) is amended by adding at the end
15 the following:

16 “(6)(A) For purposes of this Act, and except as pro-
17 vided in paragraphs (2), (3), (4), (5), (7), and (9), an indi-
18 vidual performing any labor for remuneration for a person
19 shall be an employee employed by the person and not an
20 independent contractor of the person, unless—

21 “(i) the individual is free from control and di-
22 rection in connection with the performance of the
23 labor, both under the contract for the performance
24 of the labor and in fact;

1 “(ii) the labor is performed outside the usual
2 course of the business of the person; and

3 “(iii) the individual is customarily engaged in
4 an independently established trade, occupation, pro-
5 fession, or business of the same nature as that in-
6 volved in the labor performed.

7 “(B)(i) Subparagraph (A) is not a codification of the
8 common law and shall not be interpreted to reflect, or to
9 be limited or restricted by, common law interpretations re-
10 garding when an individual is an employee of another per-
11 son. Subparagraph (A) shall be considered complete as
12 written, and any judicial or agency interpretation of such
13 subparagraph shall be limited to the explicit requirements
14 of such subparagraph.

15 “(ii) The requirements of subparagraph (A) shall not
16 be in any way affected by any agreement, written or other-
17 wise, that purports to demonstrate an individual’s ac-
18 knowledgment of or acquiescence to the absence of an em-
19 ployer-employee relationship with a particular employer.

20 “(7)(A) Notwithstanding any contrary provisions in
21 this subsection or subsection (d) or (g), in any instance
22 in which there is a non-compete agreement between a per-
23 son and an individual who performs labor for such person,
24 the presence of the non-compete agreement, without re-
25 gard to the legality or enforceability of the non-compete

1 agreement, shall be evidence of control for purposes of
2 paragraph (6)(A)(i), but shall not by itself establish an
3 employment relationship between such person and the in-
4 dividual.

5 “(B) In this paragraph, the term ‘non-compete agree-
6 ment’ means an agreement between a person and an indi-
7 vidual who performs labor for such person that restricts
8 the individual from performing, either during or after the
9 individual performs labor for such person—

10 “(i) any labor for another person;

11 “(ii) any labor for a specified period of time;

12 “(iii) any labor in a specified geographical area;

13 or

14 “(iv) any labor for another person that is simi-
15 lar to the labor such individual performed for the
16 person that is a party to such agreement.”.

17 (2) PRESUMPTION OF EMPLOYEE STATUS.—

18 Section 3(e) of the Fair Labor Standards Act of
19 1938 (29 U.S.C. 203(e)), as amended by paragraph
20 (1), is further amended by adding at the end the fol-
21 lowing:

22 “(8) For purposes of this Act, an individual per-
23 forming any labor for remuneration for a person shall be
24 presumed to be an employee of the person, unless the
25 party seeking to assert otherwise establishes by clear and

1 convincing evidence that the individual is not an employee
 2 in accordance with paragraphs (1) through (7) and para-
 3 graph (9).”.

4 (3) MISCLASSIFICATION AS A STANDALONE VIO-
 5 LATION.—

6 (A) IN GENERAL.—The Fair Labor Stand-
 7 ards Act of 1938 (29 U.S.C. 201 et seq.) is
 8 amended—

9 (i) by inserting after section 4 (29
 10 U.S.C. 204) the following:

11 **“SEC. 5. MISCLASSIFICATION.**

12 “No employer shall misclassify any employee, who in
 13 any workweek is engaged in commerce or in the produc-
 14 tion of goods for commerce, or is employed in an enter-
 15 prise engaged in commerce or in the production of goods
 16 for commerce, of the employer as not an employee of the
 17 employer for purposes of this Act.”; and

18 (ii) in section 15(a) (29 U.S.C.
 19 215(a))—

20 (I) in paragraph (5), by striking
 21 the period at the end and inserting a
 22 semicolon; and

23 (II) by adding at the end the fol-
 24 lowing:

25 “(6) to violate section 5;”.

1 (B) INCORPORATION TO FURTHER VIOLA-
2 TIONS.—Section 15(a) of the Fair Labor
3 Standards Act of 1938 (29 U.S.C. 215(a)), as
4 amended by subparagraph (A)(ii), is further
5 amended by adding at the end the following:

6 “(7) for the purpose, in whole or in part, of fa-
7 cilitating, or evading detection of, a violation of this
8 Act, including a violation of paragraph (6)—

9 “(A) to incorporate or form, or assist in
10 the incorporation or formation of, a corpora-
11 tion, partnership, limited liability corporation,
12 or other entity; or

13 “(B) to pay or collect a fee for use of a
14 foreign or domestic corporation, partnership,
15 limited liability corporation, or other entity;
16 or”.

17 (C) PENALTIES.—Section 16(e) of the
18 Fair Labor Standards Act of 1938 (29 U.S.C.
19 216(e)), as amended by section 101(b)(2), is
20 further amended by adding at the end the fol-
21 lowing:

22 “(7) PENALTIES FOR MISCLASSIFICATION AND IN-
23 CORPORATION TO FURTHER VIOLATIONS.—

1 “(A) IN GENERAL.—Any person who violates
2 paragraph (6) or (7) of section 15(a) shall be sub-
3 ject to a civil penalty of—

4 “(i) subject to clauses (ii) and (iii),
5 \$10,000;

6 “(ii) if the violation is repeated or willful,
7 \$30,000; or

8 “(iii) if the violation is widespread, 1 per-
9 cent of the net profits of the person for the year
10 in which the person had the highest net profits
11 out of all years in which the person was in such
12 violation.

13 “(B) REPEATED, OR WILLFUL, AND WIDE-
14 SPREAD VIOLATIONS.—If a violation of paragraph
15 (6) or (7) of section 15(a) is repeated or willful, as
16 described in subparagraph (A)(ii), and is wide-
17 spread, as described in subparagraph (A)(iii), the
18 higher penalty of the penalties described in such
19 subparagraphs shall apply.

20 “(C) PAYMENT OF PENALTIES.—Any penalty
21 assessed under subparagraph (A) for a violation of
22 paragraph (6) or (7) of section 15(a) shall be paid
23 from an account of the person in such violation and
24 not paid, or reimbursed, by any insurance plan that
25 would indemnify the person from violations of such

1 paragraph (6) or (7), respectively. If a person re-
2 ceives a payment from an insurance plan to indem-
3 nify the person from a violation of such paragraph,
4 the person shall transfer the payment to the Sec-
5 retary, in addition to the amount to be paid from
6 the account of the person for the penalty. The
7 amount of a payment transferred to the Secretary
8 under this subparagraph shall be treated as a civil
9 penalty under this section for a violation of section
10 15 for purposes of paragraph (5) of this subsection
11 and subsection (f).”.

12 (4) PROTECTION FROM RETALIATION FOR
13 BEING AN EMPLOYEE.—Section 15(a)(3) of the Fair
14 Labor Standards Act of 1938 (29 U.S.C. 215(a)(3))
15 is amended—

16 (A) by striking “employee because such
17 employee has filed” and inserting “employee be-
18 cause—

19 “(A) such employee has filed;”;

20 (B) by striking “committee;” and inserting
21 “committee; or”; and

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

23 “(B) such employee—

24 “(i) is required, pursuant to the enactment
25 of the Worker Flexibility and Small Business

1 Protection Act of 2020, to be classified as an
2 employee of the person for purposes of this Act
3 and not an independent contractor; and

4 “(ii) was classified by the person as an
5 independent contractor prior to the date of en-
6 actment of the Worker Flexibility and Small
7 Business Protection Act of 2020;”.

8 (5) RULES REGARDING UNLAWFUL DISCHARGE
9 OR DISCRIMINATION.—Section 15 of the Fair Labor
10 Standards Act of 1938 (29 U.S.C. 215) is amended
11 by adding at the end the following:

12 “(c) RULES REGARDING UNLAWFUL DISCHARGE OR
13 DISCRIMINATION.—

14 “(1) PRESUMPTION OF RETALIATION.—Any ac-
15 tion taken against an employee within 90 days of
16 the employee taking any action described in sub-
17 section (a)(3)(A), including taking any such action
18 with respect to exercising the right of the employee
19 pursuant to section 5 to not be misclassified, shall
20 establish a rebuttable presumption that the action is
21 discrimination against the employee in violation of
22 subsection (a)(3).

23 “(2) MOTIVATING FACTOR.—Unlawful dis-
24 charge or other discrimination against an employee
25 under subsection (a)(3) is established when the com-

1 plaining party demonstrates that one of the actions
2 or the classification described in such subsection was
3 a motivating factor for such discharge or other dis-
4 crimination, even if such discharge or other discrimi-
5 nation was also motivated by other factors.”.

6 (6) STATUTORY EMPLOYERS IN HEAVILY
7 MISCLASSIFIED INDUSTRIES.—

8 (A) DEFINITION OF EMPLOYER.—Section
9 3(d) of the Fair Labor Standards Act of 1938
10 (29 U.S.C. 203(d)) is amended to read as fol-
11 lows:

12 “(d) EMPLOYER.—

13 “(1) IN GENERAL.—The term ‘employer’ in-
14 cludes any person acting directly or indirectly in the
15 interest of an employer in relation to an employee.

16 “(2) INCLUSIONS AND EXCLUSIONS.—The term
17 ‘employer’ includes a public agency but does not in-
18 clude any labor organization (other than when acting
19 as an employer) or anyone acting in the capacity of
20 officer or agent of such labor organization.

21 “(3) APPLICATION WITH REFERENCE TO
22 OTHER DEFINITIONS.—The term ‘employer’ shall be
23 interpreted and applied in a manner that is con-
24 sistent with the other definitions in this section and
25 that incorporates the term ‘employee’, as defined in

1 subsection (e), and the term ‘employ’, as defined in
2 subsection (g).

3 “(4) STATUTORY EMPLOYERS IN CERTAIN IN-
4 DUSTRIES.—The term ‘employer’ shall include any
5 person, except a person excluded under paragraph
6 (2), with respect to an individual described in sub-
7 section (e)(9) performing labor that is beneficial to
8 the person, that is engaged in any of the following
9 work:

10 “(A) Transportation, including any person
11 that benefits from labor performed by individ-
12 uals in the form of transportation in a motor-
13 ized or unmotorized vehicle, by foot, or by any
14 other means, including transportation network
15 companies, technology platform companies, pas-
16 senger transportation or food transportation
17 companies, and cargo transportation companies.

18 “(B) Network dispatching, including any
19 person that uses a digital network to connect
20 individuals or entities seeking services or labor
21 with individuals or entities seeking to provide
22 services or labor, but not including any person
23 who owns, controls, or manages—

24 “(i) a completely neutral physical or
25 internet marketplace where the procure-

1 ment of goods or services takes place be-
2 tween individuals who are completely inde-
3 pendent from and free from any and all di-
4 rection or control by the person owning,
5 controlling, or managing the neutral mar-
6 ketplace, including such person having ab-
7 solutely no role in the setting of prices or
8 rates, in the assignment or referral of re-
9 quests for goods or services to individuals
10 who could potentially provide such goods
11 or services, and in the acceptance or rejec-
12 tion of any requests for goods or services;
13 and

14 “(ii) a labor organization hiring
15 hall.”.

16 (B) DEFINITION OF EMPLOYEE.—Section
17 3(e) of the Fair Labor Standards Act of 1938
18 (29 U.S.C. 203(e)), as amended by paragraph
19 (2), is further amended by adding at the end
20 the following:

21 “(9) Notwithstanding paragraph (1) or (6) of this
22 subsection, subsection (d) (other than paragraph (4) of
23 such subsection), or subsection (g), and except as provided
24 in paragraphs (2), (3), (4), and (5), the term ‘employee’,
25 with respect to an employer described in subsection (d)(4),

1 shall include any individual performing labor that is bene-
2 ficial to the employer, including—

3 “(A) with respect to transportation described in
4 subparagraph (A) of such subsection, any individual
5 who performs any portion of the labor included
6 under such subparagraph, including individuals who
7 perform labor in the form of engaging in transpor-
8 tation beneficial to transportation network compa-
9 nies, technology platform companies, passenger
10 transportation or food transportation companies, or
11 cargo transportation companies; and

12 “(B) with respect to network dispatching de-
13 scribed in subparagraph (B) of such subsection, any
14 individual who performs any portion of the services
15 or labor included under such subparagraph, includ-
16 ing providing the services or labor to the individuals
17 or entities seeking such services or labor.”.

18 (C) COMPENSABLE TIME WORKED.—

19 (i) IN GENERAL.—The Fair Labor
20 Standards Act of 1938 (29 U.S.C. 201 et
21 seq.) is amended by inserting after section
22 8 the following:

1 **“SEC. 9. SPECIAL REQUIREMENTS FOR CERTAIN WORKERS.**

2 “(a) DETERMINING COMPENSABLE HOURS WORKED
3 FOR TRANSPORTATION AND NETWORK DISPATCHING
4 WORKERS.—

5 “(1) DETERMINING HOURS WORKED.—

6 “(A) IN GENERAL.—For the purposes of
7 sections 6 and 7, in determining the hours for
8 which an employee described in section 3(e)(9)
9 is employed, there shall be included any reason-
10 able amount of time, as determined by the Sec-
11 retary in accordance with subparagraph (C),
12 spent on waiting for, receiving, reviewing, con-
13 sidering, accepting, and transporting oneself to
14 fulfill an assignment or request to perform any
15 portion of labor immediately before performing
16 such portion of labor, including through a
17 smartphone application, technology platform,
18 dispatch network, or any other mechanism that
19 is used to connect individuals or entities seeking
20 services or labor with employees seeking to pro-
21 vide services or labor.

22 “(B) RATE OF COMPENSATION.—Com-
23 pensation paid for any reasonable amount of
24 time described in subparagraph (A) shall be
25 paid at a rate no less than the employee’s reg-
26 ular rate of pay.

1 “(C) DETERMINATION OF AMOUNT OF
2 TIME.—The Secretary shall have discretion to
3 determine a reasonable amount of time for pur-
4 poses of subparagraph (A) given the specific
5 circumstances involved, except that in all
6 cases—

7 “(i) the minimum amount of the rea-
8 sonable amount of time for the activities
9 described in subparagraph (A) before ac-
10 cepting and performing a portion of labor
11 shall be 3 minutes; and

12 “(ii) the maximum amount of such
13 reasonable amount of time shall be 30
14 minutes.

15 “(D) COLLECTIVE BARGAINING.—Notwith-
16 standing subparagraph (A), no employer shall
17 be determined to have violated section 6 or 7 by
18 employing any employee described in section
19 3(e)(9) without providing such employee com-
20 pensation for the reasonable amount of time
21 under subparagraph (A) if such employee is so
22 employed in pursuance of an agreement, made
23 as a result of collective bargaining by a bona
24 fide representative of employees for purposes of
25 section 8(f) or (9)(a) of the National Labor Re-

1 lations Act (29 U.S.C. 158(f), 159(a)), that al-
2 ters or waives the compensation requirements of
3 this paragraph.

4 “(2) INFORMATION.—The Secretary shall have
5 the authority to request, inspect, and pursue sub-
6 poenas for any information or data held by an em-
7 ployer that the Secretary determines to be rel-
8 evant—

9 “(A) in determining the reasonable amount
10 of time under paragraph (1)(A) for which an
11 employee described in section 3(e)(9) should be
12 compensated;

13 “(B) in determining an employee’s regular
14 rate of pay for purposes of paragraph (1)(B);
15 or

16 “(C) for any other purpose related to this
17 subsection.”.

18 (ii) PENALTIES.—Section 15(a)(2) is
19 amended by inserting “including violations
20 due to failure to comply with section 9(a),”
21 after “section 7,”.

22 (7) MISCLASSIFICATION ENFORCEMENT
23 THROUGH RECLASSIFICATION ORDERS AND STOP
24 WORK ORDERS.—

1 (A) IN GENERAL.—Section 17 of the Fair
2 Labor Standards Act of 1938 (29 U.S.C. 217)
3 is amended—

4 (i) by striking “The district courts”
5 and inserting “(a) The district courts”;

6 (ii) by inserting “orders issued under
7 subsection (b)(1) or (c)(1) or violations of”
8 before “section 15,”; and

9 (iii) by adding at the end the fol-
10 lowing:

11 “(b) MISCLASSIFICATION ENFORCEMENT THROUGH
12 RECLASSIFICATION ORDERS.—

13 “(1) IN GENERAL.—If the Secretary deter-
14 mines, after an investigation under section 11, that
15 an employer has misclassified 1 or more individuals
16 who are employees of the employer as not employees
17 in violation of section 15(a)(6)—

18 “(A) the Secretary shall issue, not later
19 than 24 hours after making such determination,
20 an order against the employer requiring the em-
21 ployer to immediately classify the 1 or more in-
22 dividuals as employees of the employer; and

23 “(B) the employer shall immediately com-
24 ply with the order issued under subparagraph

1 (A) or shall otherwise be in violation of section
2 15(a)(6).

3 “(2) ORDERS.—An order issued under para-
4 graph (1) shall—

5 “(A) be effective at the time at which the
6 order is served upon the employer, which may
7 be accomplished by the posting of a copy of the
8 order in a conspicuous location at the place of
9 business of the employer; and

10 “(B) remain in effect during any review
11 conducted under paragraph (3) with respect to
12 such order and during any hearing and appeal
13 of such order under paragraph (4).

14 “(3) REVIEW FOR RECONSIDERATION.—

15 “(A) IN GENERAL.—An employer against
16 whom an order is issued under paragraph (1)
17 may request a review by the Secretary to con-
18 test the order.

19 “(B) REQUESTS.—A request under sub-
20 paragraph (A) shall be made in writing to the
21 Secretary not more than 5 days after the
22 issuance of the order.

23 “(C) REQUIREMENTS FOR REVIEW.—

24 “(i) IN GENERAL.—A review under
25 this paragraph shall—

1 “(I) commence not later than 24
2 hours after a request is made under
3 subparagraph (B); and

4 “(II) conclude not later than 24
5 hours after such commencement.

6 “(ii) DETERMINATION.—Not later
7 than 72 hours after a review concludes
8 under clause (i)(II), the Secretary shall de-
9 termine whether to affirm, modify, or re-
10 voke the contested order.

11 “(4) HEARINGS AND APPEALS.—Any person ag-
12 grieved by a determination of the Secretary under
13 paragraph (3)(C)(ii) may—

14 “(A) request a hearing to appeal such de-
15 termination to an administrative law judge; and

16 “(B) appeal an order of an administrative
17 law judge under subparagraph (A) to a Federal
18 or State court of competent jurisdiction.

19 “(5) INJUNCTION PROCEEDINGS.—The Sec-
20 retary may seek an injunction proceeding under sub-
21 section (a) against any employer that violates an
22 order issued under paragraph (1). A court shall
23 issue such injunction if the Secretary has dem-
24 onstrated it is just and proper.

1 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
2 OF MISCLASSIFICATION.—

3 “(A) IN GENERAL.—If an employer with
4 respect to whom an order was issued under
5 paragraph (1) successfully proves through a re-
6 view under paragraph (3), or a hearing or ap-
7 peal under paragraph (4), that the 1 or more
8 individuals who were the subject of the order
9 were not misclassified in violation of section
10 15(a)(6)—

11 “(i) the order issued under paragraph
12 (1) shall cease to be in effect;

13 “(ii) the employer shall not be liable
14 for any applicable unpaid minimum wages,
15 unpaid overtime compensation, other dam-
16 ages, or civil penalties owed by the em-
17 ployer under section 16 with respect to the
18 misclassification of such 1 or more individ-
19 uals; and

20 “(iii) the Secretary of Labor, adminis-
21 trative law judge, or the court shall award
22 (and the Secretary of the Treasury shall,
23 in accordance with subparagraph (B), pay)
24 to the employer reasonable fees and ex-
25 penses of attorneys in the same manner as

1 such fees and expenses could be awarded
2 under section 2412 of title 28, United
3 States Code, if the employer was a pre-
4 vailing party and the review, hearing, or
5 appeals proceeding was a civil action
6 brought by or against the United States.

7 “(B) SOURCE OF FUNDS.—The Secretary
8 of the Treasury shall, upon notification by the
9 Secretary of Labor, administrative law judge, or
10 court, as applicable, pay any fees or expenses
11 awarded under subparagraph (A)(iii) from
12 amounts in the general fund of the Treasury.

13 “(c) MISCLASSIFICATION ENFORCEMENT THROUGH
14 STOP WORK ORDERS.—

15 “(1) IN GENERAL.—In any case where an em-
16 ployer does not comply with a reclassification order
17 issued by the Secretary under subsection (b)(1),
18 with respect to 2 or more individuals who are
19 misclassified in violation of section 15(a)(6), within
20 30 days of being served with the order, the Sec-
21 retary shall issue—

22 “(A) subject to subparagraph (B), an
23 order against the employer requiring the ces-
24 sation of all business operations of such em-
25 ployer at the location of the violation; or

1 “(B) if an order described in subparagraph
2 (A) has been previously issued against the em-
3 ployer by any Federal, State, or local agency
4 for misclassifying an employee as not an em-
5 ployee in violation of section 15(a)(6), or an
6 equivalent State or local law as determined by
7 the Secretary, an order against the employer re-
8 quiring the cessation of all business operations
9 of such employer at all business locations of the
10 employer, including locations other than the lo-
11 cation where the misclassification occurred.

12 “(2) ORDERS.—

13 “(A) APPLICABILITY.—An order issued
14 under paragraph (1) shall—

15 “(i) be effective at the time at which
16 the order is served upon the employer,
17 which may be accomplished by the posting
18 of a copy of the order in a conspicuous lo-
19 cation at the place of business of the em-
20 ployer; and

21 “(ii) remain in effect—

22 “(I) during any review conducted
23 under paragraph (3) with respect to
24 such order and during any hearing

1 and appeal of such order under para-
2 graph (4); and

3 “(II) until the Secretary issues a
4 release order under subparagraph (B).

5 “(B) RELEASE ORDERS.—

6 “(i) IN GENERAL.—An order issued
7 under paragraph (1) (that is not revoked
8 by the Secretary or held unlawful or set
9 aside by an administrative law judge or a
10 court) shall remain in effect until the Sec-
11 retary issues another order releasing the
12 order issued under such paragraph upon a
13 finding by the Secretary that the em-
14 ployer—

15 “(I) has corrected the violation of
16 section 15(a)(6) with respect to the 2
17 or more individuals who were
18 misclassified resulting in the order;
19 and

20 “(II) has agreed to a payment
21 schedule for all applicable unpaid min-
22 imum wages, unpaid overtime com-
23 pensation, other damages, and civil
24 penalties owed by the employer under
25 section 16.

1 “(ii) REINSTATEMENT.—If, at any
2 time after the Secretary issues a release
3 order under clause (i), the employer fails
4 to comply with the terms of the payment
5 schedule described in clause (i)(II), the
6 Secretary shall reinstate the order issued
7 under paragraph (1) until the employer is
8 in compliance with such terms.

9 “(3) REVIEW FOR RECONSIDERATION.—

10 “(A) IN GENERAL.—An employer against
11 whom an order is issued under paragraph (1)
12 may request a review by the Secretary to con-
13 test the order.

14 “(B) REQUESTS.—A request under sub-
15 paragraph (A) shall be made in writing to the
16 Secretary not more than 5 days after the
17 issuance of the order.

18 “(C) REQUIREMENTS FOR REVIEW.—

19 “(i) IN GENERAL.—A review under
20 this paragraph shall—

21 “(I) commence not later than 24
22 hours after a request is made under
23 subparagraph (B); and

24 “(II) conclude not later than 24
25 hours after such commencement.

1 “(ii) DETERMINATION.—Not later
2 than 72 hours after a review concludes
3 under clause (i)(II), the Secretary shall de-
4 termine whether to affirm, modify, or re-
5 voke the contested order.

6 “(4) HEARINGS AND APPEALS.—Any person ag-
7 grieved by a determination of the Secretary under
8 paragraph (3)(C)(ii) may—

9 “(A) request a hearing to appeal such de-
10 termination to an administrative law judge; and

11 “(B) appeal an order of an administrative
12 law judge under subparagraph (A) to a Federal
13 or State court of competent jurisdiction.

14 “(5) INJUNCTION PROCEEDINGS.—The Sec-
15 retary may seek an injunction proceeding under sub-
16 section (a) against any employer that violates an
17 order issued under paragraph (1). A court shall
18 issue such injunction if the Secretary has dem-
19 onstrated it is just and proper.

20 “(6) COMPENSATION FOR LOST WORK.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), an employer with respect to whom
23 an order is issued under paragraph (1) shall
24 pay each employee of the employer, who loses
25 compensation due to the work of such employee

1 ceasing as a result of such order, the compensa-
2 tion that would be owed to such employee if the
3 order was not issued.

4 “(B) LIMITATION.—Compensation paid
5 under subparagraph (A) shall be for each day,
6 not to exceed 10 days, for which the employee
7 would be paid if the order described in such
8 subparagraph were not in effect.

9 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
10 OF MISCLASSIFICATION.—

11 “(A) IN GENERAL.—In any case where an
12 employer with respect to whom an order was
13 issued under paragraph (1) successfully proves,
14 through a review under paragraph (3) or a sub-
15 sequent hearing or appeals proceeding under
16 paragraph (4), that the 2 or more individuals
17 who were the subject of the order were not
18 misclassified in violation of section 15(a)(6)—

19 “(i) the order issued under paragraph
20 (1), and any order issued against the em-
21 ployer under subsection (b)(1) with respect
22 to such 2 or more individuals, shall cease
23 to be in effect;

24 “(ii) the employer shall not be liable
25 for any applicable unpaid minimum wages,

1 unpaid overtime compensation, other dam-
2 ages, or civil penalties owed by the em-
3 ployer under section 16 with respect to the
4 misclassification of such 2 or more individ-
5 uals; and

6 “(iii) the Secretary of Labor, adminis-
7 trative law judge, or the court shall award
8 (and the Secretary of the Treasury shall,
9 in accordance with subparagraph (B), pay)
10 to the employer—

11 “(I) an amount equal to any de-
12 monstrable lost net profits resulting
13 from the order, as demonstrated by
14 clear and convincing evidence; and

15 “(II) reasonable fees and ex-
16 penses of attorneys in the same man-
17 ner as such fees and expenses could
18 be awarded under section 2412 of title
19 28, United States Code, if the em-
20 ployer was a prevailing party and the
21 review, hearing, or appeals proceeding
22 was a civil action brought by or
23 against the United States.

24 “(B) SOURCE OF FUNDS.—The Secretary
25 of the Treasury shall, upon notification by the

1 Secretary of Labor, administrative law judge, or
2 court, as applicable, pay any amounts, fees, or
3 expenses awarded under subparagraph (A)(iii)
4 from amounts available in the general fund of
5 the Treasury.”.

6 (B) PENALTIES.—Section 16(e) of the
7 Fair Labor Standards Act of 1938 (29 U.S.C.
8 216(e)), as amended by paragraph (3)(C), is
9 further amended by adding at the end the fol-
10 lowing:

11 “(8) PENALTIES FOR VIOLATING RECLASSIFICATION
12 ORDERS.—

13 “(A) CIVIL PENALTIES.—Any person who vio-
14 lates a reclassification order issued by the Secretary
15 under section 17(b)(1) shall be subject to a civil pen-
16 alty of not less than \$5,000 per day, with each day
17 constituting a separate offense.

18 “(B) ADDITIONAL DAMAGES.—In any case in
19 which an employer contests a reclassification order
20 issued under paragraph (1) of section 17(b) in a re-
21 view under paragraph (3) of such section, a hearing
22 under paragraph (4)(A) of such section, and a sub-
23 sequent judicial proceeding under paragraph (4)(B)
24 of such section, and the court in such proceeding
25 rules in favor of the Secretary—

1 “(i) the court shall determine if, during the
2 period between the issuance of such order and
3 the conclusion of the proceeding, the employer
4 violated such order by not classifying the 1 or
5 more individuals as employees during that pe-
6 riod; and

7 “(ii) if the court determines the employer
8 so violated the order during that period—

9 “(I) the court shall determine the
10 amount of net profits derived by the em-
11 ployer from the individuals’ labor during
12 that period; and

13 “(II) the court shall assess damages
14 in the amount determined under subclause
15 (I), which damages shall be awarded to
16 such individuals by the court.”.

17 (C) CONFORMING AMENDMENTS.—Sections
18 12(b) and 16(b) of the Fair Labor Standards
19 Act of 1938 (29 U.S.C. 212(b) and 216(b)) are
20 amended by striking “section 17” each place it
21 appears and inserting “section 17(a)”.

22 (8) PRIVATE ATTORNEYS GENERAL.—Section
23 16 of the Fair Labor Standards Act of 1938 (29
24 U.S.C. 216), as amended by paragraph (7)(B), is
25 further amended—

1 (A) in subsection (b), by inserting after the
2 third sentence the following: “Any employer
3 who violates a provision of this Act for which
4 a civil penalty may be assessed by the Secretary
5 under this Act may, in accordance with sub-
6 section (f), be liable to the employee or employ-
7 ees affected in the amount of the civil penalty.”;

8 (B) in subsection (e)—

9 (i) in paragraph (3), in the matter
10 preceding subparagraph (A) of the second
11 sentence, by inserting “, except as provided
12 in subsection (f)(3)(A),” after “may”; and

13 (ii) in paragraph (5)—

14 (I) in the first sentence, by in-
15 serting “and as provided in subsection
16 (f)(3)(B),” after “Except for civil pen-
17 alties collected for violations of section
18 12”; and

19 (II) in the second sentence, by
20 striking “Civil penalties” and insert-
21 ing “Except as provided in subsection
22 (f)(3)(B), civil penalties”; and

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

24 “(f) PRIVATE RIGHT OF ACTION FOR PENALTIES.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision in this Act, an employee that is affected by
3 a violation of a provision of this Act for which a civil
4 penalty may be assessed by the Secretary under this
5 Act may, subject to paragraph (2), bring a civil ac-
6 tion in accordance with subsection (b) for the recov-
7 ery of the amount of the penalty on behalf of the
8 employee and any other employees similarly situated
9 (subject to the requirements for being a party plain-
10 tiff under such subsection).

11 “(2) NOTICE.—

12 “(A) IN GENERAL.—Prior to filing the civil
13 action described in paragraph (1), the employee
14 filing such action shall file with the Secretary a
15 notice of—

16 “(i) the complaint of the employee;

17 and

18 “(ii) the intention of the employee to
19 file the action and recover the amount of
20 the penalty and any other amount the em-
21 ployee is seeking under subsection (b) from
22 the employer.

23 “(B) NOTIFICATION BY SECRETARY TO
24 EMPLOYEE.—

1 “(i) IN GENERAL.—The Secretary
2 shall, not later than 60 days after receiving
3 the notice under subparagraph (A), notify
4 the employee of whether the Secretary has
5 assessed, is assessing, or plans to assess
6 the civil penalty in accordance with this
7 Act.

8 “(ii) TERMINATION OF EMPLOYEE
9 RIGHT.—The right of an employee to bring
10 an action under subsection (b) to recover a
11 civil penalty under this subsection shall
12 terminate upon the filing of a notification
13 by the Secretary under clause (i) that the
14 Secretary has assessed, is assessing, or
15 plans to assess the civil penalty in accord-
16 ance with this Act.

17 “(3) TREATMENT OF PENALTIES RECOVERED
18 BY EMPLOYEES.—In a case in which the Secretary
19 notifies the employee that the Secretary has not as-
20 sessed, is not assessing, and plans not to assess the
21 civil penalty (or fails to meet the required deadline
22 for notifying the employee under paragraph
23 (2)(B)(i))—

24 “(A) the second sentence of paragraph (3),
25 and paragraph (5), of subsection (e) shall not

1 apply with respect to the civil penalty sought by
2 the employee; and

3 “(B) if the penalty is successfully recov-
4 ered through a civil action by the employee, the
5 employee and any other similarly situated em-
6 ployee (as applicable) shall retain the amount of
7 the penalty in accordance with paragraph (4)
8 (as applicable).

9 “(4) MULTIPLE EMPLOYEES.—In a case in
10 which an employee brings a civil action in any Fed-
11 eral or State court of competent jurisdiction under
12 this subsection for the recovery of a civil penalty
13 under this Act on behalf of the employee and other
14 similarly situated employees—

15 “(A) the employee bringing the action shall
16 be entitled to—

17 “(i) 100 percent of the amount of the
18 penalty assessed for such employee; and

19 “(ii) 25 percent of the amount of the
20 penalty assessed for similarly situated em-
21 ployees involved in the action; and

22 “(B) the court shall determine how to di-
23 vide the remainder of the amount of the penalty
24 assessed for similarly situated employees in-

1 involved in the action equitably among such em-
2 ployees.

3 “(5) ARBITRATION.—

4 “(A) IN GENERAL.—Notwithstanding any
5 other provision of Federal law and except as
6 provided in subparagraph (B), the right to
7 bring a civil action under this subsection may
8 not be waived, limited, or otherwise restricted
9 by any contract or other agreement between an
10 employee and an employer entered into before
11 the events giving rise to the civil action under
12 this subsection occurred, including any contract
13 or other agreement to resolve disputes through
14 arbitration.

15 “(B) CONSENT OF SECRETARY.—No civil
16 action brought under this subsection may be
17 sent to or resolved through arbitration, regard-
18 less of whether all parties to the civil action
19 have consented to arbitration, without the ex-
20 plicit consent of the Secretary for sending that
21 specific action to arbitration.”.

22 (b) NATIONAL LABOR RELATIONS ACT.—

23 (1) STRENGTHENING EMPLOYEE TEST.—Sec-
24 tion 2(3) of the National Labor Relations Act (29
25 U.S.C. 152(3)) is amended—

1 (A) by striking “The term” and inserting

2 “(A) The term”;

3 (B) by striking “employment, but shall

4 not” and inserting “employment. Such term

5 shall not”; and

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

7 “(B)(i) For purposes of this Act, and except as pro-

8 vided in the second sentence of subparagraph (A) and sub-

9 paragraphs (C) and (E), an individual performing any

10 labor for remuneration for a person shall be an employee

11 employed by such person and not an independent con-

12 tractor of the person, unless—

13 “(I) the individual is free from control and di-

14 rection in connection with the performance of the

15 labor, both under the contract for the performance

16 of the labor and in fact;

17 “(II) the labor is performed outside the usual

18 course of the business of the person; and

19 “(III) the individual is customarily engaged in

20 an independently established trade, occupation, pro-

21 fession, or business of the same nature as that in-

22 volved in the labor performed.

23 “(ii)(I) Clause (i) is not a codification of the common

24 law and shall not be interpreted to reflect, or to be limited

25 or restricted by, common law interpretations regarding

1 when an individual is an employee of another person.
2 Clause (i) shall be considered complete as written, and any
3 judicial or agency interpretation of such clause shall be
4 limited to the explicit requirements of such clause.

5 “(II) The requirements of clause (i) shall not be in
6 any way affected by any agreement, written or otherwise,
7 that purports to demonstrate an individual’s acknowledg-
8 ment of or acquiescence to the absence of an employ-
9 er-employee relationship with a particular employer.

10 “(C)(i) Notwithstanding any contrary provisions in
11 this paragraph or paragraph (2), in any instance in which
12 there is a non-compete agreement between a person and
13 an individual who performs labor for such person, the
14 presence of the non-compete agreement, without regard to
15 the legality or enforceability of the non-compete agree-
16 ment, shall be evidence of control for purposes of subpara-
17 graph (B)(i)(I), but shall not by itself establish an employ-
18 ment relationship between such person and the individual.

19 “(ii) In this subparagraph, the term ‘non-compete
20 agreement’ means an agreement between a person and an
21 individual who performs labor for such person that re-
22 stricts the individual from performing, either during or
23 after the individual performs labor for such person—

24 “(I) any labor for another person;

25 “(II) any labor for a specified period of time;

1 “(III) any labor in a specified geographical
2 area; or

3 “(IV) any labor for another person that is simi-
4 lar to the labor such individual performed for the
5 person that is a party to such agreement.”.

6 (2) PRESUMPTION OF EMPLOYEE STATUS.—
7 Section 2(3) of the National Labor Relations Act
8 (29 U.S.C. 152(3)), as amended by paragraph (1),
9 is further amended by adding at the end the fol-
10 lowing:

11 “(D) For purposes of this Act, an individual per-
12 forming any labor for remuneration for a person shall be
13 presumed to be an employee of the person, unless the
14 party seeking to assert otherwise establishes by clear and
15 convincing evidence that the individual is not an employee
16 of the person in accordance with this paragraph.”.

17 (3) MISCLASSIFICATION AS A STANDALONE VIO-
18 LATION.—

19 (A) IN GENERAL.—Section 8(a) of the Na-
20 tional Labor Relations Act (29 U.S.C. 158(a))
21 is amended—

22 (i) in paragraph (5), by striking the
23 period at the end and inserting a semi-
24 colon; and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(6) to misclassify an employee of the employer,
4 who is engaged in commerce or an industry affecting
5 commerce, as not an employee of the employer for
6 purposes of this Act;”.

7 (B) INCORPORATION TO FURTHER VIOLA-
8 TIONS.—Section 8(a) of the National Labor Re-
9 lations Act (29 U.S.C. 158(a)), as amended by
10 subparagraph (A), is further amended by add-
11 ing at the end the following:

12 “(7) for the purpose, in whole or in part, of fa-
13 cilitating, or evading detection of, a violation of this
14 Act, including a violation of paragraph (6)—

15 “(A) to incorporate or form, or assist in
16 the incorporation or formation of, a corpora-
17 tion, partnership, limited liability corporation,
18 or other entity; or

19 “(B) to pay or collect a fee for use of a
20 foreign or domestic corporation, partnership,
21 limited liability corporation, or other entity;
22 or”.

23 (C) PENALTIES.—Section 12 of the Na-
24 tional Labor Relations Act (29 U.S.C. 162) is
25 amended to read as follows:

1 **“SEC. 12. PENALTIES.**

2 “(a) IN GENERAL.—Any person who shall willfully
3 resist, prevent, impede, or interfere with any member of
4 the Board or any of its agents or agencies in the perform-
5 ance of duties pursuant to this Act shall be punished by
6 a fine of not more than \$5,000 or by imprisonment for
7 not more than one year, or both.

8 “(b) CIVIL PENALTIES FOR MISCLASSIFICATION OR
9 INCORPORATION TO FURTHER VIOLATIONS.—

10 “(1) IN GENERAL.—Any person who violates
11 paragraph (6) or (7) of section 8(a) shall be subject
12 to a civil penalty of—

13 “(A) subject to subparagraphs (B) and
14 (C), \$10,000;

15 “(B) if the violation is repeated or willful,
16 \$30,000; or

17 “(C) if the violation is widespread, 1 per-
18 cent of the net profits of the person for the year
19 in which the person had the highest net profits
20 out of all years in which the person was in such
21 violation.

22 “(2) REPEATED, OR WILLFUL, AND WIDE-
23 SPREAD VIOLATIONS.—If a violation of paragraph
24 (6) or (7) of section 8(a) is repeated or willful, as
25 described in paragraph (1)(B), and is widespread, as
26 described in paragraph (1)(C), the higher penalty of

1 the penalties described in such paragraphs shall
2 apply.

3 “(3) PAYMENT OF PENALTIES.—Any penalty
4 assessed under paragraph (1) for a violation of para-
5 graph (6) or (7) of section 8(a) shall be paid from
6 an account of the person in such violation and not
7 paid, or reimbursed, by any insurance plan that
8 would indemnify the person from violations of such
9 paragraph (6) or (7), respectively. If a person re-
10 ceives a payment from an insurance plan to indem-
11 nify the person from a violation of such paragraph,
12 the person shall transfer the payment to the Board,
13 in addition to the amount to be paid from the ac-
14 count of the person for the penalty.”.

15 (4) PROTECTION FROM RETALIATION FOR
16 BEING AN EMPLOYEE.—Section 8(a)(4) of the Na-
17 tional Labor Relations Act (29 U.S.C. 158(a)(4)) is
18 amended—

19 (A) by striking “employee because he has
20 filed” and inserting “employee because—

21 “(A) such employee has filed;”;

22 (B) by striking “Act;” and inserting “Act;
23 or”; and

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

25 “(B) such employee—

1 “(i) is required, pursuant to the en-
2 actment of the Worker Flexibility and
3 Small Business Protection Act of 2020, to
4 be classified as an employee of the em-
5 ployer for purposes of this Act and not an
6 independent contractor; and

7 “(ii) was classified by the employer as
8 an independent contractor prior to the date
9 of enactment of the Worker Flexibility and
10 Small Business Protection Act of 2020;”.

11 (5) PRESUMPTION OF RETALIATION.—Section 8
12 of the National Labor Relations Act (29 U.S.C.
13 158) is amended by adding at the end the following:

14 “(h) PRESUMPTION OF RETALIATION.—Any action
15 taken against an employee within 90 days of the employee
16 taking any action described in subsection (a)(4)(A), in-
17 cluding taking any such action with respect to exercising
18 the right of the employee pursuant to subsection (a)(6)
19 to not be misclassified, shall establish a rebuttable pre-
20 sumption that the action is discrimination against the em-
21 ployee in violation of subsection (a)(4).”.

22 (6) STATUTORY EMPLOYERS IN HEAVILY
23 MISCLASSIFIED INDUSTRIES.—

1 (A) DEFINITION OF EMPLOYER.—Section
2 2(2) of the National Labor Relations Act (29
3 U.S.C. 152(2)) is amended to read as follows:

4 “(2) EMPLOYER.—

5 “(A) IN GENERAL.—The term ‘employer’ in-
6 cludes any person acting as an agent of an employer,
7 directly or indirectly, but shall not include the
8 United States or any wholly owned Government cor-
9 poration, or any Federal Reserve Bank, or any State
10 or political subdivision thereof, or any person subject
11 to the Railway Labor Act, as amended from time to
12 time, or any labor organization (other than when
13 acting as an employer), or anyone acting in the ca-
14 pacity of officer or agent of such labor organization.

15 “(B) STATUTORY EMPLOYERS IN CERTAIN IN-
16 DUSTRIES.—The term ‘employer’ shall include any
17 person (except a person described as excluded from
18 the term under subparagraph (A)), with respect to
19 an individual described in paragraph (3)(E) per-
20 forming labor that is beneficial to the person, that
21 is engaged in any of the following work:

22 “(i) Transportation, including any person
23 that benefits from labor performed by individ-
24 uals in the form of transportation in a motor-
25 ized or unmotorized vehicle, by foot, or by any

1 other means, including transportation network
2 companies, technology platform companies, pas-
3 senger transportation or food transportation
4 companies, and cargo transportation companies.

5 “(ii) Network dispatching, including any
6 person that uses a digital network to connect
7 individuals or entities seeking services or labor
8 with individuals or entities seeking to provide
9 services or labor, but not including any person
10 who owns, controls or manages—

11 “(I) a completely neutral physical or
12 internet marketplace where the procure-
13 ment of goods or services takes place be-
14 tween individuals who are completely inde-
15 pendent from and free from any and all di-
16 rection or control by the person owning,
17 controlling, or managing the neutral mar-
18 ketplace, including such person having ab-
19 solutely no role in the setting of prices or
20 rates, in the assignment or referral of re-
21 quests for goods or services to individuals
22 who could potentially provide such goods
23 or services, and in the acceptance or rejec-
24 tion of any requests for goods or services;
25 and

1 “(II) a labor organization hiring
2 hall.”.

3 (B) DEFINITION OF EMPLOYEE.—Section
4 2(3) of the National Labor Relations Act (29
5 U.S.C. 152(3)), as amended by paragraph (2),
6 is further amended by adding at the end the
7 following:

8 “(E) Notwithstanding subparagraphs (A) (except the
9 second sentence of such subparagraph) and (B) of this
10 paragraph or paragraph (2) (other than subparagraph (B)
11 of such paragraph), and except as provided in the second
12 sentence of such subparagraph (A), the term ‘employee’,
13 with respect to an employer described in paragraph
14 (2)(B), shall include any individual performing labor that
15 is beneficial to the employer, including—

16 “(i) with respect to transportation described in
17 clause (i) of such paragraph, any individual who per-
18 forms any portion of the labor included under such
19 clause, including individuals who perform labor in
20 the form of engaging in transportation beneficial to
21 transportation network companies, technology plat-
22 form companies, passenger transportation or food
23 transportation companies, or cargo transportation
24 companies; and

1 “(ii) with respect to network dispatching de-
 2 scribed in clause (ii) of such paragraph, any indi-
 3 vidual who performs any portion of the labor in-
 4 cluded under such clause, including providing the
 5 services or labor described in such clause to the indi-
 6 viduals or entities seeking such services or labor.”.

7 (7) MISCLASSIFICATION ENFORCEMENT
 8 THROUGH RECLASSIFICATION ORDERS AND STOP
 9 WORK ORDERS.—

10 (A) IN GENERAL.—Section 10 of the Na-
 11 tional Labor Relations Act (29 U.S.C. 160) is
 12 amended by adding at the end the following:

13 “(n) MISCLASSIFICATION ENFORCEMENT THROUGH
 14 RECLASSIFICATION ORDERS.—

15 “(1) IN GENERAL.—If a regional director, after
 16 an investigation under section 11, has reasonable
 17 cause to believe that an employer has misclassified
 18 1 or more individuals who are employees of the em-
 19 ployer as not employees in violation of section
 20 8(a)(6) and that, regardless of whether a charge has
 21 been or will be filed, if charged a complaint would
 22 issue—

23 “(A) the regional director shall issue, not
 24 later than 24 hours after making such deter-
 25 mination, an order against the employer requir-

1 ing the employer to immediately classify the 1
2 or more individuals as employees of the em-
3 ployer; and

4 “(B) the employer shall immediately com-
5 ply with the order issued under subparagraph
6 (A) or shall otherwise be in violation of section
7 8(a)(6).

8 “(2) ORDERS.—An order issued under para-
9 graph (1) shall—

10 “(A) be effective at the time at which the
11 order is served upon the employer, which may
12 be accomplished by the posting of a copy of the
13 order in a conspicuous location at the place of
14 business of the employer; and

15 “(B) remain in effect during any review
16 conducted under paragraph (3) with respect to
17 such order and during any hearing and appeal
18 regarding such order under paragraph (4).

19 “(3) REVIEW FOR RECONSIDERATION.—

20 “(A) IN GENERAL.—An employer against
21 whom an order is issued under paragraph (1)
22 may request a review for reconsideration with
23 the General Counsel to contest the order.

24 “(B) REQUESTS.—A request under sub-
25 paragraph (A) shall be made in writing to the

1 General Counsel not more than 5 days after the
2 issuance of the order.

3 “(C) REQUIREMENTS FOR REVIEW.—

4 “(i) IN GENERAL.—A review under
5 this paragraph shall—

6 “(I) commence not later than 24
7 hours after a request is made under
8 subparagraph (B); and

9 “(II) conclude not later than 24
10 hours after such commencement.

11 “(ii) DETERMINATION.—Not later
12 than 72 hours after a review concludes
13 under clause (i)(II), the General Counsel
14 shall determine whether to affirm, modify,
15 or revoke the contested order.

16 “(4) HEARINGS AND APPEALS.—Any person ag-
17 grieved by a determination of the General Counsel
18 under paragraph (3)(C)(ii) may—

19 “(A) request a hearing on the merits be-
20 fore an Administrative Law Judge;

21 “(B) appeal the determination of an Ad-
22 ministrative Law Judge under subparagraph
23 (A) to the Board; and

24 “(C) appeal an order of the Board under
25 subparagraph (B) to any court of appeals of the

1 United States in the circuit wherein the
2 misclassification in question was alleged to have
3 been engaged in or wherein such person resides
4 or transacts business, or to the United States
5 Court of Appeals for the District of Columbia.

6 “(5) TEMPORARY RELIEF OR RESTRAINING
7 ORDER.—The regional director issuing an order
8 under paragraph (1) may seek, in any court de-
9 scribed in paragraph (4)(C) against an employer
10 that violates an order issued under paragraph (1),
11 temporary relief or a restraining order to bring the
12 employer into compliance with such order issued
13 under paragraph (1). A court shall issue such tem-
14 porary relief or restraining order if the regional di-
15 rector has demonstrated it is just and proper.

16 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
17 OF MISCLASSIFICATION.—

18 “(A) IN GENERAL.—If an employer with
19 respect to whom an order was issued under
20 paragraph (1) successfully proves through a re-
21 view under paragraph (3), or a subsequent
22 hearing or appeals proceeding under paragraph
23 (4), that the 1 or more individuals who were
24 the subject of the order were not misclassified
25 in violation of section 8(a)(6)—

1 “(i) the order issued under paragraph
2 (1) shall cease to be in effect;

3 “(ii) the employer shall not be liable
4 for any applicable back pay, damages, or
5 civil penalties owed by the employer under
6 this Act with respect to the
7 misclassification of such 1 or more individ-
8 uals; and

9 “(iii) the General Counsel, the Admin-
10 istrative Law Judge, the Board, or the
11 court (as applicable) shall award (and the
12 Secretary of the Treasury shall, in accord-
13 ance with subparagraph (B), pay) to the
14 employer reasonable fees and expenses of
15 attorneys in the same manner as such fees
16 and expenses could be awarded under sec-
17 tion 2412 of title 28, United States Code,
18 if the employer was a prevailing party and
19 the review, hearing, or appeals proceeding
20 was a civil action brought by or against the
21 United States.

22 “(B) SOURCE OF FUNDS.—The Secretary
23 of the Treasury shall, upon notification by the
24 General Counsel, the Administrative Law
25 Judge, the Board, or the court, as applicable,

1 pay any fees or expenses awarded under sub-
2 paragraph (A)(iii) from amounts in the general
3 fund of the Treasury.

