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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To deter, prevent, reduce, and respond to harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories; and to amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

IN THE HOUSE OF REPRESENTATIVES

Ms. LOIS FRANKEL of Florida introduced the following bill; which was referred to the Committee on _____

A BILL

To deter, prevent, reduce, and respond to harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories; and to amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ending the Monopoly
3 of Power Over Workplace Harassment through Education
4 and Reporting Act” or the “EMPOWER Act”.

5 **TITLE I—PREVENTING AND RE-**
6 **SPONDING TO WORKPLACE**
7 **HARASSMENT**

8 **SEC. 101. PURPOSE AND AUTHORITY.**

9 It is the purpose of this title, through the exercise
10 by Congress of its power to regulate commerce among the
11 several States, to deter, prevent, reduce, and respond to
12 harassment in the workplace, including sexual harass-
13 ment, sexual assault, and harassment based on other pro-
14 tected categories.

15 **SEC. 102. DEFINITIONS.**

16 In this title:

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

20 (2) **CHARGE OF DISCRIMINATION.**—The term
21 “Charge of Discrimination” means a charge or com-
22 plaint of discrimination filed pursuant to section 706
23 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-
24 5), section 7 of the Age Discrimination in Employ-
25 ment Act of 1967 (29 U.S.C. 626), section 107 of
26 the Americans with Disabilities Act of 1990 (42

1 U.S.C. 12117), or section 207 of the Genetic Infor-
2 mation Nondiscrimination Act of 2008 (42 U.S.C.
3 2000ff-6).

4 (3) COMMISSION.—The term “Commission”
5 means the Equal Employment Opportunity Commis-
6 sion.

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

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

13 (B) an employee to which section 703, 704
14 or 717(a) of the Civil Rights Act of 1964 (42
15 U.S.C. 2000e-2; 2000e-3; 2000e-16(a)) ap-
16 plies, including an outside worker in such an
17 employee’s office or place of employment, sec-
18 tion 4 of the Age Discrimination in Employ-
19 ment Act of 1967 (29 U.S.C. 623), section 102
20 of the Americans with Disabilities Act of 1990
21 (42 U.S.C. 12112), or sections 202, 203, and
22 204 of the Genetic Information Nondiscrimina-
23 tion Act of 2008 (42 U.S.C. 2000ff-1, 2000ff-
24 2, 2000ff-3);

1 (C) a State employee to which section
2 302(a) of the Government Employee Rights Act
3 of 1991 (42 U.S.C. 2000e-16b(a)) applies, in-
4 cluding an outside worker in such a State em-
5 ployee's office or place of employment; or

6 (D) a covered employee, as defined in sec-
7 tion 101 of the Congressional Accountability
8 Act of 1995 (2 U.S.C. 1301) or section 411(c)
9 of title 3, United States Code, including an out-
10 side worker in such a covered employee's office
11 or place of employment.

12 (5) EMPLOYER.—The term “employer”
13 means—

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

16 (B) an entity to which section 703, 704, or
17 717(a) of the Civil Rights Act of 1964 applies,
18 sections 4 and 15 of the Age Discrimination in
19 Employment Act of 1967 (29 U.S.C. 623,
20 633a), section 102 of the Americans with Dis-
21 abilities Act of 1990 (42 U.S.C. § 12112), or
22 sections 202, 203, and 204 of the Genetic In-
23 formation Nondiscrimination Act of 2008 (42
24 U.S.C. 2000ff-1, 2000ff-2, 2000ff-3);

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

4 (D) an employing office, as defined in sec-
5 tion 101 of the Congressional Accountability
6 Act of 1995 or section 411(c) of title 3, United
7 States Code.

8 (6) FAIR EMPLOYMENT PRACTICES AGEN-
9 CIES.—The term “fair employment practices agen-
10 cies” means State and local agencies with the au-
11 thority to enforce laws or regulations to prohibit dis-
12 crimination in employment, to grant or seek or seek
13 relief from discrimination, or to institute criminal
14 proceedings.

15 (7) INDEPENDENT CONTRACTOR.—The term
16 “independent contractor” means an individual who,
17 with respect to an employer, is a contractor based on
18 the common law of agency.