4 “(o) MISCLASSIFICATION ENFORCEMENT THROUGH
5 STOP WORK ORDERS.—

6 “(1) IN GENERAL.—In any case where a re-
7 gional director has reasonable cause to believe that
8 an employer has not complied with a reclassification
9 order issued by a regional director under subsection
10 (n)(1), with respect to 2 or more individuals who are
11 misclassified, within 30 days of being served with
12 the order, the regional director shall issue—

13 “(A) subject to subparagraph (B), an
14 order against the employer requiring the ces-
15 sation of all business operations of such em-
16 ployer at the location of the violation; or

17 “(B) if an order described in subparagraph
18 (A) has been previously issued against the em-
19 ployer by any Federal, State, or local agency
20 for misclassifying an employee as not an em-
21 ployee in violation of section 8(a)(6), or an
22 equivalent State or local law as determined by
23 the General Counsel, an order against the em-
24 ployer requiring the cessation of all business op-
25 erations of such employer at all business loca-

1 tions of the employer, including locations other
2 than the location where the misclassification oc-
3 curred.

4 “(2) ORDERS.—

5 “(A) APPLICABILITY.—An order issued
6 under paragraph (1) shall—

7 “(i) be effective at the time at which
8 the order is served upon the employer,
9 which may be accomplished by the posting
10 of a copy of the order in a conspicuous lo-
11 cation at the place of business of the em-
12 ployer; and

13 “(ii) remain in effect—

14 “(I) during any review under
15 paragraph (3) with respect to such
16 order or hearing and appeal of such
17 order under paragraph (4); and

18 “(II) until the regional director
19 issues a release order under subpara-
20 graph (B).

21 “(B) RELEASE ORDERS.—

22 “(i) IN GENERAL.—An order issued
23 under paragraph (1) (that is not revoked
24 by the General Counsel or the Board or
25 held unlawful or set aside by a court) shall

1 remain in effect until the regional director
2 issues another order releasing the order
3 issued under paragraph (1) upon a finding
4 by the regional director that the em-
5 ployer—

6 “(I) has corrected the violation of
7 section 8(a)(6) with respect to the 2
8 or more individuals who were
9 misclassified resulting in the order;
10 and

11 “(II) has agreed to a payment
12 schedule for all applicable back pay,
13 damages, and civil penalties owed by
14 the employer under this Act.

15 “(ii) REINSTATEMENT.—If, at any
16 time after the regional director issues a re-
17 lease order under clause (i), the employer
18 fails to comply with the terms of the pay-
19 ment schedule described in clause (i)(II),
20 the regional director shall reinstate the
21 order issued under paragraph (1) until the
22 employer is in compliance with such terms.

23 “(3) REVIEW FOR RECONSIDERATION.—

24 “(A) IN GENERAL.—An employer against
25 whom an order is issued under paragraph (1)

1 may request a review for reconsideration by the
2 General Counsel to contest the order.

3 “(B) REQUESTS.—A request under sub-
4 paragraph (A) shall be made in writing to the
5 General Counsel not more than 5 days after the
6 issuance of the order.

7 “(C) REQUIREMENTS FOR REVIEW.—

8 “(i) IN GENERAL.—A review under
9 this paragraph shall—

10 “(I) commence not later than 24
11 hours after a request is made under
12 subparagraph (B); and

13 “(II) conclude not later than 24
14 hours after such commencement.

15 “(ii) DETERMINATION.—Not later
16 than 72 hours after a review concludes
17 under clause (i)(II), the General Counsel
18 shall determine whether to affirm, modify,
19 or revoke the contested order.

20 “(4) HEARINGS AND APPEALS.—Any person ag-
21 grieved by a determination of the General Counsel
22 under paragraph (3)(C)(ii) may—

23 “(A) request a hearing on the merits be-
24 fore an Administrative Law Judge;

1 “(B) appeal a determination by an Admin-
2 istrative Law Judge under subparagraph (A) to
3 the Board; and

4 “(C) appeal an order of the Board under
5 subparagraph (B) to any court of appeals of the
6 United States in the circuit wherein the
7 misclassification in question was alleged to have
8 been engaged in or wherein such person resides
9 or transacts business, or to the United States
10 Court of Appeals for the District of Columbia.

11 “(5) TEMPORARY RELIEF OR RESTRAINING OR-
12 DERS.—The regional director may seek, in any court
13 described in paragraph (4)(C) against an employer
14 that violates an order issued under paragraph (1),
15 temporary relief or a restraining order to bring the
16 employer into compliance with such order. A court
17 shall issue such temporary relief or restraining order
18 if the regional director has demonstrated it is just
19 and proper.

20 “(6) COMPENSATION FOR LOST WORK.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), an employer with respect to whom
23 an order is issued under paragraph (1) shall
24 pay each employee of the employer, who loses
25 compensation due to the work of such employee

1 ceasing as a result of such order, the compensa-
2 tion that would be owed to such employee if the
3 order was not issued.

4 “(B) LIMITATION.—Compensation paid
5 under subparagraph (A) shall be for each day,
6 not to exceed 10 days, for which the employee
7 would be paid if the order described in such
8 subparagraph were not in effect.

9 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
10 OF MISCLASSIFICATION.—

11 “(A) IN GENERAL.—In any case where an
12 employer with respect to whom an order was
13 issued under paragraph (1) successfully proves,
14 through a review under paragraph (3) or a sub-
15 sequent hearing or appeals proceeding under
16 paragraph (4), that the 2 or more individuals
17 who were the subject of the order were not
18 misclassified in violation of section 8(a)(6)—

19 “(i) the order issued under paragraph
20 (1), and any order issued against the em-
21 ployer under subsection (n)(1) with respect
22 to such 2 or more individuals, shall cease
23 to be in effect;

24 “(ii) the employer shall not be liable
25 for any applicable back pay, damages, or

1 civil penalties owed by the employer under
2 this Act with respect to the
3 misclassification of such 2 or more individ-
4 uals; and

5 “(iii) the General Counsel, the Admin-
6 istrative Law Judge, the Board, or the
7 court, as applicable, shall award (and the
8 Secretary of the Treasury shall, in accord-
9 ance with subparagraph (B), pay) to the
10 employer—

11 “(I) the amount equal to any de-
12 monstrable lost net profits resulting
13 from the order, as demonstrated by
14 clear and convincing evidence; and

15 “(II) reasonable fees and ex-
16 penses of attorneys in the same man-
17 ner as such fees and expenses could
18 be awarded under section 2412 of title
19 28, United States Code, if the em-
20 ployer was a prevailing party and the
21 review, hearing, or appeals proceeding
22 was a civil action brought by or
23 against the United States.

24 “(B) SOURCE OF FUNDS.—The Secretary
25 of the Treasury shall, upon notification by the

1 General Counsel, the Administrative Law
 2 Judge, the Board, or the court, as applicable,
 3 pay any amounts, fees, or expenses awarded
 4 under subparagraph (A)(iii) from amounts
 5 available in the general fund of the Treasury.”.

6 (B) PENALTIES.—Section 12 of the Na-
 7 tional Labor Relations Act (29 U.S.C. 162), as
 8 amended by paragraph (3)(C), is further
 9 amended by adding at the end the following:

10 “(c) PENALTIES FOR VIOLATIONS OF RECLASSIFICA-
 11 TION ORDERS.—

12 “(1) CIVIL PENALTIES.—Any person who vio-
 13 lates a reclassification order issued by a regional di-
 14 rector under section 10(n)(1) shall be subject to a
 15 civil penalty of not less than \$5,000 per day, with
 16 each day constituting a separate offense.

17 “(2) ADDITIONAL DAMAGES.—In any case
 18 where an employer contests a reclassification order
 19 issued by a regional director under paragraph (1) of
 20 section 10(n) in a review under paragraph (3) of
 21 such section, a hearing under paragraph (4)(A) of
 22 such section, an appeal to the Board under para-
 23 graph (4)(B) of such section, and a subsequent judi-
 24 cial proceeding under paragraph (4)(C) of such sec-

1 tion and a court rules in favor of the regional direc-
2 tor—

3 “(A) the court shall determine if, during
4 the period between the issuance of the order
5 and the conclusion of the proceeding, the em-
6 ployer violated such order by not classifying the
7 1 or more individuals as employees during that
8 period; and

9 “(B) if the court determines the employer
10 so violated the order during that period—

11 “(i) the court shall determine the
12 amount of net profits derived by the em-
13 ployer from the individuals’ labor during
14 that period; and

15 “(ii) the court shall assess damages in
16 the amount determined under clause (i),
17 which damages shall be awarded to such
18 individuals by the court.”.

19 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
20 1970.—

21 (1) STRENGTHENING EMPLOYEE TEST.—Sec-
22 tion 3(6) of the Occupational Safety and Health Act
23 of 1970 (29 U.S.C. 652(6)) is amended—

24 (A) by striking “The term” and inserting
25 “(A) The term”; and

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

2 “(B)(i) For purposes of this Act, including any
3 standard, rule, regulation, or order promulgated pur-
4 suant to this Act, except as provided in subpara-
5 graphs (C) and (E), an individual performing any
6 labor for remuneration for a person shall be an em-
7 ployee employed by such person and not an inde-
8 pendent contractor of the person, unless—

9 “(I) the individual is free from control and
10 direction in connection with the performance of
11 the labor, both under the contract for the per-
12 formance of the labor and in fact;

13 “(II) the labor is performed outside the
14 usual course of the business of the person; and

15 “(III) the individual is customarily en-
16 gaged in an independently established trade, oc-
17 cupation, profession, or business of the same
18 nature as that involved in the labor performed.

19 “(ii) Clause (i) is not a codification of the com-
20 mon law and shall not be interpreted to reflect, or
21 to be limited or restricted by, common law interpre-
22 tations regarding when an individual is an employee
23 of another person. Clause (i) shall be considered
24 complete as written, and any judicial or agency in-

1 interpretation of such clause shall be limited to the ex-
2 plicit requirements of such clause.

3 “(iii) The requirements of clause (i) shall not be
4 in any way affected by any agreement, written or
5 otherwise, that purports to demonstrate an individ-
6 ual’s acknowledgment of or acquiescence to the ab-
7 sence of an employer-employee relationship with a
8 particular employer.

9 “(C)(i) Notwithstanding any contrary provi-
10 sions in this paragraph or paragraph (5), in any in-
11 stance in which there is a non-compete agreement
12 between a person and an individual who performs
13 labor for such person, the presence of the non-com-
14 pete agreement, without regard to the legality or en-
15 forceability of the non-compete agreement, shall be
16 evidence of control for purposes of subparagraph
17 (B)(i)(I), but shall not by itself establish an employ-
18 ment relationship between such person and the indi-
19 vidual.

20 “(ii) In this subparagraph, the term ‘non-com-
21 pete agreement’ means an agreement between a per-
22 son and an individual who performs labor for such
23 person that restricts the individual from performing,
24 either during or after the individual performs labor
25 for such person—

1 “(I) any labor for another person;

2 “(II) any labor for a specified period of
3 time;

4 “(III) any labor in a specified geographical
5 area; or

6 “(IV) any labor for another person that is
7 similar to the labor such individual performed
8 for the person that is a party to such agree-
9 ment.”.

10 (2) PRESUMPTION OF EMPLOYEE STATUS.—

11 Section 3(6) of the Occupational Safety and Health
12 Act of 1970 (29 U.S.C. 652(6)), as amended by
13 paragraph (1), is further amended by adding at the
14 end the following:

15 “(D) For purposes of this Act, including any
16 standard, rule, regulation, or order promulgated pur-
17 suant to this Act, an individual performing any labor
18 for remuneration for a person shall be presumed to
19 be an employee of the person, unless the party seek-
20 ing to assert otherwise establishes by clear and con-
21 vincing evidence that the individual is not an em-
22 ployee in accordance with this paragraph.”.

23 (3) MISCLASSIFICATION AS A STANDALONE VIO-
24 LATION.—

1 (A) IN GENERAL.—Section 5(a) of the Oc-
2 cupational Safety and Health Act of 1970 (29
3 U.S.C. 654(a)) is amended—

4 (i) in paragraph (2), by striking the
5 period at the end and inserting a semi-
6 colon; and

7 (ii) by adding at the end the fol-
8 lowing:

9 “(3) shall not misclassify an employee of the
10 employer as not an employee of the employer for
11 purposes of this Act, including any standard, rule,
12 regulation, or order promulgated pursuant to this
13 Act; and”.

14 (B) INCORPORATION TO FURTHER VIOLA-
15 TIONS.—Section 5(a) of the Occupational Safe-
16 ty and Health Act of 1970 (29 U.S.C. 654(a)),
17 as amended by subparagraph (A), is further
18 amended by adding at the end the following:

19 “(4) shall not, for the purpose, in whole or in
20 part, of facilitating, or evading detection of, a viola-
21 tion of this Act, including a violation of paragraph
22 (3) or any standard, rule, regulation, or order pro-
23 mulgated pursuant to this Act—

24 “(A) incorporate or form, or assist in the
25 incorporation or formation of, a corporation,

1 partnership, limited liability corporation, or
2 other entity; or

3 “(B) pay or collect a fee for use of a for-
4 eign or domestic corporation, partnership, lim-
5 ited liability corporation, or other entity.”.

6 (C) PENALTIES.—Section 17 of the Occu-
7 pational Safety and Health Act of 1970 (29
8 U.S.C. 666) is amended—

9 (i) by redesignating subsections (j),
10 (k), and (l) as subsections (o), (p), and (q),
11 respectively; and

12 (ii) by inserting after subsection (i)
13 the following:

14 “(j) CIVIL PENALTIES FOR MISCLASSIFICATION OR
15 INCORPORATION TO FURTHER VIOLATIONS.—

16 “(1) IN GENERAL.—Any person who violates
17 paragraph (3) or (4) of section 5(a) shall be subject
18 to a civil penalty of—

19 “(A) subject to subparagraphs (B) and
20 (C), \$10,000;

21 “(B) if the violation is repeated or willful,
22 \$30,000; or

23 “(C) if the violation is widespread, 1 per-
24 cent of the net profits of the person for the year
25 in which the person had the highest net profits

1 out of all years in which the person was in such
2 violation.

3 “(2) REPEATED, OR WILLFUL, AND WIDE-
4 SPREAD VIOLATIONS.—If a violation of paragraph
5 (3) or (4) of section 5(a) is repeated or willful, as
6 described in paragraph (1)(B), and is widespread, as
7 described in paragraph (1)(C), the higher penalty of
8 the penalties described in such paragraphs shall
9 apply.

10 “(3) PAYMENT OF PENALTIES.—Any penalty
11 assessed under paragraph (1) for a violation of para-
12 graph (3) or (4) of section 5(a) shall be paid from
13 an account of the person in such violation and not
14 paid, or reimbursed, by any insurance plan that
15 would indemnify the person from violations of such
16 paragraph (3) or (4), respectively. If a person re-
17 ceives a payment from an insurance plan to indem-
18 nify the person from a violation of such paragraph,
19 the person shall transfer the payment to the Sec-
20 retary, in addition to the amount to be paid from
21 the account of the person for the penalty.”

22 (4) PROTECTION FROM RETALIATION FOR
23 BEING AN EMPLOYEE.—Section 11(c)(1) of the Oc-
24 cupational Safety and Health Act of 1970 (29
25 U.S.C. 660(c)(1)) is amended—

1 (A) by striking “because such employee”
2 and inserting “because—

3 “(A) such employee;”;

4 (B) by striking “afforded by this Act.” and
5 inserting “afforded by this Act; or”; and

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

7 “(B) such employee—

8 “(i) is required, pursuant to the en-
9 actment of the Worker Flexibility and
10 Small Business Protection Act of 2020, to
11 be classified as an employee of the person
12 for purposes of this Act, including any
13 standard, rule, regulation, or order pro-
14 mulgated pursuant to this Act, and not an
15 independent contractor; and

16 “(ii) was classified by the person as
17 an independent contractor prior to the date
18 of enactment of the Worker Flexibility and
19 Small Business Protection Act of 2020.”.

20 (5) RULES REGARDING UNLAWFUL DISCHARGE
21 OR DISCRIMINATION.—Section 11(c) of the Occupa-
22 tional Safety and Health Act of 1970 (29 U.S.C.
23 660(c)) is amended by adding at the end the fol-
24 lowing:

1 “(4) PRESUMPTION OF RETALIATION.—Any ac-
2 tion taken by a person described in paragraph
3 (1)(A) against an employee within 90 days of the
4 employee taking any action described in such para-
5 graph, including taking any such action with respect
6 to exercising the right of the employee pursuant to
7 section 5(a)(3) to not be misclassified, shall establish
8 a rebuttable presumption that the action is discrimi-
9 nation against the employee in violation of para-
10 graph (1).

11 “(5) MOTIVATING FACTOR.—Unlawful dis-
12 charge or other discrimination against an employee
13 under paragraph (1) is established when the com-
14 plaining party demonstrates that one of the actions
15 or the classification described in such paragraph was
16 a motivating factor for such discharge or other dis-
17 crimination, even if such discharge or other discrimi-
18 nation was also motivated by other factors.”.

19 (6) STATUTORY EMPLOYERS IN HEAVILY
20 MISCLASSIFIED INDUSTRIES.—

21 (A) DEFINITION OF EMPLOYER.—Section
22 3(5) of the Occupational Safety and Health Act
23 of 1970 (29 U.S.C. 652(5)) is amended to read
24 as follows:

25 “(5) EMPLOYER.—

1 “(A) IN GENERAL.—The term ‘employer’ means
2 a person engaged in a business affecting commerce
3 who has employees.

4 “(B) EXCLUSION.—The term ‘employer’ does
5 not include the United States (not including the
6 United States Postal Service) or any State or polit-
7 ical subdivision of a State.

8 “(C) STATUTORY EMPLOYERS IN CERTAIN IN-
9 DUSTRIES.—The term ‘employer’ shall include any
10 person (except as provided in subparagraph (B)),
11 with respect to an individual described in paragraph
12 (6)(E) performing labor that is beneficial to the per-
13 son, that is engaged in any of the following work:

14 “(i) Transportation, including any person
15 that benefits from labor performed by individ-
16 uals in the form of transportation in a motor-
17 ized or unmotorized vehicle, by foot, or by any
18 other means, including transportation network
19 companies, technology platform companies, pas-
20 senger transportation or food transportation
21 companies, and cargo transportation companies.

22 “(ii) Network dispatching, including any
23 person that uses a digital network to connect
24 individuals or entities seeking services or labor
25 with individuals or entities seeking to provide

1 services or labor, but not including any person
2 who owns, controls, or manages—

3 “(I) a completely neutral physical or
4 internet marketplace where the procure-
5 ment of goods or services takes place be-
6 tween individuals who are completely inde-
7 pendent from and free from any and all di-
8 rection or control by the person owning,
9 controlling, or managing the neutral mar-
10 ketplace, including such person having ab-
11 solutely no role in the setting of prices or
12 rates, in the assignment or referral of re-
13 quests for goods or services to individuals
14 who could potentially provide such goods
15 or services, and in the acceptance or rejec-
16 tion of any requests for goods or services;
17 and

18 “(II) a labor organization hiring
19 hall.”.

20 (B) DEFINITION OF EMPLOYEE.—Section
21 3(6) of the Occupational Safety and Health Act
22 of 1970 (29 U.S.C. 652(6)), as amended by
23 paragraph (2), is further amended by adding at
24 the end the following:

1 “(E) Notwithstanding subparagraphs (A) and (B) of
2 this paragraph or paragraph (5) (other than subparagraph
3 (C) of such paragraph), the term ‘employee’, with respect
4 to an employer described in paragraph (5)(C), shall in-
5 clude any individual performing labor that is beneficial to
6 the employer, including—

7 “(i) with respect to transportation described in
8 clause (i) of such paragraph, any individual who per-
9 forms any portion of the labor included under such
10 clause, including individuals who perform labor in
11 the form of engaging in transportation beneficial to
12 transportation network companies, technology plat-
13 form companies, passenger transportation or food
14 transportation companies, or cargo transportation
15 companies; and

16 “(ii) with respect to network dispatching de-
17 scribed in clause (ii) of such paragraph, any indi-
18 vidual who performs any portion of the labor in-
19 cluded under such clause, including providing the
20 services or labor described in such clause to the indi-
21 viduals or entities seeking such services or labor.”.

22 (7) MISCLASSIFICATION ENFORCEMENT
23 THROUGH RECLASSIFICATION ORDERS AND STOP
24 WORK ORDERS.—

1 (A) IN GENERAL.—The Occupational Safe-
2 ty and Health Act of 1970 (29 U.S.C. 651 et
3 seq.) is amended by inserting after section 13
4 (29 U.S.C. 662) the following:

5 **“SEC. 13A. MISCLASSIFICATION ENFORCEMENT THROUGH**
6 **RECLASSIFICATION ORDERS AND STOP**
7 **WORK ORDERS.**

8 “(a) RECLASSIFICATION ORDERS.—

9 “(1) IN GENERAL.—If the Secretary deter-
10 mines, after an investigation under section 8, that
11 an employer has misclassified 1 or more individuals
12 who are employees of the employer as not employees
13 in violation of section 5(a)(3)—

14 “(A) the Secretary shall issue, not later
15 than 24 hours after making such determination,
16 an order against the employer requiring the em-
17 ployer to immediately classify the 1 or more in-
18 dividuals as employees of the employer; and

19 “(B) the employer shall immediately com-
20 ply with the order issued under subparagraph
21 (A) or shall otherwise be in violation of section
22 5(a)(3).

23 “(2) ORDERS.—An order issued under para-
24 graph (1) shall—

1 “(A) be effective at the time at which the
2 order is served upon the employer, which may
3 be accomplished by the posting of a copy of the
4 order in a conspicuous location at the place of
5 business of the employer; and

6 “(B) remain in effect during any review
7 conducted under paragraph (3) with respect to
8 such order and during any hearing and appeal
9 of such order under paragraph (4).

10 “(3) REVIEW FOR RECONSIDERATION.—

11 “(A) IN GENERAL.—An employer against
12 whom an order is issued under paragraph (1)
13 may request a review by the Secretary to con-
14 test the order.

15 “(B) REQUESTS.—A request under sub-
16 paragraph (A) shall be made in writing to the
17 Secretary not more than 5 days after the
18 issuance of the order.

19 “(C) REQUIREMENTS FOR REVIEW.—

20 “(i) IN GENERAL.—A review under
21 this paragraph shall—

22 “(I) commence not later than 24
23 hours after a request is made under
24 subparagraph (B); and

1 “(II) conclude not later than 24
2 hours after such commencement.

3 “(ii) DETERMINATION.—Not later
4 than 72 hours after a review concludes
5 under clause (i)(II), the Secretary shall de-
6 termine whether to affirm, modify, or re-
7 voke the contested order.

8 “(4) HEARINGS AND APPEALS.—Any person ag-
9 grieved by a determination of the Secretary under
10 paragraph (3)(C)(ii) may—

11 “(A) request a hearing to appeal such de-
12 termination to an administrative law judge; and

13 “(B) appeal an order of an administrative
14 law judge under subparagraph (A) to any
15 United States court of appeals for the circuit in
16 which the violation is alleged to have occurred
17 or where the employer has its principal office,
18 or in the Court of Appeals for the District of
19 Columbia Circuit.

20 “(5) APPROPRIATE RELIEF.—The Secretary
21 may seek appropriate relief, in a court described in
22 paragraph (4)(B), to restrain any employer that vio-
23 lates an order issued under paragraph (1). A court
24 shall issue such appropriate relief if the Secretary
25 has demonstrated it is just and proper.

1 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
2 OF MISCLASSIFICATION.—

3 “(A) IN GENERAL.—If an employer with
4 respect to whom an order was issued under
5 paragraph (1) successfully proves through a re-
6 view under paragraph (3), or a hearing or ap-
7 peal under paragraph (4), that the 1 or more
8 individuals who were the subject of the order
9 were not misclassified in violation of section
10 5(a)(3)—

11 “(i) the order issued under paragraph
12 (1) shall cease to be in effect;

13 “(ii) the employer shall not be liable
14 for any applicable back pay, damages, or
15 civil penalties owed by the employer under
16 this Act (including any standard, rule, reg-
17 ulation, or order promulgated pursuant to
18 this Act) with respect to the
19 misclassification of such 1 or more individ-
20 uals; and

21 “(iii) the Secretary, administrative
22 law judge, or the court, as applicable, shall
23 award (and the Secretary of Labor shall,
24 in accordance with subparagraph (B), pay)
25 to the employer reasonable fees and ex-

1 penses of attorneys in the same manner as
2 such fees and expenses could be awarded
3 under section 2412 of title 28, United
4 States Code, if the employer was a pre-
5 vailing party and the review, hearing, or
6 appeals proceeding was a civil action
7 brought by or against the United States.

8 “(B) SOURCE OF FUNDS.—The Secretary
9 of the Treasury shall, upon notification by the
10 Secretary of Labor, administrative law judge, or
11 a court, as applicable, pay any fees or expenses
12 awarded under subparagraph (A)(iii) from
13 amounts in the general fund of the Treasury.

14 “(b) STOP WORK ORDERS.—

15 “(1) IN GENERAL.—In any case where an em-
16 ployer does not comply with a reclassification order
17 issued by the Secretary under subsection (a)(1), with
18 respect to 2 or more individuals who are
19 misclassified, within 30 days of being served with
20 the order, the Secretary shall issue—

21 “(A) subject to subparagraph (B), an
22 order against the employer requiring the ces-
23 sation of all business operations of such em-
24 ployer at the location of the violation; or

1 “(B) if an order described in subparagraph
2 (A) has been previously issued against the em-
3 ployer by any Federal, State, or local agency
4 for misclassifying an employee as not an em-
5 ployee in violation of section 5(a)(3), or an
6 equivalent State or local law as determined by
7 the Secretary, an order against the employer re-
8 quiring the cessation of all business operations
9 of such employer at all business locations of the
10 employer, including locations other than the lo-
11 cation where the misclassification occurred.

12 “(2) ORDERS.—

13 “(A) APPLICABILITY.—An order issued
14 under paragraph (1) shall—

15 “(i) be effective at the time at which
16 the order is served upon the employer,
17 which may be accomplished by the posting
18 of a copy of the order in a conspicuous lo-
19 cation at the place of business of the em-
20 ployer; and

21 “(ii) remain in effect—

22 “(I) during any review conducted
23 under paragraph (3) with respect to
24 such order and any hearing and ap-

1 peal of such order under paragraph
2 (4); and

3 “(II) until the Secretary issues a
4 release order under subparagraph (B).

5 “(B) RELEASE ORDERS.—

6 “(i) IN GENERAL.—An order issued
7 under paragraph (1) (that is not revoked
8 by the Secretary or held unlawful or set
9 aside by an administrative law judge or a
10 court) shall remain in effect until the Sec-
11 retary issues another order releasing the
12 order issued under such paragraph upon a
13 finding by the Secretary that the em-
14 ployer—

15 “(I) has corrected the violation of
16 section 5(a)(3) with respect to the 2
17 or more individuals who were
18 misclassified resulting in the order;
19 and

20 “(II) has agreed to a payment
21 schedule for all applicable back pay,
22 damages, and civil penalties owed by
23 the employer under this Act, including
24 any standard, rule, regulation, or

1 order promulgated pursuant to this
2 Act.

3 “(ii) REINSTATEMENT.—If, at any
4 time after the Secretary issues a release
5 order under subparagraph (A), the em-
6 ployer fails to comply with the terms of the
7 payment schedule described in clause
8 (i)(II), the Secretary shall reinstate the
9 order issued under paragraph (1) until the
10 employer is in compliance with such terms.

11 “(3) REVIEW FOR RECONSIDERATION.—

12 “(A) IN GENERAL.—An employer against
13 whom an order is issued under paragraph (1)
14 may request a review by the Secretary to con-
15 test the order.

16 “(B) REQUESTS.—A request under sub-
17 paragraph (A) shall be made in writing to the
18 Secretary not more than 5 days after the
19 issuance of the order.

20 “(C) REQUIREMENTS FOR REVIEW.—

21 “(i) IN GENERAL.—A review under
22 this paragraph shall—

23 “(I) commence not later than 24
24 hours after a request is made under
25 subparagraph (B); and

1 “(II) conclude not later than 24
2 hours after such commencement.

3 “(ii) DETERMINATION.—Not later
4 than 72 hours after a review concludes
5 under clause (i)(II), the Secretary shall de-
6 termine whether to affirm, modify, or re-
7 voke the contested order.

8 “(4) HEARINGS AND APPEALS.—Any person ag-
9 grieved by a determination of the Secretary under
10 paragraph (3)(C)(ii) may—

11 “(A) request a hearing to appeal such de-
12 termination to an administrative law judge; and

13 “(B) appeal an order of an administrative
14 law judge under subparagraph (A) to any
15 United States court of appeals for the circuit in
16 which the violation is alleged to have occurred
17 or where the employer has its principal office,
18 or in the Court of Appeals for the District of
19 Columbia Circuit.

20 “(5) APPROPRIATE RELIEF.—The Secretary
21 may seek appropriate relief, in a court described in
22 paragraph (4)(B), to restrain any employer that vio-
23 lates an order issued under paragraph (1). A court
24 shall issue such appropriate relief if the Secretary
25 has demonstrated it is just and proper.

1 “(6) COMPENSATION FOR LOST WORK.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), an employer with respect to whom
4 an order is issued under paragraph (1) shall
5 pay each employee of the employer, who loses
6 compensation due to the work of such employee
7 ceasing as a result of such order, the compensa-
8 tion that would be owed to such employee if the
9 order was not issued.

10 “(B) LIMITATION.—Compensation paid
11 under subparagraph (A) shall be for each day,
12 not to exceed 10 days, for which the employee
13 would be paid if the order described in such
14 paragraph were not in effect.

15 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
16 OF MISCLASSIFICATION.—

17 “(A) IN GENERAL.—In any case where an
18 employer with respect to whom an order was
19 issued under paragraph (1) successfully proves,
20 through a review under paragraph (3) or a sub-
21 sequent hearing or appeals proceeding under
22 paragraph (4), that the 2 or more individuals
23 who were the subject of the order were not
24 misclassified in violation of section 5(a)(3)—

1 “(i) the order issued under paragraph
2 (1), and any order issued against the em-
3 ployer under subsection (a)(1) with respect
4 to such 2 or more individuals, shall cease
5 to be in effect;

6 “(ii) the employer shall not be liable
7 for any applicable back pay, damages, or
8 civil penalties owed by the employer under
9 this Act (including any standard, rule, reg-
10 ulation, or order promulgated pursuant to
11 this Act) with respect to the
12 misclassification of such 2 or more individ-
13 uals; and

14 “(iii) the Secretary of Labor, adminis-
15 trative law judge, or the court, shall award
16 (and the Secretary of the Treasury shall,
17 in accordance with subparagraph (B), pay)
18 to the employer—

19 “(I) an amount equal to any de-
20 monstrable lost net profits resulting
21 from the order, as demonstrated by
22 clear and convincing evidence; and

23 “(II) reasonable fees and ex-
24 penses of attorneys in the same man-
25 ner as such fees and expenses could

1 be awarded under section 2412 of title
2 28, United States Code, if the em-
3 ployer was a prevailing party and the
4 review, hearing, or appeals proceeding
5 was a civil action brought by or
6 against the United States.

7 “(B) SOURCE OF FUNDS.—The Secretary
8 of the Treasury shall, upon notification by the
9 Secretary of Labor, administrative law judge, or
10 court, as applicable, pay any amounts, fees, or
11 expenses awarded under subparagraph (A)(iii)
12 from amounts available in the general fund of
13 the Treasury.”

14 (B) PENALTIES.—Section 17 of the Occu-
15 pational Safety and Health Act of 1970 (29
16 U.S.C. 666), as amended by paragraph (3)(C),
17 is further amended by inserting after subsection
18 (j) the following:

19 “(k) PENALTIES FOR VIOLATIONS OF RECLASSIFICA-
20 TION ORDERS.—

21 “(1) CIVIL PENALTIES.—Any person who vio-
22 lates a reclassification order issued by the Secretary
23 under section 13A(a)(1) shall be subject to a civil
24 penalty of not less than \$5,000 per day, with each
25 day constituting a separate offense.

1 “(2) ADDITIONAL DAMAGES.—In any case
2 where an employer contests a reclassification order
3 issued by the Secretary under paragraph (1) of sec-
4 tion 13A(a) in a review under paragraph (3) of such
5 section, hearing under paragraph (4)(A) of such sec-
6 tion, and subsequent judicial proceeding under para-
7 graph (4)(B) of such section and a court rules in
8 favor of the Secretary—

9 “(A) the court shall determine if, during
10 the period between the issuance of the order
11 and the conclusion of the proceeding, the em-
12 ployer violated such order by not classifying the
13 1 or more individuals as employees during that
14 period; and

15 “(B) if the court determines the employer
16 so violated the order during that period—

17 “(i) the court shall determine the
18 amount of net profits derived by the em-
19 ployer from the individuals’ labor during
20 that period; and

21 “(ii) the court shall assess damages in
22 the amount determined under clause (i),
23 which damages shall be awarded to such
24 individuals by the court.”.

1 (d) FEDERAL MINE SAFETY AND HEALTH ACT OF
2 1977.—

3 (1) STRENGTHENING EMPLOYEE TEST.—The
4 Federal Mine Safety and Health Act of 1977 (30
5 U.S.C. 801 et seq.) is amended by inserting after
6 section 4 (30 U.S.C. 803) the following:

7 **“SEC. 4A. EMPLOYEE TEST.**

8 “(a) IN GENERAL.—For purposes of this Act, includ-
9 ing any mandatory health or safety standard, rule, order,
10 or regulation promulgated pursuant to this Act, and ex-
11 cept as provided in subsection (c), an individual per-
12 forming any labor in a coal or other mine for remuneration
13 for a person shall be an employee employed by such person
14 and not an independent contractor of the person, unless—

15 “(1) the individual is free from control and di-
16 rection in connection with the performance of the
17 labor, both under the contract for the performance
18 of the labor and in fact;

19 “(2) the labor is performed outside the usual
20 course of the business of the person; and

21 “(3) the individual is customarily engaged in an
22 independently established trade, occupation, profes-
23 sion, or business of the same nature as that involved
24 in the labor performed.

25 “(b) CLARIFICATIONS.—

1 “(1) RELATIONSHIP WITH COMMON LAW.—Sub-
2 section (a) is not a codification of the common law
3 and shall not be interpreted to reflect, or to be lim-
4 ited or restricted by, common law interpretations re-
5 garding when an individual is an employee of an-
6 other person. Subsection (a) shall be considered
7 complete as written, and any judicial or agency in-
8 terpretation of such subsection shall be limited to
9 the explicit requirements of such subsection.

10 “(2) IMPACT OF WRITTEN OR OTHER AGREE-
11 MENTS.—The requirements of subsection (a) shall
12 not be in any way affected by any agreement, writ-
13 ten or otherwise, that purports to demonstrate an
14 individual’s acknowledgment of or acquiescence to
15 the absence of an employer-employee relationship
16 with a particular employer.

17 “(c) NON-COMPETE AGREEMENTS.—

18 “(1) IN GENERAL.—Notwithstanding any con-
19 trary provisions in this Act, in any instance in which
20 there is a non-compete agreement between a person
21 and an individual who performs labor for such per-
22 son, the presence of the non-compete agreement,
23 without regard to the legality or enforceability of the
24 non-compete agreement, shall be evidence of control
25 for purposes of subsection (a)(1), but shall not by

1 itself establish an employment relationship between
2 such person and the individual.

3 “(2) DEFINITION OF NON-COMPETE AGREE-
4 MENT.—In this subsection, the term ‘non-compete
5 agreement’ means an agreement between a person
6 and an individual who performs labor for such per-
7 son that restricts the individual from performing, ei-
8 ther during or after the individual performs labor
9 for such person—

10 “(A) any labor for another person;

11 “(B) any labor for a specified period of
12 time;

13 “(C) any labor in a specified geographical
14 area; or

15 “(D) any labor for another person that is
16 similar to the labor such individual performed
17 for the person that is a party to such agree-
18 ment.”.

19 (2) PRESUMPTION OF EMPLOYEE STATUS.—
20 Section 4A of the Federal Mine Safety and Health
21 Act of 1977, as added by paragraph (1), is further
22 amended by adding at the end the following:

23 “(d) PRESUMPTION OF EMPLOYEE STATUS.—For
24 purposes of this Act, including any mandatory health or
25 safety standard, rule, order, or regulation promulgated

1 pursuant to this Act, an individual performing any labor
2 in a coal or other mine for remuneration for a person shall
3 be presumed to be an employee of the person, unless the
4 party seeking to assert otherwise establishes by clear and
5 convincing evidence that the individual is not an employee
6 in accordance with this section.”.

7 (3) MISCLASSIFICATION AS A STANDALONE VIO-
8 LATION.—

9 (A) IN GENERAL.—Title I of the Federal
10 Mine Safety and Health Act of 1977 (30
11 U.S.C. 811 et seq.) is amended by adding at
12 the end the following:

13 **“SEC. 117. MISCLASSIFICATION; INCORPORATION TO FUR-**
14 **THER VIOLATIONS.**

15 “(a) IN GENERAL.—No operator of a coal or other
16 mine shall misclassify an employee of the operator per-
17 forming labor in a coal or other mine for the operator as
18 not an employee of the person for purposes of this Act,
19 including any mandatory health or safety standard, rule,
20 order, or regulation promulgated pursuant to this Act.”.

21 (B) INCORPORATION TO FURTHER VIOLA-
22 TIONS.—Section 117 of the Federal Mine Safe-
23 ty and Health Act of 1977, as added by sub-
24 paragraph (A), is amended by adding at the
25 end the following:

1 “(b) INCORPORATION TO FURTHER VIOLATIONS.—
 2 No person shall, for the purpose, in whole or in part, of
 3 facilitating, or evading detection of, a violation of this Act,
 4 including a violation of subsection (a) or any mandatory
 5 health or safety standard, rule, order, or regulation pro-
 6 mulgated pursuant to this Act—

7 “(1) incorporate or form, or assist in the incor-
 8 poration or formation of, a corporation, partnership,
 9 limited liability corporation, or other entity; or

10 “(2) pay or collect a fee for use of a foreign or
 11 domestic corporation, partnership, limited liability
 12 corporation, or other entity.”.

13 (C) PENALTIES.—Section 110 of the Fed-
 14 eral Mine Safety and Health Act of 1977 (30
 15 U.S.C. 820) is amended—

16 (i) by redesignating subsections (i)
 17 through (l) as subsections (l) through (o),
 18 respectively; and

19 (ii) by inserting after subsection (h)
 20 the following:

21 “(i) PENALTIES FOR MISCLASSIFICATION AND IN-
 22 CORPORATION TO FURTHER VIOLATIONS.—

23 “(1) IN GENERAL.—Any operator of a coal or
 24 other mine who violates section 117 shall be subject
 25 to a civil penalty of—

1 “(A) subject to subparagraphs (B) and
2 (C), \$10,000;

3 “(B) if the violation is repeated or willful,
4 \$30,000; or

5 “(C) if the violation is widespread, 1 per-
6 cent of the net profits of the operator for the
7 year in which the operator had the highest net
8 profits out of all years in which the operator
9 was in such violation.

10 “(2) REPEATED, OR WILLFUL, AND WIDE-
11 SPREAD VIOLATIONS.—If a violation of section 117
12 is repeated or willful, as described in paragraph
13 (1)(B), and is widespread, as described in paragraph
14 (1)(C), the higher penalty of the penalties described
15 in such paragraphs shall apply.

16 “(3) PAYMENT OF PENALTIES.—Any penalty
17 assessed under paragraph (1) for a violation of sec-
18 tion 117 shall be paid from an account of the oper-
19 ator in such violation and not paid, or reimbursed,
20 by any insurance plan that would indemnify the op-
21 erator from violations of such section. If an operator
22 of a coal or other mine receives a payment from an
23 insurance plan to indemnify the person from a viola-
24 tion of such section, the operator shall transfer the
25 payment to the Secretary, in addition to the amount

1 to be paid from the account of the operator for the
2 penalty.”.

3 (4) PROTECTION FROM RETALIATION FOR
4 BEING AN EMPLOYEE.—Section 105(c)(1) of the
5 Federal Mine Safety and Health Act of 1977 (30
6 U.S.C. 815(c)(1)) is amended—

7 (A) by striking “No person” and inserting
8 “(A) No person”; and

9 (B) by adding at the end the following:

10 “(B) No person shall discharge or in any manner dis-
11 criminate against or cause to be discharged or cause dis-
12 crimination against or otherwise interfere with the exer-
13 cise of the statutory rights of any miner, or representative
14 of miners, in any coal or other mine subject to this Act,
15 because such miner—

16 “(i) is required pursuant to the enactment of
17 the Worker Flexibility and Small Business Protec-
18 tion Act of 2020 to be classified as an employee of
19 the person for purposes of this Act, including any
20 mandatory health or safety standard, rule, order, or
21 regulation promulgated pursuant to this Act, and
22 not as an independent contractor; and

23 “(ii) was classified by the person as an inde-
24 pendent contractor prior to the date of enactment of

1 the Worker Flexibility and Small Business Protec-
2 tion Act of 2020.”.

3 (5) RULES REGARDING UNLAWFUL DISCHARGE
4 OR DISCRIMINATION.—Section 105(c) of the Federal
5 Mine Safety and Health Act of 1977 (30 U.S.C.
6 815(c)) is amended by adding at the end the fol-
7 lowing:

8 “(4) PRESUMPTION OF RETALIATION.—Any ac-
9 tion taken by a person described in paragraph
10 (1)(A) against any miner, representative of miners,
11 or applicant for employment in any coal or other
12 mine subject to this Act, within 90 days of the
13 miner, representative, or applicant taking any action
14 described in such paragraph, including taking any
15 such action with respect to exercising the right of an
16 employee pursuant to section 117(a) to not be
17 misclassified, shall establish a rebuttable presump-
18 tion that the action is discrimination against the
19 miner, representative, or applicant in violation of
20 paragraph (1).

21 “(5) MOTIVATING FACTOR.—Unlawful dis-
22 charge or discrimination under paragraph (1)
23 against a miner, representative of miners, or appli-
24 cant for employment in any coal or other mine sub-
25 ject to this Act is established when the complaining

1 party demonstrates that one of the actions or the
 2 classification described in such paragraph was a mo-
 3 tivating factor for such discharge or discrimination,
 4 even if such discharge or discrimination was also
 5 motivated by other factors.”.

6 (6) MISCLASSIFICATION ENFORCEMENT
 7 THROUGH RECLASSIFICATION ORDERS AND STOP
 8 WORK ORDERS.—

9 (A) IN GENERAL.—The Federal Mine
 10 Safety and Health Act of 1977 (30 U.S.C. 801
 11 et seq.) is amended by inserting after section
 12 108 (30 U.S.C. 818) the following:

13 **“SEC. 108A. MISCLASSIFICATION ENFORCEMENT THROUGH**
 14 **RECLASSIFICATION ORDERS AND STOP**
 15 **WORK ORDERS.**

16 “(a) RECLASSIFICATION ORDERS.—

17 “(1) IN GENERAL.—If the Secretary deter-
 18 mines, after an investigation under section 103, that
 19 an operator of a coal or other mine has misclassified
 20 1 or more individuals who are employees performing
 21 labor for the operator in a coal or other mine as not
 22 employees in violation of section 117(a)—

23 “(A) the Secretary shall issue, not later
 24 than 24 hours after making such determination,
 25 an order against the operator requiring the op-

1 erator to immediately classify the 1 or more in-
2 dividuals as employees of the operator; and

3 “(B) the operator shall immediately com-
4 ply with the order issued under subparagraph
5 (A) or otherwise be in violation of section
6 117(a).

7 “(2) ORDERS.—An order issued under para-
8 graph (1) shall—

9 “(A) be effective at the time at which the
10 order is served upon the operator, which may be
11 accomplished by the posting of a copy of the
12 order in a conspicuous location at the place of
13 business of the operator; and

14 “(B) remain in effect during any review
15 conducted under paragraph (3) and during any
16 hearing and appeal of such order under para-
17 graph (4).

18 “(3) REVIEW FOR RECONSIDERATION.—

19 “(A) IN GENERAL.—An operator against
20 whom an order is issued under paragraph (1)
21 may request a review by the Secretary to con-
22 test the order.

23 “(B) REQUESTS.—A request under sub-
24 paragraph (A) shall be made in writing to the

1 Secretary not more than 5 days after the
2 issuance of the order.

3 “(C) REQUIREMENTS FOR REVIEW.—

4 “(i) IN GENERAL.—A review under
5 this paragraph shall—

6 “(I) commence not later than 24
7 hours after a request is made under
8 subparagraph (B); and

9 “(II) conclude not later than 24
10 hours after such commencement.

11 “(ii) DETERMINATION.—Not later
12 than 72 hours after a review concludes
13 under clause (i)(II), the Secretary shall de-
14 termine whether to affirm, modify, or re-
15 voke the contested order.

16 “(4) HEARINGS AND APPEALS.—Any person ag-
17 grieved by a determination of the Secretary under
18 paragraph (3)(C)(ii) may—

19 “(A) request a hearing to appeal such de-
20 termination to an administrative law judge; and

21 “(B) appeal an order of an administrative
22 law judge under subparagraph (A) to the
23 United States Court of Appeals for the District
24 of Columbia Circuit or the circuit wherein such

1 person resides or has their principal place of
2 business.

3 “(5) RELIEF.—The Secretary may seek, in a
4 court (including circuit) described in paragraph
5 (4)(B), relief through a civil action under section
6 108(a) against any operator of a coal or other mine
7 that violates an order issued under paragraph (1). A
8 court shall issue such relief if the Secretary has
9 demonstrated it is just and proper.

10 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
11 OF MISCLASSIFICATION.—

12 “(A) IN GENERAL.—If an operator with
13 respect to whom an order was issued under
14 paragraph (1) successfully proves through a re-
15 view under paragraph (3), or a hearing or ap-
16 peal proceeding under paragraph (4), that the
17 1 or more individuals who were the subject of
18 the order were not misclassified in violation of
19 section 117(a)—

20 “(i) the order issued under paragraph
21 (1) shall cease to be in effect;

22 “(ii) the operator shall not be liable
23 for any applicable back pay, damages, or
24 civil penalties owed by the operator under
25 this Act (including any mandatory health

1 or safety standard, rule, order, or regula-
2 tion promulgated pursuant to this Act)
3 with respect to the misclassification of
4 such 1 or more individuals; and

5 “(iii) the Secretary of Labor, adminis-
6 trative law judge, or the court, as applica-
7 ble, shall award (and the Secretary of the
8 Treasury shall, in accordance with sub-
9 paragraph (B), pay) to the operator rea-
10 sonable fees and expenses of attorneys in
11 the same manner as such fees and ex-
12 penses could be awarded under section
13 2412 of title 28, United States Code, if the
14 operator was a prevailing party and the re-
15 view, hearing, or appeals proceeding was a
16 civil action brought by or against the
17 United States.

18 “(B) SOURCE OF FUNDS.—The Secretary
19 of the Treasury shall, upon notification by the
20 Secretary of Labor, administrative law judge, or
21 court, as applicable, pay any fees or expenses
22 awarded under subparagraph (A)(iii) from
23 amounts in the general fund of the Treasury.

24 “(b) STOP WORK ORDERS.—

1 “(1) IN GENERAL.—In any case where an oper-
2 ator of a coal or other mine does not comply with
3 a reclassification order issued by the Secretary
4 under subsection (a)(1), with respect to 2 or more
5 individuals who are misclassified in violation of sec-
6 tion 117(a), within 30 days of being served the
7 order, the Secretary shall issue—

8 “(A) subject to subparagraph (B), an
9 order against the operator requiring the ces-
10 sation of all business operations of such oper-
11 ator at the location of the violation; or

12 “(B) if an order described in subparagraph
13 (A) has been previously issued against the oper-
14 ator by any Federal, State, or local agency for
15 misclassifying an employee performing labor for
16 the operator in a coal or other mine as not an
17 employee in violation of section 117(a), or an
18 equivalent State or local law as determined by
19 the Secretary, an order against the operator re-
20 quiring the cessation of all business operations
21 of such operator at all business locations of the
22 operator, including locations other than the lo-
23 cation where the misclassification occurred.

24 “(2) ORDERS.—

1 “(A) APPLICABILITY.—An order issued
2 under paragraph (1) shall—

3 “(i) be effective at the time at which
4 the order is served upon the operator,
5 which may be accomplished by the posting
6 of a copy of the order in a conspicuous lo-
7 cation at the place of business of the oper-
8 ator; and

9 “(ii) remain in effect—

10 “(I) during any review conducted
11 under paragraph (3) with respect to
12 such order and during any hearing
13 and appeal of such order under para-
14 graph (4); and

15 “(II) until the Secretary issues a
16 release order under subparagraph (B).

17 “(B) RELEASE ORDERS.—

18 “(i) IN GENERAL.—An order issued
19 under paragraph (1) (that is not revoked
20 by the Secretary or held unlawful or set
21 aside by an administrative law judge or a
22 court) shall remain in effect until the Sec-
23 retary issues another order releasing the
24 order issued under such paragraph upon a

1 finding by the Secretary that the oper-
2 ator—

3 “(I) has corrected the violation of
4 section 117(a) with respect to the 2 or
5 more individuals who were
6 misclassified resulting in the order;
7 and

8 “(II) has agreed to a payment
9 schedule for all applicable back pay,
10 damages, and civil penalties owed by
11 the operator under this Act, including
12 any mandatory health or safety stand-
13 ard, rule, order, or regulation promul-
14 gated pursuant to this Act.

15 “(ii) REINSTATEMENT.—If, at any
16 time after the Secretary issues a release
17 order under paragraph (1), the operator
18 fails to comply with the terms of the pay-
19 ment schedule described in clause (i)(II),
20 the Secretary shall reinstate the order
21 issued under paragraph (1) until the oper-
22 ator is in compliance with such terms.

23 “(3) REVIEW FOR RECONSIDERATION.—

24 “(A) IN GENERAL.—An operator of a coal
25 or other mine against whom an order is issued

1 under paragraph (1) may request a review by
2 the Secretary to contest the order.

3 “(B) REQUESTS.—A request under sub-
4 paragraph (A) shall be made in writing to the
5 Secretary not more than 5 days after the
6 issuance of the order.

7 “(C) REQUIREMENTS FOR REVIEW.—

8 “(i) IN GENERAL.—A review under
9 this paragraph shall—

10 “(I) commence not later than 24
11 hours after a request is made under
12 subparagraph (B); and

13 “(II) conclude not later than 24
14 hours after such commencement.

15 “(ii) DETERMINATION.—Not later
16 than 72 hours after a review concludes
17 under clause (i)(II), the Secretary shall de-
18 termine whether to affirm, modify, or re-
19 voke the contested order.

20 “(4) HEARING AND APPEALS.—Any person ag-
21 grieved by a determination of the Secretary under
22 paragraph (3)(C)(ii) may—

23 “(A) appeal such determination to an ad-
24 ministrative law judge; and

1 “(B) appeal an order of an administrative
2 law judge under subparagraph (A) to the
3 United States Court of Appeals for the District
4 of Columbia Circuit or the circuit wherein such
5 person resides or has their principal place of
6 business.

7 “(5) RELIEF.—The Secretary may seek, in any
8 court (including circuit) described in paragraph
9 (4)(B), relief through a civil action under section
10 108(a) against any operator of a coal or other mine
11 that violates an order issued under paragraph (1). A
12 court shall issue such relief if the Secretary has
13 demonstrated it is just and proper.

14 “(6) COMPENSATION FOR LOST WORK.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), an operator of a coal or other mine
17 with respect to whom an order is issued under
18 paragraph (1) shall pay each miner who loses
19 compensation due to the work of such miner
20 ceasing as a result of such order, the compensa-
21 tion that would be owed to such miner if the
22 order was not issued.

23 “(B) LIMITATION.—Compensation paid
24 under subparagraph (A) shall be for each day,
25 not to exceed 10 days, for which the miner

1 would be paid if the order described in such
2 paragraph were not in effect.

3 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
4 OF MISCLASSIFICATION.—

5 “(A) IN GENERAL.—In any case where an
6 operator of a coal or other mine with respect to
7 whom an order was issued under paragraph (1)
8 successfully proves through a review under
9 paragraph (3), or a subsequent hearing or ap-
10 peals proceeding under paragraph (4), that the
11 2 or more individuals who were the subject of
12 the order were not misclassified in violation of
13 section 117(a)—

14 “(i) the order issued under paragraph
15 (1), and any order issued against the oper-
16 ator under subsection (a)(1) with respect
17 to such 2 or more individuals, shall cease
18 to be in effect;

19 “(ii) the operator shall not be liable
20 for any applicable back pay, damages, or
21 civil penalties owed by the operator under
22 this Act (including any mandatory health
23 or safety standard, rule, order, or regula-
24 tion promulgated pursuant to this Act)

1 with respect to the misclassification of
2 such 2 or more individuals; and

3 “(iii) the Secretary of Labor, adminis-
4 trative law judge, or court shall award
5 (and the Secretary of the Treasury, shall
6 in accordance with subparagraph (B), pay)
7 to the operator—

8 “(I) an amount equal to any de-
9 monstrable lost net profits resulting
10 from the order, as demonstrated by
11 clear and convincing evidence; and

12 “(II) reasonable attorney fees
13 and expenses of attorneys in the same
14 manner as such fees and expenses
15 could be awarded under section 2412
16 of title 28, United States Code, if the
17 operator was a prevailing party and
18 the review, hearing, or appeals pro-
19 ceeding was a civil action brought by
20 or against the United States.

21 “(B) SOURCE OF FUNDS.—The Secretary
22 of the Treasury shall, upon notification by the
23 Secretary of Labor, administrative law judge, or
24 court, as applicable, pay any amounts, fees, or
25 expenses awarded under subparagraph (A)(iii)

1 from amounts available in the general fund of
2 the Treasury.”.

3 (B) PENALTIES.—Section 110 of the Fed-
4 eral Mine Safety and Health Act of 1977 (30
5 U.S.C. 820), as amended by paragraph (3)(C),
6 is further amended by inserting after subsection
7 (i), as so redesignated, the following:

8 “(j) PENALTIES FOR VIOLATING RECLASSIFICATION
9 ORDERS.—

10 “(1) CIVIL PENALTIES.—Any operator of a coal
11 or other mine who violates a reclassification order
12 issued by the Secretary under section 108A(a)(1)
13 shall be subject to a civil penalty of not less than
14 \$5,000 per day, with each day constituting a sepa-
15 rate offense.

16 “(2) ADDITIONAL DAMAGES.—In any case in
17 which an operator of a coal or other mine contests
18 a reclassification order issued under paragraph (1)
19 of section 108A(a) in a review under paragraph (3)
20 of such section, a hearing under paragraph (4)(A) of
21 such section, and a subsequent judicial proceeding
22 under paragraph (4)(B) of such section, and the
23 court rules in favor of the Secretary—

24 “(A) the court shall determine if, during
25 the period between the issuance of such order

1 and the conclusion of the proceeding, the oper-
2 ator violated such order by not classifying the
3 1 or more individuals as employees during that
4 period; and

5 “(B) if the court determines the operator
6 so violated the order during that period—

7 “(i) the court shall determine the
8 amount of the net profits derived by the
9 operator from the individuals’ labor during
10 that period; and

11 “(ii) the court shall assess damages in
12 the amount determined under clause (i),
13 which damages shall be awarded to such
14 individuals by the court.”.

15 (e) MIGRANT AND SEASONAL AGRICULTURAL WORK-
16 ER PROTECTION ACT.—

17 (1) STRENGTHENING EMPLOYEE TEST.—The
18 Migrant and Seasonal Agricultural Worker Protec-
19 tion Act (29 U.S.C. 1801 et seq.) is amended—

20 (A) by redesignating section 4 (29 U.S.C.
21 1803) as section 5; and

22 (B) by inserting after section 3 (29 U.S.C.
23 1802) the following:

1 **“SEC. 4. EMPLOYEE TEST.**

2 “(a) IN GENERAL.—For purposes of this Act, includ-
 3 ing any regulation under this Act and except as provided
 4 in subsection (c), an individual performing any service or
 5 activity described in section 3(3), including the handling,
 6 planting, drying, packing, packaging, processing, freezing,
 7 or grading described in such section, for remuneration for
 8 a person shall be an employee employed in agricultural
 9 employment by such person and not an independent con-
 10 tractor of the person, unless—

11 “(1) the individual is free from control and di-
 12 rection in connection with the performance of the
 13 service or activity, both under the contract for the
 14 performance of the service or activity and in fact;

15 “(2) the service or activity is performed outside
 16 the usual course of the business of the person; and

17 “(3) the individual is customarily engaged in an
 18 independently established trade, occupation, profes-
 19 sion, or business of the same nature as that involved
 20 in the service or activity performed.

21 “(b) CLARIFICATION.—

22 “(1) RELATIONSHIP WITH COMMON LAW.—Sub-
 23 section (a) is not a codification of the common law
 24 and shall not be interpreted to reflect, or to be lim-
 25 ited or restricted by, common law interpretations re-
 26 garding when an individual is an employee of an-

1 other person. Subsection (a) shall be considered
2 complete as written, and any judicial or agency in-
3 terpretation of such subsection shall be limited to
4 the explicit requirements of such subsection.

5 “(2) IMPACT OF WRITTEN OR OTHER AGREE-
6 MENTS.—The requirements of subsection (a) shall
7 not be in any way affected by any agreement, writ-
8 ten or otherwise, that purports to demonstrate an
9 individual’s acknowledgment of or acquiescence to
10 the absence of an employer-employee relationship
11 with a particular employer.

12 “(c) NON-COMPETE AGREEMENTS.—

13 “(1) IN GENERAL.—Notwithstanding any con-
14 trary provisions in this Act, in any instance in which
15 there is a non-compete agreement between a person
16 and an individual who performs labor for such per-
17 son, the presence of the non-compete agreement,
18 without regard to the legality or enforceability of the
19 non-compete agreement, shall be evidence of control
20 for purposes of subsection (a)(1), but shall not by
21 itself establish an employment relationship between
22 such person and the individual.

23 “(2) DEFINITION OF NON-COMPETE AGREE-
24 MENT.—In this subsection, the term ‘non-compete
25 agreement’ means an agreement between a person

1 and an individual who performs labor for such per-
 2 son that restricts the individual from performing, ei-
 3 ther during or after the individual performs labor
 4 for such person—

5 “(A) any labor for another person;

6 “(B) any labor for a specified period of
 7 time;

8 “(C) any labor in a specified geographical
 9 area; or

10 “(D) any labor for another person that is
 11 similar to the labor such individual performed
 12 for the person that is a party to such agree-
 13 ment.”.

14 (2) PRESUMPTION OF EMPLOYEE STATUS.—
 15 Section 4 of the Migrant and Seasonal Agricultural
 16 Worker Protection Act, as amended by paragraph
 17 (1), is further amended by adding at the end the fol-
 18 lowing:

19 “(d) PRESUMPTION OF EMPLOYEE STATUS.—For
 20 purposes of this Act, including any regulation under this
 21 Act, an individual performing any service or activity de-
 22 scribed in section 3(3), including the handling, planting,
 23 drying, packing, packaging, processing, freezing, or grad-
 24 ing described in such section, for remuneration for a per-
 25 son shall be presumed to be an employee employed in agri-

1 cultural employment of the person, unless the party seek-
2 ing to assert otherwise establishes by clear and convincing
3 evidence that the individual is not such an employee in
4 accordance with this section.”.

5 (3) MISCLASSIFICATION AS A STANDALONE VIO-
6 LATION.—

7 (A) IN GENERAL.—Title IV of the Migrant
8 and Seasonal Agricultural Worker Protection
9 Act (29 U.S.C. 1841 et seq.) is amended by
10 adding at the end the following:

11 **“SEC. 405. MISCLASSIFICATION; INCORPORATION TO FUR-**
12 **THEIR VIOLATIONS.**

13 “(a) IN GENERAL.—No agricultural employer, agri-
14 cultural association, or farm labor contractor shall
15 misclassify a migrant agricultural worker or seasonal agri-
16 cultural worker employed as an employee by the employer,
17 association, or contractor as not a migrant agricultural
18 worker or seasonal agricultural worker employed as an
19 employee by the employer, association, or contractor for
20 purposes of this Act, including any regulation under this
21 Act.”.

22 (B) INCORPORATION TO FURTHER VIOLA-
23 TIONS.—Section 405 of the Migrant and Sea-
24 sonal Agricultural Worker Protection Act, as

1 added by subparagraph (A), is amended by add-
2 ing at the end the following:

3 “(b) INCORPORATION TO FURTHER VIOLATIONS.—

4 No person shall, for the purpose, in whole or in part, of
5 facilitating, or evading detection of, a violation of this Act,
6 including a violation of subsection (a) or any regulation
7 under this Act—

8 “(1) incorporate or form, or assist in the incor-
9 poration or formation of, a corporation, partnership,
10 limited liability corporation, or other entity; or

11 “(2) pay or collect a fee for use of a foreign or
12 domestic corporation, partnership, limited liability
13 corporation, or other entity.”.

14 (C) PENALTIES.—Section 503(a) of the
15 Migrant and Seasonal Agricultural Worker Pro-
16 tection Act (29 U.S.C. 1853(a)) is amended—

17 (i) in paragraph (1), by striking
18 “paragraph (2)” and inserting “para-
19 graphs (2), (3), (4), and (5)”; and

20 (ii) by adding at the end the fol-
21 lowing:

22 “(3) PENALTIES FOR MISCLASSIFICATION AND
23 INCORPORATION TO FURTHER VIOLATIONS.—

1 “(A) IN GENERAL.—Any person who vio-
2 lates section 405 shall be subject to a civil pen-
3 alty of—

4 “(i) subject to clauses (ii) and (iii),
5 \$10,000;

6 “(ii) if the violation is repeated or
7 willful, \$30,000; or

8 “(iii) if the violation is widespread, 1
9 percent of the net profits of the person for
10 the year in which the person had the high-
11 est net profits out of all years in which the
12 person was in such violation.

13 “(B) REPEATED, OR WILLFUL, AND WIDE-
14 SPREAD VIOLATIONS.—If a violation of section
15 405 is repeated or willful, as described in sub-
16 paragraph (A)(ii), and is widespread, as de-
17 scribed in subparagraph (A)(iii), the higher
18 penalty of the penalties described in such sub-
19 paragraphs shall apply.

20 “(C) PAYMENT OF PENALTIES.—Any pen-
21 alty assessed under subparagraph (A) for a vio-
22 lation of section 405 shall be paid from an ac-
23 count of the person in such violation and not
24 paid, or reimbursed, by any insurance plan that
25 would indemnify the person from violations of

1 such section. If a person receives a payment
2 from an insurance plan to indemnify the person
3 from a violation of such section, the person
4 shall transfer the payment to the Secretary, in
5 addition to the amount to be paid from the ac-
6 count of the person for the penalty.”.

7 (4) PROTECTION FROM RETALIATION FOR
8 BEING AN EMPLOYEE.—Part A of title V of the Mi-
9 grant and Seasonal Agricultural Worker Protection
10 Act (29 U.S.C. 1851 et seq.) is amended—

11 (A) by redesignating sections 505 and 506
12 (29 U.S.C. 1855 and 1856) as sections 506 and
13 507, respectively; and

14 (B) in section 506(a) (29 U.S.C. 1855(a)),
15 as so redesignated—

16 (i) by striking “No person” and in-
17 serting “(1) No person”; and

18 (ii) by adding at the end the fol-
19 lowing:

20 “(2) No person shall intimidate, threaten, restrain,
21 coerce, blacklist, discharge, or in any manner discriminate
22 against any migrant agricultural worker or seasonal agri-
23 cultural worker because such worker—

24 “(A) is required to be classified as employed in
25 agricultural employment by the person for purposes

1 of this Act, including any regulation under this Act,
2 and not as an independent contractor; and

3 “(B) was classified by the person as an inde-
4 pendent contractor prior to the date of enactment of
5 the Worker Flexibility and Small Business Protec-
6 tion Act of 2020.”.

7 (5) RULES REGARDING UNLAWFUL DISCHARGE
8 OR DISCRIMINATION.—Section 506 of the Migrant
9 and Seasonal Agricultural Worker Protection Act
10 (29 U.S.C. 1855), as so redesignated, is amended by
11 adding at the end the following:

12 “(c) RULES REGARDING UNLAWFUL DISCHARGE OR
13 DISCRIMINATION.—

14 “(1) PRESUMPTION OF RETALIATION.—Any ac-
15 tion taken by a person described in subsection (a)(1)
16 against any migrant agricultural worker or seasonal
17 agricultural worker within 90 days of the worker
18 taking any action described in such subsection, in-
19 cluding taking any such action with respect to exer-
20 cising the right pursuant to section 405(a) to not be
21 misclassified, shall establish a rebuttable presump-
22 tion that the action is discrimination against the
23 worker in violation of subsection (a).

24 “(2) MOTIVATING FACTOR.—Unlawful discrimi-
25 nation, including by intimidation, threat, restraint,

1 coercion, blacklisting, or discharge as described in
 2 subsection (a), against a migrant agricultural worker
 3 or seasonal agricultural worker under such sub-
 4 section, is established when the complaining party
 5 demonstrates that one or more actions or the classi-
 6 fication described in such subsection was a moti-
 7 vating factor for such discrimination, even if such
 8 discrimination was also motivated by other factors.”.

9 (6) MISCLASSIFICATION ENFORCEMENT
 10 THROUGH RECLASSIFICATION ORDERS AND STOP
 11 WORK ORDERS.—

12 (A) IN GENERAL.—Part A of title V of the
 13 Migrant and Seasonal Agricultural Worker Pro-
 14 tection Act (29 U.S.C. 1851 et seq.), as amend-
 15 ed by paragraph (5), is further amended by
 16 adding at the end the following:

17 **“SEC. 508. MISCLASSIFICATION ENFORCEMENT THROUGH**
 18 **RECLASSIFICATION ORDERS AND STOP**
 19 **WORK ORDERS.**

20 “(a) RECLASSIFICATION ORDERS.—

21 “(1) IN GENERAL.—If the Secretary deter-
 22 mines, after an investigation under section 512, that
 23 an agricultural employer, agricultural association, or
 24 farm labor contractor has misclassified 1 or more in-
 25 dividuals who are migrant agricultural workers or

1 seasonal agricultural workers employed by the em-
2 ployer, association, or contractor as not such work-
3 ers employed by such employer, association, or con-
4 tractor in violation of section 405(a)—

5 “(A) the Secretary shall issue, not later
6 than 24 hours after making such determination,
7 an order against the employer, association, or
8 contractor requiring the employer, association,
9 or contractor to immediately classify the 1 or
10 more individuals as employed by the employer,
11 association, or contractor; and

12 “(B) the employer, association, or con-
13 tractor shall immediately comply with the order
14 issued under subparagraph (A) or shall other-
15 wise be in violation of section 405(a).

16 “(2) ORDERS.—An order issued under para-
17 graph (1) shall—

18 “(A) be effective at the time at which the
19 order is served upon the employer, association,
20 or contractor, which may be accomplished by
21 the posting of a copy of the order in a con-
22 spicuous location at the place of business of the
23 employer, association, or contractor; and

24 “(B) remain in effect during any review
25 under paragraph (3) with respect to such order

1 and during any hearing and appeal of such
2 order under paragraph (4).

3 “(3) REVIEW FOR RECONSIDERATION.—

4 “(A) IN GENERAL.—An agricultural em-
5 ployer, agricultural association, or farm labor
6 contractor against whom an order is issued
7 under paragraph (1) may request a review by
8 the Secretary to contest the order.

9 “(B) REQUESTS.—A request under sub-
10 paragraph (A) shall be made in writing to the
11 Secretary not more than 5 days after the
12 issuance of the order.

13 “(C) REQUIREMENTS FOR REVIEW.—

14 “(i) IN GENERAL.—A review under
15 this paragraph shall—

16 “(I) commence not later than 24
17 hours after a request is made under
18 subparagraph (B); and

19 “(II) conclude not later than 24
20 hours after such commencement.

21 “(ii) DETERMINATION.—Not later
22 than 72 hours after a review concludes
23 under clause (i)(II), the Secretary shall de-
24 termine whether to affirm, modify, or re-
25 voke the contested order.

1 “(4) HEARINGS AND APPEALS.—Any person ag-
2 grieved by a determination of the Secretary under
3 paragraph (3)(C)(ii) may—

4 “(A) request a hearing to appeal such de-
5 termination to an administrative law judge; and

6 “(B) appeal an order of an administrative
7 law judge under subparagraph (A) to the
8 United States district court for any district in
9 which the person is located or the United States
10 District Court for the District of Columbia.

11 “(5) TEMPORARY OR PERMANENT INJUNCTIVE
12 RELIEF.—The Secretary may petition any court de-
13 scribed in paragraph (4)(B) for temporary or perma-
14 nent injunctive relief under section 502(a) against
15 any agricultural employer, agricultural association,
16 or farm labor contractor that violates an order
17 issued under paragraph (1). A court shall issue such
18 temporary or permanent injunctive relief if the Sec-
19 retary has demonstrated it is just and proper.

20 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
21 OF MISCLASSIFICATION.—

22 “(A) IN GENERAL.—If an agricultural em-
23 ployer, agricultural association, or farm labor
24 contractor with respect to whom an order was
25 issued under paragraph (1) successfully proves

1 through a review under paragraph (3), or a
2 subsequent hearing or appeals proceeding under
3 paragraph (4), that the 1 or more individuals
4 who were the subject of the order were not
5 misclassified in violation of section 405(a)—

6 “(i) the order issued under paragraph
7 (1) shall cease to be in effect;

8 “(ii) the employer, association, or con-
9 tractor shall not be liable for any applica-
10 ble back pay, damages, or civil penalties
11 owed by the employer, association, or con-
12 tractor under this Act (including any regu-
13 lation under this Act) with respect to the
14 misclassification of such 1 or more individ-
15 uals; and

16 “(iii) the Secretary of Labor, adminis-
17 trative law judge, or court, as applicable,
18 shall award (and the Secretary of the
19 Treasury shall, in accordance with sub-
20 paragraph (B), pay) to the employer, asso-
21 ciation, or contractor reasonable fees and
22 expenses of attorneys in the same manner
23 as such fees and expenses could be award-
24 ed under section 2412 of title 28, United
25 States Code, if the employer, association,

1 or contractor was a prevailing party and
2 the review, hearing, or appeals proceeding
3 was a civil action brought against the
4 United States.

5 “(B) SOURCE OF FUNDS.—The Secretary
6 of the Treasury shall, upon notification by the
7 Secretary of Labor, administrative law judge, or
8 court, as applicable, pay any fees or expenses
9 awarded under subparagraph (A)(iii) from
10 amounts in the general fund of the Treasury.

11 “(b) STOP WORK ORDERS.—

12 “(1) IN GENERAL.—In any case where an agri-
13 cultural employer, agricultural association, or farm
14 labor contractor does not comply with a reclassifica-
15 tion order issued by the Secretary under subsection
16 (a)(1), with respect to 2 or more individuals who are
17 misclassified in violation of section 405(a), the Sec-
18 retary shall issue—

19 “(A) subject to subparagraph (B), an
20 order against the employer, association, or con-
21 tractor requiring the cessation of all business
22 operations of such employer, association, or
23 contractor at the location of the violation; or

24 “(B) if an order described in subparagraph
25 (A) has been previously issued against the em-

1 employer, association, or contractor by any Fed-
2 eral, State, or local agency for misclassifying an
3 individual who is a migrant agricultural worker
4 or seasonal agricultural worker employed as an
5 employee by the employer, association, or con-
6 tractor as not such an employee in violation of
7 section 405(a), or an equivalent State or local
8 law as determined by the Secretary, an order
9 against the employer, association, or contractor
10 requiring the cessation of all business oper-
11 ations of such employer, association, or con-
12 tractor at all business locations of the employer,
13 association, or contractor, including locations
14 other than the location where the
15 misclassification occurred.

16 “(2) ORDERS.—

17 “(A) APPLICABILITY.—An order issued
18 under paragraph (1) shall—

19 “(i) be effective at the time at which
20 the order is served upon the employer, as-
21 sociation, or contractor, which may be ac-
22 complished by the posting of a copy of the
23 order in a conspicuous location at the place
24 of business of the employer, association, or
25 contractor; and

1 “(ii) remain in effect—

2 “(I) during any review conducted
3 under paragraph (3) with respect to
4 such order and during any hearing
5 and appeal of such order under para-
6 graph (4); and

7 “(II) until the Secretary issues a
8 release order under subparagraph (B).

9 “(B) RELEASE ORDERS.—

10 “(i) IN GENERAL.—An order issued
11 under paragraph (1) (that is not revoked
12 by the Secretary or held unlawful or set
13 aside by an administrative law judge or a
14 court) shall remain in effect until the Sec-
15 retary issues another order releasing the
16 order issued under such paragraph upon a
17 finding by the Secretary that the employer,
18 association, or contractor—

19 “(I) has corrected the violation of
20 section 405(a) with respect to the 2 or
21 more individuals who were
22 misclassified resulting in the order;
23 and

24 “(II) has agreed to a payment
25 schedule for all applicable back pay,

1 damages, and civil penalties owed by
2 the employer, association, or con-
3 tractor under this Act, including any
4 regulation under this Act.

5 “(ii) REINSTATEMENT.—If, at any
6 time after the Secretary issues a release
7 order under clause (i), the employer, asso-
8 ciation, or contractor fails to comply with
9 the terms of the payment schedule de-
10 scribed in clause (i)(II), the Secretary shall
11 reinstate the order issued under paragraph
12 (1) until the employer, association, or con-
13 tractor is in compliance with such terms.

14 “(3) REVIEW FOR RECONSIDERATION.—

15 “(A) IN GENERAL.—An agricultural em-
16 ployer, agricultural association, or farm labor
17 contractor against whom an order is issued
18 under paragraph (1) may request a review by
19 the Secretary to contest the order.

20 “(B) REQUESTS.—A request under sub-
21 paragraph (A) shall be made in writing to the
22 Secretary not more than 5 days after the
23 issuance of the order.

24 “(C) REQUIREMENTS FOR REVIEW.—

1 “(i) IN GENERAL.—A review under
2 this paragraph shall—

3 “(I) commence not later than 24
4 hours after a request is made under
5 subparagraph (B); and

6 “(II) conclude not later than 24
7 hours after such commencement.

8 “(ii) DETERMINATION.—Not later
9 than 72 hours after a review concludes
10 under clause (i)(II), the Secretary shall de-
11 termine whether to affirm, modify, or re-
12 voke the contested order.

13 “(4) APPEALS.—Any person aggrieved by a de-
14 termination of the Secretary under paragraph
15 (3)(C)(ii) may—

16 “(A) appeal such determination to an ad-
17 ministrative law judge; and

18 “(B) appeal an order of an administrative
19 law judge under subparagraph (A) to the
20 United States district court for any district in
21 which the person is located or the United States
22 District Court for the District of Columbia.

23 “(5) TEMPORARY OR PERMANENT INJUNCTIVE
24 RELIEF.—The Secretary may petition a court de-
25 scribed in paragraph (4)(B) for temporary or perma-

1 nent injunctive relief under section 502(a) against
2 any agricultural employer, agricultural association,
3 or farm labor contractor that violates an order
4 issued under paragraph (1). A court shall issue such
5 temporary or permanent injunctive relief if the Sec-
6 retary has demonstrated it is just and proper.

7 “(6) COMPENSATION FOR LOST WORK.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (B), an agricultural employer, agricul-
10 tural association, or farm labor contractor with
11 respect to whom an order is issued under para-
12 graph (1) shall pay each migrant agricultural
13 worker or seasonal agricultural worker em-
14 ployed by the employer, association, or con-
15 tractor, who loses compensation due to the work
16 of such worker ceasing as a result of such
17 order, the compensation that would be owed to
18 such worker if the order was not issued.

19 “(B) LIMITATION.—Compensation paid
20 under subparagraph (A) shall be for each day,
21 not to exceed 10 days, for which the migrant
22 agricultural worker or seasonal agricultural
23 worker would be paid if the order described in
24 such subparagraph were not in effect.

1 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
2 OF MISCLASSIFICATION.—

3 “(A) IN GENERAL.—In any case where an
4 agricultural employer, agricultural association,
5 or farm labor contractor with respect to whom
6 an order was issued under paragraph (1) suc-
7 cessfully proves through a review under para-
8 graph (3) or a subsequent hearing or appeals
9 proceeding under paragraph (4) that the 2 or
10 more individuals who were the subject of the
11 order were not misclassified in violation of sec-
12 tion 405(a)—

13 “(i) the order issued under paragraph
14 (1), and any order issued against the em-
15 ployer, association, or contractor under
16 subsection (a)(1), with respect to such 2 or
17 more individuals, shall cease to be in ef-
18 fect;

19 “(ii) the employer, association, or con-
20 tractor shall not be liable for any applica-
21 ble back pay, damages, or civil penalties
22 owed by the employer, association, or con-
23 tractor under this Act (including any regu-
24 lation under this Act) with respect to the

1 misclassification of such 2 or more individ-
2 uals; and

3 “(iii) the Secretary of Labor, adminis-
4 trative law judge, or court shall award
5 (and the Secretary of the Treasury shall,
6 in accordance with subparagraph (B), pay)
7 to the employer, association, or con-
8 tractor—

9 “(I) an amount equal to any de-
10 monstrable lost net profits resulting
11 from the order, as demonstrated by
12 clear and convincing evidence; and

13 “(II) reasonable fees and ex-
14 penses of attorneys in the same man-
15 ner as such fees and expenses could
16 be awarded under section 2412 of title
17 28, United States Code, if the em-
18 ployer, association, or contractor was
19 a prevailing party and the review,
20 hearing, or appeals proceeding was a
21 civil action brought by or against the
22 United States.

23 “(B) SOURCE OF FUNDS.—The Secretary
24 of the Treasury shall, upon notification by the
25 Secretary of Labor, administrative law judge, or

1 a court, as applicable, pay any amounts, fees,
2 or expenses awarded under subparagraph
3 (A)(iii) from amounts available in the general
4 fund of the Treasury.”.

5 (B) PENALTIES.—Section 503(a) of the
6 Migrant and Seasonal Agricultural Worker Pro-
7 tection Act (29 U.S.C. 1853(a)), as amended by
8 paragraph (3)(C), is further amended by adding
9 at the end the following:

10 “(4) PENALTIES FOR VIOLATING RECLASSIFICA-
11 TION ORDERS.—

12 “(A) CIVIL PENALTIES.—Any person who
13 violates a reclassification order issued by the
14 Secretary under section 508(a)(1) shall be sub-
15 ject to a civil penalty of not less than \$5,000
16 per day, with each day constituting a separate
17 offense.

18 “(B) ADDITIONAL DAMAGES.—In any case
19 in which an agricultural employer, agricultural
20 association, or farm labor contractor contests a
21 reclassification order issued under paragraph
22 (1) of section 508(a) in a review under para-
23 graph (3) of such section, a hearing under
24 paragraph (4)(A) of such section, and a subse-
25 quent judicial proceeding under paragraph

1 (4)(B) of such section, and the court in such
2 proceeding rules in favor of the Secretary—

3 “(i) the court shall determine if, dur-
4 ing the period between the issuance of such
5 order and the conclusion of the proceeding,
6 the employer, association, or contractor
7 violated such order by not classifying the 1
8 or more individuals as employees employed
9 by the employer, association, or contractor
10 during that period; and

11 “(ii) if the court determines the em-
12 ployer, association, or contractor so vio-
13 lated the order during that period—

14 “(I) the court shall determine the
15 amount of net profits derived by the
16 employer, association, or contractor
17 from the individuals’ labor during that
18 period; and

19 “(II) the court shall assess dam-
20 ages in the amount determined under
21 subclause (I), which damages shall be
22 awarded to such individuals by the
23 court.”.

24 (f) DAVIS-BACON ACT.—

1 (1) STRENGTHENING EMPLOYEE TEST.—Sub-
2 chapter IV of chapter 31 of title 40, United States
3 Code, is amended by inserting after section 3141 the
4 following:

5 **“§ 3141a. Employee test**

6 “(a) IN GENERAL.—For purposes of this subchapter
7 and except as provided in subsection (c), a laborer or me-
8 chanic performing any labor under a contract or sub-
9 contract to which this subchapter applies shall be an em-
10 ployee employed by the contractor or subcontractor of the
11 contract or subcontract and not an independent con-
12 tractor, unless—

13 “(1) the laborer or mechanic is free from con-
14 trol and direction in connection with the perform-
15 ance of the labor, both under the contract or sub-
16 contract for the performance of the labor and in
17 fact;

18 “(2) the labor is performed outside the usual
19 course of the business of such contractor or subcon-
20 tractor; and

21 “(3) the laborer or mechanic is customarily en-
22 gaged in an independently established trade, occupa-
23 tion, profession, or business of the same nature as
24 that involved in the labor performed.

25 “(b) CLARIFICATIONS.—

1 “(1) RELATIONSHIP WITH COMMON LAW.—Sub-
2 section (a) is not a codification of the common law
3 and shall not be interpreted to reflect, or to be lim-
4 ited or restricted by, common law interpretations re-
5 garding when an individual is an employee of an-
6 other person. Subsection (a) shall be considered
7 complete as written, and any judicial or agency in-
8 terpretation of such subsection shall be limited to
9 the explicit requirements of such subsection.

10 “(2) IMPACT OF WRITTEN OR OTHER AGREE-
11 MENTS.—The requirements of subsection (a) shall
12 not be in any way affected by any agreement, writ-
13 ten or otherwise, that purports to demonstrate an
14 individual’s acknowledgment of or acquiescence to
15 the absence of an employer-employee relationship
16 with a particular employer.

17 “(c) NON-COMPETE AGREEMENTS.—

18 “(1) IN GENERAL.—Notwithstanding any con-
19 trary provisions in this subchapter, in any instance
20 in which there is a non-compete agreement between
21 a person and an individual who performs labor for
22 such person, the presence of the non-compete agree-
23 ment, without regard to the legality or enforceability
24 of the non-compete agreement, shall be evidence of
25 control for purposes of subsection (a)(1), but shall

1 not by itself establish an employment relationship
 2 between such person and the individual.

3 “(2) DEFINITION OF NON-COMPETE AGREE-
 4 MENT.—In this subsection, the term ‘non-compete
 5 agreement’ means an agreement between a person
 6 and an individual who performs labor for such per-
 7 son that restricts the individual from performing, ei-
 8 ther during or after the individual performs labor
 9 for such person—

10 “(A) any labor for another person;

11 “(B) any labor for a specified period of
 12 time;

13 “(C) any labor in a specified geographical
 14 area; or

15 “(D) any labor for another person that is
 16 similar to the labor such individual performed
 17 for the person that is a party to such agree-
 18 ment.”.

19 (2) PRESUMPTION OF EMPLOYEE STATUS.—
 20 Section 3141a of title 40, United States Code, as
 21 added by paragraph (1), is amended by adding at
 22 the end the following:

23 “(d) PRESUMPTION OF EMPLOYEE STATUS.—For
 24 purposes of this subchapter, a laborer or mechanic per-
 25 forming any labor under a contract or subcontract to

1 which this subchapter applies shall be an employee em-
 2 ployed by the contractor or subcontractor of the contract
 3 or subcontract and not an independent contractor, unless
 4 the party seeking to assert otherwise establishes by clear
 5 and convincing evidence that the laborer or mechanic is
 6 not such an employee in accordance with this section.”.

7 (3) MISCLASSIFICATION AS A STANDALONE VIO-
 8 LATION; INCORPORATION TO FURTHER VIOLA-
 9 TIONS.—Subchapter IV of chapter 31 of title 40,
 10 United States Code, is amended by inserting after
 11 section 3144, the following:

12 **“§ 3144a. Prohibitions against misclassification, in-**
 13 **corporation to further violations, and re-**
 14 **taliation; reclassification orders and stop**
 15 **work orders**

16 “(a) MISCLASSIFICATION.—No contractor or subcon-
 17 tractor of a contract or subcontract to which this sub-
 18 chapter applies shall misclassify a laborer or mechanic,
 19 who is an employee of the contractor or subcontractor and
 20 is performing any labor under the contract or subcontract,
 21 as not an employee of the contractor or subcontractor for
 22 purposes of this subchapter.

23 “(b) INCORPORATION TO FURTHER VIOLATIONS.—
 24 No contractor or subcontractor, for the purpose, in whole
 25 or in part, of facilitating, or evading detection of, a viola-

1 tion of this subchapter, including a violation of subsection
2 (a), shall—

3 “(1) incorporate or form, or assist in the incor-
4 poration or formation of, a corporation, partnership,
5 limited liability corporation, or other entity; or

6 “(2) pay or collect a fee for use of a foreign or
7 domestic corporation, partnership, limited liability
8 corporation, or other entity.”.

9 (4) PROTECTION FROM RETALIATION FOR
10 BEING AN EMPLOYEE; PRESUMPTION OF RETALIA-
11 TION.—Section 3144a of title 40, United States
12 Code, added by paragraph (3), is amended by add-
13 ing at the end the following:

14 “(c) RETALIATION.—

15 “(1) IN GENERAL.—A contractor or subcon-
16 tractor of a contract or subcontract to which this
17 subchapter applies shall not discharge or in any
18 other manner discriminate against a laborer or me-
19 chanic who is employed by the contractor or subcon-
20 tractor and is performing any labor under the con-
21 tract or subcontract, because—

22 “(A) such laborer or mechanic has filed
23 any complaint or instituted or caused to be in-
24 stituted any proceeding under or related to this
25 subchapter, or has testified or is about to tes-

1 tify in any such proceeding, or has served or is
2 about to serve on an industry committee; or

3 “(B) such laborer or mechanic—

4 “(i) is required, pursuant to the en-
5 actment of the Worker Flexibility and
6 Small Business Protection Act of 2020, to
7 be classified as an employee of the con-
8 tractor or subcontractor for purposes of
9 this subchapter and not an independent
10 contractor; and

11 “(ii) was classified by the contractor
12 or subcontractor as an independent con-
13 tractor prior to the date of enactment of
14 the Worker Flexibility and Small Business
15 Protection Act of 2020.

16 “(2) RULES REGARDING UNLAWFUL DIS-
17 CHARGE OR DISCRIMINATION.—

18 “(A) PRESUMPTION OF RETALIATION.—

19 Any action taken by a contractor or subcon-
20 tractor of a contract or subcontract to which
21 this subchapter applies against a laborer or me-
22 chanic who is employed by the contractor or
23 subcontractor, and is performing any labor
24 under the contract or subcontract, within 90
25 days of the laborer or mechanic taking any ac-

1 tion described in paragraph (1)(A), including
 2 taking any such action with respect to exer-
 3 cising the right of the laborer or mechanic pur-
 4 suant to subsection (a) to not be misclassified,
 5 shall establish a rebuttable presumption that
 6 the action is discrimination against the laborer
 7 or mechanic in violation of paragraph (1).

8 “(B) MOTIVATING FACTOR.—Unlawful dis-
 9 charge or other discrimination against a laborer
 10 or mechanic under paragraph (1) is established
 11 when the complaining party demonstrates that
 12 one of the actions or the classification described
 13 in such paragraph was a motivating factor for
 14 such discharge or other discrimination, even if
 15 such discharge or other discrimination was also
 16 motivated by other factors.”.

17 (5) MISCLASSIFICATION ENFORCEMENT
 18 THROUGH RECLASSIFICATION ORDERS AND STOP
 19 WORK ORDERS.—Section 3144a of title 40, United
 20 States Code, as amended by paragraph (4), is fur-
 21 ther amended by adding at the end the following:

22 “(d) MISCLASSIFICATION ENFORCEMENT THROUGH
 23 RECLASSIFICATION ORDERS.—

24 “(1) IN GENERAL.—If the Secretary determines
 25 that a contractor or subcontractor of a contract or

1 subcontract to which this subchapter applies has
2 misclassified 1 or more laborers or mechanics in vio-
3 lation of subsection (a)—

4 “(A) the Secretary shall issue, not later
5 than 24 hours after making such determination,
6 an order against the contractor or subcon-
7 tractor requiring the contractor or subcon-
8 tractor to immediately classify the 1 or more la-
9 borers or mechanics as employees of the con-
10 tractor or subcontractor; and

11 “(B) the contractor or subcontractor shall
12 immediately comply with the order issued under
13 subparagraph (A) or shall otherwise be in viola-
14 tion of subsection (a).

15 “(2) ORDERS.—An order issued under para-
16 graph (1) shall—

17 “(A) be effective at the time at which the
18 order is served upon the contractor or subcon-
19 tractor, which may be accomplished by the post-
20 ing of a copy of the order in a conspicuous loca-
21 tion at the place of business of the contractor
22 or subcontractor; and

23 “(B) remain in effect during any review
24 conducted under paragraph (3) and during any

1 hearing and appeal of such order under para-
2 graph (4).

3 “(3) REVIEW FOR RECONSIDERATION.—

4 “(A) IN GENERAL.—A contractor or sub-
5 contractor against whom an order is issued
6 under paragraph (1) may request a review by
7 the Secretary to contest the order.

8 “(B) REQUESTS.—A request under sub-
9 paragraph (A) shall be made in writing to the
10 Secretary not more than 5 days after the
11 issuance of the order.

12 “(C) REQUIREMENTS FOR REVIEW.—

13 “(i) IN GENERAL.—A hearing under
14 this paragraph shall—

15 “(I) commence not later than 24
16 hours after a request is made under
17 subparagraph (B); and

18 “(II) conclude not later than 24
19 hours after such commencement.

20 “(ii) DETERMINATION.—Not later
21 than 72 hours after a review concludes
22 under clause (i)(II), the Secretary shall de-
23 termine whether to affirm, modify, or re-
24 voke the contested order.

1 “(4) HEARINGS AND APPEALS.—Any person ag-
2 grieved by a determination of the Secretary under
3 paragraph (3)(C)(ii) may—

4 “(A) request a hearing to appeal such de-
5 termination to an administrative law judge; and

6 “(B) appeal an order of an administrative
7 law judge under subparagraph (A) to a court of
8 competent jurisdiction.

9 “(5) TEMPORARY OR PERMANENT INJUNCTIVE
10 RELIEF.—The Secretary may petition any court of
11 competent jurisdiction for temporary or permanent
12 injunctive relief against any contractor or subcon-
13 tractor that violates an order issued under para-
14 graph (1). A court shall issue such temporary or
15 permanent injunctive relief if the Secretary has dem-
16 onstrated it is just and proper.

17 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
18 OF MISCLASSIFICATION.—

19 “(A) IN GENERAL.—If a contractor or sub-
20 contractor with respect to whom an order was
21 issued under paragraph (1) successfully proves
22 through a review under paragraph (3), or a
23 subsequent hearing or appeals proceeding under
24 paragraph (4), that the 1 or more laborers or
25 mechanics who were the subject of the order

1 were not misclassified in violation of subsection

2 (a)—

3 “(i) the order issued under paragraph
4 (1) shall cease to be in effect;

5 “(ii) the contractor or subcontractor
6 shall not be liable for any applicable back
7 pay, damages, or civil penalties owed by
8 the contractor or subcontractor under this
9 subchapter with respect to the
10 misclassification of such 2 or more laborers
11 or mechanics; and

12 “(iii) the Secretary of Labor, adminis-
13 trative law judge, or court, as applicable,
14 shall award (and the Secretary of the
15 Treasury shall, in accordance with sub-
16 paragraph (B), pay) to the contractor or
17 subcontractor reasonable fees and expenses
18 of attorneys in the same manner as such
19 fees and expenses could be awarded under
20 section 2412 of title 28, United States
21 Code, if the contractor or subcontractor
22 was a prevailing party and the hearing or
23 appeals proceeding was a civil action
24 brought by or against the United States.

1 “(B) SOURCE OF FUNDS.—The Secretary
2 of the Treasury shall, upon notification by the
3 Secretary of Labor, administrative law judge, or
4 court, as applicable, pay any fees or expenses
5 awarded under subparagraph (A)(iii) from
6 amounts in the general fund of the Treasury.

7 “(e) MISCLASSIFICATION ENFORCEMENT THROUGH
8 STOP WORK ORDERS.—

9 “(1) IN GENERAL.—In any case where a con-
10 tractor or subcontractor of a contract or subcontract
11 to which this subchapter applies does not comply
12 with a reclassification order issued by the Secretary
13 under subsection (d)(1), with respect to 2 or more
14 laborers or mechanics who are misclassified in viola-
15 tion of subsection (a), the Secretary shall issue—

16 “(A) subject to subparagraph (B), an
17 order against the contractor or subcontractor
18 requiring the cessation of all business oper-
19 ations of such contractor or subcontractor at
20 the location of the violation; or

21 “(B) if an order described in subparagraph
22 (A) has been previously issued against the con-
23 tractor or subcontractor by any Federal, State,
24 or local agency for misclassifying a laborer or
25 mechanic employed by the contractor or subcon-

1 tractor and performing any labor under the
2 contract or subcontract, as not an employee of
3 the contractor or subcontractor in violation of
4 subsection (a), or an equivalent State or local
5 law as determined by the Secretary, an order
6 against the contractor or subcontractor requir-
7 ing the cessation of all business operations of
8 such contractor or subcontractor at all business
9 locations of the contractor or subcontractor, in-
10 cluding locations other than the location where
11 the misclassification occurred.

12 “(2) ORDERS.—

13 “(A) APPLICABILITY.—An order issued
14 under paragraph (1) shall—

15 “(i) be effective at the time at which
16 the order is served upon the contractor or
17 subcontractor, which may be accomplished
18 by the posting of a copy of the order in a
19 conspicuous location at the place of busi-
20 ness of the contractor or subcontractor;
21 and

22 “(ii) remain in effect—

23 “(I) during any review conducted
24 under paragraph (3) with respect to
25 such order and during any hearing

1 and appeal of such order under para-
2 graph (4); and

3 “(II) until the Secretary issues a
4 release order under subparagraph (B).

5 “(B) RELEASE ORDERS.—

6 “(i) IN GENERAL.—An order issued
7 under paragraph (1) (that is not revoked
8 by the Secretary or held unlawful or set
9 aside by an administrative law judge or a
10 court) shall remain in effect until the Sec-
11 retary issues another order releasing the
12 order issued under such paragraph upon a
13 finding by the Secretary that the con-
14 tractor or subcontractor—

15 “(I) has corrected the violation of
16 subsection (a) with respect to the 2 or
17 more laborers or mechanics who were
18 misclassified resulting in the order;
19 and

20 “(II) has agreed to a payment
21 schedule for all applicable back pay,
22 damages, and civil penalties owed by
23 the contractor or subcontractor under
24 this subchapter.

1 “(ii) REINSTATEMENT.—If, at any
2 time after the Secretary issues a release
3 order under clause (i), the contractor or
4 subcontractor fails to comply with the
5 terms of the payment schedule described in
6 clause (i)(II), the Secretary shall reinstate
7 the order issued under paragraph (1) until
8 the contractor or subcontractor is in com-
9 pliance with such terms.

10 “(3) REVIEW FOR RECONSIDERATION.—

11 “(A) IN GENERAL.—A contractor or sub-
12 contractor against whom an order is issued
13 under paragraph (1) may request a review by
14 the Secretary to contest the order.

15 “(B) REQUESTS.—A request under sub-
16 paragraph (A) shall be made in writing to the
17 Secretary not more than 5 days after the
18 issuance of the order.

19 “(C) REQUIREMENTS FOR REVIEW.—

20 “(i) IN GENERAL.—A review under
21 this paragraph shall—

22 “(I) commence not later than 24
23 hours after a request is made under
24 subparagraph (B); and

1 “(II) conclude not later than 24
2 hours after such commencement.

3 “(D) DETERMINATION.—Not later than 72
4 hours after a review concludes under clause
5 (i)(II), the Secretary shall determine whether to
6 affirm, modify, or revoke the contested order.

7 “(4) HEARING AND APPEALS.—Any person ag-
8 grieved by a determination of the Secretary under
9 paragraph (3)(C)(ii) may—

10 “(A) request a hearing to appeal such de-
11 termination to an administrative law judge; and

12 “(B) appeal an order of an administrative
13 law judge under subparagraph (A) to a court of
14 competent jurisdiction.

15 “(5) TEMPORARY OR PERMANENT INJUNCTIVE
16 RELIEF.—The Secretary may petition any court of
17 competent jurisdiction for temporary or permanent
18 injunctive relief against any contractor or subcon-
19 tractor that violates an order issued under para-
20 graph (1). A court shall issue such temporary or
21 permanent injunctive relief if the Secretary has dem-
22 onstrated it is just and proper.

23 “(6) COMPENSATION FOR LOST WORK.—

24 “(A) IN GENERAL.—Subject to subpara-
25 graph (B), a contractor or subcontractor with

1 respect to whom an order is issued under para-
2 graph (1) shall pay each laborer or mechanic
3 described in subparagraph (C) the compensa-
4 tion that would be owed to such laborer or me-
5 chanic if the order was not issued.

6 “(B) LIMITATION.—Compensation paid
7 under subparagraph (A) shall be for each day,
8 not to exceed 10 days, for which the laborer or
9 mechanic would be paid if the order described
10 in such subparagraph were not in effect.

11 “(C) APPLICABILITY.—Subparagraph (A)
12 applies to a laborer or mechanic who—

13 “(i) is an employee of the contractor
14 or subcontractor against whom an order is
15 issued under paragraph (1);

16 “(ii) is performing labor under the
17 contract or subcontract, respectively, that
18 is subject to the order; and

19 “(iii) loses compensation due to the
20 work of such laborer or mechanic ceasing
21 as a result of such order.

22 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
23 OF MISCLASSIFICATION.—

24 “(A) IN GENERAL.—In any case where a
25 contractor or subcontractor with respect to

1 whom an order was issued under paragraph (1)
2 successfully proves through a review under
3 paragraph (3) or subsequent hearing or appeals
4 proceeding under paragraph (4) that the 2 or
5 more laborers or mechanics who were the sub-
6 ject of the order were not misclassified in viola-
7 tion of subsection (a)—

8 “(i) the order issued under paragraph
9 (1), and any order issued against the con-
10 tractor or subcontractor under subsection
11 (d)(1) with respect to such 2 or more la-
12 borers or mechanics, shall cease to be in
13 effect;

14 “(ii) the contractor or subcontractor
15 shall not be liable for any applicable back
16 pay, damages, or civil penalties owed by
17 the contractor or subcontractor under this
18 subchapter with respect to the
19 misclassification of such 2 or more laborers
20 or mechanics; and

21 “(iii) the Secretary of Labor, adminis-
22 trative law judge, or the court shall award
23 (and the Secretary of the Treasury shall,
24 in accordance with subparagraph (B), pay)
25 to the contractor or subcontractor—

1 “(I) an amount equal to any de-
2 monstrable lost net profits resulting
3 from the order, as demonstrated by
4 clear and convincing evidence; and

5 “(II) reasonable fees and ex-
6 penses of attorneys in the same man-
7 ner as such fees and expenses could
8 be awarded under section 2412 of title
9 28, United States Code, if the con-
10 tractor or subcontractor was a pre-
11 vailing party and the review, hearing,
12 or appeals proceeding was a civil ac-
13 tion brought by or against the United
14 States.

15 “(B) SOURCE OF FUNDS.—The Secretary
16 of the Treasury shall, upon notification by the
17 Secretary of Labor, administrative law judge, or
18 court, as applicable, pay any amounts, fees, or
19 expenses awarded under subparagraph (A)(iii)
20 from amounts available in the general fund of
21 the Treasury.”.