19 (8) LAW ENFORCEMENT AGENCY.—The term
20 “law enforcement agency” means a government
21 agency with criminal or civil law enforcement pow-
22 ers, which may include a government agency with
23 regulatory or licensing authority.

24 (9) NONDISCLOSURE CLAUSE.—The term “non-
25 disclosure clause” means a provision in a contract or

1 agreement establishing that the parties to the con-
2 tract or agreement agree not to disclose information
3 covered by the terms and conditions of the contract
4 or agreement.

5 (10) NONDISPARAGEMENT CLAUSE.—The term
6 “nondisparagement clause” means a provision in a
7 contract or agreement requiring one or more parties
8 to the contract or agreement not to make negative
9 statements about the other.

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

12 (A) a temporary worker hired through an
13 employment agency (as defined in section 701
14 of the Civil Rights Act of 1964 (42 U.S.C.
15 2000e)) to provide services to an employer pur-
16 suant to an agreement between the employment
17 agency and the employer, section 11 of the Age
18 Discrimination in Employment Act of 1967 (29
19 U.S.C. 630), section 101 of the Americans with
20 Disabilities Act of 1990 (42 U.S.C. 12111), or
21 section 201 of the Genetic Information Non-
22 discrimination Act of 2008 (42 U.S.C.
23 2000ff)”;

24 (B) an independent contractor for an em-
25 ployer or a subcontractor thereof; or

1 (C) an intern or volunteer, whether paid or
2 unpaid, for an employer.

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

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

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

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

5 (a) UNLAWFUL PRACTICES.—

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

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

25 (b) SETTLEMENT OR SEPARATION AGREEMENTS.—

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

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

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

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

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

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

5 (d) ENFORCEMENT.—

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

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

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

15 (ii) the Age Discrimination in Em-
16 ployment Act of 1967 (29 U.S.C. 621 et
17 seq.);

18 (iii) titles I and V of the Americans
19 with Disabilities Act of 1990 (42 U.S.C.
20 12101 et seq.);

21 (iv) title II of the Genetic Information
22 Nondiscrimination Act of 2008 (42 U.S.C.
23 2000ff et seq.); or

1 (v) sections 302 and 304 of the Gov-
2 ernment Employee Rights Act of 1991 (42
3 U.S.C. 2000e–16b and 2000e–16c),
4 in the case of a claim alleged by an employee
5 or applicant for a violation of the law specified
6 in respective clause of this subparagraph;

7 (B) the Librarian of Congress shall have
8 the same powers as the Librarian of Congress
9 has to administer and enforce title VII of the
10 Civil Rights Act of 1964 (42 U.S.C. 2000e et
11 seq.) in the case of a claim alleged by an em-
12 ployee or applicant for a violation of such title;

13 (C) the Board (as defined in section 101 of
14 the Congressional Accountability Act of 1995 (2
15 U.S.C. 1301)) shall have the same powers as
16 the Board has to administer and enforce the
17 Congressional Accountability Act of 1995 (2
18 U.S.C. 1301 et seq.) in the case of a claim al-
19 leged by an employee or applicant for a viola-
20 tion of section 201(a)(1) of such Act (2 U.S.C.
21 1311(a)(1));

22 (D) the Attorney General shall have the
23 same powers as the Attorney General has to ad-
24 minister and enforce—

1 (i) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.); or

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

6 in the case of a claim alleged by an employee
7 or applicant for a violation of the law specified
8 in respective clause of this subparagraph;

9 (E) the President, the Commission, and
10 the Merit Systems Protection Board shall have
11 the same powers as the President, the Commis-
12 sion, and the Board, respectively, have to ad-
13 minister and enforce chapter 5 of title 3,
14 United States Code, in the case of a claim al-
15 leged by an employee or applicant for a viola-
16 tion of section 411 of such title;

17 (F) the Commission shall have the same
18 powers as described in subparagraph (A) to ad-
19 minister and enforce a claim by any employee
20 or applicant who is not otherwise able to seek
21 remedy for a claim through an enforcement en-
22 tity described in subparagraph (A) through (E);
23 and