22 (6) PENALTIES FOR VIOLATIONS OF NEW RE-
23 QUIREMENTS.—Subchapter IV of chapter 31 of title
24 40, United States Code, is amended by inserting

1 after section 3144a, as added by paragraph (3), the
2 following:

3 **“§ 3144c. Penalties; expanded liability**

4 “(a) MISCLASSIFICATION; INCORPORATION TO FUR-
5 THER VIOLATIONS; RETALIATION.—

6 “(1) IN GENERAL.—A contractor or subcon-
7 tractor that violates subsection (a), (b), or (c) of sec-
8 tion 3144a of this title shall be subject to a civil
9 penalty of—

10 “(A) subject to subparagraphs (B) and
11 (C), \$10,000;

12 “(B) if the violation is repeated or willful,
13 \$30,000; or

14 “(C) if the violation is widespread, 1 per-
15 cent of the net profits of the contractor or sub-
16 contractor for the year in which the contractor
17 or subcontractor had the highest net profits out
18 of all years in which the contractor or subcon-
19 tractor was in such violation.

20 “(2) REPEATED, OR WILLFUL, AND WIDE-
21 SPREAD VIOLATIONS.—If the violation of subsection
22 (a), (b), or (c) of section 3144a of this title is re-
23 peated or willful, as described in paragraph (1)(B),
24 and is widespread, as described in paragraph (1)(C),

1 the higher amount of the amounts described in such
2 paragraphs shall apply.

3 “(3) PAYMENT OF DAMAGES.—Any penalty as-
4 sessed under paragraph (1) for a violation of sub-
5 section (a), (b), or (c) of section 3144a of this title
6 shall be paid from an account of the contractor or
7 subcontractor in such violation for the violation and
8 not paid, or reimbursed, by any insurance plan that
9 would indemnify the contractor or subcontractor
10 from violations of such subsection. If a contractor or
11 subcontractor receives a payment from an insurance
12 plan to indemnify the contractor or subcontractor
13 from a violation of such subsection, the contractor or
14 subcontractor shall transfer the payment to the Sec-
15 retary, in addition to the amount to be paid from
16 the account of the contractor or subcontractor for
17 the penalty.

18 “(b) MISCLASSIFICATION ENFORCEMENT THROUGH
19 RECLASSIFICATION ORDERS.—

20 “(1) CIVIL PENALTIES.—A contractor or sub-
21 contractor that violates a reclassification order
22 issued under section 3144a(d)(1) shall be subject to
23 a civil penalty of not less than \$5,000 per day, with
24 each day constituting a separate offense.

1 “(2) ADDITIONAL DAMAGES.—In any case in
2 which a contractor or subcontractor contests a re-
3 classification order issued under paragraph (1) of
4 section 3144a(d) in a review under paragraph (3) of
5 such section, a hearing under paragraph (4)(A) of
6 such section, and a subsequent judicial proceeding
7 under paragraph (4)(B) of such section, and the
8 court in such proceeding rules in favor of the Sec-
9 retary—

10 “(A) the court shall determine if, during
11 the period between the issuance of such order
12 and the conclusion of the proceeding, the con-
13 tractor or subcontractor violated such order by
14 not classifying the 1 or more laborer or me-
15 chanics as employees during that period; and

16 “(B) if the court determines the contractor
17 or subcontractor so violated the order during
18 that period—

19 “(i) the court shall determine the
20 amount of net profits derived by the con-
21 tractor or subcontractor from the labor of
22 the laborers or mechanics during that pe-
23 riod; and

24 “(ii) the court shall assess damages in
25 the amount determined under clause (i),

1 which damages shall be awarded to such
2 individuals by the court.”.

3 (7) CONFORMING AMENDMENTS.—The table of
4 sections for subchapter IV of chapter 31 of title 40,
5 United States Code, is amended—

6 (A) by inserting after the item relating to
7 section 3141 the following:

“Sec. 3141a. Employee test.”;

8 and

9 (B) by inserting after the item relating to
10 section 3144 the following:

“Sec. 3144a. Prohibitions against misclassification, incorporation to further vio-
 lations, and retaliation; reclassification orders and stop work
 orders.

“Sec. 3144e. Penalties; expanded liability.”.

11 (g) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

12 (1) STRENGTHENING EMPLOYEE TEST.—Chap-
13 ter 65 of title 41, United States Code, is amended
14 by inserting after section 6501 of such title the fol-
15 lowing:

16 **“§ 6501a. Employee test**

17 “(a) IN GENERAL.—For purposes of this chapter and
18 except as provided in subsection (c), an individual per-
19 forming any labor, with respect to the manufacture or fur-
20 nishing of materials, supplies, articles, or equipment,
21 under a contract to which this chapter applies, shall be

1 an employee employed by the contractor of such contract
2 and not an independent contractor, unless—

3 “(1) the individual is free from control and di-
4 rection in connection with the performance of the
5 labor, both under the contract for the performance
6 of the labor and in fact;

7 “(2) the labor is performed outside the usual
8 course of the business of such contractor; and

9 “(3) the individual is customarily engaged in an
10 independently established trade, occupation, profes-
11 sion, or business of the same nature as that involved
12 in the labor performed.

13 “(b) CLARIFICATIONS.—

14 “(1) RELATIONSHIP WITH COMMON LAW.—Sub-
15 section (a) is not a codification of the common law
16 and shall not be interpreted to reflect, or to be lim-
17 ited or restricted by, common law interpretations re-
18 garding when an individual is an employee of an-
19 other person. Subsection (a) shall be considered
20 complete as written, and any judicial or agency in-
21 terpretation of such subsection shall be limited to
22 the explicit requirements of such subsection.

23 “(2) IMPACT OF WRITTEN OR OTHER AGREE-
24 MENTS.—The requirements of subsection (a) shall
25 not be in any way affected by any agreement, writ-

1 ten or otherwise, that purports to demonstrate an
2 individual's acknowledgment of or acquiescence to
3 the absence of an employer-employee relationship
4 with a particular employer.

5 “(c) NON-COMPETE AGREEMENTS.—

6 “(1) IN GENERAL.—Notwithstanding any con-
7 trary provisions in this chapter, in any instance in
8 which there is a non-compete agreement between a
9 person and an individual who performs labor for
10 such person, the presence of the non-compete agree-
11 ment, without regard to the legality or enforceability
12 of the non-compete agreement, shall be evidence of
13 control for purposes of subsection (a)(1), but shall
14 not by itself establish an employment relationship
15 between such person and the individual.

16 “(2) DEFINITION OF NON-COMPETE AGREE-
17 MENT.—In this subsection, the term ‘non-compete
18 agreement’ means an agreement between a person
19 and an individual who performs labor for such per-
20 son that restricts the individual from performing, ei-
21 ther during or after the individual performs labor
22 for such person—

23 “(A) any labor for another person;

24 “(B) any labor for a specified period of
25 time;

1 “(C) any labor in a specified geographical
2 area; or

3 “(D) any labor for another person that is
4 similar to the labor such individual performed
5 for the person that is a party to such agree-
6 ment.”.

7 (2) PRESUMPTION OF EMPLOYEE STATUS.—
8 Section 6501a of title 41, United States Code, as
9 added by paragraph (1), is amended by adding at
10 the end the following:

11 “(d) PRESUMPTION OF EMPLOYEE STATUS.—For
12 purposes of this chapter, an individual performing any
13 labor, with respect to the manufacture or furnishing of
14 materials, supplies, articles, or equipment, under a con-
15 tract to which this chapter applies, shall be an employee
16 employed by the contractor of such contract unless the
17 party seeking to assert otherwise establishes by clear and
18 convincing evidence that the individual is not such an em-
19 ployee in accordance with this section.”.

20 (3) MISCLASSIFICATION AS A STANDALONE VIO-
21 LATION.—

22 (A) IN GENERAL.—Section 6502 of title
23 41, United States Code, is amended by adding
24 at the end the following:

1 “(5) MISCLASSIFICATION.—The contractor shall
2 not misclassify an individual performing any labor,
3 with respect to the manufacture or furnishing of ma-
4 terials, supplies, articles, or equipment under the
5 contract, who is an employee of the contractor as
6 not such an employee for purposes of this chapter.”.

7 (B) INCORPORATION TO FURTHER VIOLA-
8 TIONS.—Section 6502 of title 41, United States
9 Code, as amended by subparagraph (A), is fur-
10 ther amended by adding at the end the fol-
11 lowing:

12 “(6) INCORPORATION TO FURTHER VIOLA-
13 TIONS.—The contractor shall not, for the purpose,
14 in whole or in part, of facilitating, or evading detec-
15 tion of, a violation of this chapter, including a viola-
16 tion of paragraph (5)—

17 “(A) incorporate or form, or assist in the
18 incorporation or formation of, a corporation,
19 partnership, limited liability corporation, or
20 other entity; or

21 “(B) pay or collect a fee for use of a for-
22 eign or domestic corporation, partnership, lim-
23 ited liability corporation, or other entity.”.

24 (4) PROTECTION FROM RETALIATION FOR
25 BEING AN EMPLOYEE; RULES REGARDING UNLAW-

1 FUL DISCHARGE OR DISCRIMINATION.—Section 6502
2 of title 41, United States Code, as amended by para-
3 graph (4), is further amended by adding at the end
4 the following:

5 “(7) RETALIATION.—

6 “(A) IN GENERAL.—The contractor shall
7 not discharge or in any other manner discrimi-
8 nate against an individual employed by the con-
9 tractor in the manufacture or furnishing of ma-
10 terials, supplies, articles, or equipment under
11 the contract, because—

12 “(i) such individual has filed any com-
13 plaint or instituted or caused to be insti-
14 tuted any proceeding under or related to
15 this chapter, or has testified or is about to
16 testify in any such proceeding, or has
17 served or is about to serve on an industry
18 committee; or

19 “(ii) such individual—

20 “(I) is required, pursuant to the
21 enactment of the Worker Flexibility
22 and Small Business Protection Act of
23 2020, to be classified as an employee
24 of the contractor for purposes of this

1 chapter and not an independent con-
2 tractor; and

3 “(II) was classified by the con-
4 tractor as an independent contractor
5 prior to the date of enactment of the
6 Worker Flexibility and Small Business
7 Protection Act of 2020.

8 “(B) RULES REGARDING UNLAWFUL DIS-
9 CHARGE OR DISCRIMINATION.—

10 “(i) PRESUMPTION OF RETALIA-
11 TION.—Any action taken against an indi-
12 vidual, employed by the contractor or sub-
13 contractor in the manufacture or fur-
14 nishing of materials, supplies, articles, or
15 equipment under the contract, within 90
16 days of the individual taking any action
17 described in subparagraph (A)(i), including
18 taking any such action with respect to ex-
19 ercising the right of the individual pursu-
20 ant to paragraph (5) to not be
21 misclassified, shall establish a rebuttable
22 presumption that the action is discrimina-
23 tion against the individual in violation of
24 subparagraph (A).

1 “(ii) MOTIVATING FACTOR.—Unlawful
 2 discharge or other discrimination against
 3 an employee under subparagraph (A) is es-
 4 tablished when the complaining party dem-
 5 onstrates that one of the actions or the
 6 classification described in such subpara-
 7 graph was a motivating factor for such dis-
 8 charge or other discrimination, even if
 9 such discharge or other discrimination was
 10 also motivated by other factors.”.

11 (5) MISCLASSIFICATION ENFORCEMENT
 12 THROUGH RECLASSIFICATION ORDERS AND STOP
 13 WORK ORDERS.—Chapter 65 of title 41, United
 14 States Code, is amended by inserting after section
 15 6506 the following:

16 **“§ 6506a. Misclassification enforcement through re-**
 17 **classification orders and stop work or-**
 18 **ders**

19 “(a) RECLASSIFICATION ORDERS.—

20 “(1) IN GENERAL.—If the Secretary deter-
 21 mines, after an investigation under section 6506(e),
 22 that a contractor of a contract to which this chapter
 23 applies has misclassified 1 or more individuals who
 24 are employees of the contractor performing any
 25 labor, with respect to the manufacture or furnishing

1 of materials, supplies, articles, or equipment, under
2 the contract, as not employees of the contractor, in
3 violation of section 6502(5)—

4 “(A) the Secretary shall issue, not later
5 than 24 hours after making such determination,
6 an order against the contractor requiring the
7 contractor to immediately classify the 1 or more
8 individuals as employees of the contractor; and

9 “(B) the contractor shall immediately com-
10 ply with the order issued under subparagraph
11 (A) or shall otherwise be in violation of section
12 6502(5).

13 “(2) ORDERS.—An order issued under para-
14 graph (1) shall—

15 “(A) be effective at the time at which the
16 order is served upon the contractor, which may
17 be accomplished by the posting of a copy of the
18 order in a conspicuous location at the place of
19 business of the contractor; and

20 “(B) remain in effect during any review
21 conducted under paragraph (3) and during any
22 hearing and appeal of such order under para-
23 graph (4).

24 “(3) REVIEW FOR RECONSIDERATION.—

1 “(A) IN GENERAL.—A contractor against
2 whom an order is issued under paragraph (1)
3 may request a review by the Secretary to con-
4 test the order.

5 “(B) REQUESTS.—A request under sub-
6 paragraph (A) shall be made in writing to the
7 Secretary not more than 5 days after the
8 issuance of the order.

9 “(C) REQUIREMENTS FOR REVIEW.—

10 “(i) IN GENERAL.—A review under
11 this paragraph shall—

12 “(I) commence not later than 24
13 hours after a request is made under
14 subparagraph (B); and

15 “(II) conclude not later than 24
16 hours after such commencement.

17 “(ii) DETERMINATION.—Not later
18 than 72 hours after a review concludes
19 under clause (i)(II), the Secretary shall de-
20 termine whether to affirm, modify, or re-
21 voke the contested order.

22 “(4) HEARINGS AND APPEALS.—Any person ag-
23 grieved by a determination of the Secretary under
24 paragraph (3)(C)(ii) may—

1 “(A) request a hearing to appeal such de-
2 termination to an administrative law judge; and

3 “(B) appeal an order of an administrative
4 law judge under subparagraph (A) to a court of
5 jurisdiction as described in section 6507(d).

6 “(5) TEMPORARY OR PERMANENT INJUNCTIVE
7 RELIEF.—The Secretary may petition a court of ju-
8 risdiction as described in section 6507(d) for tem-
9 porary or permanent injunctive relief against any
10 contractor that violates an order issued under para-
11 graph (1). A court shall issue such temporary or
12 permanent injunctive relief if the Secretary has dem-
13 onstrated it is just and proper.

14 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
15 OF MISCLASSIFICATION.—

16 “(A) IN GENERAL.—If contractor with re-
17 spect to whom an order was issued under para-
18 graph (1) successfully proves through a review
19 under paragraph (3), or a subsequent hearing
20 or appeals proceeding under paragraph (4),
21 that the 1 or more individuals who were the
22 subject of the order were not misclassified in
23 violation of section 6502(5)—

24 “(i) the order issued under paragraph
25 (1) shall cease to be in effect;

1 “(ii) the contractor shall not be liable
2 for any applicable back pay, damages, or
3 civil penalties owed by the contractor
4 under this chapter with respect to the
5 misclassification of such 1 or more individ-
6 uals; and

7 “(iii) the Secretary of Labor, adminis-
8 trative law judge, or the court, as applica-
9 ble, shall award (and the Secretary of the
10 Treasury shall, in accordance with sub-
11 paragraph (B), pay) to the contractor rea-
12 sonable fees and expenses of attorneys in
13 the same manner as such fees and ex-
14 penses could be awarded under section
15 2412 of title 28, United States Code, if the
16 contractor was a prevailing party and the
17 review, hearing, or appeals proceeding was
18 a civil action brought by or against the
19 United States.

20 “(B) SOURCE OF FUNDS.—The Secretary
21 of the Treasury shall, upon notification by the
22 Secretary of Labor, administrative law judge, or
23 court, as applicable, pay any fees or expenses
24 awarded under subparagraph (A)(iii) from
25 amounts in the general fund of the Treasury.

1 “(b) STOP WORK ORDERS.—

2 “(1) IN GENERAL.—In any case where a con-
3 tractor does not comply with a reclassification order
4 issued by the Secretary under subsection (a)(1), with
5 respect to 2 or more individuals who are
6 misclassified in violation of section 6502(5), within
7 30 days of being served with the order, the Sec-
8 retary shall issue—

9 “(A) subject to subparagraph (B), an
10 order against the contractor requiring the ces-
11 sation of all business operations of such con-
12 tractor at the location of the violation; or

13 “(B) if an order described in subparagraph
14 (A) has been previously issued against the con-
15 tractor by any Federal, State, or local agency
16 for misclassifying an employee performing any
17 labor, with respect to the manufacture or fur-
18 nishing of materials, supplies, articles, or equip-
19 ment under the contract, as not such an em-
20 ployee in violation of section 6502(5), or an
21 equivalent State or local law as determined by
22 the Secretary, an order against the contractor
23 requiring the cessation of all business oper-
24 ations of such contractor at all business loca-
25 tions of the contractor, including locations other

1 than the location where the misclassification oc-
2 curred.

3 “(2) ORDERS.—

4 “(A) APPLICABILITY.—An order issued
5 under paragraph (1) shall—

6 “(i) be effective at the time at which
7 the order is served upon the contractor,
8 which may be accomplished by the posting
9 of a copy of the order in a conspicuous lo-
10 cation at the place of business of the con-
11 tractor; and

12 “(ii) remain in effect—

13 “(I) during any review conducted
14 under paragraph (3) with respect to
15 such order and during any hearing
16 and appeal of such order under para-
17 graph (4); and

18 “(II) until the Secretary issues a
19 release order under subparagraph (B).

20 “(B) RELEASE ORDERS.—

21 “(i) IN GENERAL.—An order issued
22 under paragraph (1) (that is not revoked
23 by the Secretary or held unlawful or set
24 aside by an administrative law judge or a
25 court) shall remain in effect until the Sec-

1 retary issues another order releasing the
2 order issued under such subsection upon a
3 finding by the Secretary that the con-
4 tractor—

5 “(I) has corrected the violation of
6 section 6502(5) with respect to the 2
7 or more individuals who were
8 misclassified resulting in the order;
9 and

10 “(II) has agreed to a payment
11 schedule for all applicable back pay,
12 damages, and civil penalties owed by
13 the contractor under this chapter.

14 “(ii) REINSTATEMENT.—If, at any
15 time after the Secretary issues a release
16 order under clause (i), the contractor fails
17 to comply with the terms of the payment
18 schedule described in clause (i)(II), the
19 Secretary shall reinstate the order issued
20 under paragraph (1) until the contractor is
21 in compliance with such terms.

22 “(3) REVIEW FOR RECONSIDERATION.—

23 “(A) IN GENERAL.—A contractor against
24 whom an order is issued under paragraph (1)

1 may request a review by the Secretary to con-
2 test the order.

3 “(B) REQUESTS.—A request under sub-
4 paragraph (A) shall be made in writing to the
5 Secretary not more than 5 days after the
6 issuance of the order.

7 “(C) REQUIREMENTS FOR REVIEW.—

8 “(i) IN GENERAL.—A review under
9 this paragraph shall—

10 “(I) commence not later than 24
11 hours after a request is made under
12 subparagraph (B); and

13 “(II) conclude not later than 24
14 hours after such commencement.

15 “(ii) DETERMINATION.—Not later
16 than 72 hours after a review concludes
17 under clause (i)(II), the Secretary shall de-
18 termine whether to affirm, modify, or re-
19 voke the contested order.

20 “(4) HEARINGS AND APPEALS.—Any person ag-
21 grieved by a determination of the Secretary under
22 paragraph (3)(C)(ii) may—

23 “(A) request a hearing to appeal such de-
24 termination to an administrative law judge; and

1 “(B) appeal an order of an administrative
2 law judge under subparagraph (A) to a court of
3 jurisdiction as described in section 6507(d).

4 “(5) TEMPORARY OR PERMANENT INJUNCTIVE
5 RELIEF.—The Secretary may petition a court of ju-
6 risdiction as described in section 6507(d) for tem-
7 porary or permanent injunctive relief against any
8 contractor that violates an order issued under para-
9 graph (1). A court shall issue such temporary or
10 permanent injunctive relief if the Secretary has dem-
11 onstrated it is just and proper.

12 “(6) COMPENSATION FOR LOST WORK.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), a contractor with respect to whom
15 an order is issued under paragraph (1) shall
16 pay each employee described in subparagraph
17 (C) the compensation that would be owed to
18 such employee if the order was not issued.

19 “(B) LIMITATION.—Compensation paid
20 under subparagraph (A) shall be for each day,
21 not to exceed 10 days, for which the employee
22 would be paid if the order described in such
23 paragraph were not in effect.

1 “(C) APPLICABLE EMPLOYEES.—An em-
2 ployee described in this subparagraph is an in-
3 dividual who—

4 “(i) is an employee of a contractor
5 against whom an order is issued under
6 paragraph (1);

7 “(ii) performs labor with respect to
8 the manufacture or furnishing of mate-
9 rials, supplies, articles, or equipment under
10 the contract that is subject to the order;
11 and

12 “(iii) loses compensation due to the
13 work of such employee ceasing as a result
14 of such order.

15 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
16 OF MISCLASSIFICATION.—

17 “(A) IN GENERAL.—In any case where a
18 contractor with respect to whom an order was
19 issued under paragraph (1) successfully proves
20 through a review under paragraph (3) or a sub-
21 sequent hearing or appeals proceeding under
22 paragraph (4) that the 2 or more individuals
23 who were the subject of the order were not
24 misclassified in violation of section 6502(5)—

1 “(i) the order issued under paragraph
2 (1), and any order issued against the con-
3 tractor under subsection (a)(1) with re-
4 spect to such 2 or more individuals, shall
5 cease to be in effect;

6 “(ii) the contractor shall not be liable
7 for any applicable back pay, damages, or
8 civil penalties owed by the contractor
9 under this chapter with respect to the
10 misclassification of such 2 or more individ-
11 uals; and

12 “(iii) the Secretary of Labor, adminis-
13 trative law judge, or court, as applicable,
14 shall award (and the Secretary of the
15 Treasury shall, in accordance with sub-
16 paragraph (B), pay) to the contractor—

17 “(I) an amount equal to any de-
18 monstrable lost net profits resulting
19 from the order, as demonstrated by
20 clear and convincing evidence; and

21 “(II) reasonable fees and ex-
22 penses of attorneys in the same man-
23 ner as such fees and expenses could
24 be awarded under section 2412 of title
25 28, United States Code, if the con-

1 tractor was a prevailing party and the
2 review, hearing, or appeals proceeding
3 was a civil action brought by or
4 against the United States.

5 “(B) SOURCE OF FUNDS.—The Secretary
6 of the Treasury shall, upon notification by the
7 Secretary of Labor, administrative law judge, or
8 court, as applicable, pay any amounts, fees, or
9 expenses awarded under subparagraph (A)(iii)
10 from amounts available in the general fund of
11 the Treasury.”.

12 (6) PENALTIES FOR VIOLATIONS OF NEW RE-
13 QUIREMENTS.—Chapter 65 of title 41, United
14 States Code, as amended by paragraph (5), is fur-
15 ther amended by inserting after section 6506a the
16 following:

17 **“§ 6506b. Penalties; expanded liability**

18 “(a) MISCLASSIFICATION AND INCORPORATION TO
19 FURTHER VIOLATIONS.—

20 “(1) IN GENERAL.—A contractor that violates
21 paragraph (5), (6), or (7) of section 6502 of this
22 title shall be subject to a civil penalty of—

23 “(A) subject to subparagraphs (B) and
24 (C), \$10,000;

1 “(B) if the violation is repeated or willful,
2 \$30,000; or

3 “(C) if the violation is widespread, 1 per-
4 cent of the net profits of the contractor for the
5 year in which the contractor had the highest
6 net profits out of all years in which the con-
7 tractor was in such violation.

8 “(2) REPEATED, OR WILLFUL, AND WIDE-
9 SPREAD VIOLATIONS.—If the violation of paragraph
10 (5), (6), or (7) of section 6502 of this title is re-
11 peated or willful, as described in paragraph (1)(B),
12 and is widespread, as described in paragraph (1)(C),
13 the higher amount of the amounts described in such
14 paragraphs shall apply.

15 “(3) PAYMENT OF DAMAGES.—Any penalty as-
16 sessed under paragraph (1) for a violation of para-
17 graph (5), (6), or (7) of section 6502 of this title
18 shall be paid from an account of the contractor in
19 such violation and not paid, or reimbursed, by any
20 insurance plan that would indemnify the contractor
21 from violations of such paragraph (5), (6), or (7). If
22 a contractor receives a payment from an insurance
23 plan to indemnify the contractor from a violation of
24 such paragraph (5), (6), or (7), the contractor shall
25 transfer the payment to the Secretary, in addition to

1 the amount to be paid from the account of the con-
2 tractor for the penalty.

3 “(b) RECLASSIFICATION ORDERS.—

4 “(1) CIVIL PENALTIES.—A contractor that vio-
5 lates a reclassification order issued under section
6 6506a(a)(1) shall be subject to a civil penalty in an
7 amount not less than \$5,000 per day, with each day
8 constituting a separate offense.

9 “(2) ADDITIONAL DAMAGES.—In any case in
10 which a contractor contests a reclassification order
11 issued under paragraph (1) of section 6506a(a) in a
12 review under paragraph (3) of such section, a hear-
13 ing under paragraph (4)(A) of such section, and a
14 subsequent judicial proceeding under paragraph
15 (4)(B) of such section, and the court in such pro-
16 ceeding rules in favor of the Secretary—

17 “(A) the court shall determine if, during
18 the period between the issuance of such order
19 and the conclusion of the proceeding, the con-
20 tractor violated such order by not classifying
21 the 1 or more individuals as employees during
22 that period; and

23 “(B) if the court determines the contractor
24 so violated the order during that period—

1 “(i) the court shall determine the
2 amount of net profits derived by the con-
3 tractor from the individuals’ labor during
4 that period; and

5 “(ii) the court shall assess damages in
6 the amount determined under clause (i),
7 which damages shall be awarded to such
8 individuals by the court.”.

9 (7) CONFORMING AMENDMENTS.—The table of
10 sections for chapter 65 of title 41, United States
11 Code, is amended—

12 (A) by inserting after the item relating to
13 section 6501 the following:

“Sec. 6501a. Employee test.”;

14 and

15 (B) by inserting after the item relating to
16 section 6506 the following:

“Sec. 6506a. Misclassification enforcement through reclassification orders and
stop work orders.

“Sec. 6506b. Penalties; expanded liability.”.

17 (h) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

18 (1) MISCLASSIFICATION AS A STANDALONE VIO-
19 LATION.—

20 (A) IN GENERAL.—Section 105 of the
21 Family and Medical Leave Act of 1993 (29
22 U.S.C. 2615) is amended by adding at the end
23 the following:

1 “(c) MISCLASSIFICATION.—It shall be unlawful for
2 any employer to misclassify an eligible employee of the em-
3 ployer as not an employee of the employer for purposes
4 of this title.”.

5 (B) INCORPORATION TO FURTHER VIOLA-
6 TIONS.—Section 105 of the Family and Medical
7 Leave Act of 1993 (29 U.S.C. 2615), as
8 amended by subparagraph (A), is further
9 amended by adding at the end the following:

10 “(d) INCORPORATION TO FURTHER VIOLATIONS.—
11 It shall be unlawful for any employer to, for the purpose,
12 in whole or in part, of facilitating, or evading detection
13 of, a violation of this title, including a violation of sub-
14 section (c)—

15 “(1) incorporate or form, or assist in the incor-
16 poration or formation of, a corporation, partnership,
17 limited liability corporation, or other entity; or

18 “(2) pay or collect a fee for use of a foreign or
19 domestic corporation, partnership, limited liability
20 corporation, or other entity.”.

21 (C) PENALTIES.—Section 107(b) of the
22 Family and Medical Leave Act of 1993 (29
23 U.S.C. 2617(b)) is amended by adding at the
24 end the following:

1 “(4) PENALTIES FOR MISCLASSIFICATION AND
2 INCORPORATION TO FURTHER VIOLATIONS.—

3 “(A) IN GENERAL.—Any employer who
4 violates subsection (c) or (d) of section 105
5 shall be subject to a civil penalty of—

6 “(i) subject to clauses (ii) and (iii),
7 \$10,000;

8 “(ii) if the violation is repeated or
9 willful, \$30,000; or

10 “(iii) if the violation is widespread, 1
11 percent of the net profits of the employer
12 for the year in which the employer had the
13 highest net profits out of all years in which
14 the employer was in such violation.

15 “(B) REPEATED, OR WILLFUL, AND WIDE-
16 SPREAD VIOLATIONS.—If a violation of sub-
17 section (c) or (d) of section 105 is repeated or
18 willful, as described in subparagraph (A)(ii),
19 and is widespread, as described in subpara-
20 graph (A)(iii), the higher penalty of the pen-
21 alties described in such subparagraphs shall
22 apply.

23 “(C) PAYMENT OF PENALTIES.—Any pen-
24 alty assessed under subparagraph (A) for a vio-
25 lation of subsection (c) or (d) of section 105

1 shall be paid from an account of the employer
2 in such violation and not paid, or reimbursed,
3 by any insurance plan that would indemnify the
4 employer from violations of such subsection (c)
5 or (d), respectively. If an employer receives a
6 payment from an insurance plan to indemnify
7 the employer from a violation of such sub-
8 section, the employer shall transfer the payment
9 to the Secretary, in addition to the amount to
10 be paid from the account of the employer for
11 the penalty.”.

12 (2) PROTECTION FROM RETALIATION FOR
13 BEING AN EMPLOYEE; PRESUMPTION OF RETALIA-
14 TION.—Section 105(b) of the Family and Medical
15 Leave Act of 1993 (29 U.S.C. 2615(b)) is amend-
16 ed—

17 (A) by redesignating paragraphs (1)
18 through (3) as subparagraphs (A) through (C),
19 respectively, and indenting appropriately;

20 (B) by striking “It shall” and inserting the
21 following:

22 “(1) IN GENERAL.—It shall”;

23 (C) in subparagraph (B), as so redesign-
24 ated, by striking “; or” and inserting a semi-
25 colon;

1 (D) in subparagraph (C), as so redesign-
2 nated, by striking the period at the end and in-
3 serting “; or”; and

4 (E) by adding at the end the following:

5 “(D)(i) is required, pursuant to the enact-
6 ment of the Worker Flexibility and Small Busi-
7 ness Protection Act of 2020, to be classified as
8 an employee of the person for purposes of this
9 title and not an independent contractor; and

10 “(ii) was classified by the person as an
11 independent contractor prior to the date of en-
12 actment of the Worker Flexibility and Small
13 Business Protection Act of 2020.

14 “(2) RULES REGARDING UNLAWFUL DIS-
15 CHARGE OR DISCRIMINATION.—

16 “(A) PRESUMPTION OF RETALIATION.—

17 Any action taken against an individual within
18 90 days of the individual taking any action de-
19 scribed in any of subparagraph (A), (B), or (C)
20 of paragraph (1), including taking any such ac-
21 tion with respect to exercising the right of an
22 employee pursuant to subsection (c) to not be
23 misclassified, shall establish a rebuttable pre-
24 sumption that the action is discrimination

1 against the individual in violation of paragraph
2 (1).

3 “(B) MOTIVATING FACTOR.—Unlawful dis-
4 charge or other discrimination against an em-
5 ployee under paragraph (1) is established when
6 the complaining party demonstrates that one of
7 the actions or the classification described in
8 such paragraph was a motivating factor for
9 such discharge or other discrimination, even if
10 such discharge or other discrimination was also
11 motivated by other factors.”.

12 (3) STATUTORY EMPLOYERS IN HEAVILY
13 MISCLASSIFYING INDUSTRIES.—Section 101(4) of
14 the Family and Medical Leave Act of 1993 (29
15 U.S.C. 2611(4)) is amended by adding at the end
16 the following:

17 “(C) STATUTORY EMPLOYERS IN HEAVILY
18 MISCLASSIFYING INDUSTRIES.—The term ‘em-
19 ployer’ shall include any person who—

20 “(i) is described in subparagraph
21 (A)(i); and

22 “(ii) is described in section 3(d)(4) of
23 the Fair Labor Standards Act of 1938 (29
24 U.S.C. 203(d)(4)).”.

1 (4) MISCLASSIFICATION ENFORCEMENT
2 THROUGH STOP WORK ORDERS.—

3 (A) IN GENERAL.—Title I of the Family
4 and Medical Leave Act of 1993 (29 U.S.C.
5 2611 et seq.) is amended by inserting after sec-
6 tion 107 (29 U.S.C. 2617) the following:

7 **“SEC. 107A. MISCLASSIFICATION ENFORCEMENT THROUGH**
8 **RECLASSIFICATION ORDERS AND STOP**
9 **WORK ORDERS.**

10 “(a) RECLASSIFICATION ORDERS.—

11 “(1) IN GENERAL.—If the Secretary deter-
12 mines, after an investigation under section 106, that
13 an employer has misclassified 1 or more individuals
14 who are eligible employees of the employer as not
15 employees in violation of section 105(c)—

16 “(A) the Secretary shall issue, not later
17 than 24 hours after making such determination,
18 an order against the employer requiring the em-
19 ployer to immediately classify the 1 or more in-
20 dividuals as eligible employees of the employer;
21 and

22 “(B) the employer shall immediately com-
23 ply with the order issued under subparagraph
24 (A) or shall otherwise be in violation of section
25 105(c).

1 “(2) ORDERS.—An order issued under para-
2 graph (1) shall—

3 “(A) be effective at the time at which the
4 order is served upon the employer, which may
5 be accomplished by the posting of a copy of the
6 order in a conspicuous location at the place of
7 business of the employer; and

8 “(B) remain in effect during any review
9 conducted under paragraph (3) with respect to
10 such order and during any hearing and appeal
11 of such order under paragraph (4).

12 “(3) REVIEW FOR RECONSIDERATION.—

13 “(A) IN GENERAL.—An employer against
14 whom an order is issued under paragraph (1)
15 may request a review by the Secretary to con-
16 test the order.

17 “(B) REQUESTS.—A request under sub-
18 paragraph (A) shall be made in writing to the
19 Secretary not more than 5 days after the
20 issuance of the order.

21 “(C) REQUIREMENTS FOR REVIEW.—

22 “(i) IN GENERAL.—A review under
23 this paragraph shall—

1 “(I) commence not later than 24
2 hours after a request is made under
3 subparagraph (B); and

4 “(II) conclude not later than 24
5 hours after such commencement.

6 “(ii) DETERMINATION.—Not later
7 than 72 hours after a review concludes
8 under clause (i)(II), the Secretary shall de-
9 termine whether to affirm, modify, or re-
10 voke the contested order.

11 “(4) HEARINGS AND APPEALS.—Any person ag-
12 grieved by a determination of the Secretary under
13 paragraph (3)(C)(ii) may—

14 “(A) request a hearing to appeal such de-
15 termination to an administrative law judge; and

16 “(B) appeal an order of an administrative
17 law judge under subparagraph (A) to any Fed-
18 eral or State court of competent jurisdiction.

19 “(5) ACTION FOR INJUNCTION.—The Secretary
20 may petition any district court of the United States
21 to restrain a violation of an order issued under para-
22 graph (1). A court shall issue such relief if the Sec-
23 retary has demonstrated it is just and proper.

24 “(6) SUCCESSFULLY DISPROVING OCCURRENCE
25 OF MISCLASSIFICATION.—

1 “(A) IN GENERAL.—If an employer with
2 respect to whom an order was issued under
3 paragraph (1) successfully proves through a re-
4 view under paragraph (3), or a subsequent
5 hearing or appeals proceeding under paragraph
6 (4), that the 1 or more individuals who were
7 the subject of the order were not misclassified
8 in violation of section 105(c)—

9 “(i) the order issued under paragraph
10 (1) shall cease to be in effect;

11 “(ii) the employer shall not be liable
12 for any applicable back pay, damages, or
13 civil penalties owed by the employer under
14 this title with respect to the
15 misclassification of such 2 or more individ-
16 uals; and

17 “(iii) the Secretary of Labor, adminis-
18 trative law judge, or court, as applicable,
19 shall award (and the Secretary of the
20 Treasury shall, in accordance with sub-
21 paragraph (B), pay) to the employer rea-
22 sonable fees and expenses of attorneys in
23 the same manner as such fees and ex-
24 penses could be awarded under section
25 2412 of title 28, United States Code, if the

1 employer was a prevailing party and the
2 review, hearing, or appeals proceeding was
3 a civil action brought by or against the
4 United States.

5 “(B) SOURCE OF FUNDS.—The Secretary
6 of the Treasury shall, upon notification by the
7 Secretary of Labor, administrative law judge, or
8 court, as applicable, pay any fees or expenses
9 awarded under subparagraph (A)(iii) from
10 amounts in the general fund of the Treasury.

11 “(b) STOP WORK ORDERS.—

12 “(1) IN GENERAL.—In any case where an em-
13 ployer does not comply with a reclassification order
14 issued by the Secretary under subsection (a)(1), with
15 respect to 2 or more individuals who are
16 misclassified in violation of section 105(c), within 30
17 days of being served the order, the Secretary shall
18 issue—

19 “(A) subject to subparagraph (B), an
20 order against the employer requiring the ces-
21 sation of all business operations of such em-
22 ployer at the location of the violation; or

23 “(B) if an order described in subparagraph
24 (A) has been previously issued against the em-
25 ployer by any Federal, State, or local agency

1 for misclassifying an eligible employee as not an
2 employee in violation of section 105(c), or an
3 equivalent State or local law as determined by
4 the Secretary, an order against the employer re-
5 quiring the cessation of all business operations
6 of such employer at all business locations of the
7 employer, including locations other than the lo-
8 cation where the misclassification occurred.

9 “(2) ORDERS.—

10 “(A) APPLICABILITY.—An order issued
11 under paragraph (1) shall—

12 “(i) be effective at the time at which
13 the order is served upon the employer,
14 which may be accomplished by the posting
15 of a copy of the order in a conspicuous lo-
16 cation at the place of business of the em-
17 ployer; and

18 “(ii) remain in effect—

19 “(I) during any review conducted
20 under paragraph (3) with respect to
21 such order and during any hearing
22 and appeal of such order under para-
23 graph (4); and

24 “(II) until the Secretary issues a
25 release order under subparagraph (B).

1 “(B) RELEASE ORDERS.—

2 “(i) IN GENERAL.—An order issued
3 under paragraph (1) (that is not revoked
4 by the Secretary or held unlawful or set
5 aside by an administrative law judge or a
6 court) shall remain in effect until the Sec-
7 retary issues another order releasing the
8 order issued under such paragraph upon a
9 finding by the Secretary that the em-
10 ployer—

11 “(I) has corrected the violation of
12 section 105(c) with respect to the 2 or
13 more individuals who were
14 misclassified resulting in the order;
15 and

16 “(II) has agreed to a payment
17 schedule for all applicable back pay,
18 damages, and civil penalties owed by
19 the employer under this title.

20 “(ii) REINSTATEMENT.—If, at any
21 time after the Secretary issues a release
22 order under clause (i), the employer fails
23 to comply with the terms of the payment
24 schedule described in clause (i)(II), the
25 Secretary shall reinstate the order issued

1 under paragraph (1) until the employer is
2 in compliance with such terms.

3 “(3) REVIEW FOR RECONSIDERATION.—

4 “(A) IN GENERAL.—An employer against
5 whom an order is issued under paragraph (1)
6 may request a review by the Secretary to con-
7 test the order.

8 “(B) REQUESTS.—A request under sub-
9 paragraph (A) shall be made in writing to the
10 Secretary not more than 5 days after the
11 issuance of the order.

12 “(C) REQUIREMENTS FOR REVIEW.—

13 “(i) IN GENERAL.—A review under
14 this paragraph shall—

15 “(I) commence not later than 24
16 hours after a request is made under
17 subparagraph (B); and

18 “(II) conclude not later than 24
19 hours after such commencement.

20 “(ii) DETERMINATION.—Not later
21 than 72 hours after a review concludes
22 under clause (i)(II), the Secretary shall de-
23 termine whether to affirm, modify, or re-
24 voke the contested order.

1 “(4) HEARING AND APPEALS.—Any person ag-
2 grieved by a determination of the Secretary under
3 paragraph (3)(C)(ii) may—

4 “(A) request a hearing to appeal such de-
5 termination to an administrative law judge; and

6 “(B) appeal an order of an administrative
7 law judge under subparagraph (A) to any Fed-
8 eral or State court of competent jurisdiction.

9 “(5) ACTION FOR INJUNCTION.—The Secretary
10 may petition any district court of the United States
11 to restrain a violation of an order issued under para-
12 graph (1). A court shall issue such relief if the Sec-
13 retary has demonstrated it is just and proper.

14 “(6) COMPENSATION FOR LOST WORK.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), an employer with respect to whom
17 an order is issued under paragraph (1) shall
18 pay each eligible employee of the employer who
19 loses compensation due to the work of such em-
20 ployee ceasing as a result of such order, the
21 compensation that would be owed to such em-
22 ployee if the order was not issued.

23 “(B) LIMITATION.—Compensation paid
24 under subparagraph (A) shall be for each day,
25 not to exceed 10 days, for which the eligible

1 employee would be paid if the order described
2 in such subparagraph were not in effect.

3 “(7) SUCCESSFULLY DISPROVING OCCURRENCE
4 OF MISCLASSIFICATION.—

5 “(A) IN GENERAL.—In any case where an
6 employer with respect to whom an order was
7 issued under paragraph (1) successfully proves
8 through a review under paragraph (3), or a
9 subsequent hearing or appeals proceeding under
10 paragraph (4), that the 2 or more individuals
11 who were the subject of the order were not
12 misclassified in violation of section 105(c)—

13 “(i) the order issued under paragraph
14 (1), and any order issued against the em-
15 ployer under subsection (a)(1) with respect
16 to such 2 or more individuals, shall cease
17 to be in effect;

18 “(ii) the employer shall not be liable
19 for any applicable back pay, damages, or
20 civil penalties owed by the employer under
21 this title with respect to the
22 misclassification of such 2 or more individ-
23 uals; and

24 “(iii) the Secretary of Labor, adminis-
25 trative law judge, or court, as applicable,

1 shall award (and the Secretary of the
2 Treasury shall, in accordance with sub-
3 paragraph (B), pay) to the employer—

4 “(I) an amount equal to any de-
5 monstrable lost net profits resulting
6 from the order, as demonstrated by
7 clear and convincing evidence; and

8 “(II) reasonable fees and ex-
9 penses of attorneys in the same man-
10 ner as such fees and expenses could
11 be awarded under section 2412 of title
12 28, United States Code, if the em-
13 ployer was a prevailing party and the
14 review, hearing, or appeals proceeding
15 was a civil action brought by or
16 against the United States.

17 “(B) SOURCE OF FUNDS.—The Secretary
18 of the Treasury shall, upon notification by the
19 Secretary of Labor, administrative law judge, or
20 court, as applicable, pay any amounts, fees, or
21 expenses awarded under subparagraph (A)(iii)
22 from amounts available in the general fund of
23 the Treasury.”.

24 (B) PENALTIES.—Section 107(b) of the
25 Family and Medical Leave Act of 1993 (29

1 U.S.C. 2617(b)), as amended by paragraph
2 (1)(C), is further amended by adding at the end
3 the following:

4 “(5) PENALTIES FOR VIOLATIONS OF RECLASSI-
5 FICATION ORDERS.—

6 “(A) CIVIL PENALTIES.—Any employer
7 who violates a reclassification order issued by
8 the Secretary under section 107A(a)(1) shall be
9 subject to a civil penalty of not less than
10 \$5,000 per day, with each day constituting a
11 separate offense.

12 “(B) ADDITIONAL DAMAGES.—In any case
13 in which an employer contests a reclassification
14 order issued under paragraph (1) of section
15 107A(a) in a review under paragraph (3) of
16 such section, a hearing under paragraph (4)(A)
17 of such section, and a subsequent judicial pro-
18 ceeding under paragraph (4)(B) of such section,
19 and the court in such proceeding rules in favor
20 of the Secretary—

21 “(i) the court shall determine if, dur-
22 ing the period between the issuance of such
23 order and the conclusion of the proceeding,
24 the employer violated such order by not

1 classifying the 1 or more individuals as eli-
2 gible employees during that period; and

3 “(ii) if the court determines the em-
4 ployer so violated the order during that pe-
5 riod—

6 “(I) the court shall determine the
7 amount of net profits derived by the
8 employer from the individuals’ labor
9 during that period; and

10 “(II) the court shall assess dam-
11 ages in the amount determined under
12 subclause (I), which damages shall be
13 awarded to such individuals by the
14 court.”.

15 (i) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

16 (1) IN GENERAL.—Section 3306 of the Internal
17 Revenue Code of 1986 is amended by adding at the
18 end the following new subsection:

19 “(w) SPECIAL RULES FOR PURPOSES OF DEFINING
20 EMPLOYER AND EMPLOYEE.—In defining employer and
21 employee for purposes of this chapter, such definitions
22 shall comply with the following:

23 “(1) Paragraph (4) of section 3(d) of the Fair
24 Labor Standards Act of 1938.

1 “(2) Paragraphs (6), (7), (8), and (9) of section
2 3(e) of such Act.”.

3 (2) EFFECTIVE DATE.—The amendments made
4 by paragraph (1) shall apply to services rendered on
5 or after January 1, 2022.

6 **TITLE II—SMALL BUSINESS PRO-**
7 **TECTION THROUGH SHARED**
8 **RESPONSIBILITY FOR WORK-**
9 **ERS’ RIGHTS**

10 **SEC. 201. GENERAL SHARED RESPONSIBILITY FOR WORK-**
11 **ERS’ RIGHTS.**

12 (a) FAIR LABOR STANDARDS ACT OF 1938.—Section
13 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C.
14 203(d)), as amended by section 102(a)(6)(A), is further
15 amended by adding at the end the following:

16 “(5) MULTIPLE EMPLOYERS.—

17 “(A) RULE OF INTERPRETATION.—This
18 paragraph—

19 “(i) is to be read as an addition to,
20 and an augmentation and expansion of, all
21 relevant judicial and agency interpretations
22 in existence on the date of enactment of
23 the Worker Flexibility and Small Business
24 Protection Act of 2020 regarding which
25 persons qualify as employers in relation to

1 a given employee under this Act, including
2 in a multiple employer or joint employment
3 structure;

4 “(ii) shall not be interpreted by any
5 court or agency as a restriction on, or nar-
6 rowing of, any such interpretations; and

7 “(iii) is not a codification of the com-
8 mon law and shall not be interpreted to re-
9 flect, or to be limited or restricted by, com-
10 mon law interpretations regarding whether
11 a person is an employer of a given em-
12 ployee or whether multiple persons are em-
13 ployers of a given employee.

14 “(B) IN GENERAL.—Two or more persons
15 shall be employers with respect to an employee
16 if each such person individually, acting directly
17 or indirectly, is an employer of the employee,
18 based on and in accordance with the meaning
19 given the term ‘employer’ under paragraphs
20 (1), (2), and (3) of this subsection, the defini-
21 tion of ‘employee’ under subsection (e), and the
22 definition of ‘employ’ under subsection (g).

23 “(C) ADDITIONAL MULTIPLE EMPLOYER
24 DETERMINATIONS.—Notwithstanding subpara-
25 graph (B), 2 or more persons shall be employ-

1 ers, acting directly or indirectly, with respect to
2 an employee if—

3 “(i) each such person directly or indi-
4 rectly benefits or seeks to directly or indi-
5 rectly benefit from the performance of
6 labor by an employee; and

7 “(ii)(I) each such person exerts actual
8 direction or control, directly or indirectly,
9 over any material term or condition of em-
10 ployment of the employee, including
11 through an intermediary;

12 “(II) each such person exerts func-
13 tional direction or control, directly or indi-
14 rectly, over any material term or condition
15 of employment of the employee, including
16 through an intermediary;

17 “(III) each such person is legally ca-
18 pable, without regard as to whether such
19 capability is used, of directly or indi-
20 rectly—

21 “(aa) exerting direction or con-
22 trol over any material term or condi-
23 tion of employment of the employee;

24 “(bb) ensuring compliance with
25 the requirements of this Act with re-

1 gard to the employee’s performance of
2 such labor; or

3 “(cc) upholding the rights and
4 protections of this Act with regard to
5 the employee’s performance of such
6 labor; or

7 “(IV) based on an act or omission of
8 the 2 or more persons, the employee rea-
9 sonably believed that such persons were
10 the employee’s employers and the employee
11 did not have actual knowledge that any of
12 the persons were not the employee’s em-
13 ployer under this Act.”.

14 (b) NATIONAL LABOR RELATIONS ACT.—Section
15 2(2) of the National Labor Relations Act (29 U.S.C.
16 152(2)), as amended by section 102(b)(6)(A), is further
17 amended by adding at the end the following:

18 “(C) MULTIPLE EMPLOYERS.—

19 “(i) RULE OF INTERPRETATION.—
20 This subparagraph—

21 “(I) is to be read as an addition
22 to, and an augmentation and expan-
23 sion of, all relevant judicial and agen-
24 cy interpretations in existence on the
25 date of enactment of the Worker

1 Flexibility and Small Business Protec-
2 tion Act of 2020 regarding which per-
3 sons qualify as employers in relation
4 to a given employee under this Act,
5 including in a multiple employer or
6 joint employment structure;

7 “(II) shall not be interpreted by
8 any court or agency as a restriction
9 on, or narrowing of, any such inter-
10 pretations; and

11 “(III) is not a codification of the
12 common law and shall not be inter-
13 preted to reflect, or to be limited or
14 restricted by, common law interpreta-
15 tions regarding whether a person is
16 an employer of a given employee or
17 whether multiple persons are employ-
18 ers of a given employee.

19 “(ii) IN GENERAL.—Two or more per-
20 sons shall be employers with respect to an
21 employee if each such person individually,
22 acting directly or indirectly, is an employer
23 of the employee, based on and in accord-
24 ance with the meanings given the term

1 'employer' under subparagraph (A) and
2 the term 'employee' under paragraph (3).

3 "(iii) ADDITIONAL MULTIPLE EM-
4 PLOYER DETERMINATIONS.—Notwith-
5 standing clause (ii), 2 or more persons
6 shall be employers, acting directly or indi-
7 rectly, with respect to an employee if—

8 "(I) each such person directly or
9 indirectly benefits or seeks to directly
10 or indirectly benefit from the perform-
11 ance of labor by an employee; and

12 "(II)(aa) each such person exerts
13 actual direction or control, directly or
14 indirectly, over any material term or
15 condition of employment of the em-
16 ployee, including through an inter-
17 mediary;

18 "(bb) each such person exerts
19 functional direction or control, directly
20 or indirectly, over any material term
21 or condition of employment of the em-
22 ployee, including through an inter-
23 mediary;

24 "(cc) each such person is legally
25 capable, without regard as to whether

1 such capability is used, of directly or
2 indirectly—

3 “(AA) exerting direction or
4 control over any material term or
5 condition of employment of the
6 employee;

7 “(BB) ensuring compliance
8 with the requirements of this Act
9 with regard to the employee’s
10 performance of such labor; or

11 “(CC) upholding the rights
12 and protections of this Act with
13 regard to the employee’s per-
14 formance of such labor;

15 “(dd) based on an act or omis-
16 sion of the 2 or more persons, the em-
17 ployee reasonably believed that such
18 persons were the employee’s employ-
19 ers and the employee did not have ac-
20 tual knowledge that any of the per-
21 sons were not the employee’s employer
22 under this Act; or

23 “(ee) based on the totality of the
24 circumstances of the industrial reali-
25 ties, including the way separate per-

1 sons have structured their commercial
2 relationship, 2 or more persons wield
3 sufficient influence over any material
4 term or condition of employment of
5 the employee such that meaningful
6 bargaining could not occur in the ab-
7 sence of the 2 or more persons.”.

8 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
9 1970.—Section 3(5) of the Occupational Safety and
10 Health Act of 1970 (29 U.S.C. 652(5)), as amended by
11 section 102(c)(6)(A), is further amended by adding at the
12 end the following:

13 “(C) MULTIPLE EMPLOYERS.—

14 “(i) RULE OF INTERPRETATION.—This
15 subparagraph—

16 “(I) is to be read as an addition to,
17 and an augmentation and expansion of, all
18 relevant judicial and agency interpretations
19 in existence on the date of enactment of
20 the Worker Flexibility and Small Business
21 Protection Act of 2020 regarding which
22 persons qualify as employers in relation to
23 a given employee under this Act, including
24 in a multiple employer or joint employment
25 structure;

1 “(II) shall not be interpreted by any
2 court or agency as a restriction on, or nar-
3 rowing of, any such interpretations; and

4 “(III) is not a codification of the com-
5 mon law and shall not be interpreted to re-
6 flect, or to be limited or restricted by, com-
7 mon law interpretations regarding whether
8 a person is an employer of a given em-
9 ployee or whether multiple persons are em-
10 ployers of a given employee.

11 “(ii) IN GENERAL.—Two or more persons
12 shall be employers with respect to an employee
13 if each such person individually, acting directly
14 or indirectly, is an employer of the employee,
15 based on and in accordance with the meaning
16 given the term ‘employer’ under subparagraph
17 (A) and the definition of ‘employee’ under para-
18 graph (6).

19 “(iii) ADDITIONAL MULTIPLE EMPLOYER
20 DETERMINATIONS.—Notwithstanding clause
21 (ii), 2 or more persons shall be employers, act-
22 ing directly or indirectly, with respect to an em-
23 ployee if—

24 “(I) each such person directly or indi-
25 rectly benefits or seeks to directly or indi-

1 rectly benefit from the performance of
2 labor by an employee; and

3 “(II)(aa) each such person exerts ac-
4 tual direction or control, directly or indi-
5 rectly, over any material term or condition
6 of employment of the employee, including
7 through an intermediary;

8 “(bb) each such person exerts
9 functional direction or control, directly
10 or indirectly, over any material term
11 or condition of employment of the em-
12 ployee, including through an inter-
13 mediary;

14 “(cc) each such person is legally
15 capable, without regard as to whether
16 such capability is used, of directly or
17 indirectly—

18 “(AA) exerting direction or
19 control over any material term or
20 condition of employment of the
21 employee;

22 “(BB) ensuring compliance
23 with the requirements of this Act
24 with regard to the employee’s
25 performance of such labor; or

1 “(CC) upholding the rights
2 and protections of this Act with
3 regard to the employee’s per-
4 formance of such labor; or

5 “(dd) based on an act or omis-
6 sion of the 2 or more persons, the em-
7 ployee reasonably believed that such
8 persons were the employee’s employ-
9 ers and the employee did not have ac-
10 tual knowledge that any of the per-
11 sons were not the employee’s employer
12 under this Act.”.

13 (d) FEDERAL MINE SAFETY AND HEALTH ACT OF
14 1977.—The Federal Mine Safety and Health Act of 1977
15 (30 U.S.C. 801 et seq.), as amended by paragraphs (1)
16 and (2) of section 102(d), is further amended by inserting
17 after section 4A the following:

18 **“SEC. 4B. APPLICABILITY TO MULTIPLE EMPLOYERS AND**
19 **RELATED ENTITIES.**

20 “(a) MULTIPLE EMPLOYERS.—

21 “(1) RULE OF INTERPRETATION.—This sub-
22 section—

23 “(A) is to be read as an addition to, and
24 an augmentation and expansion of, all relevant
25 judicial and agency interpretations in existence

1 on the date of enactment of the Worker Flexi-
2 bility and Small Business Protection Act of
3 2020 regarding which persons qualify as opera-
4 tors in relation to a given miner under this Act,
5 including in a multiple employer or joint em-
6 ployment structure;

7 “(B) shall not be interpreted by any court
8 or agency as a restriction on, or narrowing of,
9 any such interpretations; and

10 “(C) is not a codification of the common
11 law and shall not be interpreted to reflect, or to
12 be limited or restricted by, common law inter-
13 pretations regarding whether a person is an em-
14 ployer of a given miner or whether multiple per-
15 sons are employers with respect to a given
16 miner.

17 “(2) IN GENERAL.—Two or more persons shall
18 be employers with respect to a miner of a coal or
19 other mine if, based on the definitions given the
20 terms ‘operator’ and ‘miner’ in section 3, each such
21 person individually satisfies the definition of an op-
22 erator under this Act in relation to a given miner.

23 “(3) ADDITIONAL MULTIPLE EMPLOYER DE-
24 TERMINATIONS.—Notwithstanding paragraph (2), 2
25 or more persons shall be employers, acting directly

1 or indirectly, with respect to a miner of a coal or
2 other mine if—

3 “(A) one of the persons is an operator of
4 a coal or other mine and the miner is per-
5 forming labor for the operator;

6 “(B) each such person directly or indi-
7 rectly benefits or seeks to directly or indirectly
8 benefit from the performance of labor by the
9 miner; and

10 “(C)(i) each such person exerts actual di-
11 rection or control, directly or indirectly, over
12 any material term or condition of employment
13 of the miner, including through an inter-
14 mediary;

15 “(ii) each such person exerts functional di-
16 rection or control, directly or indirectly, over
17 any material term or condition of employment
18 of the miner, including through an inter-
19 mediary;

20 “(iii) each such person is legally capable,
21 without regard as to whether such capability is
22 used, of directly or indirectly—

23 “(I) exerting direction or control over
24 any material term or condition of employ-
25 ment of the miner;

1 “(II) ensuring compliance with the re-
2 quirements of this Act with regard to the
3 miner’s performance of such labor; or

4 “(III) upholding the rights and pro-
5 tections of this Act with regard to the min-
6 er’s performance of such labor; or

7 “(iv) based on an act or omission of the 2
8 or more persons, the miner reasonably believed
9 that such persons were the miner’s employers
10 and the miner did not have actual knowledge
11 that any of the persons were not the miner’s
12 employer under this Act.”.

13 (e) MIGRANT AND SEASONAL AGRICULTURAL WORK-
14 ER PROTECTION ACT.—Section 5 of the Migrant and Sea-
15 sonal Agricultural Worker Protection Act (29 U.S.C.
16 1803), as redesignated by section 102(e)(1)(A), is further
17 amended by adding at the end the following:

18 “(c) EXPANDED APPLICABILITY.—

19 “(1) RESPONSIBILITY OF AGRICULTURAL EM-
20 PLOYERS AND AGRICULTURAL ASSOCIATIONS FOR
21 WORKERS OF FARM LABOR CONTRACTORS.—In any
22 case where an agricultural employer or an agricul-
23 tural association has entered into an agreement with
24 a farm labor contractor to provide migrant agricul-
25 tural workers or seasonal agricultural workers to the

1 employer or association, both the agricultural em-
2 ployer or association and the farm labor contractor
3 shall be responsible for the rights and protections of
4 this Act with regard to the migrant agricultural
5 worker or seasonal agricultural worker, as the case
6 may be, in any case where the farm labor contractor
7 is responsible for the rights and protections of this
8 Act.

9 “(2) MULTIPLE EMPLOYERS.—

10 “(A) RULE OF INTERPRETATION.—This
11 paragraph—

12 “(i) is to be read as an addition to,
13 and an augmentation and expansion of, all
14 relevant judicial and agency interpretations
15 in existence on the date of enactment of
16 the Worker Flexibility and Small Business
17 Protection Act of 2020 regarding which
18 persons qualify as agricultural employers,
19 agricultural associations, or farm labor
20 contractors in relation to a given employee
21 under this Act, including in a multiple em-
22 ployer or joint employment structure;

23 “(ii) shall not be interpreted by any
24 court or agency as a restriction on, or nar-
25 rowing of, any such interpretations; and

1 “(iii) is not a codification of the com-
2 mon law and shall not be interpreted to re-
3 flect, or to be limited or restricted by, com-
4 mon law interpretations regarding whether
5 a person is an employer of a given migrant
6 agricultural worker or seasonal agricultural
7 worker or whether multiple persons are
8 employers of a given worker.

9 “(B) IN GENERAL.—Two or more persons,
10 acting directly or indirectly, shall be responsible
11 for the rights and protections of this Act with
12 respect to a migrant agricultural worker or sea-
13 sonal agricultural worker, if based on the appli-
14 cation of the definitions of ‘agricultural associa-
15 tion’, ‘agricultural employer’, ‘agricultural em-
16 ployment’, ‘employ’, ‘farm labor contractor’,
17 ‘migrant agricultural worker’, and ‘seasonal ag-
18 ricultural worker’ under section 3, each such
19 person individually satisfies the definition of a
20 farm labor contractor, agricultural employer, or
21 agricultural association under this Act in rela-
22 tion to a given migrant agricultural worker or
23 seasonal agricultural worker.

24 “(C) ADDITIONAL MULTIPLE EMPLOYER
25 DETERMINATIONS.—Notwithstanding subpara-

1 graph (B), 2 or more persons, acting directly or
2 indirectly, shall be responsible for the rights
3 and protections of this Act with respect to a mi-
4 grant agricultural worker or seasonal agricul-
5 tural worker if—

6 “(i) one of the persons is a farm labor
7 contractor, agricultural employer, or agri-
8 cultural association and the migrant agri-
9 cultural worker or seasonal agricultural
10 worker is performing labor for such per-
11 son;

12 “(ii) each such person directly or indi-
13 rectly benefits or seeks to directly or indi-
14 rectly benefit from the performance of
15 labor by the worker; and

16 “(iii)(I) each such person exerts ac-
17 tual direction or control, directly or indi-
18 rectly, over any material term or condition
19 of employment of the worker, including
20 through an intermediary;

21 “(II) each such person exerts func-
22 tional direction or control, directly or indi-
23 rectly, over any material term or condition
24 of employment of the worker, including
25 through an intermediary;

1 “(III) each such person is legally ca-
2 pable, without regard as to whether such
3 capability is used, of directly or indi-
4 rectly—

5 “(aa) exerting direction or con-
6 trol over any material term or condi-
7 tion of employment of the worker;

8 “(bb) ensuring compliance with
9 the requirements of this Act with re-
10 gard to the worker’s performance of
11 such labor; or

12 “(cc) upholding the rights and
13 protections of this Act with regard to
14 the worker’s performance of such
15 labor; or

16 “(IV) based on an act or omission of
17 the 2 or more persons, the worker reason-
18 ably believed that each such person was a
19 farm labor contractor, agricultural em-
20 ployer, or agricultural association that em-
21 ployed the worker and the worker did not
22 have actual knowledge that any of the per-
23 sons were not the worker’s employer for
24 purposes of this this Act.

1 “(3) INTERACTION WITH REGISTRATION REQUIRE-
 2 MENTS.—Notwithstanding paragraph (2), an agricultural
 3 employer or agricultural association shall not be subject
 4 to liability for any violation of title I by a farm labor con-
 5 tractor.”.

6 (f) DAVIS-BACON ACT.—Subchapter IV of chapter 31
 7 of title 40, United States Code, as amended by section
 8 102(f)(5), is further amended by inserting after section
 9 3144a the following:

10 **“§ 3144b. Applicability to multiple employers and re-
 11 lated entities**

12 “(a) MULTIPLE EMPLOYERS.—

13 “(1) RULE OF INTERPRETATION.—This sub-
 14 section—

15 “(A) is to be read as an addition to, and
 16 an augmentation and expansion of, all relevant
 17 judicial and agency interpretations in existence
 18 on the date of enactment of the Worker Flexi-
 19 bility and Small Business Protection Act of
 20 2020 regarding which persons qualify as em-
 21 ployers in relation to a given laborer or me-
 22 chanic under this subchapter, including in a
 23 multiple employer or joint employment struc-
 24 ture;

1 “(B) shall not be interpreted by any court
2 or agency as a restriction on, or narrowing of,
3 any such interpretations; and

4 “(C) is not a codification of the common
5 law and shall not be interpreted to reflect, or to
6 be limited or restricted by, common law inter-
7 pretations regarding whether a person is an em-
8 ployer of a given laborer or mechanic or wheth-
9 er multiple persons are employers of a laborer
10 or mechanic.

11 “(2) ADDITIONAL MULTIPLE EMPLOYER DE-
12 TERMINATIONS.—Two or more persons, acting di-
13 rectly or indirectly, shall be responsible for the
14 rights and protections of this subchapter with re-
15 spect to a laborer or mechanic if—

16 “(A) one of the persons is a contractor, or
17 subcontractor, for a contract to which this sub-
18 chapter applies and the laborer or mechanic is
19 performing labor under such contract;

20 “(B) each such person directly or indi-
21 rectly benefits or seeks to directly or indirectly
22 benefit from the performance of labor by the la-
23 borer or mechanic; and

24 “(C)(i) each such person exerts actual di-
25 rection or control, directly or indirectly, over

1 any material term or condition of employment
2 of the laborer or mechanic, including through
3 an intermediary;

4 “(ii) each such person exerts functional di-
5 rection or control, directly or indirectly, over
6 any material term or condition of employment
7 of the laborer or mechanic, including through
8 an intermediary;

9 “(iii) each such person is legally capable,
10 without regard as to whether such capability is
11 used, of directly or indirectly—

12 “(I) exerting direction or control over
13 any material term or condition of employ-
14 ment of the laborer or mechanic;

15 “(II) ensuring compliance with the re-
16 quirements of this subchapter with regard
17 to the laborer or mechanic’s performance
18 of such labor; or

19 “(III) upholding the rights and pro-
20 tections of this subchapter with regard to
21 the laborer or mechanic’s performance of
22 such labor; or

23 “(iv) based on an act or omission of the 2
24 or more persons, the laborer or mechanic rea-
25 sonably believed that such persons were the la-

1 borer or mechanic’s employers and the laborer
2 or mechanic did not have actual knowledge that
3 any of the persons were not the laborer or me-
4 chanic’s employer under this subchapter.”.

5 (g) MCNAMARA-O’HARA SERVICE CONTRACT ACT.—
6 Chapter 67 of title 41, United States Code, is amended
7 by inserting after section 6701 the following:

8 **“§ 6701a. Applicability to multiple employers and re-**
9 **lated entities**

10 “(a) MULTIPLE EMPLOYERS.—

11 “(1) RULE OF INTERPRETATION.—This sub-
12 section—

13 “(A) is to be read as an addition to, and
14 an augmentation and expansion of, all relevant
15 judicial and agency interpretations in existence
16 on the date of enactment of the Worker Flexi-
17 bility and Small Business Protection Act of
18 2020 regarding which persons qualify as em-
19 ployers in relation to a given service employee
20 under this chapter, including in a multiple em-
21 ployer or joint employment structure;

22 “(B) shall not be interpreted by any court
23 or agency as a restriction on, or narrowing of,
24 any such interpretations; and

1 “(C) is not a codification of the common
2 law and shall not be interpreted to reflect, or to
3 be limited or restricted by, common law inter-
4 pretations regarding whether a person is an em-
5 ployer of a given service employee or whether
6 multiple persons are employers of a service em-
7 ployee.

8 “(2) ADDITIONAL MULTIPLE EMPLOYER DE-
9 TERMINATIONS.—Two or more persons, acting di-
10 rectly or indirectly, shall be responsible for the
11 rights and protections of this chapter with respect to
12 a service employee if—

13 “(A) one of the persons is a contractor, or
14 subcontractor, for a contract to which this
15 chapter applies and the service employee is per-
16 forming labor under such contract;

17 “(B) each such person directly or indi-
18 rectly benefits or seeks to directly or indirectly
19 benefit from the performance of labor by the
20 service employee; and

21 “(C)(i) each such person exerts actual di-
22 rection or control, directly or indirectly, over
23 any material term or condition of employment
24 of the service employee, including through an
25 intermediary;

1 “(ii) each such person exerts functional di-
2 rection or control, directly or indirectly, over
3 any material term or condition of employment
4 of the service employee, including through an
5 intermediary;

6 “(iii) each such person is legally capable,
7 without regard as to whether such capability is
8 used, of directly or indirectly—

9 “(I) exerting direction or control over
10 any material term or condition of employ-
11 ment of the service employee;

12 “(II) ensuring compliance with the re-
13 quirements of this chapter with regard to
14 the service employee’s performance of such
15 labor; or

16 “(III) upholding the rights and pro-
17 tections of this chapter with regard to the
18 service employee’s performance of such
19 labor; or

20 “(iv) based on an act or omission of the 2
21 or more persons, the service employee reason-
22 ably believed that such persons were the service
23 employee’s employers and the service employee
24 did not have actual knowledge that any of the

1 persons were not the service employee’s em-
2 ployer under this chapter.”.

3 (h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—
4 Chapter 65 of title 41, United States Code, is amended
5 by inserting after section 6501a the following:

6 “§ 6501b. **Applicability to multiple employers and re-**
7 **lated entities**

8 “(a) MULTIPLE EMPLOYERS.—

9 “(1) RULE OF INTERPRETATION.—This sub-
10 section—

11 “(A) is to be read as an addition to, and
12 an augmentation and expansion of, all relevant
13 judicial and agency interpretations in existence
14 on the date of enactment of the Worker Flexi-
15 bility and Small Business Protection Act of
16 2020 regarding which persons qualify as em-
17 ployers in relation to a given individual per-
18 forming labor in the manufacture or furnishing
19 of materials, supplies, articles, or equipment
20 under a contract subject to this chapter, includ-
21 ing in a multiple employer or joint employment
22 structure;

23 “(B) shall not be interpreted by any court
24 or agency as a restriction on, or narrowing of,
25 any such interpretations; and

1 “(C) is not a codification of the common
2 law and shall not be interpreted to reflect, or to
3 be limited or restricted by, common law inter-
4 pretations regarding whether a person is an em-
5 ployer of an individual described in subpara-
6 graph (A) or whether multiple persons are em-
7 ployers of such individual.

8 “(2) ADDITIONAL MULTIPLE EMPLOYER DE-
9 TERMINATIONS.—Two or more persons, acting di-
10 rectly or indirectly, shall be responsible for the
11 rights and protections of this chapter with respect to
12 an individual if—

13 “(A) one of the persons is a contractor for
14 a contract to which this chapter applies and the
15 individual is performing labor in the manufac-
16 ture or furnishing of materials, supplies, arti-
17 cles, or equipment under the contract;

18 “(B) each such person directly or indi-
19 rectly benefits or seeks to directly or indirectly
20 benefit from such performance of labor by the
21 individual; and

22 “(C)(i) each such person exerts actual di-
23 rection or control, directly or indirectly, over
24 any material term or condition of employment
25 of the individual;

1 “(ii) each such person exerts functional di-
2 rection or control, directly or indirectly, over
3 any material term or condition of employment
4 of the individual, including through an inter-
5 mediary;

6 “(iii) each such person is legally capable,
7 without regard as to whether such capability is
8 used, of directly or indirectly—

9 “(I) exerting direction or control over
10 any material term or condition of employ-
11 ment of the individual;

12 “(II) ensuring compliance with the re-
13 quirements of this chapter with regard to
14 the individual’s performance of such labor;
15 or

16 “(III) upholding the rights and pro-
17 tections of this chapter with regard to the
18 individual’s performance of such labor; or

19 “(iv) based on an act or omission of the 2
20 or more persons, the individual reasonably be-
21 lieved that such persons were the individual’s
22 employers and the individual did not have ac-
23 tual knowledge that any of the persons were not
24 the individual’s employer under this chapter.”.

1 (i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—
2 Section 101(4) of the Family and Medical Leave Act of
3 1993 (29 U.S.C. 2611(4)), as amended by section
4 102(h)(3), is further amended by adding at the end the
5 following:

6 “(D) MULTIPLE EMPLOYERS.—

7 “(i) RULE OF INTERPRETATION.—

8 This subparagraph—

9 “(I) is to be read as an addition
10 to, and an augmentation and expan-
11 sion of, all relevant judicial and agen-
12 cy interpretations in existence on the
13 date of enactment of the Worker
14 Flexibility and Small Business Protec-
15 tion Act of 2020 regarding which per-
16 sons qualify as employers in relation
17 to a given employee under this Act,
18 including in a multiple employer or
19 joint employment structure;

20 “(II) shall not be interpreted by
21 any court or agency as a restriction
22 on, or narrowing of, any such inter-
23 pretations; and

24 “(III) is not a codification of the
25 common law and shall not be inter-

1 preted to reflect, or to be limited or
2 restricted by, common law interpreta-
3 tions regarding whether a person is
4 an employer of a given employee or
5 whether multiple persons are employ-
6 ers of a given employee.

7 “(ii) IN GENERAL.—Two or more per-
8 sons shall be employers with respect to an
9 employee if each such person individually,
10 acting directly or indirectly, is an em-
11 ployer, based on and in accordance with
12 the meaning given the term ‘employer’
13 under subparagraphs (A) and (B) of this
14 paragraph, and the definitions of ‘employ’
15 and ‘employee’ under paragraph (3).

16 “(iii) ADDITIONAL MULTIPLE EM-
17 PLOYER DETERMINATIONS.—Notwith-
18 standing clause (ii), 2 or more persons
19 shall be employers, acting directly or indi-
20 rectly, with respect to an employee if—

21 “(I) each such person directly or
22 indirectly benefits or seeks to directly
23 or indirectly benefit from the perform-
24 ance of labor by an employee; and

1 “(II)(aa) each such person exerts
2 actual direction or control, directly or
3 indirectly, over any material term or
4 condition of employment of the em-
5 ployee, including through an inter-
6 mediary;

7 “(bb) each such person exerts
8 functional direction or control, directly
9 or indirectly, over any material term
10 or condition of employment of the em-
11 ployee, including through an inter-
12 mediary;

13 “(cc) each such person is legally
14 capable, without regard as to whether
15 such capability is used, of directly or
16 indirectly—

17 “(AA) exerting direction or
18 control over any material term or
19 condition of employment of the
20 employee;

21 “(BB) ensuring compliance
22 with the requirements of this Act
23 with regard to the employee; or

1 “(CC) upholding the rights
2 and protections of this Act with
3 regard to the employee; or

4 “(dd) based on an act or omis-
5 sion of the 2 or more persons, the em-
6 ployee reasonably believed that such
7 persons were the employee’s employ-
8 ers and the employee did not have ac-
9 tual knowledge that any of the per-
10 sons were not the employee’s employer
11 under this Act.”.

12 (j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

13 (1) IN GENERAL.—Section 3306(w) of the In-
14 ternal Revenue Code of 1986, as added by section
15 102(j), is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(3) Paragraph (5) of section 3(d) of such
18 Act.”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall apply to services rendered on
21 or after January 1, 2022.

22 **SEC. 202. MASSIVE CORPORATIONS.**

23 (a) JOINT RESPONSIBILITY FOR ALL CORPORATE
24 FAMILY EMPLOYEES.—

1 (1) FAIR LABOR STANDARDS ACT OF 1938.—
2 Section 3(d) of the Fair Labor Standards Act of
3 1938 (29 U.S.C. 203(d)), as amended by section
4 201(a), is further amended by adding at the end the
5 following:

6 “(6) SUBSIDIARIES.—An employer shall also be
7 responsible for the rights and protections of this Act
8 with regard to an employee of a subsidiary of the
9 employer, or subsidiary under a subsidiary, in any
10 case where the subsidiary is responsible for the
11 rights and protections of this Act for the employee.”.

12 (2) NATIONAL LABOR RELATIONS ACT.—Sec-
13 tion 2(2) of the National Labor Relations Act (29
14 U.S.C. 152(2)), as amended by section 201(b), is
15 further amended by adding at the end the following:

16 “(D) SUBSIDIARIES.—An employer shall also be
17 responsible for the rights and protections of this Act
18 with regard to an employee of a subsidiary of the
19 employer, or subsidiary under a subsidiary, in any
20 case where the subsidiary is responsible for the
21 rights and protections of this Act for the employee.”.

22 (3) OCCUPATIONAL SAFETY AND HEALTH ACT
23 OF 1970.—Section 3(5) of the Occupational Safety
24 and Health Act of 1970 (29 U.S.C. 652(5)), as

1 amended by section 201(c), is further amended by
2 adding at the end the following:

3 “(E) SUBSIDIARIES.—An employer shall
4 also be responsible for the rights and protec-
5 tions of this Act with regard to an employee of
6 a subsidiary of the employer, or subsidiary
7 under a subsidiary, in any case where the sub-
8 sidiary is responsible for the rights and protec-
9 tions of this Act for the employee.”.

10 (4) FEDERAL MINE SAFETY AND HEALTH ACT
11 OF 1977.—Section 4B of the Federal Mine Safety
12 and Health Act of 1977, as added by section 201(d),
13 is further amended by adding at the end the fol-
14 lowing:

15 “(b) SUBSIDIARIES.—An employer shall also be re-
16 sponsible for the rights and protections of this Act with
17 regard to a miner of a coal or other mine who is an em-
18 ployee of a subsidiary of the employer, or subsidiary under
19 a subsidiary, in any case where the subsidiary is respon-
20 sible for the rights and protections of this Act for the
21 miner.”.

22 (5) MIGRANT AND SEASONAL AGRICULTURAL
23 WORKER PROTECTION ACT.—Section 5(c) of the Mi-
24 grant and Seasonal Agricultural Worker Protection
25 Act (29 U.S.C. 1803(c)), as added by section

1 201(e), is further amended by adding at the end the
2 following:

3 “(4) SUBSIDIARIES.—An entity shall also be re-
4 sponsible for the rights and protections of this Act
5 with regard to an individual who is a migrant agri-
6 cultural worker or seasonal agricultural worker em-
7 ployed by a farm labor contractor, agricultural em-
8 ployer, or agricultural association, that is a sub-
9 sidiary of the entity, or a subsidiary under such a
10 subsidiary, in any case where the subsidiary is re-
11 sponsible for the rights and protections of this Act
12 for the migrant agricultural worker or seasonal agri-
13 cultural worker.”.

14 (6) DAVIS-BACON ACT.—Section 3144b of title
15 40, United States Code, as added by section 201(f),
16 is further amended by adding at the end the fol-
17 lowing:

18 “(b) SUBSIDIARIES.—An entity shall also be respon-
19 sible for the rights and protections of this subchapter with
20 regard to a laborer or mechanic employed by a contractor
21 or any subcontractor that is a subsidiary of the entity,
22 or a subsidiary under such a subsidiary, in any case where
23 the subsidiary is responsible for the rights and protections
24 of this subchapter for the laborer or mechanic.”.

1 (7) McNAMARA-O’HARA SERVICE CONTRACT
2 ACT.—Section 6701a of title 41, United States
3 Code, as added by section 201(g), is further amend-
4 ed by adding at the end the following:

5 “(b) SUBSIDIARIES.—An entity shall also be respon-
6 sible for the rights and protections of this chapter with
7 regard to a service employee of a contractor that is a sub-
8 sidiary of the entity, or a subsidiary under such a sub-
9 sidiary, in any case where the subsidiary is responsible for
10 the rights and protections of this chapter for the service
11 employee.”.

12 (8) WALSH-HEALEY PUBLIC CONTRACTS ACT.—
13 Section 6501b of title 41, United States Code, as
14 added by section 201(h), is further amended by add-
15 ing at the end the following:

16 “(b) SUBSIDIARIES.—An entity shall also be respon-
17 sible for the rights and protections of this chapter with
18 regard to an individual employed by a contractor that is
19 a subsidiary of the entity, or a subsidiary under such a
20 subsidiary, in any case where the subsidiary is responsible
21 for the rights and protections of this chapter for the indi-
22 vidual.”.

23 (9) FAMILY AND MEDICAL LEAVE ACT OF
24 1993.—Section 101(4) of the Family and Medical
25 Leave Act of 1993 (20 U.S.C. 2611(4)), as amended

1 by section 201(i), is further amended by adding at
2 the end the following:

3 “(E) SUBSIDIARIES.—An employer shall
4 also be responsible for the rights and protec-
5 tions of this Act with regard to an employee of
6 a subsidiary of the employer, or subsidiary
7 under a subsidiary, in any case where the sub-
8 sidiary is responsible for the rights and protec-
9 tions of this Act for the employee.”.

10 (10) FEDERAL UNEMPLOYMENT TAX ACT
11 (FUTA).—

12 (A) IN GENERAL.—Section 3306(w) of the
13 Internal Revenue Code of 1986, as amended by
14 section 201(j), is amended by adding at the end
15 the following new paragraph:

16 “(4) Paragraph (6) of section 3(d) of such
17 Act.”.

18 (B) EFFECTIVE DATE.—The amendment
19 made by subparagraph (A) shall apply to serv-
20 ices rendered on or after January 1, 2022.

21 (b) JOINT RESPONSIBILITY AS OWNERS, DIRECTORS,
22 OFFICERS, AND MANAGING AGENTS.—

23 (1) FAIR LABOR STANDARDS ACT OF 1938.—
24 Section 16 of the Fair Labor Standards Act of 1938
25 (29 U.S.C. 216), as amended by section

1 102(a)(8)(C), is further amended by adding at the
2 end the following:

3 “(g) OWNERS, DIRECTORS, OFFICERS, AND MAN-
4 AGING AGENTS.—

5 “(1) IN GENERAL.—In any action or proceeding
6 for a violation of this Act, the Secretary or court
7 may also assess a civil penalty for such violation
8 against an owner, director, officer, or managing
9 agent of the employer if the Secretary or court de-
10 termines, based on the particular facts and cir-
11 cumstances presented, that personal liability for the
12 violation is warranted because the owner, director,
13 officer, or managing agent—

14 “(A) directed or committed the violation;

15 “(B) established a policy that led to such
16 a violation; or

17 “(C) had actual or constructive knowledge
18 of the violation, had the authority to prevent
19 the violation, and failed to prevent the violation.

20 “(2) AMOUNT OF CIVIL PENALTY.—The amount
21 of, or range for, a civil penalty for a violation under
22 paragraph (1) shall, in any case where a similar civil
23 penalty against the employer is established by law,
24 be the amount or range for the civil penalty that

1 may be assessed against the employer for such viola-
2 tion.”.

3 (2) NATIONAL LABOR RELATIONS ACT.—Sec-
4 tion 12 of the National Labor Relations Act (29
5 U.S.C. 162), as amended by section 102(b)(7)(B), is
6 further amended by adding at the end the following:

7 “(e) OWNERS, DIRECTORS, OFFICERS, AND MAN-
8 AGING AGENTS.—

9 “(1) IN GENERAL.—In any action or proceeding
10 for a violation of this Act, the Board or court may
11 also assess a civil penalty for such violation against
12 an owner, director, officer, or managing agent of the
13 employer if the Board or court determines, based on
14 the particular facts and circumstances presented,
15 that personal liability for the violation is warranted
16 because the owner, director, officer, or managing
17 agent—

18 “(A) directed or committed the violation;

19 “(B) established a policy that led to such
20 a violation; or

21 “(C) had actual or constructive knowledge
22 of the violation, had the authority to prevent
23 the violation, and failed to prevent the violation.

24 “(2) AMOUNT OF CIVIL PENALTY.—The amount
25 of, or range for, a civil penalty for a violation under

1 paragraph (1) shall, in any case where a similar civil
2 penalty against the employer is established by law,
3 be the amount or range for the civil penalty that
4 may be assessed against the employer for such viola-
5 tion.”.

6 (3) OCCUPATIONAL SAFETY AND HEALTH ACT
7 OF 1970.—Section 17 of the Occupational Safety
8 and Health Act of 1970 (29 U.S.C. 666), as amend-
9 ed by section 102(c)(7)(B), is amended by inserting
10 after subsection (k) the following:

11 “(m) OWNERS, DIRECTORS, OFFICERS, AND MAN-
12 AGING AGENTS.—

13 “(1) IN GENERAL.—In any action or proceeding
14 for a violation of this Act, including any standard,
15 rule, regulation, or order promulgated pursuant to
16 this Act, the Secretary or court may also assess a
17 civil penalty for such violation against an owner, di-
18 rector, officer, or managing agent of the employer if
19 the Secretary or court determines, based on the par-
20 ticular facts and circumstances presented, that per-
21 sonal liability for the violation is warranted because
22 the owner, director, officer, or managing agent—

23 “(A) directed or committed the violation;

24 “(B) established a policy that led to such
25 a violation; or

1 “(C) had actual or constructive knowledge
2 of the violation, had the authority to prevent
3 the violation, and failed to prevent the violation.

4 “(2) AMOUNT OF CIVIL PENALTY.—The amount
5 of, or range for, a civil penalty for a violation under
6 paragraph (1) shall, in any case where a similar civil
7 penalty against the employer is established by law,
8 be the amount or range for the civil penalty that
9 may be assessed against the employer for such viola-
10 tion.”.

11 (4) FEDERAL MINE SAFETY AND HEALTH ACT
12 OF 1977.—

13 (A) IN GENERAL.—Title I of the Federal
14 Mine Safety and Health Act of 1977 (30
15 U.S.C. 820), as amended by section 102(d), is
16 further amended by adding at the end the fol-
17 lowing:

18 **“SEC. 118. LIABILITY OF OWNERS, DIRECTORS, OFFICERS,**
19 **MANAGING AGENTS, AND LARGE SHARE-**
20 **HOLDERS; INDEMNIFICATION.**

21 “(a) OWNERS, DIRECTORS, OFFICERS, AND MAN-
22 AGING AGENTS.—

23 “(1) IN GENERAL.—In any action or proceeding
24 for a violation of this Act including any mandatory
25 health or safety standard, rule, order, or regulation

1 promulgated pursuant to this Act, the Secretary or
2 court may also assess a civil penalty against an
3 owner, director, officer, or managing agent of the
4 operator or employer if the Secretary or court deter-
5 mines, based on the particular facts and cir-
6 cumstances presented, that personal liability for the
7 violation is warranted because the owner, director,
8 officer, or managing agent—

9 “(A) directed or committed the violation;

10 “(B) established a policy that led to such
11 a violation; or

12 “(C) had actual or constructive knowledge
13 of the violation, had the authority to prevent
14 the violation, and failed to prevent the violation.

15 “(2) AMOUNT OF CIVIL PENALTY.—The amount
16 of, or range for, a civil penalty for a violation under
17 paragraph (1) shall, in any case where a similar civil
18 penalty against the employer is established by law,
19 be the amount or range for the civil penalty that
20 may be assessed against the employer for such viola-
21 tion.”.

22 (5) MIGRANT AND SEASONAL AGRICULTURAL
23 WORKER PROTECTION ACT.—Title V of the Migrant
24 and Seasonal Agricultural Worker Protection Act
25 (29 U.S.C. 1851 et seq.), as amended by section

1 102(e)(5)(A), is further amended by inserting after
2 section 504 the following:

3 **“SEC. 505. LIABILITY OF OWNERS, DIRECTORS, OFFICERS,**
4 **MANAGING AGENTS, AND LARGE SHARE-**
5 **HOLDERS; INDEMNIFICATION.**

6 “(a) CIVIL PENALTY LIABILITY FOR OWNERS, DI-
7 RECTORS, OFFICERS, AND MANAGING AGENTS OF FARM
8 LABOR CONTRACTORS, AGRICULTURAL EMPLOYERS, OR
9 AGRICULTURAL ASSOCIATIONS.—

10 “(1) IN GENERAL.—In any action or proceeding
11 for a violation of this Act, including any regulation
12 under this Act, by a farm labor contractor, agricul-
13 tural employer, or agricultural association, the Sec-
14 retary or court may also assess a civil penalty for
15 such violation against an owner, director, officer, or
16 managing agent of the farm labor contractor, agri-
17 cultural employer, or agricultural association if the
18 Secretary or court determines, based on the par-
19 ticular facts and circumstances presented, that per-
20 sonal liability for the violation is warranted because
21 the owner, director, officer, or managing agent—

22 “(A) directed or committed the violation;

23 “(B) established a policy that led to such
24 a violation; or

1 “(C) had actual or constructive knowledge
2 of the violation, had the authority to prevent
3 the violation, and failed to prevent the violation.

4 “(2) AMOUNT OF CIVIL PENALTY.—The amount
5 of, or range for, a civil penalty for a violation under
6 paragraph (1) shall, in any case where a similar civil
7 penalty against the employer is established by law,
8 be the amount or range for the civil penalty that
9 may be assessed against the employer for such viola-
10 tion.”.

11 (6) DAVIS-BACON ACT.—Section 3144e of title
12 40, United States Code, as amended by section
13 102(f)(6), is further amended by adding at the end
14 the following:

15 “(d) CIVIL PENALTY LIABILITY FOR OWNERS, DI-
16 RECTORS, OFFICERS, AND MANAGING AGENTS.—

17 “(1) IN GENERAL.—In any action or proceeding
18 for a violation of this subchapter, the Secretary of
19 Labor or court may also assess a civil penalty for
20 such violation against an owner, director, officer, or
21 managing agent of the contractor or subcontractor if
22 the Secretary or court determines, based on the par-
23 ticular facts and circumstances presented, that per-
24 sonal liability for the violation is warranted because
25 the owner, director, officer, or managing agent—

1 “(A) directed or committed the violation;

2 “(B) established a policy that led to such
3 a violation; or

4 “(C) had actual or constructive knowledge
5 of the violation, had the authority to prevent
6 the violation, and failed to prevent the violation.

7 “(2) AMOUNT OF CIVIL PENALTY.—The amount
8 of, or range for, a civil penalty for a violation under
9 paragraph (1) shall, in any case where a similar civil
10 penalty against the employer is established by law,
11 be the amount or range for the civil penalty that
12 may be assessed against the contractor or subcon-
13 tractor for such violation.”.

14 (7) MCNAMARA-O’HARA SERVICE CONTRACT
15 ACT.—Chapter 67 of title 41, United States Code, is
16 amended—

17 (A) by redesignating sections 6705, 6706,
18 and 6707 as sections 6706, 6708, and 6709, re-
19 spectively; and

20 (B) by inserting after section 6706 the fol-
21 lowing:

1 **“§ 6707. Civil penalties assessed against owners, di-**
2 **rectors, officers, managing agents, and**
3 **large shareholders; indemnification**

4 “(a) CIVIL PENALTY LIABILITY FOR OWNERS, DI-
5 RECTORS, OFFICERS, AND MANAGING AGENTS.—

6 “(1) IN GENERAL.—In any action or proceeding
7 for a violation of this chapter, the Secretary or court
8 may also assess a civil penalty for such violation
9 against an owner, director, officer, or managing
10 agent of the contractor if the Secretary or court de-
11 termines, based on the particular facts and cir-
12 cumstances presented, that personal liability for the
13 violation is warranted because the owner, director,
14 officer, or managing agent—

15 “(A) directed or committed the violation;

16 “(B) established a policy that led to such
17 a violation; or

18 “(C) had actual or constructive knowledge
19 of the violation, had the authority to prevent
20 the violation, and failed to prevent the violation.

21 “(2) AMOUNT OF CIVIL PENALTY.—The amount
22 of, or range for, a civil penalty for a violation under
23 paragraph (1) shall, in any case where a similar civil
24 penalty against the employer is established by law,
25 be the amount or range for the civil penalty that

1 may be assessed against the contractor for such vio-
2 lation.”.

3 (8) WALSH-HEALEY PUBLIC CONTRACTS ACT.—
4 Section 6506b of title 41, United States Code, as
5 amended by section 102(g)(6), is further amended
6 by adding at the end the following:

7 “(d) CIVIL PENALTIES ASSESSED AGAINST OWNERS,
8 DIRECTORS, OFFICERS, MANAGING AGENTS, AND LARGE
9 SHAREHOLDERS.—

10 “(1) IN GENERAL.—In any action or proceeding
11 for a violation of this chapter, the Secretary or court
12 may also assess a civil penalty for such violation
13 against an owner, director, officer, or managing
14 agent of the contractor if the Secretary or court de-
15 termines, based on the particular facts and cir-
16 cumstances presented, that personal liability for the
17 violation is warranted because the owner, director,
18 officer, or managing agent—

19 “(A) directed or committed the violation;

20 “(B) established a policy that led to such
21 a violation; or

22 “(C) had actual or constructive knowledge
23 of the violation, had the authority to prevent
24 the violation, and failed to prevent the violation.

1 “(2) AMOUNT OF CIVIL PENALTY.—The amount
2 of, or range for, a civil penalty for a violation under
3 paragraph (1) shall, in any case where a similar civil
4 penalty against the employer is established by law,
5 be the amount or range for the civil penalty that
6 may be assessed against the contractor for such vio-
7 lation.”.

8 (9) FAMILY AND MEDICAL LEAVE ACT OF
9 1993.—Section 107 of the Family and Medical
10 Leave Act of 1993 (29 U.S.C. 2617) is amended—

11 (A) by redesignating subsections (e) and
12 (f) as subsections (i) and (j), respectively; and

13 (B) by inserting after subsection (d) the
14 following:

15 “(e) OWNERS, DIRECTORS, OFFICERS, AND MAN-
16 AGING AGENTS.—

17 “(1) IN GENERAL.—In any action or proceeding
18 for a violation of this Act, the Secretary or court
19 may also assess a civil penalty for such violation
20 against an owner, director, officer, or managing
21 agent of the employer if the Secretary or court de-
22 termines, based on the particular facts and cir-
23 cumstances presented, that personal liability for the
24 violation is warranted because the owner, director,
25 officer, or managing agent—

1 “(A) directed or committed the violation;

2 “(B) established a policy that led to such
3 a violation; or

4 “(C) had actual or constructive knowledge
5 of the violation, had the authority to prevent
6 the violation, and failed to prevent the violation.

7 “(2) AMOUNT OF CIVIL PENALTY.—The amount
8 of, or range for, a civil penalty for a violation under
9 paragraph (1) shall, in any case where a similar civil
10 penalty against the employer is established by law,
11 be the amount or range for the civil penalty that
12 may be assessed against the employer for such viola-
13 tion.”.

14 (c) RESPONSIBILITIES OF 10 LARGEST SHARE-
15 HOLDERS.—

16 (1) FAIR LABOR STANDARDS ACT OF 1938.—
17 Section 16 of the Fair Labor Standards Act of 1938
18 (20 U.S.C. 216), as amended by subsection (b)(1),
19 is further amended by adding at the end the fol-
20 lowing:

21 “(h) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

22 “(1) IN GENERAL.—In any action or proceeding
23 for a violation of this Act, the 10 largest share-
24 holders of an employer, as determined by the fair
25 value for their beneficial interest as of the beginning

1 of the period during which the violation occurred,
2 shall—

3 “(A) jointly and severally be personally lia-
4 ble for all violations of this Act and for all dam-
5 ages awarded and civil penalties assessed for
6 violations of this Act; and

7 “(B) notwithstanding subparagraph (A),
8 be personally responsible for 10 percent of any
9 damages, civil penalties, or other restitution or
10 fees assessed against the employer for the viola-
11 tions, with the employer responsible for not
12 more than 90 percent.

13 “(2) NO REIMBURSEMENT.—An employer may
14 not refund in any way any amounts paid by a share-
15 holder under paragraph (1).”.

16 (2) NATIONAL LABOR RELATIONS ACT.—Sec-
17 tion 12 of the National Labor Relations Act (29
18 U.S.C. 162), as amended by subsection (b)(2), is
19 further amended by adding at the end the following:

20 “(f) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

21 “(1) IN GENERAL.—In any action or proceeding
22 for a violation of this Act, the 10 largest share-
23 holders of an employer, as determined by the fair
24 value for their beneficial interest as of the beginning

1 of the period during which the violation occurred,
2 shall—

3 “(A) jointly and severally be personally lia-
4 ble for all violations of this Act and for all dam-
5 ages awarded and civil penalties assessed for
6 violations of this Act; and

7 “(B) notwithstanding subparagraph (A),
8 be personally responsible for 10 percent of any
9 damages, civil penalties, or other restitution or
10 fees assessed against the employer for the viola-
11 tions, with the employer responsible for not
12 more than 90 percent.

13 “(2) NO REIMBURSEMENT.—An employer may
14 not refund in any way any amounts paid by a share-
15 holder under paragraph (1).”.

16 (3) OCCUPATIONAL SAFETY AND HEALTH ACT
17 OF 1970.—Section 17 of the Occupational Safety
18 and Health Act of 1970 (29 U.S.C. 666), as amend-
19 ed by subsection (b)(3), is further amended by add-
20 ing at the end the following:

21 “(n) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

22 “(1) IN GENERAL.—In any action or proceeding
23 for a violation of this Act, including any standard,
24 rule, regulation, or order promulgated pursuant to
25 this Act, the 10 largest shareholders of an employer,

1 as determined by the fair value for their beneficial
2 interest as of the beginning of the period during
3 which the violation occurred, shall—

4 “(A) jointly and severally be personally lia-
5 ble for all violations of this Act and for all dam-
6 ages awarded and civil penalties assessed for
7 violations of this Act; and

8 “(B) notwithstanding subparagraph (A),
9 be personally responsible for 10 percent of any
10 damages, civil penalties, or other restitution or
11 fees assessed against the employer for the viola-
12 tions, with the employer responsible for not
13 more than 90 percent.

14 “(2) NO REIMBURSEMENT.—An employer may
15 not refund in any way any amounts paid by a share-
16 holder under paragraph (1).”.

17 (4) FEDERAL MINE SAFETY AND HEALTH ACT
18 OF 1977.—Section 118 of the Federal Mine Safety
19 and Health Act of 1977, as added by subsection
20 (b)(4), is further amended by adding at the end the
21 following:

22 “(b) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

23 “(1) IN GENERAL.—In any action or proceeding
24 for a violation of this Act, including any mandatory
25 health or safety standard, rule, order, or regulation

1 promulgated pursuant to this Act, the 10 largest
2 shareholders of an operator of a coal or other mine,
3 as determined by the fair value for their beneficial
4 interest as of the beginning of the period during
5 which such violation occurred, shall—

6 “(A) jointly and severally be personally lia-
7 ble for all such violations, and for all damages
8 awarded and civil penalties assessed for such
9 violations; and

10 “(B) notwithstanding subparagraph (A),
11 be personally responsible for 10 percent of any
12 damages, civil penalties, or other restitution or
13 fees assessed against the operator for all viola-
14 tions, with the operator responsible for not
15 more than 90 percent.

16 “(2) NO REIMBURSEMENT.—An operator may
17 not refund in any way any amounts paid by a share-
18 holder under paragraph (1).”.

19 (5) MIGRANT AND SEASONAL AGRICULTURAL
20 WORKER PROTECTION ACT.—Section 505 of the Mi-
21 grant and Seasonal Agricultural Worker Protection
22 Act, as added by subsection (b)(5), is further
23 amended by adding at the end the following:

24 “(b) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

1 “(1) IN GENERAL.—In any action or proceeding
2 for a violation of this Act, including any regulation
3 under this Act, the 10 largest shareholders of a farm
4 labor contractor, agricultural employer, or agricul-
5 tural association, as determined by the fair value for
6 their beneficial interest as of the beginning of the
7 period during which such violation occurred, shall—

8 “(A) jointly and severally be personally lia-
9 ble for all violations of this Act, including any
10 regulation under this Act, and for all damages
11 awarded and civil penalties assessed for such
12 violations; and

13 “(B) notwithstanding subparagraph (A),
14 be personally responsible for 10 percent of any
15 damages, civil penalties, or other restitution or
16 fees assessed against the farm labor contractor,
17 agricultural employer, or agricultural associa-
18 tion for all violations, with the farm labor con-
19 tractor, agricultural employer, or agricultural
20 association (respectively) responsible for not
21 more than 90 percent.

22 “(2) NO REIMBURSEMENT.—A farm labor con-
23 tractor, agricultural employer, or agricultural asso-
24 ciation may not refund in any way any amounts paid
25 by a shareholder under paragraph (1).”.

1 (6) DAVIS-BACON ACT.—Section 3144c of title
2 40, United States Code, as amended by subsection
3 (b)(6), is further amended by adding at the end the
4 following:

5 “(e) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

6 “(1) IN GENERAL.—In any action or proceeding
7 for a violation of this subchapter, the 10 largest
8 shareholders of a contractor or subcontractor, as de-
9 termined by the fair value for their beneficial inter-
10 est as of the beginning of the period during which
11 the violation occurred, shall—

12 “(A) jointly and severally be personally lia-
13 ble for all violations of this subchapter, and for
14 all damages awarded and civil penalties as-
15 sessed for violations of this subchapter; and

16 “(B) notwithstanding subparagraph (A),
17 be personally responsible for 10 percent of any
18 damages, civil penalties, or other restitution or
19 fees assessed against the contractor or subcon-
20 tractor for the violations, with the contractor or
21 subcontractor responsible for not more than 90
22 percent.

23 “(2) NO REIMBURSEMENT.—A contractor or
24 subcontractor may not refund in any way any

1 amounts paid by a shareholder under paragraph
2 (1).”.

3 (7) McNAMARA-O’HARA SERVICE CONTRACT
4 ACT.—Section 6707 of title 41, United States Code,
5 as amended by subsection (b)(7)(A), is further
6 amended by adding at the end the following:

7 “(b) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

8 “(1) IN GENERAL.—In any action or proceeding
9 for a violation of this chapter, the 10 largest share-
10 holders of a contractor, as determined by the fair
11 value for their beneficial interest as of the beginning
12 of the period during which the violation occurred,
13 shall—

14 “(A) jointly and severally be personally lia-
15 ble for all violations of this chapter, and for all
16 damages awarded and civil penalties assessed
17 for violations of this chapter; and

18 “(B) notwithstanding subparagraph (A),
19 be personally responsible for 10 percent of any
20 damages, civil penalties, or other restitution or
21 fees assessed against the contractor for the vio-
22 lations, with the contractor responsible for not
23 more than 90 percent.

1 “(2) NO REIMBURSEMENT.—A contractor may
2 not refund in any way any amounts paid by a share-
3 holder under paragraph (1).”.

4 (8) WALSH-HEALEY PUBLIC CONTRACTS ACT.—
5 Section 6506b of title 41, United States Code, as
6 amended by subsection (b)(8), is further amended by
7 adding at the end the following:

8 “(e) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

9 “(1) IN GENERAL.—In any action or proceeding
10 for a violation of this chapter, the 10 largest share-
11 holders of a contractor, as determined by the fair
12 value for their beneficial interest as of the beginning
13 of the period during which the violation occurred,
14 shall—

15 “(A) jointly and severally be personally lia-
16 ble for all violations of this chapter, and for all
17 damages awarded and civil penalties assessed
18 for violations of this chapter; and

19 “(B) notwithstanding subparagraph (A),
20 be personally responsible for 10 percent of any
21 damages, civil penalties, or other restitution or
22 fees assessed against the contractor for the vio-
23 lations, with the contractor responsible for not
24 more than 90 percent.

1 “(2) NO REIMBURSEMENT.—A contractor may
2 not refund in any way any amounts paid by a share-
3 holder under paragraph (1).”.

4 (9) FAMILY AND MEDICAL LEAVE ACT OF
5 1993.—Section 107 of the Family and Medical
6 Leave Act of 1993 (29 U.S.C. 2617), as amended by
7 subsection (b)(9), is further amended by inserting
8 after subsection (e) the following:

9 “(f) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

10 “(1) IN GENERAL.—In any action or proceeding
11 for a violation of this Act, the 10 largest share-
12 holders of an employer, as determined by the fair
13 value for their beneficial interest as of the beginning
14 of the period during which the violation occurred,
15 shall—

16 “(A) jointly and severally be personally lia-
17 ble for all violations of this Act and for all dam-
18 ages awarded and civil penalties assessed for
19 violations of this Act; and

20 “(B) notwithstanding subparagraph (A),
21 be personally responsible for 10 percent of any
22 damages, civil penalties, or other restitution or
23 fees assessed against the employer for the viola-
24 tions, with the employer responsible for not
25 more than 90 percent.

1 “(2) NO REIMBURSEMENT.—An employer may
2 not refund in any way any amounts paid by a share-
3 holder under paragraph (1).”.

4 **SEC. 203. FRANCHISORS.**

5 (a) FAIR LABOR STANDARDS ACT OF 1938.—

6 (1) IN GENERAL.—Section 3(d) of the Fair
7 Labor Standards Act of 1938 (29 U.S.C. 203(d)), as
8 amended by section 202(a)(1), is further amended
9 by adding at the end the following:

10 “(7) FRANCHISORS AND FRANCHISEES.—A
11 franchisor shall also be responsible for the rights
12 and protections of this Act with regard to an em-
13 ployee, in any case where a franchisee of the
14 franchisor is responsible for the rights and protec-
15 tions of this Act for the employee.”.

16 (2) INDEMNIFICATION.—Section 16 of the Fair
17 Labor Standards Act of 1938, as amended by sec-
18 tion 202(c)(1), is further amended by adding at the
19 end the following:

20 “(i) FRANCHISEES AND FRANCHISORS.—

21 “(1) INDEMNIFICATION BY FRANCHISOR.—An
22 employer or entity that is found to be in violation of
23 this Act and is a franchisee shall have the right to
24 indemnification as described in paragraph (2) from
25 the franchisor, in any case where the violation was—

1 “(A) at the behest of the franchisor;

2 “(B) at the direction of the franchisor;

3 “(C) pursuant to any policies, agreements,
4 or contractual obligations emanating from the
5 franchisor; or

6 “(D) due to other direct or indirect control
7 or pressure from the franchisor.

8 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
9 TION.—Indemnification under paragraph (1)—

10 “(A) may be sought by a franchisee in any
11 court of competent jurisdiction; and

12 “(B) shall include a full recovery from the
13 franchisor of all compensatory and punitive
14 damages, civil monetary penalties, attorney’s
15 fees, or other amounts required to be paid by
16 the franchisee as a result of the violation of this
17 Act.

18 “(3) PROHIBITION ON WAIVER.—

19 “(A) IN GENERAL.—A franchisor shall not
20 require or otherwise request a franchisee to
21 waive the franchisee’s right to indemnification
22 under this subsection.

23 “(B) REMEDY AND CIVIL PENALTY.—If a
24 franchisor violates subparagraph (A)—

1 “(i) any indemnification waiver ob-
2 tained shall be null and void; and

3 “(ii) the franchisor shall be subject to
4 a civil penalty of \$100,000.

5 “(4) PROHIBITION ON RETALIATION.—

6 “(A) IN GENERAL.—A franchisor shall not
7 end a franchise agreement with, take adverse
8 action in relation to, or otherwise discriminate
9 against, a franchisee for pursuing indemnifica-
10 tion under this subsection.

11 “(B) REMEDY AND CIVIL PENALTY.—Any
12 franchisor who violates subparagraph (A) shall
13 be subject to a civil penalty of \$100,000.”.

14 (b) NATIONAL LABOR RELATIONS ACT.—

15 (1) IN GENERAL.—Section 2(2) of the National
16 Labor Relations Act (29 U.S.C. 152(2)), as amend-
17 ed by section 202(a)(2), is further amended by add-
18 ing at the end the following:

19 “(E) FRANCHISORS AND FRANCHISEES.—A
20 franchisor shall also be responsible for the rights
21 and protections of this Act with regard to an em-
22 ployee, in any case where a franchisee of the
23 franchisor is responsible for the rights and protec-
24 tions of this Act for the employee.”.

1 (2) INDEMNIFICATION.—Section 12 of the Na-
2 tional Labor Relations Act (29 U.S.C. 162), as
3 amended by section 202(c)(2), is further amended
4 by adding at the end the following:

5 “(g) FRANCHISEES AND FRANCHISORS.—

6 “(1) INDEMNIFICATION BY FRANCHISOR.—An
7 employer or entity that is found to be in violation of
8 this Act and is a franchisee shall have the right to
9 indemnification as described in paragraph (2) from
10 the franchisor, in any case where the violation was—

11 “(A) at the behest of the franchisor;

12 “(B) at the direction of the franchisor;

13 “(C) pursuant to any policies, agreements,
14 or contractual obligations emanating from the
15 franchisor; or

16 “(D) due to other direct or indirect control
17 or pressure from the franchisor.

18 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
19 TION.—Indemnification under paragraph (1)—

20 “(A) may be sought by a franchisee in any
21 court of competent jurisdiction; and

22 “(B) shall include a full recovery from the
23 franchisor of all compensatory and punitive
24 damages, civil monetary penalties, attorney’s
25 fees, or other amounts required to be paid by

1 the franchisee as a result of the violation of this
2 Act.

3 “(3) PROHIBITION ON WAIVER.—

4 “(A) IN GENERAL.—A franchisor shall not
5 require or otherwise request a franchisee to
6 waive the franchisee’s right to indemnification
7 under this subsection.

8 “(B) REMEDY AND CIVIL PENALTY.—If a
9 franchisor violates subparagraph (A)—

10 “(i) any indemnification waiver ob-
11 tained shall be null and void; and

12 “(ii) the franchisor shall be subject to
13 a civil penalty of \$100,000.

14 “(4) PROHIBITION ON RETALIATION.—

15 “(A) IN GENERAL.—A franchisor shall not
16 end a franchise agreement with, take adverse
17 action in relation to, or otherwise discriminate
18 against, a franchisee for pursuing indemnifica-
19 tion under this subsection.

20 “(B) REMEDY AND CIVIL PENALTY.—Any
21 franchisor who violates subparagraph (A) shall
22 be subject to a civil penalty of \$100,000.”.

23 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
24 1970.—

1 (1) IN GENERAL.—Section 3(5) of the Occupa-
2 tional Safety and Health Act of 1970 (29 U.S.C.
3 652(5)), as amended by section 202(a)(3), is further
4 amended by adding at the end the following:

5 “(F) FRANCHISORS AND FRANCHISEES.—

6 A franchisor shall also be responsible for the
7 rights and protections of this Act with regard
8 to an employee, in any case where a franchisee
9 of the franchisor is responsible for the rights
10 and protections of this Act for the employee.”.

11 (2) INDEMNIFICATION.—Section 17 of the Oc-
12 cupational Safety and Health Act of 1970 (29
13 U.S.C. 666), as amended by section 202(c)(3), is
14 further amended by adding at the end the following:

15 “(o) FRANCHISEES AND FRANCHISORS.—

16 “(1) INDEMNIFICATION BY FRANCHISOR.—An
17 employer or other entity that is a franchisee and is
18 found to be in violation of this Act shall have the
19 right to indemnification as described in paragraph
20 (2) from the franchisor, in any case where the viola-
21 tion was—

22 “(A) at the behest of the franchisor;

23 “(B) at the direction of the franchisor;

1 “(C) pursuant to any policies, agreements,
2 or contractual obligations emanating from the
3 franchisor; or

4 “(D) due to other direct or indirect control
5 or pressure from the franchisor.

6 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
7 TION.—Indemnification under paragraph (1)—

8 “(A) may be sought by a franchisee in any
9 court of competent jurisdiction; and

10 “(B) shall include a full recovery from the
11 franchisor of all compensatory and punitive
12 damages, civil monetary penalties, attorney’s
13 fees, or other amounts required to be paid by
14 the franchisee as a result of the violation of this
15 Act.

16 “(3) PROHIBITION ON WAIVER.—

17 “(A) IN GENERAL.—A franchisor shall not
18 require or otherwise request a franchisee to
19 waive the franchisee’s right to indemnification
20 under this subsection.

21 “(B) REMEDY AND CIVIL PENALTY.—If a
22 franchisor violates subparagraph (A)—

23 “(i) any indemnification waiver ob-
24 tained shall be null and void; and

1 “(ii) the franchisor shall be subject to
2 a civil penalty of \$100,000.

3 “(4) PROHIBITION ON RETALIATION.—

4 “(A) IN GENERAL.—A franchisor shall not
5 end a franchise agreement with, take adverse
6 action in relation to, or otherwise discriminate
7 against, a franchisee for pursuing indemnifica-
8 tion under this subsection.

9 “(B) REMEDY AND CIVIL PENALTY.—Any
10 franchisor who violates subparagraph (A) shall
11 be subject to a civil penalty of \$100,000.”.

12 (d) FEDERAL MINE SAFETY AND HEALTH ACT OF
13 1977.—

14 (1) IN GENERAL.—Section 4B of the Federal
15 Mine Safety and Health Act of 1977, as amended by
16 section 202(a)(4), is further amended by adding at
17 the end the following:

18 “(c) FRANCHISORS AND FRANCHISEES.—A
19 franchisor shall also be responsible for the rights and pro-
20 tections of this Act with regard to a miner, in any case
21 where a franchisee of the franchisor is responsible for the
22 rights and protections of this Act for the miner.”.

23 (2) INDEMNIFICATION.—Section 118 of the
24 Federal Mine Safety and Health Act of 1977, as

1 amended by section 202(c)(4), is further amended
2 by adding at the end the following:

3 “(c) FRANCHISEES AND FRANCHISORS.—

4 “(1) INDEMNIFICATION BY FRANCHISOR.—An
5 operator or other entity that is found to be in viola-
6 tion of this Act and is a franchisee shall have the
7 right to indemnification as described in paragraph
8 (2) from the franchisor, in any case where the viola-
9 tion was—

10 “(A) at the behest of the franchisor;

11 “(B) at the direction of the franchisor;

12 “(C) pursuant to any policies, agreements,
13 or contractual obligations emanating from the
14 franchisor; or

15 “(D) due to other direct or indirect control
16 or pressure from the franchisor.

17 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
18 TION.—Indemnification under paragraph (1)—

19 “(A) may be sought by a franchisee in any
20 court of competent jurisdiction; and

21 “(B) shall include a full recovery from the
22 franchisor of all compensatory and punitive
23 damages, civil monetary penalties, attorney’s
24 fees, or other amounts required to be paid by

1 the franchisee as a result of the violation of this
2 Act.

3 “(3) PROHIBITION ON WAIVER.—

4 “(A) IN GENERAL.—A franchisor shall not
5 require or otherwise request a franchisee to
6 waive the franchisee’s right to indemnification
7 under this subsection.

8 “(B) REMEDY AND CIVIL PENALTY.—If a
9 franchisor violates subparagraph (A)—

10 “(i) any indemnification waiver ob-
11 tained shall be null and void; and

12 “(ii) the franchisor shall be subject to
13 a civil penalty of \$100,000.

14 “(4) PROHIBITION ON RETALIATION.—

15 “(A) IN GENERAL.—A franchisor shall not
16 end a franchise agreement with, take adverse
17 action in relation to, or otherwise discriminate
18 against, a franchisee for pursuing indemnifica-
19 tion under this subsection.

20 “(B) REMEDY AND CIVIL PENALTY.—Any
21 franchisor who violates subparagraph (A) shall
22 be subject to a civil penalty of \$100,000.”.

23 (e) MIGRANT AND SEASONAL AGRICULTURAL WORK-
24 ER PROTECTION ACT.—

1 (1) IN GENERAL.—Section 5(c) of the Migrant
2 and Seasonal Agricultural Worker Protection Act, as
3 amended by section 202(a)(5), is further amended
4 by adding at the end the following:

5 “(4) FRANCHISORS AND FRANCHISEES.—A
6 franchisor shall also be responsible for the rights
7 and protections of this Act with regard to an indi-
8 vidual who is a migrant agricultural worker or sea-
9 sonal agricultural worker employed by a farm labor
10 contractor, agricultural employer, or agricultural as-
11 sociation, in any case where a franchisee of the
12 franchisor is responsible for the rights and protec-
13 tions of this Act for the migrant agricultural worker
14 or seasonal agricultural worker.”.

15 (2) INDEMNIFICATION.—Section 505 of the Mi-
16 grant and Seasonal Agricultural Worker Protection
17 Act, as amended by section 202(c)(5), is further
18 amended by adding at the end the following:

19 “(c) FRANCHISEES AND FRANCHISORS.—

20 “(1) INDEMNIFICATION BY FRANCHISOR.—A
21 farm labor contractor, agricultural employer, agricul-
22 tural association, or other entity that is found to be
23 in violation of this Act and is a franchisee shall have
24 the right to indemnification as described in para-

1 graph (2) from the franchisor, in any case where the
2 violation was—

3 “(A) at the behest of the franchisor;

4 “(B) at the direction of the franchisor;

5 “(C) pursuant to any policies, agreements,
6 or contractual obligations emanating from the
7 franchisor; or

8 “(D) due to other direct or indirect control
9 or pressure from the franchisor.

10 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
11 TION.—Indemnification under paragraph (1)—

12 “(A) may be sought by a franchisee in any
13 court of competent jurisdiction; and

14 “(B) shall include a full recovery from the
15 franchisor of all compensatory and punitive
16 damages, civil monetary penalties, attorney’s
17 fees, or other amounts required to be paid by
18 the franchisee as a result of the violation of this
19 Act.

20 “(3) PROHIBITION ON WAIVER.—

21 “(A) IN GENERAL.—A franchisor shall not
22 require or otherwise request a franchisee to
23 waive the franchisee’s right to indemnification
24 under this subsection.

1 “(B) REMEDY AND CIVIL PENALTY.—If a
2 franchisor violates subparagraph (A)—

3 “(i) any indemnification waiver ob-
4 tained shall be null and void; and

5 “(ii) the franchisor shall be subject to
6 a civil penalty of \$100,000.

7 “(4) PROHIBITION ON RETALIATION.—

8 “(A) IN GENERAL.—A franchisor shall not
9 end a franchise agreement with, take adverse
10 action in relation to, or otherwise discriminate
11 against, a franchisee for pursuing indemnifica-
12 tion under this subsection.

13 “(B) REMEDY AND CIVIL PENALTY.—Any
14 franchisor who violates subparagraph (A) shall
15 be subject to a civil penalty of \$100,000.”.

16 (f) DAVIS-BACON ACT.—

17 (1) IN GENERAL.—Section 3144b of title 40,
18 United States Code, as amended by section
19 202(a)(6), is further amended by adding at the end
20 the following:

21 “(c) FRANCHISORS AND FRANCHISEES.—A
22 franchisor shall also be responsible for the rights and pro-
23 tections of this subchapter with regard to a laborer or me-
24 chanic in any case where a franchisee of the franchisor

1 is responsible for the rights and protections of this sub-
2 chapter for the laborer or mechanic.”.

3 (2) INDEMNIFICATION.—Section 3144c of title
4 40, United States Code, as amended by section
5 202(c)(6), is further amended by adding at the end
6 the following:

7 “(f) FRANCHISEES AND FRANCHISORS.—

8 “(1) INDEMNIFICATION BY FRANCHISOR.—A
9 contractor, subcontractor, or other entity that is
10 found to be in violation of this subchapter and is a
11 franchisee shall have the right to indemnification as
12 described in paragraph (2) from the franchisor, in
13 any case where the violation was—

14 “(A) at the behest of the franchisor;

15 “(B) at the direction of the franchisor;

16 “(C) pursuant to any policies, agreements,
17 or contractual obligations emanating from the
18 franchisor; or

19 “(D) due to other direct or indirect control
20 or pressure from the franchisor.

21 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
22 TION.—Indemnification under paragraph (1)—

23 “(A) may be sought by a franchisee in any
24 court of competent jurisdiction; and

1 “(B) shall include a full recovery from the
2 franchisor of all compensatory and punitive
3 damages, civil monetary penalties, attorney’s
4 fees, or other amounts required to be paid by
5 the franchisee as a result of the violation of this
6 subchapter.

7 “(3) PROHIBITION ON WAIVER.—

8 “(A) IN GENERAL.—A franchisor shall not
9 require or otherwise request a franchisee to
10 waive the franchisee’s right to indemnification
11 under this subsection.

12 “(B) REMEDY AND CIVIL PENALTY.—If a
13 franchisor violates subparagraph (A)—

14 “(i) any indemnification waiver ob-
15 tained shall be null and void; and

16 “(ii) the franchisor shall be subject to
17 a civil penalty of \$100,000.

18 “(4) PROHIBITION ON RETALIATION.—

19 “(A) IN GENERAL.—A franchisor shall not
20 end a franchise agreement with, take adverse
21 action in relation to, or otherwise discriminate
22 against, a franchisee for pursuing indemnifica-
23 tion under this subsection.

1 “(B) REMEDY AND CIVIL PENALTY.—Any
2 franchisor who violates subparagraph (A) shall
3 be subject to a civil penalty of \$100,000.”.

4 (g) MCNAMARA-O’HARA SERVICE CONTRACT ACT.—

5 (1) IN GENERAL.—Section 6701a of title 41,
6 United States Code, as amended by section
7 202(a)(7), is further amended by adding at the end
8 the following:

9 “(c) FRANCHISORS AND FRANCHISEES.—A
10 franchisor shall also be responsible for the rights and pro-
11 tections of this chapter with regard to a service employee
12 in any case where a franchisee of the franchisor is respon-
13 sible for the rights and protections of this chapter for the
14 service employee.”.

15 (2) INDEMNIFICATION.—Section 6707 of title
16 41, United States Code, as amended by section
17 202(c)(7), is further amended by adding at the end
18 the following:

19 “(c) FRANCHISEES AND FRANCHISORS.—

20 “(1) INDEMNIFICATION BY FRANCHISOR.—A
21 contractor, subcontractor, or other entity that is
22 found to be in violation of this chapter and is a
23 franchisee shall have the right to indemnification as
24 described in paragraph (2) from the franchisor, in
25 any case where the violation was—

1 “(A) at the behest of the franchisor;

2 “(B) at the direction of the franchisor;

3 “(C) pursuant to any policies, agreements,
4 or contractual obligations emanating from the
5 franchisor; or

6 “(D) due to other direct or indirect control
7 or pressure from the franchisor.

8 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
9 TION.—Indemnification under paragraph (1)—

10 “(A) may be sought by a franchisee in any
11 court of competent jurisdiction; and

12 “(B) shall include a full recovery from the
13 franchisor of all compensatory and punitive
14 damages, civil monetary penalties, attorney’s
15 fees, or other amounts required to be paid by
16 the franchisee as a result of the violation of this
17 chapter.

18 “(3) PROHIBITION ON WAIVER.—

19 “(A) IN GENERAL.—A franchisor shall not
20 require or otherwise request a franchisee to
21 waive the franchisee’s right to indemnification
22 under this subsection.

23 “(B) REMEDY AND CIVIL PENALTY.—If a
24 franchisor violates subparagraph (A)—

1 “(i) any indemnification waiver ob-
2 tained shall be null and void; and

3 “(ii) the franchisor shall be subject to
4 a civil penalty of \$100,000.

5 “(4) PROHIBITION ON RETALIATION.—

6 “(A) IN GENERAL.—A franchisor shall not
7 end a franchise agreement with, take adverse
8 action in relation to, or otherwise discriminate
9 against, a franchisee for pursuing indemnifica-
10 tion under this subsection.

11 “(B) REMEDY AND CIVIL PENALTY.—Any
12 franchisor who violates subparagraph (A) shall
13 be subject to a civil penalty of \$100,000.”.

14 (h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

15 (1) IN GENERAL.—Section 6501b of title 41,
16 United States Code, as amended by section
17 202(a)(8), is further amended by adding at the end
18 the following:

19 “(c) FRANCHISORS AND FRANCHISEES.—A
20 franchisor shall also be responsible for the rights and pro-
21 tections of this chapter with regard to an individual em-
22 ployed under a contract to which this chapter applies, in
23 any case where a franchisee of the franchisor is respon-
24 sible for the rights and protections of this chapter for the
25 individual.”.

1 (2) INDEMNIFICATION.—Section 6506b of title
2 41, United States Code, as amended by section
3 202(c)(8), is further amended by adding at the end
4 the following:

5 “(f) FRANCHISEES AND FRANCHISORS.—

6 “(1) INDEMNIFICATION BY FRANCHISOR.—A
7 contractor, subcontractor, or other entity that is
8 found to be in violation of this chapter and is a
9 franchisee shall have the right to indemnification as
10 described in paragraph (2) from the franchisor, in
11 any case where the violation was—

12 “(A) at the behest of the franchisor;

13 “(B) at the direction of the franchisor;

14 “(C) pursuant to any policies, agreements,
15 or contractual obligations emanating from the
16 franchisor; or

17 “(D) due to other direct or indirect control
18 or pressure from the franchisor.

19 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
20 TION.—Indemnification under paragraph (1)—

21 “(A) may be sought by a franchisee in any
22 court of competent jurisdiction; and

23 “(B) shall include a full recovery from the
24 franchisor of all compensatory and punitive
25 damages, civil monetary penalties, attorney’s

1 fees, or other amounts required to be paid by
2 the franchisee as a result of the violation of this
3 chapter.

4 “(3) PROHIBITION ON WAIVER.—

5 “(A) IN GENERAL.—A franchisor shall not
6 require or otherwise request a franchisee to
7 waive the franchisee’s right to indemnification
8 under this subsection.

9 “(B) REMEDY AND CIVIL PENALTY.—If a
10 franchisor violates subparagraph (A)—

11 “(i) any indemnification waiver ob-
12 tained shall be null and void; and

13 “(ii) the franchisor shall be subject to
14 a civil penalty of \$100,000.

15 “(4) PROHIBITION ON RETALIATION.—

16 “(A) IN GENERAL.—A franchisor shall not
17 end a franchise agreement with, take adverse
18 action in relation to, or otherwise discriminate
19 against, a franchisee for pursuing indemnifica-
20 tion under this subsection.

21 “(B) REMEDY AND CIVIL PENALTY.—Any
22 franchisor who violates subparagraph (A) shall
23 be subject to a civil penalty of \$100,000.”.

24 (i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

1 (1) IN GENERAL.—Section 101(4) of the Fam-
2 ily and Medical Leave Act of 1993 (29 U.S.C.
3 2611(4)), as amended by section 202(a)(9), is fur-
4 ther amended by adding at the end the following:

5 “(F) FRANCHISORS AND FRANCHISEES.—

6 A franchisor shall also be responsible for the
7 rights and protections of this Act with regard
8 to an employee, in any case where a franchisee
9 of the franchisor is responsible for the rights
10 and protections of this Act for the employee.”.

11 (2) INDEMNIFICATION.—Section 107 of the
12 Family and Medical Leave Act of 1993 (29 U.S.C.
13 2617), as amended by section 202(c)(9), is further
14 amended by inserting after subsection (f) the fol-
15 lowing:

16 “(g) FRANCHISEES AND FRANCHISORS.—

17 “(1) INDEMNIFICATION BY FRANCHISOR.—An
18 employer or other entity that is found to be in viola-
19 tion of this Act and is a franchisee shall have the
20 right to indemnification as described in paragraph
21 (2) from the franchisor, in any case where the viola-
22 tion was—

23 “(A) at the behest of the franchisor;

24 “(B) at the direction of the franchisor;

1 “(C) pursuant to any policies, agreements,
2 or contractual obligations emanating from the
3 franchisor; or

4 “(D) due to other direct or indirect control
5 or pressure from the franchisor.

6 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
7 TION.—Indemnification under paragraph (1)—

8 “(A) may be sought by a franchisee in any
9 court of competent jurisdiction; and

10 “(B) shall include a full recovery from the
11 franchisor of all compensatory and punitive
12 damages, civil monetary penalties, attorney’s
13 fees, or other amounts required to be paid by
14 the franchisee as a result of the violation of this
15 Act.

16 “(3) PROHIBITION ON WAIVER.—

17 “(A) IN GENERAL.—A franchisor shall not
18 require or otherwise request a franchisee to
19 waive the franchisee’s right to indemnification
20 under this subsection.

21 “(B) REMEDY AND CIVIL PENALTY.—If a
22 franchisor violates subparagraph (A)—

23 “(i) any indemnification waiver ob-
24 tained shall be null and void; and

1 “(ii) the franchisor shall be subject to
2 a civil penalty of \$100,000.

3 “(4) PROHIBITION ON RETALIATION.—

4 “(A) IN GENERAL.—A franchisor shall not
5 end a franchise agreement with, take adverse
6 action in relation to, or otherwise discriminate
7 against, a franchisee for pursuing indemnifica-
8 tion under this subsection.

9 “(B) REMEDY AND CIVIL PENALTY.—Any
10 franchisor who violates subparagraph (A) shall
11 be subject to a civil penalty of \$100,000.”.

12 (j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

13 (1) IN GENERAL.—Section 3306(w) of the In-
14 ternal Revenue Code of 1986, as amended by section
15 202(a)(10), is amended by adding at the end the fol-
16 lowing new paragraphs:

17 “(5) Paragraph (7) of section 3(d) of such Act.

18 “(6) Subsection (i) of section 16 of such Act.”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall apply to services rendered on
21 or after January 1, 2022.

22 **SEC. 204. TEMPORARY STAFFING COMPANIES.**

23 (a) RESPONSIBILITIES OF EMPLOYERS UTILIZING
24 EMPLOYEES OF STAFFING COMPANIES AND OTHER COV-
25 ERED EMPLOYEES.—

1 (1) FAIR LABOR STANDARDS ACT OF 1938.—
2 Section 3(d) of the Fair Labor Standards Act of
3 1938 (29 U.S.C. 203(d)), as amended by section
4 203(a)(1), is further amended by adding at the end
5 the following:

6 “(8) EMPLOYERS OF EMPLOYEES OF STAFFING
7 COMPANIES AND OTHER COVERED EMPLOYEES.—An
8 employer shall also be responsible for the rights and
9 protections of this Act with regard to one or more
10 covered employees (as defined in section 6(c)(1))
11 provided by another employer to perform labor for
12 the employer.”.

13 (2) NATIONAL LABOR RELATIONS ACT.—Sec-
14 tion 2(2) of the National Labor Relations Act (29
15 U.S.C. 152(2)), as amended by section 203(b)(1), is
16 further amended by adding at the end the following:

17 “(F) EMPLOYERS OF EMPLOYEES OF STAFFING
18 COMPANIES AND OTHER COVERED EMPLOYEES.—An
19 employer shall also be responsible for the rights and
20 protections of this Act with regard to one or more
21 covered employees (as defined in section 6(c)(1) of
22 the Fair Labor Standards Act of 1938 (29 U.S.C.
23 206(c)(1))) provided by another employer to perform
24 labor for the employer.”.

1 (3) OCCUPATIONAL SAFETY AND HEALTH ACT
2 OF 1970.—Section 3(5) of the Occupational Safety
3 and Health Act of 1970 (29 U.S.C. 652(5)), as
4 amended by section 203(c), is further amended by
5 adding at the end the following:

6 “(G) EMPLOYERS OF EMPLOYEES OF
7 STAFFING COMPANIES AND OTHER COVERED
8 EMPLOYEES.—An employer shall also be re-
9 sponsible for the rights and protections of this
10 Act with regard to one or more covered employ-
11 ees (as defined in section 6(c)(1) of the Fair
12 Labor Standards Act (29 U.S.C. 206(c)(1)))
13 provided by another employer to perform labor
14 for the employer.”.

15 (4) FEDERAL MINE SAFETY AND HEALTH ACT
16 OF 1977.—Section 4B of the Federal Mine Safety
17 and Health Act of 1977, as amended by section
18 203(d)(1), is further amended by adding at the end
19 the following:

20 “(d) EMPLOYERS OF EMPLOYEES OF STAFFING
21 COMPANIES AND OTHER COVERED EMPLOYEES.—An op-
22 erator of a coal or other mine shall also be responsible
23 for the rights and protections of this Act with regard to
24 one or more covered employees (as defined in section
25 6(c)(1) of the Fair Labor Standards Act (29 U.S.C.

1 206(c)(1))) provided by another employer to perform labor
2 as miners for the operator.”.

3 (5) MIGRANT AND SEASONAL AGRICULTURAL
4 WORKER PROTECTION ACT.—Section 5(e) of the Mi-
5 grant and Seasonal Agricultural Worker Protection
6 Act, as amended by section 203(e), is further
7 amended by adding at the end the following:

8 “(5) EMPLOYERS OF EMPLOYEES OF STAFFING
9 COMPANIES AND OTHER COVERED EMPLOYEES.—A
10 farm labor contractor, agricultural employer, or agri-
11 cultural association shall also be responsible for the
12 rights and protections of this Act with regard to one
13 or more migrant agricultural workers or seasonal agri-
14 cultural workers who—

15 “(A) are covered employees (as defined in
16 section 6(c)(1) of the Fair Labor Standards Act
17 of 1938); and

18 “(B) are provided by another employer to
19 perform labor for the farm labor contractor, agri-
20 cultural employer, or agricultural associa-
21 tion.”.

22 (6) DAVIS-BACON ACT.—Section 3144b of title
23 40, United States Code, as amended by section
24 203(f)(1), is further amended by adding at the end
25 the following:

1 “(d) EMPLOYERS OF EMPLOYEES OF STAFFING
2 COMPANIES AND OTHER COVERED EMPLOYEES.—A con-
3 tractor or any subcontractor shall also be responsible for
4 the rights and protections of this subchapter with regard
5 to one or more laborers or mechanics who are covered em-
6 ployees (as defined in section 6(c)(1) of the Fair Labor
7 Standards Act (29 U.S.C. 206(c)(1))) provided by another
8 employer to perform labor for the contractor or subcon-
9 tractor under a contract to which this subchapter ap-
10 plies.”.

11 (7) McNAMARA-O’HARA SERVICE CONTRACT
12 ACT.—Section 6701a of title 41, United States
13 Code, as amended by section 203(g), is further
14 amended by adding at the end the following:

15 “(d) EMPLOYERS OF EMPLOYEES OF STAFFING
16 COMPANIES AND OTHER COVERED EMPLOYEES.—A con-
17 tractor shall also be responsible for the rights and protec-
18 tions of this chapter with regard to one or more service
19 employees who are covered employees (as defined in sec-
20 tion 6(c)(1) of the Fair Labor Standards Act (29 U.S.C.
21 206(c)(1))) provided by another employer to perform labor
22 for the contractor under a contract to which this chapter
23 applies.”.

24 (8) WALSH-HEALEY PUBLIC CONTRACTS ACT.—
25 Section 6501b of title 41, United States Code, as

1 amended by section 203(h), is further amended by
2 adding at the end the following:

3 “(d) EMPLOYERS OF EMPLOYEES OF STAFFING
4 COMPANIES AND OTHER COVERED EMPLOYEES.—A con-
5 tractor shall also be responsible for the rights and protec-
6 tions of this chapter with regard to one or more individ-
7 uals who are covered employees (as defined in section
8 6(c)(1) of the Fair Labor Standards Act (29 U.S.C.
9 206(c)(1))) provided by another employer to perform labor
10 in the manufacture or furnishing of materials, supplies,
11 articles, or equipment for the contractor under a contract
12 to which this chapter applies.”.

13 (9) FAMILY AND MEDICAL LEAVE ACT OF
14 1993.—Section 101(4) of the Family and Medical
15 Leave Act of 1993 (29 U.S.C. 2611(4)), as amended
16 by section 203(i), is further amended by adding at
17 the end the following:

18 “(G) EMPLOYERS OF EMPLOYEES OF
19 STAFFING COMPANIES AND OTHER COVERED
20 EMPLOYEES.—An employer shall also be re-
21 sponsible for the rights and protections of this
22 Act with regard to one or more covered employ-
23 ees (as defined in section 6(c)(1) of the Fair
24 Labor Standards Act of 1938 (29 U.S.C.

1 206(c)(1))) provided by another employer to
2 perform labor for the employer.”.

3 (10) FEDERAL UNEMPLOYMENT TAX ACT
4 (FUTA).—

5 (A) IN GENERAL.—Section 3306(w) of the
6 Internal Revenue Code of 1986, as amended by
7 section 203(j), is amended by adding at the end
8 the following new paragraph:

9 “(7) Paragraph (8) of section 3(d) of such
10 Act.”.

11 (B) EFFECTIVE DATE.—The amendment
12 made by subparagraph (A) shall apply to serv-
13 ices rendered on or after January 1, 2022.

14 (b) EQUITABLE TREATMENT FOR EMPLOYEES OF
15 STAFFING COMPANIES AND OTHER COVERED EMPLOY-
16 EES.—

17 (1) IN GENERAL.—Section 6 of the Fair Labor
18 Standards Act of 1938 (29 U.S.C. 206) is amended
19 by inserting after subsection (b) the following:

20 “(c) EMPLOYEES OF STAFFING COMPANIES AND
21 OTHER COVERED EMPLOYEES.—

22 “(1) DEFINITION OF COVERED EMPLOYEE.—In
23 this subsection, the term ‘covered employee’ means
24 an employee provided by another employer to per-

1 form labor for the employer, including a temporary
2 or short-term contract employee.

3 “(2) WAGES FOR COVERED EMPLOYEES.—

4 “(A) IN GENERAL.—No employer shall pay
5 wages to a covered employee provided by an-
6 other employer to perform labor for the em-
7 ployer, or allow a covered employee provided by
8 another employer to perform labor for the em-
9 ployer at wages, at a rate less than the pre-
10 vailing rate at which the employer for whom the
11 labor is performed pays wages to direct employ-
12 ees for similar work on jobs the performance of
13 which requires similar skill, effort, and respon-
14 sibility, and which are performed under similar
15 working conditions, except as provided in sub-
16 paragraph (B).

17 “(B) EXCEPTIONS.—An employer may pay
18 a covered employee a wage at a rate less than
19 the wage rate required under subparagraph (A)
20 if—

21 “(i) such payment is made pursuant

22 to—

23 “(I) a seniority system;

24 “(II) a merit system;

1 “(III) a system that measures
2 rate of pay by quantity or quality of
3 production; or

4 “(IV) a differential based on any
5 lawful factor other than employment
6 status; and

7 “(ii) the rate is not less than 80 per-
8 cent of the prevailing rate at which the
9 employer for whom the labor is performed
10 pays wages to direct employees for similar
11 work on jobs the performance of which re-
12 quires similar skill, effort, and responsi-
13 bility, and which are performed under
14 similar working conditions.

15 “(3) INCREASED WAGES FOR COVERED EM-
16 PLOYEES.—

17 “(A) IN GENERAL.—In the case of a cov-
18 ered employee who is not provided with the
19 same benefits as the employer for whom the
20 labor is being performed provides to its direct
21 employees, the employer for whom the labor is
22 being performed shall pay the covered employee,
23 or require the employer providing the covered
24 employee to pay the covered employee, a wage

1 rate that, subject to subparagraph (B), is not
2 less than the sum of—

3 “(i) the wage rate required under
4 paragraph (2); and

5 “(ii) the lesser of—

6 “(I) an amount equal to 25 per-
7 cent of the wage rate required under
8 paragraph (2); or

9 “(II) the amount the employee
10 would have to pay to secure equivalent
11 benefits without an employer’s assist-
12 ance.

13 “(B) MINIMUM.—In no case shall the min-
14 imum wage rate required under subparagraph
15 (A) be less than 125 percent of the minimum
16 wage rate required under subsection (a)(1).”

17 (2) LIMITING EXEMPTIONS.—Section 13 of the
18 Fair Labor Standards Act of 1938 (29 U.S.C. 213)
19 is amended—

20 (A) in the matter preceding paragraph (1)
21 of subsection (a), by inserting “and section
22 6(c)” after “this subsection”;

23 (B) in subsection (d), by inserting “(except
24 for subsection (c) of such section)” after “sec-
25 tions 6”; and

1 (C) in subsection (f), by inserting “(except
2 for subsection (c) of such section)” after “sec-
3 tions 6”.

4 (c) NEW PROTECTIONS FOR EMPLOYEES OF STAFF-
5 ING COMPANIES AND OTHER COVERED EMPLOYEES.—

6 (1) IN GENERAL.—Section 9 of the Fair Labor
7 Standards Act of 1938, as added by section
8 102(a)(6)(C)(i), is further amended by adding at the
9 end the following:

10 “(b) PROTECTIONS FOR EMPLOYEES OF STAFFING
11 COMPANIES AND OTHER COVERED EMPLOYEES.—

12 “(1) DEFINITION OF COVERED EMPLOYEE.—In
13 this subsection, the term ‘covered employee’ has the
14 meaning given the term in section 6(c)(1).

15 “(2) REGISTRATION OF PROVIDING EMPLOY-
16 ERS.—

17 “(A) IN GENERAL.—Each employer that
18 provides covered employees to perform labor for
19 another employer shall register with the Sec-
20 retary each year, in accordance with this sub-
21 section and regulations of the Secretary. Each
22 such providing employer shall include with the
23 registration—

1 “(i) proof of an employer account
2 number for the purposes of the payment of
3 unemployment insurance contributions;

4 “(ii) proof of valid workers’ compensa-
5 tion insurance in effect at the time of reg-
6 istration and covering all covered employ-
7 ees performing labor for the employer; and

8 “(iii) a report containing the informa-
9 tion described in paragraph (7)(A)(ix), in
10 the aggregate for all covered employees of
11 the providing employer that performed
12 labor for another employer in the pre-
13 ceding calendar year and disaggregated by
14 branch office.

15 “(B) REGISTRATION FEE.—The Secretary
16 shall assess each employer that registers under
17 subparagraph (A) a nonrefundable registration
18 fee equal to the sum of—

19 “(i) \$1,000 per year; and

20 “(ii) an additional \$250 for each
21 branch office of the employer.

22 “(C) IMMEDIATE REPORTING OF WORK-
23 ERS’ COMPENSATION LAPSE.—In any case
24 where the workers’ compensation insurance of

1 an employer required to register under subpara-
2 graph (A) lapses—

3 “(i) the employer shall report the
4 lapse to the Secretary; and

5 “(ii) the Secretary shall suspend the
6 employer’s registration until the employer’s
7 workers’ compensation insurance is rein-
8 stated.

9 “(D) AUTHORITY TO DENY, SUSPEND, OR
10 REVOKE REGISTRATION.—

11 “(i) IN GENERAL.—The Secretary
12 shall have the authority to deny, suspend,
13 or revoke the registration of an employer
14 under subparagraph (A) if warranted by
15 violations of this subsection or of any other
16 Federal, State, or local worker protection
17 law.

18 “(ii) DUTY TO NOTIFY.—An employer
19 whose registration under subparagraph (A)
20 is denied, suspended, or revoked shall no-
21 tify, both by telephone and in writing, each
22 of its covered employees and each of the
23 employers for whom its covered employees
24 perform labor within 24 hours of any de-

1 nial, suspension, or revocation of its reg-
2 istration.

3 “(E) INELIGIBILITY.—An employer re-
4 questing to register with the Secretary under
5 subparagraph (A) is ineligible if, within the 5
6 years immediately preceding the date of the em-
7 ployer’s registration request, the employer or
8 any of its officers, directors, partners, or man-
9 agers, or any owner of 25 percent or greater
10 beneficial interest, has been involved, as officer,
11 director, partner, manager, or owner, in an-
12 other employer whose registration under such
13 subparagraph was revoked or suspended with-
14 out being reinstated.

15 “(F) WEBSITE.—The Secretary shall cre-
16 ate and maintain a public website that in-
17 cludes—

18 “(i) a list of all employers whose reg-
19 istration under subparagraph (A) is in
20 good standing;

21 “(ii) a list of all employers whose reg-
22 istration under subparagraph (A) has been
23 suspended, including the reason for the
24 suspension, the date the suspension was

1 initiated, and, if known, the date the sus-
2 pension is to be lifted; and

3 “(iii) a list of all employers whose reg-
4 istration under subparagraph (A) has been
5 revoked, including the reason for the rev-
6 ocation and the date the registration was
7 revoked.

8 “(3) EMPLOYERS FOR WHOM EMPLOYEES PER-
9 FORM LABOR.—

10 “(A) IN GENERAL.—No employer for
11 whom a covered employee is provided by an-
12 other employer to perform labor may enter into
13 a contract or any other agreement for such
14 labor with any employer not registered under
15 paragraph (2)(A).

16 “(B) VERIFICATION.—

17 “(i) REQUIREMENTS FOR RECEIVING
18 EMPLOYERS.—An employer for whom a
19 covered employee is provided by another
20 employer to perform labor shall verify the
21 providing employer’s status with the Sec-
22 retary of Labor before entering into a con-
23 tract or other agreement with the pro-
24 viding employer, and at annual intervals
25 thereafter.

1 “(ii) REQUIREMENTS FOR PROVIDING
2 EMPLOYERS.—An employer that provides a
3 covered employee to another employer to
4 perform labor shall provide any employer
5 for whom its covered employee performs
6 labor with proof of valid registration under
7 paragraph (2)(A) before entering into any
8 contract or other agreement with the re-
9 ceiving employer.

10 “(C) LIST OF REGISTERED EMPLOYERS.—
11 Upon request, the Secretary shall provide to
12 any requesting party a list of employers reg-
13 istered under paragraph (2)(A) and an em-
14 ployer may rely in good faith on the informa-
15 tion on such list provided by the Secretary.

16 “(4) NO WORK RESTRICTIONS.—No employer
17 that provides a covered employee to perform labor
18 for another employer shall—

19 “(A) restrict the right of a covered em-
20 ployee to accept direct employment with an em-
21 ployer for whom the covered employee has per-
22 formed labor;

23 “(B) restrict the right of an employer for
24 whom the covered employee has performed
25 labor to offer such direct employment; or

1 “(C) charge any fee, either to the covered
2 employee or an employer for whom the covered
3 employee has performed labor, for the covered
4 employee converting to direct employment with
5 such employer.

6 “(5) PROHIBITION ON PERMATEMP WORK-
7 ERS.—

8 “(A) CONVERSION OF TEMPORARY WORK-
9 ERS TO DIRECT EMPLOYEES.—After a covered
10 employee performs labor for an employer for
11 1,040 total hours during any 12-month period,
12 such employer shall convert the covered em-
13 ployee to a direct employee of such employer.

14 “(B) PROHIBITIONS ON EVASION.—

15 “(i) NO MULTIPLE CONTRACTS.—An
16 employer shall not terminate or end the
17 agreement under which a covered employee
18 is providing labor to the employer and then
19 reengage such covered employee at a later
20 date in order to evade the requirements of
21 this subsection.

22 “(ii) NO REPLACEMENT EMPLOY-
23 EES.—An employer shall not terminate or
24 end the agreement under which a covered
25 employee is providing labor to the employer

1 and then engage a different covered em-
2 ployee in order to evade the requirements
3 of this subsection.

4 “(6) EMPLOYMENT NOTICES.—

5 “(A) IN GENERAL.—Whenever an em-
6 ployer agrees to provide 1 or more covered em-
7 ployees to perform labor for another employer,
8 the providing employer shall provide to each
9 covered employee and to the other employer, at
10 the time of dispatch, a statement containing the
11 following information on a form approved by
12 the Secretary:

13 “(i) The name of the covered em-
14 ployee.

15 “(ii) The name, address, and phone
16 number of the providing employer that has
17 agreed to the dispatch.

18 “(iii) The name, address, and phone
19 number of the employer for whom the cov-
20 ered employee will perform labor.

21 “(iv) The name, address, and phone
22 number of the providing employer’s work-
23 ers’ compensation insurance carrier.

1 “(v) The address and phone number
2 of the nearest regional office of the De-
3 partment of Labor.

4 “(vi) The name of the position, the
5 nature of the work to be performed, and
6 the types of equipment, clothing, and
7 training that are required for the task.

8 “(vii) The wages offered, including
9 the hourly rate of pay and the hourly rate
10 of overtime pay, should overtime hours be
11 performed.

12 “(viii) The designated pay day.

13 “(ix) The anticipated daily start times
14 and daily end times.

15 “(x) The anticipated duration of the
16 dispatch.

17 “(xi) The terms of transportation.

18 “(xii) Whether meals or equipment, or
19 both, are provided and the cost of the meal
20 and equipment to the covered employee, if
21 any.

22 “(B) DURATION.—If a covered employee
23 who is provided by an employer to perform
24 labor for another employer is assigned to the
25 same employer for more than 1 day, the pro-

1 viding employer is required to provide the em-
2 ployment information described in subpara-
3 graph (A) only on—

4 “(i) the first day of the assignment;

5 and

6 “(ii) if any of the terms described in
7 subparagraph (A) are changed, the first
8 day of such change.

9 “(C) CONFIRMATION OF WORK SOUGHT.—

10 If an employer that provides covered employees
11 to other employers to perform labor does not
12 place a covered employee with an employer for
13 whom to perform labor for a particular day, the
14 providing employer shall, upon request, provide
15 the covered employee with a written and signed
16 confirmation that the covered employee sought
17 work, which shall include the name of the pro-
18 viding employer, the name and address of the
19 covered employee, and the date and time that
20 the covered employee received the confirmation.

21 “(D) NO COVERED EMPLOYEES DURING
22 LABOR DISPUTES.—No employer may provide a
23 covered employee to perform labor at any work-
24 place where a strike, lockout, or other labor dis-
25 pute exists.

1 “(7) RECORDKEEPING.—

2 “(A) PROVIDING EMPLOYER.—Whenever
3 an employer provides covered employees to per-
4 form labor for another employer, the providing
5 employer shall keep the following records with
6 respect to the covered employees:

7 “(i) The name, address, and telephone
8 number for each employer to whom covered
9 employees were sent to perform labor, in-
10 cluding each worksite to which covered em-
11 ployees were sent, and the date of the
12 transaction effectuating the agreement be-
13 tween employers.

14 “(ii) For each covered employee, the
15 name, address, and specific location of the
16 worksite, the type of labor performed, the
17 number of hours worked, and the hourly
18 rate of pay.

19 “(iii) The name and title of all indi-
20 viduals responsible for the transaction on
21 behalf of the employer for whom the cov-
22 ered employee is performing labor.

23 “(iv) Any specific qualifications or at-
24 tributes of an employee that are requested

1 by the employer for whom the covered em-
2 ployee performs labor.

3 “(v) Copies of all contracts (if any) or
4 other agreements with, and all invoices
5 from, the employer for whom the covered
6 employee performs labor.

7 “(vi) Copies of all employment notices
8 provided in accordance with paragraph
9 (6)(A).

10 “(vii) Deductions to be made from the
11 covered employee’s compensation, made by
12 either the providing employer or the em-
13 ployer for whom the covered employee per-
14 forms labor, for the covered employee’s
15 transportation, food, equipment, withheld
16 income tax, withheld social security pay-
17 ments, and any other deduction.

18 “(viii) Documentation verifying the
19 actual cost of any equipment or meal
20 charged to a covered employee.

21 “(ix) The race and gender of each
22 covered employee performing labor.

23 “(x) Any additional information as
24 shall be required by regulation of the Sec-
25 retary.

1 “(B) TRANSMISSION REQUIREMENTS.—

2 “ (i) IN GENERAL.—The employer for
3 whom the covered employee is performing
4 labor shall transmit all information re-
5 quired under subparagraph (A)(ii) to the
6 employer who has provided such covered
7 employee not later than 7 days following
8 the last day of the work week worked for
9 which the covered employee performed
10 work for the employer.

11 “(ii) INTERACTION WITH OTHER RE-
12 QUIREMENTS.—The failure of an employer
13 for whom a covered employee is performing
14 labor to transmit the information required
15 under this subparagraph shall not exempt
16 the covered employee’s providing employer
17 from any other recordkeeping requirements
18 of this subsection.

19 “(8) MEALS.—If a covered employee is provided
20 with a meal, the covered employee shall not be
21 charged more than the actual cost of the meal. A
22 covered employee shall not be charged for any meal
23 not consumed by the covered employee. Purchase of
24 a meal by a covered employee shall not be a condi-
25 tion of employment or performance of labor.

1 “(9) TRANSPORTATION.—

2 “(A) IN GENERAL.—A covered employee
3 may not be charged any fee for transport to or
4 from a designated worksite by either the em-
5 ployer who is providing the covered employee
6 for the performance of labor or the employer
7 for whom the covered employee is performing
8 labor.

9 “(B) RESPONSIBILITY.—The employer who
10 is providing a covered employee to perform
11 labor for another employer is responsible for the
12 conduct and performance of any person whom
13 the employer secures to transport the covered
14 employee to or from a designated worksite and
15 for the safety of the vehicle used for such trans-
16 port, unless the transporter is a part of public
17 mass transportation or a common carrier.

18 “(C) REFERRAL LIMITATIONS.—The em-
19 ployer who is providing a covered employee to
20 perform labor for another employer may not
21 refer the covered employee to any person for
22 transportation to or from a worksite unless that
23 person is—

24 “(i) part of public mass transpor-
25 tation; or

1 “(ii) providing the transportation for
2 no fee.

3 “(D) VEHICLE REQUIREMENTS.—Any
4 motor vehicle owned or operated by an employer
5 who is providing a covered employee to another
6 employer that is used for the covered employ-
7 ee’s transportation to or from a worksite must
8 have a seat and safety belt for each passenger
9 and must be operated by a driver with a valid
10 license to operate such motor vehicle.

11 “(E) ROUND-TRIP TRANSPORTATION.—If a
12 covered employee is provided with transpor-
13 tation to a worksite by either the covered em-
14 ployee’s providing employer or the employer for
15 whom the covered employee is performing labor,
16 then the covered employee shall be provided
17 with transportation back to the point of origin
18 unless the covered employee agrees prior to
19 leaving for the worksite that the covered em-
20 ployee already has secured or will secure alter-
21 native transportation at the end of the covered
22 employee’s shift.

23 “(F) REIMBURSEMENT AND MINIMUM
24 COMPENSATION.—In any case where an em-
25 ployer providing a covered employee to perform

1 labor for another employer dispatches a covered
2 employee to a job that does not exist, the pro-
3 viding employer shall—

4 “(i) refund the covered employee’s
5 reasonable transportation costs; and

6 “(ii) pay the covered employee com-
7 pensation equivalent to 2 hours of work.

8 “(10) EQUIPMENT.—For any safety equipment,
9 specialized clothing, accessories, or any other items
10 required by the nature of the work, either by law,
11 custom, or the employer for whom a covered em-
12 ployee is performing labor, the covered employee—

13 “(A) shall not be charged for the items
14 provided by the providing employer or the em-
15 ployer for whom the covered employee is per-
16 forming labor, unless the covered employee neg-
17 ligently damages or destroys such items; and

18 “(B) if the covered employee is required to
19 purchase any such items, the employer for
20 whom the covered employee is performing labor
21 shall refund the cost of such items, including
22 any related shipping or handling, to the covered
23 employee.

24 “(11) OTHER CHARGES.—No covered employee
25 shall be charged by the employer who is providing

1 the covered employee to perform labor, or the em-
 2 ployer for whom the covered employee is performing
 3 work, for any of the following:

4 “(A) Registering with the covered employ-
 5 ee’s providing employer.

6 “(B) Obtaining work assignments.

7 “(C) Drug tests.

8 “(D) Background checks.

9 “(E) Debit cards used for payment of
 10 wages or any other method of wage payment.”.

11 (2) PENALTIES.—

12 (A) PROHIBITED ACTS.—Section 15(a) of
 13 the Fair Labor Standards Act of 1938 (29
 14 U.S.C. 215(a)), as amended by section
 15 102(a)(3)(B), is further amended by adding at
 16 the end the following:

17 “(8) to violate any of the provisions of section
 18 9(b).”.

19 (B) PENALTIES.—Section 16(e) of the
 20 Fair Labor Standards Act of 1938 (29 U.S.C.
 21 216(e)), as amended by section 102(a)(7)(B), is
 22 further amended by adding at the end the fol-
 23 lowing:

24 “(9) FINES AND PENALTIES REGARDING TEM-
 25 PORARY AND OTHER COVERED EMPLOYEES.—

1 “(A) IN GENERAL.—The Secretary may, after
2 notice and an opportunity for a hearing, assess a
3 civil penalty not to exceed \$6,000 against any em-
4 ployer that violates any of the provisions of section
5 9(b) (except for paragraph (2)(A) or (3) of such sec-
6 tion). Each violation of such section 9(b) for each
7 day of the violation and for each covered employee
8 shall constitute a separate and distinct violation of
9 such section 9(b).

10 “(B) REGISTRATION VIOLATIONS.—The Sec-
11 retary may, after notice and an opportunity for a
12 hearing, assess a civil penalty against any employer
13 that fails to register with the Secretary of Labor in
14 accordance with section 9(b)(2)(A), including any
15 rules issued under such section, of \$500 per viola-
16 tion. Each day during which an employer operates
17 without registering shall be a separate and distinct
18 violation of such section.

19 “(C) CIVIL PENALTY.—Any employer for whom
20 a covered employee performs labor that violates sec-
21 tion 9(b)(3) shall be subject to a civil penalty of
22 \$500. Each day during which such employer con-
23 tracts with a covered employee’s employer who is not
24 registered with the Secretary of Labor under section

1 9(b)(2)(A) shall constitute a separate and distinct
2 offense.

3 “(D) REVOCATION.—The Secretary may revoke
4 the registration of an employer under section
5 9(b)(2)(A) in any case where an employer willfully,
6 as determined by the Department, commits a viola-
7 tion of this section within 3 years of an earlier viola-
8 tion of such section.”.

9 **SEC. 205. LICENSORS.**

10 (a) FAIR LABOR STANDARDS ACT OF 1938.—

11 (1) IN GENERAL.—Section 3(d) of the Fair
12 Labor Standards Act of 1938 (29 U.S.C. 203(d)), as
13 amended by section 204(a)(1), is further amended
14 by adding at the end the following:

15 “(9) LICENSORS.—An entity licensing its
16 brand, name, or other likeness to an employer, or
17 other entity responsible for the rights and protec-
18 tions of this Act with regard to the employees of
19 such employer, for consideration shall also be re-
20 sponsible for the rights and protections of this Act
21 with regard to the employees of such employer.”.

22 (2) INDEMNIFICATION.—Section 16 of the Fair
23 Labor Standards Act of 1938, as amended by sec-
24 tion 203(a)(2), is further amended by adding at the
25 end the following:

1 “(j) LICENSEES AND LICENSORS.—

2 “(1) INDEMNIFICATION BY LICENSOR.—An em-
3 ployer or other entity that is found to be in violation
4 of this Act shall have the right to indemnification as
5 described in paragraph (2) from an entity licensing
6 its brand, name, or other likeness to the employer or
7 other entity, in any case where the violation was—

8 “(A) at the behest of the licensor;

9 “(B) at the direction of the licensor;

10 “(C) pursuant to any policies, agreements,
11 or contractual obligations emanating from the
12 licensor; or

13 “(D) due to other direct or indirect control
14 or pressure from the licensor.

15 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
16 TION.—Indemnification under paragraph (1)—

17 “(A) may be sought by a licensee in any
18 court of competent jurisdiction; and

19 “(B) shall include a full recovery from the
20 licensor of all compensatory and punitive dam-
21 ages, civil monetary penalties, attorney’s fees,
22 or other amounts required to be paid by the li-
23 censee as a result of the violation of this Act.

24 “(3) PROHIBITION ON WAIVER.—

1 “(A) IN GENERAL.—A licensor shall not
2 require or otherwise request a licensee to waive
3 the licensee’s right to indemnification under
4 this subsection.

5 “(B) PENALTY.—If a licensor violates sub-
6 paragraph (A)—

7 “(i) any indemnification waiver shall
8 be null and void; and

9 “(ii) the licensor shall be subject to a
10 civil penalty of \$100,000.

11 “(4) PROHIBITION ON RETALIATION.—

12 “(A) IN GENERAL.—A licensor shall not
13 end the license agreement with, take adverse
14 action in relation to, or otherwise discriminate
15 against, a licensee for pursuing indemnification
16 under this subsection.

17 “(B) PENALTY.—A licensor who violates
18 subparagraph (A) shall be subject to a civil
19 penalty of \$100,000.”.

20 (b) NATIONAL LABOR RELATIONS ACT.—

21 (1) IN GENERAL.—Section 2(2) of the National
22 Labor Relations Act (29 U.S.C. 152(2)), as amend-
23 ed by section 204(a)(2), is further amended by add-
24 ing at the end the following:

1 “(G) LICENSORS.—An entity licensing its
2 brand, name, or other likeness to an employer, or
3 other entity responsible for the rights and protec-
4 tions of this Act with regard to the employees of
5 such employer, for consideration shall also be re-
6 sponsible for the rights and protections of this Act
7 with regard to the employees of such employer.”.

8 (2) INDEMNIFICATION.—Section 12 of the Na-
9 tional Labor Relations Act (29 U.S.C. 162), as
10 amended by section 203(b)(2), is further amended
11 by adding at the end the following:

12 “(h) LICENSEES AND LICENSORS.—

13 “(1) INDEMNIFICATION BY LICENSOR.—An em-
14 ployer or other entity that is found to be in violation
15 of this Act shall have the right to indemnification as
16 described in paragraph (2) from an entity licensing
17 its brand, name, or other likeness to the employer or
18 other entity, in any case where the violation was—

19 “(A) at the behest of the licensor;

20 “(B) at the direction of the licensor;

21 “(C) pursuant to any policies, agreements,
22 or contractual obligations emanating from the
23 licensor; or

24 “(D) due to other direct or indirect control
25 or pressure from the licensor.

1 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
2 TION.—Indemnification under paragraph (1)—

3 “(A) may be sought by a licensee in any
4 court of competent jurisdiction; and

5 “(B) shall include a full recovery from the
6 licensor of all compensatory and punitive dam-
7 ages, civil monetary penalties, attorney’s fees,
8 or other amounts required to be paid by the li-
9 censee as a result of the violation of this Act.

10 “(3) PROHIBITION ON WAIVER.—

11 “(A) IN GENERAL.—A licensor shall not
12 require or otherwise request a licensee to waive
13 the licensee’s right to indemnification under
14 this subsection.

15 “(B) PENALTY.—If a licensor violates sub-
16 paragraph (A)—

17 “(i) any indemnification waiver shall
18 be null and void; and

19 “(ii) the licensor shall be subject to a
20 civil penalty of \$100,000.

21 “(4) PROHIBITION ON RETALIATION.—

22 “(A) IN GENERAL.—A licensor shall not
23 end the license agreement with, take adverse
24 action in relation to, or otherwise discriminate

1 against, a licensee for pursuing indemnification
2 under this subsection.

3 “(B) PENALTY.—A licensor who violates
4 subparagraph (A) shall be subject to a civil
5 penalty of \$100,000.”.

6 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
7 1970.—

8 (1) IN GENERAL.—Section 3(5) of the Occupa-
9 tional Safety and Health Act of 1970 (29 U.S.C.
10 652(5)), as amended by section 204(a)(3), is further
11 amended by adding at the end the following:

12 “(H) LICENSORS.—An entity licensing its
13 brand, name, or other likeness to an employer,
14 or other entity responsible for the rights and
15 protections of this Act with regard to the em-
16 ployees of an employer, or other entity respon-
17 sible for the rights and protections of this Act
18 with regard to the employees of such employer,
19 for consideration shall also be responsible for
20 the rights and protections of this Act with re-
21 gard to the employees of such employer.”.

22 (2) INDEMNIFICATION.—Section 17 of the Oc-
23 cupational Safety and Health Act of 1970 (29
24 U.S.C. 666), as amended by section 203(c)(2), is
25 further amended by adding at the end the following:

1 “(p) LICENSEES AND LICENSORS.—

2 “(1) INDEMNIFICATION BY LICENSOR.—An em-
3 ployer or other entity that is found to be in violation
4 of this Act shall have the right to indemnification as
5 described in paragraph (2) from an entity licensing
6 its brand, name, or other likeness to the employer or
7 other entity, in any case where the violation was—

8 “(A) at the behest of the licensor;

9 “(B) at the direction of the licensor;

10 “(C) pursuant to any policies, agreements,
11 or contractual obligations emanating from the
12 licensor; or

13 “(D) due to other direct or indirect control
14 or pressure from the licensor.

15 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
16 TION.—Indemnification under paragraph (1)—

17 “(A) may be sought by a licensee in any
18 court of competent jurisdiction; and

19 “(B) shall include a full recovery from the
20 licensor of all compensatory and punitive dam-
21 ages, civil monetary penalties, attorney’s fees,
22 or other amounts required to be paid by the li-
23 censee as a result of the violation of this Act.

24 “(3) PROHIBITION ON WAIVER.—

1 “(A) IN GENERAL.—A licensor shall not
2 require or otherwise request a licensee to waive
3 the licensee’s right to indemnification under
4 this subsection.

5 “(B) PENALTY.—If a licensor violates sub-
6 paragraph (A)—

7 “(i) any indemnification waiver shall
8 be null and void; and

9 “(ii) the licensor shall be subject to a
10 civil penalty of \$100,000.

11 “(4) PROHIBITION ON RETALIATION.—

12 “(A) IN GENERAL.—A licensor shall not
13 end the license agreement with, take adverse
14 action in relation to, or otherwise discriminate
15 against, a licensee for pursuing indemnification
16 under this subsection.

17 “(B) PENALTY.—A licensor who violates
18 subparagraph (A) shall be subject to a civil
19 penalty of \$100,000.”.

20 (d) FEDERAL MINE SAFETY AND HEALTH ACT OF
21 1977.—

22 (1) IN GENERAL.—Section 4B of the Federal
23 Mine Safety and Health Act of 1977, as amended by
24 section 204(a)(4), is further amended by adding at
25 the end the following:

1 “(e) LICENSORS.—An entity licensing its brand,
2 name, or other likeness to an operator of a coal or other
3 mine, or other entity responsible for the rights and protec-
4 tions of this Act with regard to the miners employed by
5 such operator, for consideration shall also be responsible
6 for the rights and protections of this Act with regard to
7 the miners employed by such operator.”.

8 (2) INDEMNIFICATION.—Section 118 of the
9 Federal Mine Safety and Health Act of 1977, as
10 amended by section 203(d)(2), is further amended
11 by adding at the end the following:

12 “(d) LICENSEES AND LICENSORS.—

13 “(1) INDEMNIFICATION BY LICENSOR.—An op-
14 erator or other entity that is found to be in violation
15 of this Act shall have the right to indemnification as
16 described in paragraph (2) from an entity licensing
17 its brand, name, or other likeness to the operator or
18 other entity, in any case where the violation was—

19 “(A) at the behest of the licensor;

20 “(B) at the direction of the licensor;

21 “(C) pursuant to any policies, agreements,
22 or contractual obligations emanating from the
23 licensor; or

24 “(D) due to other direct or indirect control
25 or pressure from the licensor.

1 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
2 TION.—Indemnification under paragraph (1)—

3 “(A) may be sought by a licensee in any
4 court of competent jurisdiction; and

5 “(B) shall include a full recovery from the
6 licensor of all compensatory and punitive dam-
7 ages, civil monetary penalties, attorney’s fees,
8 or other amounts required to be paid by the li-
9 censee as a result of the violation of this Act.

10 “(3) PROHIBITION ON WAIVER.—

11 “(A) IN GENERAL.—A licensor shall not
12 require or otherwise request a licensee to waive
13 the licensee’s right to indemnification under
14 this subsection.

15 “(B) PENALTY.—If a licensor violates sub-
16 paragraph (A)—

17 “(i) any indemnification waiver shall
18 be null and void; and

19 “(ii) the licensor shall be subject to a
20 civil penalty of \$100,000.

21 “(4) PROHIBITION ON RETALIATION.—

22 “(A) IN GENERAL.—A licensor shall not
23 end the license agreement with, take adverse
24 action in relation to, or otherwise discriminate

1 against, a licensee for pursuing indemnification
2 under this subsection.

3 “(B) PENALTY.—A licensor who violates
4 subparagraph (A) shall be subject to a civil
5 penalty of \$100,000.”.

6 (e) MIGRANT AND SEASONAL AGRICULTURAL WORK-
7 ER PROTECTION ACT.—

8 (1) IN GENERAL.—Section 5(c) of the Migrant
9 and Seasonal Agricultural Worker Protection Act, as
10 amended by section 204(a)(5), is further amended
11 by adding at the end the following:

12 “(6) LICENSORS.—An entity licensing its
13 brand, name, or other likeness to a farm labor con-
14 tractor, agricultural employer, or agricultural asso-
15 ciation, or other entity responsible for the rights and
16 protections of this Act with regard to the migrant
17 agricultural workers or seasonal agricultural workers
18 of the farm labor contractor, agricultural employer,
19 or agricultural association, for consideration shall
20 also be responsible for the rights and protections of
21 this Act with regard to such migrant agricultural
22 workers and seasonal agricultural workers.”.

23 (2) INDEMNIFICATION.—Section 505 of the Mi-
24 grant and Seasonal Agricultural Worker Protection

1 Act, as amended by section 203(e)(2), is further
 2 amended by adding at the end the following:

3 “(d) LICENSEES AND LICENSORS.—

4 “(1) INDEMNIFICATION BY LICENSOR.—A farm
 5 labor contractor, agricultural employer, agricultural
 6 association, or other entity that is found to be in vio-
 7 lation of this Act shall have the right to indemnifica-
 8 tion as described in paragraph (2) from an entity li-
 9 censing its brand, name, or other likeness to the
 10 farm labor contractor, agricultural employer, agricul-
 11 tural association, or other entity, in any case where
 12 the violation was—

13 “(A) at the behest of the licensor;

14 “(B) at the direction of the licensor;

15 “(C) pursuant to any policies, agreements,
 16 or contractual obligations emanating from the
 17 licensor; or

18 “(D) due to other direct or indirect control
 19 or pressure from the licensor.

20 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
 21 TION.—Indemnification under paragraph (1)—

22 “(A) may be sought by a licensee in any
 23 court of competent jurisdiction; and

24 “(B) shall include a full recovery from the
 25 licensor of all compensatory and punitive dam-

1 ages, civil monetary penalties, attorney’s fees,
2 or other amounts required to be paid by the li-
3 censee as a result of the violation of this Act.

4 “(3) PROHIBITION ON WAIVER.—

5 “(A) IN GENERAL.—A licensor shall not
6 require or otherwise request a licensee to waive
7 the licensee’s right to indemnification under
8 this subsection.

9 “(B) PENALTY.—If a licensor violates sub-
10 paragraph (A)—

11 “(i) any indemnification waiver shall
12 be null and void; and

13 “(ii) the licensor shall be subject to a
14 civil penalty of \$100,000.

15 “(4) PROHIBITION ON RETALIATION.—

16 “(A) IN GENERAL.—A licensor shall not
17 end the license agreement with, take adverse
18 action in relation to, or otherwise discriminate
19 against, a licensee for pursuing indemnification
20 under this subsection.

21 “(B) PENALTY.—A licensor who violates
22 subparagraph (A) shall be subject to a civil
23 penalty of \$100,000.”.

24 (f) DAVIS-BACON ACT.—

1 (1) IN GENERAL.—Section 3144b of title 40,
2 United States Code, as amended by section
3 204(a)(6), is further amended by adding at the end
4 the following:

5 “(e) LICENSORS.—An entity licensing its brand,
6 name, or other likeness to a contractor or subcontractor,
7 or other entity responsible for the rights and protections
8 of this subchapter with regard to the laborers or mechan-
9 ics of such contractor or subcontractor, for consideration
10 shall also be responsible for the rights and protections of
11 this subchapter with regard to such laborers or mechan-
12 ics.”.

13 (2) INDEMNIFICATION.—Section 3144c of title
14 40, United States Code, as amended by section
15 203(f)(2), is further amended by adding at the end
16 the following:

17 “(g) LICENSEES AND LICENSORS.—

18 “(1) INDEMNIFICATION BY LICENSOR.—A con-
19 tractor, subcontractor, or other entity that is found
20 to be in violation of this subchapter shall have the
21 right to indemnification as described in paragraph
22 (2) from an entity licensing its brand, name, or
23 other likeness to the employer or other entity, in any
24 case where the violation was—

25 “(A) at the behest of the licensor;

1 “(B) at the direction of the licensor;

2 “(C) pursuant to any policies, agreements,
3 or contractual obligations emanating from the
4 licensor; or

5 “(D) due to other direct or indirect control
6 or pressure from the licensor.

7 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
8 TION.—Indemnification under paragraph (1)—

9 “(A) may be sought by a licensee in any
10 court of competent jurisdiction; and

11 “(B) shall include a full recovery from the
12 licensor of all compensatory and punitive dam-
13 ages, civil monetary penalties, attorney’s fees,
14 or other amounts required to be paid by the li-
15 censee as a result of the violation of this sub-
16 chapter.

17 “(3) PROHIBITION ON WAIVER.—

18 “(A) IN GENERAL.—A licensor shall not
19 require or otherwise request a licensee to waive
20 the licensee’s right to indemnification under
21 this subsection.

22 “(B) PENALTY.—If a licensor violates sub-
23 paragraph (A)—

24 “(i) any indemnification waiver shall
25 be null and void; and

1 “(ii) the licensor shall be subject to a
2 civil penalty of \$100,000.

3 “(4) PROHIBITION ON RETALIATION.—

4 “(A) IN GENERAL.—A licensor shall not
5 end the license agreement with, take adverse
6 action in relation to, or otherwise discriminate
7 against, a licensee for pursuing indemnification
8 under this subsection.

9 “(B) PENALTY.—A licensor who violates
10 subparagraph (A) shall be subject to a civil
11 penalty of \$100,000.”.

12 (g) MCNAMARA-O’HARA SERVICE CONTRACT ACT.—

13 (1) IN GENERAL.—Section 6701a of title 41,
14 United States Code, as amended by section
15 204(a)(7), is further amended by adding at the end
16 the following:

17 “(e) LICENSORS.—An entity licensing its brand,
18 name, or other likeness to a contractor, or other entity
19 responsible for the rights and protections of this chapter
20 with regard to the service employees of such contractor,
21 for consideration shall also be responsible for the rights
22 and protections of this chapter with regard to such service
23 employees.”.

24 (2) INDEMNIFICATION.—Section 6707 of title
25 41, United States Code, as amended by section

1 203(g)(2), is further amended by adding at the end
2 the following:

3 “(d) LICENSEES AND LICENSORS.—

4 “(1) INDEMNIFICATION BY LICENSOR.—A con-
5 tractor, subcontractor, or other entity that is found
6 to be in violation of this chapter shall have the right
7 to indemnification as described in paragraph (2)
8 from an entity licensing its brand, name, or other
9 likeness to the employer or other entity, in any case
10 where the violation was—

11 “(A) at the behest of the licensor;

12 “(B) at the direction of the licensor;

13 “(C) pursuant to any policies, agreements,
14 or contractual obligations emanating from the
15 licensor; or

16 “(D) due to other direct or indirect control
17 or pressure from the licensor.

18 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
19 TION.—Indemnification under paragraph (1)—

20 “(A) may be sought by a licensee in any
21 court of competent jurisdiction; and

22 “(B) shall include a full recovery from the
23 licensor of all compensatory and punitive dam-
24 ages, civil monetary penalties, attorney’s fees,
25 or other amounts required to be paid by the li-

1 censee as a result of the violation of this chap-
2 ter.

3 “(3) PROHIBITION ON WAIVER.—

4 “(A) IN GENERAL.—A licensor shall not
5 require or otherwise request a licensee to waive
6 the licensee’s right to indemnification under
7 this subsection.

8 “(B) PENALTY.—If a licensor violates sub-
9 paragraph (A)—

10 “(i) any indemnification waiver shall
11 be null and void; and

12 “(ii) the licensor shall be subject to a
13 civil penalty of \$100,000.

14 “(4) PROHIBITION ON RETALIATION.—

15 “(A) IN GENERAL.—A licensor shall not
16 end the license agreement with, take adverse
17 action in relation to, or otherwise discriminate
18 against, a licensee for pursuing indemnification
19 under this subsection.

20 “(B) PENALTY.—A licensor who violates
21 subparagraph (A) shall be subject to a civil
22 penalty of \$100,000.”.

23 (h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

24 (1) IN GENERAL.—Section 6501b of title 41,
25 United States Code, as amended by section

1 204(a)(8), is further amended by adding at the end
2 the following:

3 “(e) LICENSORS.—An entity licensing its brand,
4 name, or other likeness to a contractor, or other entity
5 responsible for the rights and protections of this chapter
6 with regard to individuals employed in the manufacture
7 or furnishing of materials, supplies, articles, or equipment
8 under a contract to which this chapter applies by such
9 contractor, for consideration shall also be responsible for
10 the rights and protections of this chapter with regard to
11 such individuals.”.

12 (2) INDEMNIFICATION.—Section 6506b of title
13 41, United States Code, as amended by section
14 203(h)(2), is further amended by adding at the end
15 the following:

16 “(g) LICENSEES AND LICENSORS.—

17 “(1) INDEMNIFICATION BY LICENSOR.—A con-
18 tractor, subcontractor, or other entity that is found
19 to be in violation of this chapter shall have the right
20 to indemnification as described in paragraph (2)
21 from an entity licensing its brand, name, or other
22 likeness to the employer or other entity, in any case
23 where the violation was—

24 “(A) at the behest of the licensor;

25 “(B) at the direction of the licensor;

1 “(C) pursuant to any policies, agreements,
2 or contractual obligations emanating from the
3 licensor; or

4 “(D) due to other direct or indirect control
5 or pressure from the licensor.

6 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
7 TION.—Indemnification under paragraph (1)—

8 “(A) may be sought by a licensee in any
9 court of competent jurisdiction; and

10 “(B) shall include a full recovery from the
11 licensor of all compensatory and punitive dam-
12 ages, civil monetary penalties, attorney’s fees,
13 or other amounts required to be paid by the li-
14 censee as a result of the violation of this chap-
15 ter.

16 “(3) PROHIBITION ON WAIVER.—

17 “(A) IN GENERAL.—A licensor shall not
18 require or otherwise request a licensee to waive
19 the licensee’s right to indemnification under
20 this subsection.

21 “(B) PENALTY.—If a licensor violates sub-
22 paragraph (A)—

23 “(i) any indemnification waiver shall
24 be null and void; and

1 “(ii) the licensor shall be subject to a
2 civil penalty of \$100,000.

3 “(4) PROHIBITION ON RETALIATION.—

4 “(A) IN GENERAL.—A licensor shall not
5 end the license agreement with, take adverse
6 action in relation to, or otherwise discriminate
7 against, a licensee for pursuing indemnification
8 under this subsection.

9 “(B) PENALTY.—A licensor who violates
10 subparagraph (A) shall be subject to a civil
11 penalty of \$100,000.”.

12 (i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

13 (1) IN GENERAL.—Section 101(4) of the Fam-
14 ily and Medical Leave Act of 1993 (29 U.S.C.
15 2611), as amended by section 204(a)(9), is further
16 amended by adding at the end the following:

17 “(H) LICENSORS.—An entity licensing its
18 brand, name, or other likeness to an employer
19 for consideration shall also be responsible for
20 the rights and protections of this Act with re-
21 gard to the employees of such employer.”.

22 (2) INDEMNIFICATION.—Section 107 of the
23 Family and Medical Leave Act of 1993 (29 U.S.C.
24 2617), as amended by section 203(i)(2), by inserting
25 after subsection (g) the following:

1 “(h) LICENSEES AND LICENSORS.—

2 “(1) INDEMNIFICATION BY LICENSOR.—An em-
3 ployer or other entity that is found to be in violation
4 of this Act shall have the right to indemnification as
5 described in paragraph (2) from an entity licensing
6 its brand, name, or other likeness to the employer or
7 other entity, in any case where the violation was—

8 “(A) at the behest of the licensor;

9 “(B) at the direction of the licensor;

10 “(C) pursuant to any policies, agreements,
11 or contractual obligations emanating from the
12 licensor; or

13 “(D) due to other direct or indirect control
14 or pressure from the licensor.

15 “(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
16 TION.—Indemnification under paragraph (1)—

17 “(A) may be sought by a licensee in any
18 court of competent jurisdiction; and

19 “(B) shall include a full recovery from the
20 licensor of all compensatory and punitive dam-
21 ages, civil monetary penalties, attorney’s fees,
22 or other amounts required to be paid by the li-
23 censee as a result of the violation of this Act.

24 “(3) PROHIBITION ON WAIVER.—

1 “(A) IN GENERAL.—A licensor shall not
2 require or otherwise request a licensee to waive
3 the licensee’s right to indemnification under
4 this subsection.

5 “(B) PENALTY.—If a licensor violates sub-
6 paragraph (A)—

7 “(i) any indemnification waiver shall
8 be null and void; and

9 “(ii) the licensor shall be subject to a
10 civil penalty of \$100,000.

11 “(4) PROHIBITION ON RETALIATION.—

12 “(A) IN GENERAL.—A licensor shall not
13 end the license agreement with, take adverse
14 action in relation to, or otherwise discriminate
15 against, a licensee for pursuing indemnification
16 under this subsection.

17 “(B) PENALTY.—A licensor who violates
18 subparagraph (A) shall be subject to a civil
19 penalty of \$100,000.”.

20 (j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

21 (1) IN GENERAL.—Section 3306(w) of the In-
22 ternal Revenue Code of 1986, as amended by section
23 204(a)(10), is amended by adding at the end the fol-
24 lowing new paragraphs:

25 “(8) Paragraph (9) of section 3(d) of such Act.

1 “(9) Subsection (j) of section 16 of such Act.”.

2 (2) EFFECTIVE DATE.—The amendment made
3 by paragraph (1) shall apply to services rendered on
4 or after January 1, 2022.

5 **SEC. 206. LABOR CONTRACTORS.**

6 (a) FAIR LABOR STANDARDS ACT OF 1938.—Section
7 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C.
8 203(d)), as amended by section 205(a)(1), is further
9 amended by adding at the end the following:

10 “(10) LABOR CONTRACTORS.—An employer
11 shall also be responsible for the rights and protec-
12 tions of this Act with regard to an employee of a
13 labor contractor, or any labor subcontractors under
14 a labor contractor, in any case where such labor con-
15 tractor or labor subcontractor is responsible for the
16 rights and protections of this Act with respect to the
17 employee.”.

18 (b) NATIONAL LABOR RELATIONS ACT.—

19 (1) IN GENERAL.—Section 2(2) of the National
20 Labor Relations Act (29 U.S.C. 152(2)), as amend-
21 ed by section 205(b), is further amended by adding
22 at the end the following:

23 “(H) LABOR CONTRACTORS.—An employer
24 shall also be responsible for the rights and protec-
25 tions of this Act with regard to an employee of a

1 labor contractor, or any labor subcontractors under
2 a labor contractor, in any case where such labor con-
3 tractor or labor subcontractor is responsible for the
4 rights and protections of this Act with respect to the
5 employee.”.

6 (2) UNFAIR LABOR PRACTICE.—Section 8(a) of
7 the National Labor Relations Act (29 U.S.C.
8 158(a)), as amended by section 102(b)(3)(B), is fur-
9 ther amended by adding at the end the following:

10 “(8) to reject contractors in whole or in part
11 because the contractors have workforces represented
12 by labor organizations, including—

13 “(A) when the employer initially solicits
14 bids for a contract for an as-yet-unchosen con-
15 tractor to provide a good or service to the em-
16 ployer, by rejecting any contractor in whole or
17 in part because the contractor’s workforce is
18 represented by a labor organization; or

19 “(B) when an employer has an existing
20 contract with a contractor and the contractor’s
21 employees are considering to organize or have
22 chosen to organize in accordance with the rights
23 provided under section 7, by—

24 “(i) ending the employer’s existing
25 contract with the contractor;

1 “(ii) not renewing the employer’s ex-
2 isting contract with the contractor if the
3 contract is set to expire; or

4 “(iii) threatening to end or not renew
5 the employer’s existing contract with the
6 contractor,

7 in whole or in part because of the labor organi-
8 zation consideration or representation described
9 in the matter preceding clause (i).”.

10 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
11 1970.—Section 3(5) of the Occupational Safety and
12 Health Act of 1970 (29 U.S.C. 652(5)), as amended by
13 section 205(c)(1), is further amended by adding at the end
14 the following:

15 “(I) LABOR CONTRACTORS.—An employer
16 shall also be responsible for the rights and pro-
17 tections of this Act with regard to an employee
18 of a labor contractor, or any labor subcontractors
19 under a labor contractor, in any case where
20 such labor contractor or labor subcontractor is
21 responsible for the rights and protections of
22 this Act with respect to the employee.”.

23 (d) FEDERAL MINE SAFETY AND HEALTH ACT OF
24 1977.—Section 4B of the Federal Mine Safety and Health

1 Act of 1977, as amended by section 205(d), is further
2 amended by adding at the end the following:

3 “(f) LABOR CONTRACTORS.—An employer shall also
4 be responsible for the rights and protections of this Act
5 with regard to a miner of a coal or other mine employed
6 by a labor contractor, or any labor subcontractors under
7 a labor contractor, in any case where such labor contractor
8 or labor subcontractor is responsible for the rights and
9 protections of this Act with respect to the miner.”.

10 (e) MIGRANT AND SEASONAL AGRICULTURAL WORK-
11 ER PROTECTION ACT.—Section 4(c) of the Migrant and
12 Seasonal Agricultural Worker Protection Act, as amended
13 by section 205(e)(1), is further amended by adding at the
14 end the following:

15 “(7) LABOR CONTRACTORS.—A farm labor con-
16 tractor, agricultural employer, or agricultural asso-
17 ciation shall also be responsible for the rights and
18 protections of this Act with regard to a migrant ag-
19 ricultural worker or seasonal agricultural worker of
20 a labor contractor, or any labor subcontractors
21 under a labor contractor, in any case where such
22 labor contractor or labor subcontractor is responsible
23 for the rights and protections of this Act with re-
24 spect to the migrant agricultural worker or seasonal
25 agricultural worker.”.

1 (f) DAVIS-BACON ACT.—Section 3144b of title 40,
2 United States Code, as amended by section 205(f)(1), is
3 further amended by adding at the end the following:

4 “(f) CONTRACTORS’ LIABILITY FOR LABOR SUB-
5 CONTRACTORS.—An employer who is a contractor subject
6 to the requirements of this subchapter shall also be re-
7 sponsible for the rights and protections of this subchapter
8 with regard to an employee of any labor subcontractor of
9 the contractor, or any labor subcontractors under a labor
10 subcontractor, in any case where—

11 “(1) the employee is performing work under a
12 contract to which this subchapter applies; and

13 “(2) such labor subcontractor, or labor subcon-
14 tractor of a labor subcontractor, is responsible for
15 the rights and protections of this subchapter with
16 respect to a laborer or mechanic.”.

17 (g) McNAMARA-O’HARA SERVICE CONTRACT ACT.—
18 Section 6701a of title 41, United States Code, as amended
19 by section 205(g), is further amended by adding at the
20 end the following:

21 “(f) CONTRACTORS’ LIABILITY FOR LABOR SUB-
22 CONTRACTORS.—An employer who is a contractor subject
23 to the requirements of this chapter shall also be respon-
24 sible for the rights and protections of this chapter with
25 regard to an employee of any labor subcontractor of the

1 contractor, or any labor subcontractors under a labor sub-
2 contractor, in any case where—

3 “(1) the employee is performing work under a
4 contract to which this chapter applies; and

5 “(2) such labor subcontractor, or labor subcon-
6 tractor of a labor subcontractor, is responsible for
7 the rights and protections of this chapter with re-
8 spect to a service employee.”.

9 (h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—Sec-
10 tion 6501b of title 41, United States Code, as amended
11 by section 205(h), is further amended by adding at the
12 end the following:

13 “(f) CONTRACTORS’ LIABILITY FOR LABOR SUB-
14 CONTRACTORS.—An employer who is a contractor subject
15 to the requirements of this chapter shall also be respon-
16 sible for the rights and protections of this chapter with
17 regard to an employee of any labor subcontractor of the
18 contractor, or any labor subcontractors under a labor sub-
19 contractor, in any case where—

20 “(1) the employee is employed in the manufac-
21 ture or furnishing of materials, supplies, articles, or
22 equipment under a contract to which this chapter
23 applies; and

24 “(2) such labor subcontractor, or labor subcon-
25 tractor of a labor subcontractor, is responsible for

1 the rights and protections of this chapter with re-
2 spect to the employee.”.

3 (i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

4 Section 101(4) of the Family and Medical Leave Act of
5 1993 (29 U.S.C. 2611), as amended by section 205(i), is
6 further amended by adding at the end the following:

7 “(I) LABOR CONTRACTORS.—An employer
8 shall also be responsible for the rights and pro-
9 tectons of this Act with regard to an employee
10 of a labor contractor, or any labor subcontractors
11 under a labor contractor, in any case where
12 such labor contractor or labor subcontractor is
13 responsible for the rights and protections of
14 this Act with respect to the employee.”.

15 (j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

16 (1) IN GENERAL.—Section 3306(w) of the In-
17 ternal Revenue Code of 1986, as amended by section
18 205(j), is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(10) Paragraph (10) of section 3(d) of such
21 Act.”.

22 (2) EFFECTIVE DATE.—The amendment made
23 by paragraph (1) shall apply to services rendered on
24 or after January 1, 2022.

1 **SEC. 207. SUPPLY CHAIN RESPONSIBILITY PLAN.**

2 (a) FAIR LABOR STANDARDS ACT OF 1938.—

3 (1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

4 Section 11 of the Fair Labor Standards Act of 1938
5 (29 U.S.C. 211) is amended by adding at the end
6 the following:

7 “(e) SUPPLY CHAIN RESPONSIBILITY PLAN.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) COVERED EMPLOYER.—The term
10 ‘covered employer’ means an employer that em-
11 ploys 100 or more employees.

12 “(B) COVERED LAWS.—The term ‘covered
13 laws’ means all of the following:

14 “(i) This Act.

15 “(ii) The National Labor Relations
16 Act.

17 “(iii) The Occupational Safety and
18 Health Act of 1970.

19 “(iv) The Federal Mine Safety and
20 Health Act of 1977.

21 “(v) The Migrant and Seasonal Agri-
22 cultural Worker Protection Act.

23 “(vi) Subchapter IV of chapter 31 of
24 title 40, United States Code (commonly
25 known as the ‘Davis-Bacon Act’).

1 “(vii) Chapter 67 of title 41, United
2 States Code (commonly known as the
3 ‘McNamara-O’Hara Service Contract
4 Act’).

5 “(viii) Chapter 65 of title 41, United
6 States Code (commonly known as the
7 ‘Walsh-Healey Public Contracts Act of
8 1936’).

9 “(ix) The Family and Medical Leave
10 Act of 1993.

11 “(x) Violations of State law required
12 under section 3304 of the Internal Rev-
13 enue Code of 1986.

14 “(xi) The applicable labor laws of any
15 country in which an employer that is part
16 of a covered employer’s supply chain oper-
17 ates, with respect to employees employed
18 in such country.

19 “(2) DEVELOPMENT OF PLAN.—Each covered
20 employer shall develop and carry out a supply chain
21 responsibility plan described in paragraph (3) that
22 describes how the employer will attempt to ensure
23 that the employer’s primary supply chain does not
24 include any employer that regularly violates—

25 “(A) an individual covered law; or

1 “(B) the covered laws, when considered as
2 a whole.

3 “(3) CONTENTS.—Each supply chain responsi-
4 bility plan shall include, at a minimum—

5 “(A) an assessment of—

6 “(i) the violations under each covered
7 law by each employer with more than 19
8 employees in the covered employer’s supply
9 chain; and

10 “(ii) the violations under each covered
11 law by each employer that provides a large
12 volume or dollar amount of the covered
13 employer’s supply chain;

14 “(B) a plan for—

15 “(i) removing from the covered em-
16 ployer’s supply chain each employer de-
17 scribed in subparagraph (A) that regularly
18 violates—

19 “(I) an individual covered law; or

20 “(II) the covered laws, when con-
21 sidered as a whole; or

22 “(ii) if clause (i) is not possible with
23 respect to a particular employer described
24 in subparagraph (A) due to an extremely
25 limited number of employers that could

1 fulfill specific portions of the covered em-
2 ployer’s supply chain, utilizing the leverage
3 that the covered employer has as a pur-
4 chaser to pressure the particular employer
5 to improve compliance with the covered
6 laws;

7 “(C) a list of the organizations that the
8 covered employer has identified to assist the
9 covered employer in this process, including
10 workers’ rights advocates; and

11 “(D) any other information the Secretary
12 determines necessary.

13 “(4) SUBMISSION.—Each covered employer
14 shall annually submit the supply chain responsibility
15 plan to the Secretary and shall post the most recent
16 plan publicly on the covered employer’s website.”.

17 (2) PENALTIES.—Section 16(e) of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 216(e)), as
19 amended by section 204(c)(2)(B), is further amend-
20 ed by adding at the end the following:

21 “(10) PENALTIES FOR VIOLATIONS REGARDING
22 SUPPLY CHAIN RESPONSIBILITY PLANS.—Any per-
23 son who violates section 11(e)(3) by not submitting
24 or posting a complete supply chain responsibility

1 plan each year shall be subject to a civil penalty of
2 \$50,000 for each month of noncompliance.”.

3 (b) NATIONAL LABOR RELATIONS ACT.—

4 (1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

5 Section 8 of the National Labor Relations Act (29
6 U.S.C. 158), as amended by section 102(b)(5), is
7 further amended by adding at the end the following:

8 “(i) SUPPLY CHAIN RESPONSIBILITY PLAN.—It shall
9 be an unfair labor practice for an employer who is a cov-
10 ered employer, as defined in section 11(e)(1) of the Fair
11 Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)), to
12 fail to annually—

13 “(1) submit, as part of the covered employer’s
14 supply chain responsibility plan under section 11(e)
15 of such Act, the information required under such
16 Act that relates to this Act; and

17 “(2) include such information in the plan post-
18 ed publicly on the covered employer’s website.”.

19 (2) PENALTIES.—Section 12 of the National
20 Labor Relations Act (29 U.S.C. 162), as amended
21 by section 102(b)(7)(B), is further amended by in-
22 serting after subsection (c) the following:

23 “(d) CIVIL PENALTY FOR FAILURE TO SUBMIT A
24 COMPLETE SUPPLY CHAIN RESPONSIBILITY PLAN.—Any

1 person who violates section 8(i) shall be subject to a civil
2 penalty of \$50,000 for each month of noncompliance.”.

3 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
4 1970.—

5 (1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

6 Section 5 of the Occupational Safety and Health Act
7 of 1970 (29 U.S.C. 654) is amended by adding at
8 the end the following:

9 “(c) SUPPLY CHAIN RESPONSIBILITY PLAN.—An
10 employer who is a covered employer, as defined in section
11 11(e)(1) of the Fair Labor Standards Act of 1938 (29
12 U.S.C. 211(e)(1)), shall annually—

13 “(1) submit, as part of the employer’s supply
14 chain responsibility plan under section 11(e) of such
15 Act, the information required under such section
16 that relates to this Act; and

17 “(2) include such information in the plan post-
18 ed publicly on the employer’s website.”.

19 (2) PENALTIES.—Section 17 of the Occupa-
20 tional Safety and Health Act of 1970 (29 U.S.C.
21 666), as amended by section 205(c)(2), is further
22 amended by inserting after subsection (k) the fol-
23 lowing:

24 “(l) PENALTIES FOR VIOLATIONS REGARDING SUP-
25 PLY CHAIN RESPONSIBILITY PLANS.—Any person who

1 violates section 5(c) shall be subject to a civil penalty of
2 \$50,000 for each month of noncompliance.”.

3 (d) FEDERAL MINE SAFETY AND HEALTH ACT OF
4 1977.—

5 (1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

6 Section 109 of the Federal Mine Safety and Health
7 Act of 1977 (30 U.S.C. 819) is amended—

8 (A) in the section heading, by inserting “;
9 SUPPLY CHAIN RESPONSIBILITY PLANS” after
10 “DECISIONS”; and

11 (B) by adding at the end the following:

12 “(e) SUPPLY CHAIN RESPONSIBILITY PLANS.—Each
13 operator that is a covered employer, as defined in section
14 11(e)(1) of the Fair Labor Standards Act of 1938 (29
15 U.S.C. 211(e)(1)), shall annually—

16 “(1) submit, as part of the operator’s supply
17 chain responsibility plan under section 11(e) of such
18 Act, the information required under such section
19 that relates to this Act; and

20 “(2) include such information in the plan post-
21 ed publicly on the operator’s website.”.

22 (2) PENALTIES.—Section 110 of the Federal
23 Mine Safety and Health Act of 1977 (30 U.S.C.
24 820), as amended by section 102(d)(6)(B), is fur-

1 ther amended by inserting after subsection (j) the
2 following:

3 “(k) CIVIL PENALTY FOR FAILURE TO SUBMIT A
4 SUPPLY CHAIN RESPONSIBILITY PLAN.—Any operator
5 who violates section 109(e) shall be subject to a civil pen-
6 alty of \$50,000 for each month of noncompliance.”.

7 (e) MIGRANT AND SEASONAL AGRICULTURAL WORK-
8 ER PROTECTION ACT.—

9 (1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

10 Title IV of the Migrant and Seasonal Agricultural
11 Worker Protection Act (29 U.S.C. 1841 et seq.), as
12 amended by section 102(e)(3)), is further amended
13 by adding at the end the following:

14 **“SEC. 406. SUPPLY CHAIN RESPONSIBILITY PLAN.**

15 “(a) DEFINITION OF RESPONSIBLE ENTITY.—In this
16 section, the term ‘responsible entity’ means a farm labor
17 contractor, agricultural employer, or agricultural associa-
18 tion, that is a covered employer, as defined in section
19 11(e)(1) of the Fair Labor Standards Act of 1938 (29
20 U.S.C. 211(e)(1)).

21 “(b) SUPPLY CHAIN RESPONSIBILITY PLANS.—Each
22 responsible entity shall annually—

23 “(1) submit, as part of the responsible entity’s
24 supply chain responsibility plan under section 11(e)

1 of such Act, the information required under such
2 section that relates to this Act; and

3 “(2) include such information in the plan post-
4 ed publicly on the responsible entity’s website.”.

5 (2) PENALTIES.—Section 503(a) of the Migrant
6 and Seasonal Agricultural Worker Protection Act
7 (29 U.S.C. 1853(a)), as amended by section
8 102(e)(6)(B), is further amended by adding at the
9 end the following:

10 “(5) PENALTIES FOR VIOLATIONS REGARDING
11 SUPPLY CHAIN RESPONSIBILITY PLANS.—Any per-
12 son who violates section 406(b) shall be subject to
13 a civil penalty of \$50,000 for each month of non-
14 compliance.”.

15 (f) DAVIS-BACON ACT.—

16 (1) SUPPLY CHAIN RESPONSIBILITY PLAN.—
17 Subchapter IV of chapter 31 of title 40, United
18 States Code, as amended by this Act, is further
19 amended by inserting after section 3143 the fol-
20 lowing:

21 **“§ 3143a. Supply chain responsibility plan**

22 “(a) COVERED CONTRACTOR.—In this section, the
23 term ‘covered contractor’ means a contractor or subcon-
24 tractor—

1 “(1) for a contract subject to the requirements
2 of this subchapter; and

3 “(2) that is a covered employer, as defined in
4 section 11(e)(1) of the Fair Labor Standards Act of
5 1938 (29 U.S.C. 211(e)(1)).

6 “(b) IN GENERAL.—Each covered contractor shall
7 annually—

8 “(1) submit, as part of the covered contractor’s
9 supply chain responsibility plan under section 11(e)
10 of such Act, the information required under such
11 section that relates to this subchapter; and

12 “(2) include such information in the plan post-
13 ed publicly on the covered contractor’s website.”.

14 (2) PENALTIES.—Section 3144e of title 40,
15 United States Code, as amended by section
16 204(f)(2), is further amended by inserting after sub-
17 section (b) the following:

18 “(c) PENALTIES FOR VIOLATIONS REGARDING SUP-
19 PLY CHAIN RESPONSIBILITY PLANS.—Any person who
20 violates section 3143a of this title shall be subject to a
21 civil penalty of \$50,000 for each month of noncompli-
22 ance.”.

23 (g) MCNAMARA-O’HARA SERVICE CONTRACT ACT.—
24 Chapter 67 of title 41, United States Code, as amended

1 by section 202(b)(7)(A), is further amended by inserting
2 after section 6704 the following:

3 **“§ 6705. Supply chain responsibility plan**

4 “(a) COVERED CONTRACTOR.—In this section, the
5 term ‘covered contractor’ means a contractor or subcon-
6 tractor—

7 “(1) for a contract subject to the requirements
8 of this chapter; and

9 “(2) that is a covered employer, as defined in
10 section 11(e)(1) of the Fair Labor Standards Act of
11 1938 (29 U.S.C. 211(e)(1)).

12 “(b) IN GENERAL.—Each covered contractor shall
13 annually—

14 “(1) submit, as part of the covered contractor’s
15 supply chain responsibility plan under section 11(e)
16 of such Act, the information required under such
17 section that relates to this chapter; and

18 “(2) include such information in the plan post-
19 ed publicly on the covered contractor’s website.

20 “(c) PENALTIES FOR VIOLATIONS REGARDING SUP-
21 PLY CHAIN RESPONSIBILITY PLANS.—Any person who
22 violates subsection (b) of this section shall be subject to
23 a civil penalty of \$50,000 for each month of noncompli-
24 ance.”.

1 (h) WALSH-HEALEY PUBLIC CONTRACTS ACT OF
2 1936.—

3 (1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

4 Chapter 65 of title 41, United States Code, is fur-
5 ther amended by inserting after section 6502 the fol-
6 lowing:

7 **“§ 6502a. Supply chain responsibility plan**

8 “(a) COVERED CONTRACTOR.—In this section, the
9 term ‘covered contractor’ means a contractor or subcon-
10 tractor—

11 “(1) for a contract subject to the requirements
12 of this chapter; and

13 “(2) that is a covered employer, as defined in
14 section 11(e)(1) of the Fair Labor Standards Act of
15 1938 (29 U.S.C. 211(e)(1)).

16 “(b) IN GENERAL.—Each covered contractor shall
17 annually—

18 “(1) submit, as part of the covered contractor’s
19 supply chain responsibility plan under section 11(e)
20 of such Act, the information required under such
21 section that relates to this chapter; and

22 “(2) include such information in the plan post-
23 ed publicly on the covered contractor’s website.”.

24 (2) PENALTIES.—Section 6506a of title 41,
25 United States Code, as amended by section

1 202(c)(8), is further amended by inserting after sub-
2 section (b) the following:

3 “(c) PENALTIES FOR VIOLATIONS REGARDING SUP-
4 PLY CHAIN RESPONSIBILITY PLANS.—Any person who
5 violates section 6502a shall be subject to a civil penalty
6 of \$50,000 for each month of noncompliance.”.

7 (i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—
8 Section 109 of the Family and Medical Leave Act of 1993
9 (29 U.S.C. 2619) is amended—

10 (1) in the section heading, by inserting “; **SUP-**
11 **PLY CHAIN RESPONSIBILITY PLAN**” after “**NO-**
12 **TICE**”;

13 (2) by striking “IN GENERAL.—Each” and in-
14 serting the following: “NOTICE.—

15 “(1) IN GENERAL.—Each”;

16 (3) by redesignating subsection (b) as para-
17 graph (2) of subsection (a), and aligning the mar-
18 gins of such paragraph with the margins of para-
19 graph (1);

20 (4) in paragraph (2) (as so redesignated), by
21 striking “this section” and inserting “this sub-
22 section”; and

23 (5) by adding at the end the following:

24 “(b) SUPPLY CHAIN RESPONSIBILITY PLAN.—

1 “(1) IN GENERAL.—Each employer that is a
2 covered employer, as defined in section 11(e)(1) of
3 the Fair Labor Standards Act of 1938 (29 U.S.C.
4 211(e)(1)), shall annually—

5 “(A) submit, as part of the employer’s sup-
6 ply chain responsibility plan under section 11(e)
7 of such Act, the information required under
8 such section that relates to this Act; and

9 “(B) include such information in the plan
10 posted publicly on the employer’s website.

11 “(2) PENALTY.—Any person who violates para-
12 graph (1) shall be subject to a civil penalty of
13 \$50,000 for each month of noncompliance.”.

14 (j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

15 (1) STATE LAW REQUIREMENT.—Section 3304
16 of the Internal Revenue Code of 1986 (relating to
17 approval of State unemployment compensation laws)
18 is amended—

19 (A) in subsection (a)—

20 (i) in paragraph (18), by striking
21 “and” at the end;

22 (ii) by redesignating paragraph (19)
23 as paragraph (20);

24 (iii) by inserting after paragraph (18)
25 the following new paragraph:

1 “(19) each employer that is a covered employer,
2 as defined in section 11(e)(1) of the Fair Labor
3 Standards Act of 1938 (29 U.S.C. 211(e)(1)) is re-
4 quired to comply with subsection (h); and”;

5 (iv) by adding at the end the fol-
6 lowing:

7 “(h) SUPPLY CHAIN RESPONSIBILITY PLANS.—Each
8 employer that is a covered employer, as defined in section
9 11(e)(1) of the Fair Labor Standards Act of 1938 (29
10 U.S.C. 211(e)(1)), shall annually—

11 “(1) submit, as part of the employer’s supply
12 chain responsibility plan under section 11(e) of such
13 Act, the information required under such section
14 that relates to this Act; and

15 “(2) include such information in the plan post-
16 ed publicly on the operator’s website.”.

17 (2) EFFECTIVE DATE.—The amendments made
18 by paragraph (1) shall apply to weeks of unemploy-
19 ment beginning on or after the earlier of—

20 (A) the date the State changes its statutes,
21 regulations, or policies in order to comply with
22 such amendments; or

23 (B) January 1, 2022.

1 **SEC. 208. CONFORMING AMENDMENTS.**

2 (a) DAVIS-BACON ACT.—The table of sections of sub-
3 chapter IV of chapter 31 of title 40, United States Code,
4 as amended by section 102(f)(7), is further amended—

5 (1) by inserting after the item relating to sec-
6 tion 3413 the following:

“Sec. 3143a. Supply chain responsibility plan.”;

7 and

8 (2) by inserting after the item relating to sec-
9 tion 3144a the following:

“Sec. 3144b. Applicability to multiple employers and related entities.”.

10 (b) McNAMARA-O’HARA SERVICE CONTRACT ACT.—

11 Chapter 67 of title 41, United States Code, is amended—

12 (1) in the table of sections—

13 (A) by redesignating the items relating to
14 sections 6705, 6706, and 6707 as the items re-
15 lating to sections 6706, 6708, and 6709, re-
16 spectively;

17 (B) by inserting after the item relating to
18 section 6701 the following:

“Sec. 6701a. Applicability to multiple employers and related entities.”;

19 (C) by inserting after the item relating to
20 section 6704 the following:

“Sec. 6705. Supply chain responsibility plan.”;

21 and

1 (D) by inserting after the item relating to
2 section 6706 the following:

“Sec. 6707. Civil penalties assessed against owners, directors, officers, man-
aging agents, and large shareholders; indemnification.”;

3 (2) in section 6704(b), by striking “sections
4 6705 to 6707(d)” and inserting “sections 6706 to
5 6709(d)”; and

6 (3) in section 6705(d), by striking “section
7 6707(a)–(d)” and inserting “section 6709(a)–(d)”.

8 (c) WALSH-HEALEY PUBLIC CONTRACTS ACT.—The
9 table of sections for chapter 65 of title 41, United States
10 Code, as amended by section 102(g)(7), is further amend-
11 ed—

12 (1) by inserting after the item relating to sec-
13 tion 6501a the following:

“Sec. 6501b. Applicability to multiple employers and related entities.”;

14 and

15 (2) by inserting after the item relating to sec-
16 tion 6502 the following:

“Sec. 6502a. Supply chain responsibility plan.”.

1 **TITLE III—PUBLIC TRANS-**
 2 **PARENCY ON WORKERS’**
 3 **RIGHTS VIOLATIONS**

4 **SEC. 301. CONSUMER RIGHT TO KNOW ABOUT COMPLIANCE**
 5 **WITH WORKERS’ RIGHTS.**

6 (a) IN GENERAL.—The Fair Labor Standards Act of
 7 1938 (29 U.S.C. 201 et seq.) is amended by inserting
 8 after section 18C (29 U.S.C. 218c) the following:

9 **“SEC. 18D. COMPLIANCE RATINGS.**

10 “(a) REQUIREMENT FOR POSTING NOTICE.—An em-
 11 ployer shall post a notice, provided each calendar year by
 12 the Secretary under subsection (b), of the compliance of
 13 the employer with the covered labor laws during the 3 cal-
 14 endar years preceding the calendar year for which the no-
 15 tice applies (referred to in this section as the ‘applicable
 16 3-year period’). Such notice shall be posted—

17 “(1) in each location of the employer—

18 “(A) in a window that is located not less
 19 than 5 feet from the main entry way of such lo-
 20 cation; or

21 “(B) if such a location does not have a
 22 window located within 5 feet of the main entry
 23 way, otherwise within 5 feet of the main entry
 24 way;

1 “(2) on the official website of the employer, if
2 the employer has such a website; and

3 “(3) until the notice is replaced by a revised no-
4 tice under this section or a notice for a subsequent
5 calendar year.

6 “(b) RATING PROCESS.—

7 “(1) IN GENERAL.—The Secretary shall estab-
8 lish—

9 “(A) in accordance with paragraph (2), a
10 process for annually—

11 “(i) reviewing the compliance of each
12 employer with the covered labor laws dur-
13 ing the applicable 3-year period; and

14 “(ii) providing a rating to each em-
15 ployer indicating the level of such compli-
16 ance; and

17 “(B) a notice for each employer to post in
18 accordance with subsection (a), which shall—

19 “(i) be easy for the public to under-
20 stand;

21 “(ii) indicate the rating under this
22 subsection of the employer for the calendar
23 year; and

24 “(iii) otherwise be consistent across
25 all employers.

1 “(2) RATING.—

2 “(A) IN GENERAL.—The notice required
3 under subsection (a) shall provide a rating of
4 the employer’s compliance with the covered
5 labor laws during the applicable 3-year period
6 in the form of one of 4 ratings described in sub-
7 paragraph (B), including—

8 “(i) a concise summary, in English, of
9 the compliance of the employer with the
10 covered labor laws during the applicable 3-
11 year period;

12 “(ii) an emoji face or cartoon face
13 that reflects such summary; and

14 “(iii) a color that reflects such sum-
15 mary.

16 “(B) REGULATIONS.—The Secretary shall
17 prescribe through regulations the number, de-
18 gree, and extent of violations of the covered
19 labor laws by an employer during the applicable
20 3-year period that would qualify for each of the
21 following 4 ratings:

22 “(i) A rating of ‘Excellent’—

23 “(I) meaning the employer has
24 had no or few violations of the covered
25 labor laws during such period; and

1 “(II) which shall be paired with a
2 very open-mouthed smiling face and a
3 deep-green background color.

4 “(ii) A rating of ‘Good’—

5 “(I) meaning the employer has
6 had some violations of the covered
7 labor laws during such period, but no
8 major or extensive violations; and

9 “(II) which shall be paired with a
10 wide-smiling face and a light-green
11 background color.

12 “(iii) A rating of ‘Okay’—

13 “(I) meaning the employer has
14 had, during such period—

15 “(aa) multiple violations of
16 the covered labor laws; or

17 “(bb) very few major or ex-
18 tensive violations of the covered
19 labor laws; and

20 “(II) which shall be paired with a
21 flat-mouthed and unenthusiastic face
22 and a yellow background color.

23 “(iv) A rating of ‘Needs Improve-
24 ment’—

1 “(I) meaning the employer has
2 had, during such period—

3 “(aa) several violations of
4 the covered labor laws;

5 “(bb) more than a few
6 major or extensive violations of
7 the covered labor laws; or

8 “(cc) willful or repeated vio-
9 lations of the covered labor laws
10 (as defined by the Secretary with
11 respect to the covered labor
12 laws); and

13 “(II) which shall be paired with a
14 frowning sad face and a gray back-
15 ground color.

16 “(3) REVIEW PROCESS.—For each review under
17 this section of the compliance of an employer with
18 the covered labor laws, including any additional re-
19 view under subsection (c) or (d), the Secretary shall
20 review—

21 “(A) any information the employer pro-
22 vides to the Secretary with respect to the com-
23 pliance of the employer with the covered labor
24 laws for the applicable 3-year period;

1 “(B) any information provided by any
2 other individual or organization with respect to
3 such compliance; and

4 “(C) any other information the Secretary
5 determines appropriate for the review.

6 “(c) ADDITIONAL REVIEW UPON CLAIM OF INACCU-
7 RACY.—

8 “(1) REQUEST.—If an employer claims that the
9 rating provided for the employer under this section
10 is inaccurate, the employer may, not later than 10
11 days after receiving the notice under this section, re-
12 quest an additional review by the Secretary of the
13 employer’s compliance with the covered labor laws
14 during the applicable 3-year period and a revised
15 rating and notice.

16 “(2) DETERMINATION.—

17 “(A) IN GENERAL.—For each request
18 made under paragraph (1), the Secretary shall
19 conduct an additional review described in such
20 paragraph and make a determination of wheth-
21 er to provide a revised rating and notice.

22 “(B) REVISED RATING GRANTED.—If the
23 Secretary determines that an alteration of the
24 rating is warranted, the Secretary may provide
25 the employer a revised rating and notice under

1 this section. The employer shall, in accordance
2 with subsection (a), post any such revised no-
3 tice not later than 5 days after receiving such
4 revised notice.

5 “(C) REVISED RATING DENIED.—If the
6 Secretary determines that no alteration of the
7 rating is warranted—

8 “(i) the Secretary shall notify the em-
9 ployer of such determination; and

10 “(ii) the employer shall, in accordance
11 with subsection (a), post the notice for
12 which such review was conducted not later
13 than 5 days after receiving the notification
14 described in clause (i).

15 “(D) POSTING OF NOTICE DURING RE-
16 VIEW.—If an employer claims that a rating
17 under this section for a calendar year is inac-
18 curate and submits a request under paragraph
19 (1) for an additional review of such rating, the
20 employer may refrain from posting the notice
21 under this section for such calendar year during
22 the period of such additional review. If an em-
23 ployer so refrains from posting such notice, the
24 employer shall keep the notice the employer re-
25 ceived under this section for the previous cal-

1 endar year (if the employer received such a no-
2 tice) posted in accordance with subsection (a)
3 during the period of such additional review.

4 “(E) LIMITATION.—An employer may not
5 request an additional review of a rating for a
6 calendar year under this subsection if the em-
7 ployer has previously requested such an addi-
8 tional review for the rating for such calendar
9 year.

10 “(d) ADDITIONAL REVIEW UPON REMEDY OF VIOLA-
11 TIONS.—

12 “(1) REQUEST.—If, after receiving a notice
13 under this section for a calendar year, an employer
14 claims that the employer has, not later than the end
15 of such calendar year, fully remedied a violation that
16 affected the rating of the employer under this sec-
17 tion for that year and has reformed the practices of
18 the employer to ensure future compliance with the
19 covered labor laws, the employer may request an ad-
20 ditional review of the employer’s compliance with the
21 covered labor laws, during the period beginning on
22 the first day of the applicable 3-year period and end-
23 ing on the date on which the employer submits the
24 request, and a revised rating and notice under this
25 section for the year.

1 “(2) DETERMINATION.—

2 “(A) IN GENERAL.—For each request
3 made under paragraph (1), the Secretary shall
4 conduct a review described in such paragraph
5 and make a determination as to whether to pro-
6 vide a revised rating and notice.

7 “(B) REVISED RATING GRANTED.—If the
8 Secretary determines that the employer has,
9 during the period beginning on the first day of
10 the applicable 3-year period and ending on the
11 date on which the employer submits the request
12 under paragraph (1), fully remedied the viola-
13 tion with respect to which the employer sub-
14 mitted the request and has reformed its prac-
15 tices to ensure future compliance with the cov-
16 ered labor laws—

17 “(i) the Secretary may provide the
18 employer with a revised rating and notice
19 under this section; and

20 “(ii) if the Secretary provides a re-
21 vised rating and notice under clause (i),
22 the employer shall, in accordance with sub-
23 section (a), post such revised notice not
24 later than 5 days after receiving such re-
25 vised notice.

1 “(C) REVISED RATING DENIED.—If the
2 Secretary decides not to grant a revised rating
3 and notice under this subsection, the Secretary
4 shall notify the employer of such decision.

5 “(D) POSTING OF NOTICE DURING RE-
6 VIEW.—An employer shall keep the notice for
7 which a review under this subsection applies
8 posted in accordance with subsection (a) until
9 the Secretary, if applicable, provides a revised
10 rating and notice under subparagraph (B)(i).

11 “(e) FINAL REVIEW.—Except for the reviews de-
12 scribed in subsections (c) and (d), there shall be no other
13 reviews, including judicial review, of the determinations of
14 the Secretary regarding the rating of an employer under
15 this section.

16 “(f) POSTING IN LOCAL NEWSPAPER.—If an em-
17 ployer violates a provision of this section for more than
18 one month, the employer shall, in addition to the penalties
19 under section 16(e)(11), publish the notice provided under
20 this section in the most prominent local newspaper, as de-
21 termined by the Secretary.

22 “(g) PUBLIC WEBSITE.—

23 “(1) IN GENERAL.—The Secretary shall estab-
24 lish and maintain a public website that includes—

1 “(A) the most recent rating, and all pre-
2 vious ratings, under this section for each em-
3 ployer, which shall be accessible through a sim-
4 ple search feature—

5 “(i) by employer name, city, or zip
6 code; and

7 “(ii) by location on a digital map; and

8 “(B) an accounting of every violation by
9 each employer during the 3-year period of the
10 most recent rating under this section.

11 “(2) RANKINGS.—The Secretary may use the
12 website under this subsection to provide rankings of
13 employers, including by comparing employers to
14 other employers in the same industry.

15 “(h) DEFINITION OF COVERED LABOR LAWS.—For
16 purposes of this section, the term ‘covered labor laws’
17 means, to the extent applicable to the employer, each of
18 the following:

19 “(1) This Act.

20 “(2) The Occupational Safety and Health Act
21 of 1970 (29 U.S.C. 651 et seq.).

22 “(3) The Federal Mine Safety and Health Act
23 of 1977 (30 U.S.C. 801 et seq.).

24 “(4) The Migrant and Seasonal Agricultural
25 Worker Protection Act (29 U.S.C. 1801 et seq.).

1 “(5) The National Labor Relations Act (29
2 U.S.C. 151 et seq.).

3 “(6) Subchapter IV of chapter 31 of title 40,
4 United States Code (commonly known as the ‘Davis-
5 Bacon Act’).

6 “(7) Chapter 67 of title 41, United States Code
7 (commonly known as the ‘McNamara-O’Hara Serv-
8 ice Contract Act’).

9 “(8) Section 503 of the Rehabilitation Act of
10 1973 (29 U.S.C. 793).

11 “(9) The Family and Medical Leave Act of
12 1993 (29 U.S.C. 2601 et seq.).

13 “(10) Title VII of the Civil Rights Act of 1964
14 (42 U.S.C. 2000e et seq.).

15 “(11) The Americans with Disabilities Act of
16 1990 (42 U.S.C. 12101 et seq.).

17 “(12) The Age Discrimination in Employment
18 Act of 1967 (29 U.S.C. 621 et seq.).

19 “(13) Title II of the Genetic Information Non-
20 discrimination Act of 2008 (42 U.S.C. 2000ff et
21 seq.).

22 “(14) Any State law that the Secretary deter-
23 mines is equivalent to a law described in any of
24 paragraphs (1) through (13).”.

1 (b) PENALTIES.—Section 16(e) of the Fair Labor
 2 Standards Act of 1938 (29 U.S.C. 216(e)), as amended
 3 by section 207(a)(2), is further amended by adding at the
 4 end the following:

5 “(11) PENALTIES FOR VIOLATIONS OF COMPLIANCE
 6 RATING PROVISIONS.—Any person who violates section
 7 18D shall be subject to a civil penalty of not more than
 8 \$1,000 for each employee of the employer working at the
 9 location where the violation occurred and for each day of
 10 the violation.”.

11 **TITLE IV—CREATING BROAD**
 12 **AND INCREASING WORKER**
 13 **PROTECTIONS**

14 **SEC. 401. GENERAL STANDARDS FOR APPLYING AND IN-**
 15 **TERPRETING WORKERS’ RIGHTS.**

16 (a) FAIR LABOR STANDARDS ACT OF 1938.—The
 17 Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.)
 18 is amended by adding at the end the following:

19 **“SEC. 20. GENERAL STANDARDS FOR APPLYING AND INTER-**
 20 **PRETING WORKERS’ RIGHTS.**

21 “(a) INTERPRETATION OF PROTECTIONS AND EX-
 22 EMPTIONS.—

23 “(1) PROTECTIONS.—All protections afforded
 24 employees under this Act, including as applied
 25 through the definitions under section 3, shall be in-

1 terpreted expansively in favor of the employee or in-
2 dividual claiming classification as an employee.

3 “(2) EXEMPTIONS AND EXCLUSIONS.—

4 “(A) IN GENERAL.—All exemptions and
5 exclusions under this Act, including as applied
6 through the definitions under section 3, shall be
7 interpreted narrowly against the employer, or
8 person alleged to be an employer, and limited in
9 application to those persons or circumstances
10 plainly and unmistakably within the language
11 and spirit of the exemption or exclusion.

12 “(B) CLEAR AND CONVINCING EVI-
13 DENCE.—Any person asserting the applicability
14 of an exemption or exclusion under this Act
15 shall prove such applicability by clear and con-
16 vincing evidence.

17 “(b) NO-LESS-PROTECTION RULE.—

18 “(1) IN GENERAL.—The Secretary shall not
19 take any action to reduce a protection afforded an
20 employee under this Act through any regulation,
21 guidance, opinion, ruling, standard, order, adjudica-
22 tive decision, or other interpretation from the protec-
23 tion provided to the employee through a prior regu-
24 lation, guidance, opinion, ruling, standard, order, ad-
25 judicative decision, or other interpretation in effect

1 on the day before the date of such action, unless
2 such reduction is explicitly and specifically mandated
3 by an Act of Congress.

4 “(2) REQUEST FOR CONGRESSIONAL ACTION.—
5 The Secretary may submit a proposal to Congress
6 for a reduction described in paragraph (1), but shall
7 not take any action described in such paragraph
8 without an explicit and specific mandate by an Act
9 of Congress.

10 “(3) STANDARD OF DEFERENCE.—Notwith-
11 standing chapter 7 of title 5, United States Code, in
12 any action for judicial review of an agency action
13 under such chapter, a reviewing court shall defer to
14 a regulation, guidance, opinion, ruling, standard,
15 order, adjudicative decision, or other interpretation
16 issued by the agency that increases or otherwise
17 strengthens a protection afforded to an employee
18 under this Act unless such regulation, guidance,
19 opinion, ruling, standard, order, adjudicative deci-
20 sion, or other interpretation is plainly erroneous or
21 inconsistent with this Act.”.

22 (b) NATIONAL LABOR RELATIONS ACT.—The Na-
23 tional Labor Relations Act (29 U.S.C. 151 et seq.) is
24 amended by adding at the end the following:

1 **“SEC. 20. GENERAL STANDARDS FOR APPLYING AND INTER-**
2 **PRETING WORKERS’ RIGHTS.**

3 “(a) INTERPRETATION OF PROTECTIONS AND EX-
4 EMPTIONS.—

5 “(1) PROTECTIONS.—All protections afforded
6 employees under this Act, including as applied
7 through the definitions under section 2, shall be in-
8 terpreted expansively in favor of the employee or in-
9 dividual claiming classification as an employee.

10 “(2) EXEMPTIONS AND EXCLUSIONS.—

11 “(A) IN GENERAL.—All exemptions and
12 exclusions under this Act, including as applied
13 through the definitions under section 2, shall be
14 interpreted narrowly against the employer, or
15 person alleged to be an employer, and limited in
16 application to those persons or circumstances
17 plainly and unmistakably within the language
18 and spirit of the exemption or exclusion.

19 “(B) CLEAR AND CONVINCING EVI-
20 DENCE.—Any person asserting the applicability
21 of an exemption or exclusion under this Act
22 shall prove such applicability by clear and con-
23 vincing evidence.

24 “(b) NO-LESS-PROTECTION RULE.—

25 “(1) IN GENERAL.—The Board, the General
26 Counsel, and any regional director shall not take any

1 action to reduce a protection afforded an employee
2 under this Act through any regulation, guidance,
3 opinion, ruling, standard, order, adjudicative deci-
4 sion, or other interpretation from the protection pro-
5 vided to the employee through a prior regulation,
6 guidance, opinion, ruling, standard, order, adjudica-
7 tive decision, or other interpretation in effect on the
8 day before the date of such action, unless such re-
9 duction is explicitly and specifically mandated by an
10 Act of Congress.

11 “(2) REQUEST FOR CONGRESSIONAL ACTION.—
12 The Board may submit a proposal to Congress for
13 a reduction described in paragraph (1), but the
14 Board, the General Counsel, or any regional director
15 shall not take any action described in such para-
16 graph without an explicit and specific mandate by
17 an Act of Congress.

18 “(3) STANDARD OF DEFERENCE.—Notwith-
19 standing chapter 7 of title 5, United States Code, in
20 any action for judicial review of an agency action
21 under such chapter, a reviewing court shall defer to
22 a regulation, guidance, opinion, ruling, standard,
23 order, adjudicative decision, or other interpretation
24 issued by the agency that increases or otherwise
25 strengthens a protection afforded to an employee

1 under this Act unless such regulation, guidance,
2 opinion, ruling, standard, order, adjudicative deci-
3 sion, or other interpretation is plainly erroneous or
4 inconsistent with this Act.”.

5 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
6 1970.—The Occupational Safety and Health Act of 1970
7 (29 U.S.C. 651 et seq.) is amended by inserting after sec-
8 tion 32 (29 U.S.C. 677) the following:

9 **“SEC. 32A. GENERAL STANDARDS FOR APPLYING AND IN-**
10 **TERPRETING WORKERS’ RIGHTS.**

11 “(a) INTERPRETATION OF PROTECTIONS AND EX-
12 EMPTIONS.—

13 “(1) PROTECTIONS.—All protections afforded
14 employees under this Act, including as applied
15 through the definitions under section 3, shall be in-
16 terpreted expansively in favor of the employee or in-
17 dividual claiming classification as an employee.

18 “(2) EXEMPTIONS AND EXCLUSIONS.—

19 “(A) IN GENERAL.—All exemptions and
20 exclusions under this Act, including as applied
21 through the definitions under section 3, shall be
22 interpreted narrowly against the employer, or
23 person alleged to be an employer, and limited in
24 application to those persons or circumstances

1 plainly and unmistakably within the language
2 and spirit of the exemption or exclusion.

3 “(B) CLEAR AND CONVINCING EVI-
4 DENCE.—Any person asserting the applicability
5 of an exemption or exclusion under this Act
6 shall prove such applicability by clear and con-
7 vincing evidence.

8 “(b) NO-LESS-PROTECTION RULE.—

9 “(1) IN GENERAL.—The Secretary shall not
10 take any action to reduce a protection afforded an
11 employee under this Act through any regulation,
12 guidance, opinion, ruling, standard, order, adjudica-
13 tive decision, or other interpretation from the protec-
14 tion provided to the employee through a prior regu-
15 lation, guidance, opinion, ruling, standard, order, ad-
16 judicative decision, or other interpretation in effect
17 on the day before the date of such action, unless
18 such reduction is explicitly and specifically mandated
19 by an Act of Congress.

20 “(2) REQUEST FOR CONGRESSIONAL ACTION.—

21 The Secretary may submit a proposal to Congress
22 for a reduction described in paragraph (1), but shall
23 not take any action described in such paragraph
24 without an explicit and specific mandate by an Act
25 of Congress.

1 “(3) STANDARD OF DEFERENCE.—Notwith-
2 standing chapter 7 of title 5, United States Code, in
3 any action for judicial review of an agency action
4 under such chapter, a reviewing court shall defer to
5 a regulation, guidance, opinion, ruling, standard,
6 order, adjudicative decision, or other interpretation
7 issued by the agency that increases or otherwise
8 strengthens a protection afforded to an employee
9 under this Act unless such regulation, guidance,
10 opinion, ruling, standard, order, adjudicative deci-
11 sion, or other interpretation is plainly erroneous or
12 inconsistent with this Act.”.

13 (d) FEDERAL MINE SAFETY AND HEALTH ACT OF
14 1977.—Title I of the Federal Mine Safety and Health Act
15 (30 U.S.C. 811 et seq.), as amended by section 202(b)(4),
16 is further amended by adding at the end the following:

17 **“SEC. 119. GENERAL STANDARDS FOR APPLYING AND IN-**
18 **TERPRETING WORKERS’ RIGHTS.**

19 “(a) INTERPRETATION OF PROTECTIONS AND EX-
20 EMPTIONS.—

21 “(1) PROTECTIONS.—All protections afforded
22 under this Act, including any mandatory health or
23 safety standard, rule, order, or regulation promul-
24 gated pursuant to this Act, to employees performing
25 labor in a coal or other mine shall be interpreted ex-

1 pansively in favor of the employee or individual
2 claiming classification as an employee.

3 “(2) EXEMPTIONS AND EXCLUSIONS.—

4 “(A) IN GENERAL.—All exemptions and
5 exclusions under this Act, including any manda-
6 tory health or safety standard, rule, order, or
7 regulation promulgated pursuant to this Act,
8 shall be interpreted narrowly against an oper-
9 ator of a coal or other mine employing employ-
10 ees performing labor in the coal or other mine,
11 or person alleged to be such an operator, and
12 limited in application to those persons or cir-
13 cumstances plainly and unmistakably within the
14 language and spirit of the exemption or exclu-
15 sion.

16 “(B) CLEAR AND CONVINCING EVI-
17 DENCE.—Any person asserting the applicability
18 of an exemption or exclusion under this Act, in-
19 cluding any mandatory health or safety stand-
20 ard, rule, order, or regulation promulgated pur-
21 suant to this Act, shall prove such applicability
22 by clear and convincing evidence.

23 “(b) NO-LESS-PROTECTION RULE.—

24 “(1) IN GENERAL.—The Secretary shall not
25 take any action to reduce a protection afforded

1 under this Act, including any mandatory health or
2 safety standard, rule, order, or regulation promul-
3 gated pursuant to this Act, to an employee per-
4 forming labor in a coal or other mine through any
5 regulation, guidance, opinion, ruling, standard,
6 order, adjudicative decision, or other interpretation
7 from the protection provided to the employee
8 through a prior regulation, guidance, opinion, ruling,
9 standard, order, adjudicative decision, or other inter-
10 pretation in effect on the day before the date of such
11 action, unless such reduction is explicitly and specifi-
12 cally mandated by an Act of Congress.

13 “(2) REQUEST FOR CONGRESSIONAL ACTION.—
14 The Secretary may submit a proposal to Congress
15 for a reduction described in paragraph (1), but shall
16 not take any action described in such paragraph
17 without an explicit and specific mandate by an Act
18 of Congress.

19 “(3) STANDARD OF DEFERENCE.—Notwith-
20 standing chapter 7 of title 5, United States Code, in
21 any action for judicial review of an agency action
22 under such chapter, a reviewing court shall defer to
23 a regulation, guidance, opinion, ruling, standard,
24 order, adjudicative decision, or other interpretation
25 issued by the agency that increases or otherwise

1 strengthens a protection afforded to an employee
2 performing labor in a coal or other mine under this
3 Act, including any mandatory health or safety stand-
4 ard, rule, order, or regulation promulgated pursuant
5 to this Act, unless such regulation, guidance, opin-
6 ion, ruling, standard, order, adjudicative decision, or
7 other interpretation is plainly erroneous or incon-
8 sistent with this Act, including any mandatory
9 health or safety standard, rule, order, or regulation
10 promulgated pursuant to this Act.”.

11 (e) **MIGRANT AND SEASONAL AGRICULTURAL WORK-**
12 **ER PROTECTION ACT.**—Part B of title V of the Migrant
13 and Seasonal Agricultural Worker Protection Act (29
14 U.S.C. 1861 et seq.) is amended by adding at the end
15 the following:

16 **“SEC. 514. GENERAL STANDARDS FOR APPLYING AND IN-**
17 **TERPRETING WORKERS’ RIGHTS.**

18 **“(a) INTERPRETATION OF PROTECTIONS AND EX-**
19 **EMPTIONS.—**

20 **“(1) PROTECTIONS.—**All protections afforded
21 under this Act, including any regulation under this
22 Act, to migrant agricultural workers or seasonal ag-
23 ricultural workers shall be interpreted expansively in
24 favor of the worker or individual claiming classifica-
25 tion as such a worker.

1 “(2) EXEMPTIONS AND EXCLUSION.—

2 “(A) IN GENERAL.—All exemptions and
3 exclusions under this Act, including any regula-
4 tion under this Act, shall be interpreted nar-
5 rowly against an agricultural employer, agricul-
6 tural association, or farm labor contractor em-
7 ploying a migrant agricultural worker or sea-
8 sonal agricultural worker, or person alleged to
9 be such an employer, association, or contractor,
10 and limited in application to those persons or
11 circumstances plainly and unmistakably within
12 the language and spirit of the exemption or ex-
13 clusion.

14 “(B) CLEAR AND CONVINCING EVI-
15 DENCE.—Any person asserting the applicability
16 of an exemption or exclusion under this Act, in-
17 cluding a regulation under this Act, shall prove
18 such applicability by clear and convincing evi-
19 dence.

20 “(b) NO-LESS-PROTECTION RULE.—

21 “(1) IN GENERAL.—The Secretary shall not
22 take any action to reduce a protection afforded
23 under this Act, including a regulation under this
24 Act, to a migrant agricultural worker or a seasonal
25 agricultural worker through any regulation, guid-

1 ance, opinion, ruling, standard, order, adjudicative
2 decision, or other interpretation from the protection
3 provided to the worker through a prior regulation,
4 guidance, opinion, ruling, standard, order, adjudica-
5 tive decision, or other interpretation in effect on the
6 day before the date of such action, unless such re-
7 duction is explicitly and specifically mandated by an
8 Act of Congress.

9 “(2) REQUEST FOR CONGRESSIONAL ACTION.—

10 The Secretary may submit a proposal to Congress
11 for a reduction described in paragraph (1), but shall
12 not take any action described in such paragraph
13 without an explicit and specific mandate by an Act
14 of Congress.

15 “(3) STANDARD OF DEFERENCE.—Notwith-

16 standing chapter 7 of title 5, United States Code, in
17 any action for judicial review of an agency action
18 under such chapter, a reviewing court shall defer to
19 a regulation, guidance, opinion, ruling, standard,
20 order, adjudicative decision, or other interpretation
21 issued by the agency that increases or otherwise
22 strengthens a protection afforded under this Act, in-
23 cluding a regulation under this Act, to a migrant ag-
24 ricultural worker or seasonal agricultural worker un-
25 less such regulation, guidance, opinion, ruling,

1 standard, order, adjudicative decision, or other inter-
 2 pretation is plainly erroneous or inconsistent with
 3 this Act, including a regulation under this Act.”.

4 (f) DAVIS-BACON ACT.—

5 (1) IN GENERAL.—Subchapter IV of chapter
 6 31, United States Code, is amended by adding at
 7 the end the following:

8 **“SEC. 3149. GENERAL STANDARDS FOR APPLYING AND IN-**
 9 **TERPRETING WORKERS’ RIGHTS.**

10 “(a) INTERPRETATION OF PROTECTIONS AND EX-
 11 EMPTIONS.—

12 “(1) PROTECTIONS.—All protections afforded
 13 under this subchapter to laborers and mechanics
 14 who are employees performing labor under a con-
 15 tract or subcontract to which this subchapter applies
 16 shall be interpreted expansively in favor of such la-
 17 borer or mechanic or individual claiming classifica-
 18 tion as such a laborer or mechanic.

19 “(2) EXEMPTIONS AND EXCLUSIONS.—

20 “(A) IN GENERAL.—All exemptions and
 21 exclusions under this subchapter shall be inter-
 22 preted narrowly against a contractor or subcon-
 23 tractor of a contract to which this subchapter
 24 applies, or person alleged to be such a con-
 25 tractor or subcontractor, and limited in applica-

1 tion to those persons or circumstances plainly
2 and unmistakably within the language and spir-
3 it of the exemption or exclusion.

4 “(B) CLEAR AND CONVINCING EVI-
5 DENCE.—Any person asserting the applicability
6 of an exemption or exclusion under this sub-
7 chapter shall prove such applicability by clear
8 and convincing evidence.

9 “(b) NO-LESS-PROTECTION RULE.—

10 “(1) IN GENERAL.—The Secretary shall not
11 take any action to reduce a protection afforded
12 under this subchapter to a laborer or mechanic who
13 is an employee performing labor under a contract or
14 subcontract to which this subchapter applies through
15 any regulation, guidance, opinion, ruling, standard,
16 order, adjudicative decision, or other interpretation
17 from the protection provided to such laborer or me-
18 chanic through a prior regulation, guidance, opinion,
19 ruling, standard, order, adjudicative decision, or
20 other interpretation in effect on the day before the
21 date of such action, unless such reduction is explic-
22 itly and specifically mandated by an Act of Con-
23 gress.

24 “(2) REQUEST FOR CONGRESSIONAL ACTION.—

25 The Secretary may submit a proposal to Congress

1 for a reduction described in paragraph (1), but shall
2 not take any action described in such paragraph
3 without an explicit and specific mandate by an Act
4 of Congress.

5 “(3) STANDARD OF DEFERENCE.—Notwith-
6 standing chapter 7 of title 5, United States Code, in
7 any action for judicial review of an agency action
8 under such chapter, a reviewing court shall defer to
9 a regulation, guidance, opinion, ruling, standard,
10 order, adjudicative decision, or other interpretation
11 issued by the agency that increases or otherwise
12 strengthens a protection afforded under this sub-
13 chapter to a laborer or mechanic who is an employee
14 performing labor under a contract or subcontract to
15 which this subchapter applies unless such regulation,
16 guidance, opinion, ruling, standard, order, adjudica-
17 tive decision, or other interpretation is plainly erro-
18 neous or inconsistent with this subchapter.”.

19 (2) TABLE OF SECTIONS.—The table of sections
20 for subchapter IV of chapter 31 of title 40, United
21 States Code, is amended by adding at the end the
22 following:

Sec. 3149. General standards for applying and interpreting workers’ rights.

23 (g) MCNAMARA-O’HARA SERVICE CONTRACT ACT.—
24 Section 6709 of title 41, United States Code, as amended

1 by section 202(b)(7)(A), is further amended by adding at
2 the end the following:

3 “(g) GENERAL STANDARDS FOR APPLYING AND IN-
4 TERPRETING WORKERS’ RIGHTS.—

5 “(1) INTERPRETATION OF PROTECTIONS AND
6 EXEMPTIONS.—

7 “(A) PROTECTIONS.—All protections af-
8 farded service employees under this chapter
9 shall be interpreted expansively in favor of the
10 service employee or individual claiming classi-
11 fication as a service employee.

12 “(B) EXEMPTIONS AND EXCLUSIONS.—

13 “(i) IN GENERAL.—All exemptions
14 and exclusions under this chapter shall be
15 interpreted narrowly against the contractor
16 or subcontractor to which this chapter ap-
17 plies, or person alleged to be such a con-
18 tractor or subcontractor, and limited in ap-
19 plication to those persons or circumstances
20 plainly and unmistakably within the lan-
21 guage and spirit of the exemption or exclu-
22 sion.

23 “(ii) CLEAR AND CONVINCING EVI-
24 DENCE.—Any person asserting the applica-
25 bility of an exemption or exclusion under

1 this chapter shall prove such applicability
2 by clear and convincing evidence.

3 “(2) NO-LESS-PROTECTION RULE.—

4 “(A) IN GENERAL.—The Secretary shall
5 not take any action to reduce a protection af-
6 forded under this chapter to a service employee
7 through any regulation, guidance, opinion, rul-
8 ing, standard, order, adjudicative decision, or
9 other interpretation from the protection pro-
10 vided to the service employee through a prior
11 regulation, guidance, opinion, ruling, standard,
12 order, adjudicative decision, or other interpreta-
13 tion in effect on the day before the date of such
14 action, unless such reduction is explicitly and
15 specifically mandated by an Act of Congress.

16 “(B) REQUEST FOR CONGRESSIONAL AC-
17 TION.—The Secretary may submit a proposal to
18 Congress for a reduction described in subpara-
19 graph (A), but shall not take any action de-
20 scribed in such subparagraph without an ex-
21 plicit and specific mandate by an Act of Con-
22 gress.

23 “(C) STANDARD OF DEFERENCE.—Not-
24 withstanding chapter 7 of title 5, United States
25 Code, in any action for judicial review of an

1 agency action under such chapter, a reviewing
 2 court shall defer to a regulation, guidance,
 3 opinion, ruling, standard, order, adjudicative
 4 decision, or other interpretation issued by the
 5 agency that increases or otherwise strengthens
 6 a protection afforded to a service employee
 7 under this chapter unless such regulation, guid-
 8 ance, opinion, ruling, standard, order, adjudica-
 9 tive decision, or other interpretation is plainly
 10 erroneous or inconsistent with this chapter.”.

11 (h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

12 (1) IN GENERAL.—Chapter 65 of title 41,
 13 United States Code, is amended by adding at the
 14 end the following:

15 **“SEC. 6512. GENERAL STANDARDS FOR APPLYING AND IN-**
 16 **TERPRETING WORKERS’ RIGHTS.**

17 **“(a) INTERPRETATION OF PROTECTIONS AND EX-**
 18 **EMPTIONS.—**

19 **“(1) PROTECTIONS.—**All protections afforded
 20 under this chapter to individuals performing any
 21 labor, with respect to the manufacture or furnishing
 22 of materials, supplies, articles, or equipment under
 23 a contract to which this chapter applies, who is an
 24 employee of the contractor of such contract, shall be
 25 interpreted expansively in favor of such individual or

1 an individual claiming classification as such an indi-
2 vidual.

3 “(2) EXEMPTIONS AND EXCLUSIONS.—

4 “(A) IN GENERAL.—All exemptions and
5 exclusions under this chapter shall be inter-
6 preted narrowly against the contractor of a con-
7 tract to which this chapter applies, or person
8 alleged to be such a contractor, and limited in
9 application to those persons or circumstances
10 plainly and unmistakably within the language
11 and spirit of the exemption or exclusion.

12 “(B) CLEAR AND CONVINCING EVI-
13 DENCE.—Any person asserting the applicability
14 of an exemption or exclusion under this chapter
15 shall prove such applicability by clear and con-
16 vincing evidence.

17 “(b) NO-LESS-PROTECTION RULE.—

18 “(1) IN GENERAL.—The Secretary shall not
19 take any action to reduce a protection afforded
20 under this chapter to an individual performing any
21 labor, with respect to the manufacture or furnishing
22 of materials, supplies, articles, or equipment under
23 a contract to which this chapter applies, who is an
24 employee of the contractor of such contract, through
25 any regulation, guidance, opinion, ruling, standard,

1 order, adjudicative decision, or other interpretation
2 from the protection provided to such individual
3 through a prior regulation, guidance, opinion, ruling,
4 standard, order, adjudicative decision, or other inter-
5 pretation in effect on the day before the date of such
6 action, unless such reduction is explicitly and specifi-
7 cally mandated by an Act of Congress.

8 “(2) REQUEST FOR CONGRESSIONAL ACTION.—

9 The Secretary may submit a proposal to Congress
10 for a reduction described in paragraph (1), but shall
11 not take any action described in such paragraph
12 without an explicit and specific mandate by an Act
13 of Congress.

14 “(3) STANDARD OF DEFERENCE.—Notwith-

15 standing chapter 7 of title 5, United States Code, in
16 any action for judicial review of an agency action
17 under such chapter, a reviewing court shall defer to
18 a regulation, guidance, opinion, ruling, standard,
19 order, adjudicative decision, or other interpretation
20 issued by the agency that increases or otherwise
21 strengthens a protection afforded under this chapter
22 to an individual performing any labor, with respect
23 to the manufacture or furnishing of materials, sup-
24 plies, articles, or equipment under a contract to
25 which this chapter applies, who is an employee of

1 the contractor of such contract, unless such regula-
 2 tion, guidance, opinion, ruling, standard, order, ad-
 3 judicative decision, or other interpretation is plainly
 4 erroneous or inconsistent with this chapter.”.

5 (2) TABLE OF SECTIONS.—The table of sections
 6 for chapter 65 of title 41, United States Code, is
 7 amended by adding at the end the following:

Sec. 6512. General standards for applying and interpreting workers’ rights.

8 (i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

9 (1) IN GENERAL.—Title I of the Family and
 10 Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.)
 11 is amended by adding at the end the following:

12 **“SEC. 110. GENERAL STANDARDS FOR APPLYING AND IN-**
 13 **TERPRETING WORKERS’ RIGHTS.**

14 **“(a) INTERPRETATION OF PROTECTIONS AND EX-**
 15 **EMPTIONS.—**

16 **“(1) PROTECTIONS.—**All protections afforded
 17 eligible employees under this title, including as ap-
 18 plied through the definitions under section 3, shall
 19 be interpreted expansively in favor of the eligible em-
 20 ployee or individual claiming classification as an eli-
 21 gible employee.

22 **“(2) EXEMPTIONS AND EXCLUSIONS.—**

23 **“(A) IN GENERAL.—**All exemptions and
 24 exclusions under this title, including as applied
 25 through the definitions under section 3, shall be

1 interpreted narrowly against the employer, or
2 person alleged to be an employer, and limited in
3 application to those persons or circumstances
4 plainly and unmistakably within the language
5 and spirit of the exemption or exclusion.

6 “(B) CLEAR AND CONVINCING EVI-
7 DENCE.—Any person asserting the applicability
8 of an exemption or exclusion under this title
9 shall prove such applicability by clear and con-
10 vincing evidence.

11 “(b) NO-LESS-PROTECTION RULE.—

12 “(1) IN GENERAL.—The Secretary shall not
13 take any action to reduce a protection afforded an
14 eligible employee under this title through any regula-
15 tion, guidance, opinion, ruling, standard, order, ad-
16 judicative decision, or other interpretation from the
17 protection provided to the eligible employee through
18 a prior regulation, guidance, opinion, ruling, stand-
19 ard, order, adjudicative decision, or other interpreta-
20 tion in effect on the day before the date of such ac-
21 tion, unless such reduction is explicitly and specifi-
22 cally mandated by an Act of Congress.

23 “(2) REQUEST FOR CONGRESSIONAL ACTION.—
24 The Secretary may submit a proposal to Congress
25 for a reduction described in paragraph (1), but shall

1 not take any action described in such paragraph
 2 without an explicit and specific mandate by an Act
 3 of Congress.

4 “(3) STANDARD OF DEFERENCE.—Notwith-
 5 standing chapter 7 of title 5, United States Code, in
 6 any action for judicial review of an agency action
 7 under such chapter, a reviewing court shall defer to
 8 a regulation, guidance, opinion, ruling, standard,
 9 order, adjudicative decision, or other interpretation
 10 issued by the agency that increases or otherwise
 11 strengthens a protection afforded to an eligible em-
 12 ployee under this title unless such regulation, guid-
 13 ance, opinion, ruling, standard, order, adjudicative
 14 decision, or other interpretation is plainly erroneous
 15 or inconsistent with this title.”.

16 (2) TABLE OF CONTENTS.—The table of con-
 17 tents in section 1(b) of the Family and Medical
 18 Leave Act of 1993 is amended by inserting after the
 19 item relating to section 109 the following:

“Sec. 110. General standards for applying and interpreting workers’ rights.”.

20 (j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

21 (1) IN GENERAL.—Section 3306(w) of the In-
 22 ternal Revenue Code of 1986, as amended by section
 23 206(j), is amended by adding at the end the fol-
 24 lowing new paragraph:

25 “(8) Section 20 of such Act.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall apply to services rendered on
3 or after January 1, 2022.

4 **SEC. 402. STATUTES OF LIMITATION.**

5 (a) FLSA; WALSH-HEALEY PUBLIC CONTRACTS
6 ACT; DAVIS-BACON ACT.—Section 6 of the Portal-to-Port-
7 tal Act of 1947 (29 U.S.C. 255) is amended—

8 (1) in the matter preceding subsection (a), by
9 striking “for unpaid minimum wages, unpaid over-
10 time compensation, or liquidated damages,”; and

11 (2) in subsection (a)—

12 (A) by striking “two years” each place it
13 appears and inserting “4 years”;

14 (B) by inserting “or repeated” after “will-
15 ful”; and

16 (C) by striking “three years” and inserting
17 “6 years”.

18 (b) NATIONAL LABOR RELATIONS ACT.—Section
19 10(b) of the National Labor Relations Act (29 U.S.C.
20 160(b)) is amended—

21 (1) by striking “six months prior to the filing
22 of the charge with the Board” and inserting “4
23 years prior to the filing of the charge with the
24 Board, or 6 years prior to such filing in the case of

1 an alleged willful or repeated unfair labor practice,”;
2 and

3 (2) by striking “six-month period” and insert-
4 ing “4-year period, or 6-year period, as applicable,”.

5 (c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
6 1970.—Section 9(c) of the Occupational Safety and
7 Health Act of 1970 (29 U.S.C. 658(c)) is amended by
8 striking “expiration of six months following the occurrence
9 of any violation” and inserting “expiration of—

10 “(1) except as provided in paragraph (2), 4
11 years following the occurrence of any violation de-
12 scribed in subsection (a); or

13 “(2) in the case of a violation described in sub-
14 section (a) that is willful or repeated, 6 years fol-
15 lowing the occurrence of the violation.”.

16 (d) FAMILY AND MEDICAL LEAVE ACT OF 1993.—
17 Section 107(c) of the Family and Medical Leave Act of
18 1993 (29 U.S.C. 2617(c)) is amended—

19 (1) in paragraph (1), by striking “2 years” and
20 inserting “4 years”; and

21 (2) in paragraph (2), by striking “3 years” and
22 inserting “6 years”.

1 TITLE V—GENERAL PROVISIONS**2 SEC. 501. SEVERABILITY.**

3 If any provision of this Act or the application of such
4 provision to any person, entity, government, or cir-
5 cumstance, is held to be unconstitutional, the remainder
6 of this Act, or the application of such provision to all other
7 persons, entities, governments, or circumstances, shall not
8 be affected thereby.

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