1 (G) a court of the United States shall have
2 the same jurisdiction and powers as the court
3 has to enforce—

4 (i) title VII of the Civil Rights Act of
5 1964 (42 U.S.C. 2000e et seq.) in the case
6 of a claim alleged by an employee or appli-
7 cant for a violation of such title or in the
8 case of a claim described in subparagraph
9 (F);

10 (ii) the Age Discrimination in Em-
11 ployment Act of 1967 (29 U.S.C. 621 et
12 seq.);

13 (iii) titles I and V of the Americans
14 with Disabilities Act of 1990 (42 U.S.C.
15 12101 et seq.);

16 (iv) title II of the Genetic Information
17 Nondiscrimination Act of 2008 (42 U.S.C.
18 2000ff et seq.);

19 (v) sections 302 and 304 of the Gov-
20 ernment Employee Rights Act of 1991 (42
21 U.S.C. 2000e–16b and 2000e–16c) in the
22 case of a claim alleged by an employee or
23 applicant for a violation of section
24 302(a)(1) of such Act (42 U.S.C. 2000e–
25 16b(a)(1));

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

7 (vii) chapter 5 of title 3, United
8 States Code, in the case of a claim alleged
9 by an employee or applicant for a violation
10 of section 411 of such title.

11 (2) PROCEDURES AND REMEDIES.—The proce-
12 dures and remedies applicable to a claim alleged by
13 an employee or applicant for a violation of this sec-
14 tion are—

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

21 (B) the Age Discrimination in Employment
22 Act of 1967 (29 U.S.C. 621 et seq.);

23 (C) titles I and V of the Americans with
24 Disabilities Act of 1990 (42 U.S.C. 12101 et
25 seq.);

1 (D) title II of the Genetic Information
2 Nondiscrimination Act of 2008 (42 U.S.C.
3 2000ff et seq.);

4 (E) the procedures and remedies applicable
5 for a violation of section 302(a)(1) of the Gov-
6 ernment Employee Rights Act of 1991 (42
7 U.S.C. 2000e–16b(a)(1)) in the case of a claim
8 alleged by an employee or applicant for a viola-
9 tion of such section;

10 (F) the procedures and remedies applicable
11 for a violation of section 201(a)(1) of the Con-
12 gressional Accountability Act of 1995 (2 U.S.C.
13 1311(a)(1)) in the case of a claim alleged by an
14 employee or applicant for a violation of such
15 section; and

16 (G) the procedures and remedies applicable
17 for a violation of section 411 of title 3, United
18 States Code, in the case of a claim alleged by
19 an employee or applicant for a violation of such
20 section.

21 (3) OTHER APPLICABLE PROVISIONS.—With re-
22 spect to a claim alleged by a covered employee (as
23 defined in section 101 of the Congressional Account-
24 ability Act of 1995 (2 U.S.C. 1301)) for a violation
25 of this section, title III of the Congressional Ac-

1 countability Act of 1995 (2 U.S.C. 1381 et seq.)
2 shall apply in the same manner as such title applies
3 with respect to a claim alleged by such a covered
4 employee for a violation of section 201(a)(1) of such
5 Act (2 U.S.C. 1311(a)(1)).

6 (e) REGULATIONS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graphs (2), (3), and (4), the Commission shall have
9 authority to issue regulations to carry out this sec-
10 tion.

11 (2) LIBRARIAN OF CONGRESS.—The Librarian
12 of Congress shall have authority to issue regulations
13 to carry out this section with respect to employee or
14 applicant s and applicants for employment of the Li-
15 brary of Congress.

16 (3) BOARD.—The Board referred to in sub-
17 section (d)(1)(C) shall have authority to issue regu-
18 lations to carry out this section, in accordance with
19 section 304 of the Congressional Accountability Act
20 of 1995 (2 U.S.C. 1384), with respect to covered
21 employees, as defined in section 101 of such Act (2
22 U.S.C. 1301).

23 (4) PRESIDENT.—The President shall have au-
24 thority to issue regulations to carry out this section
25 with respect to covered employees, as defined in sec-

1 tion 411(c) of title 3, United States Code, and appli-
2 cants for employment as such employees.

3 (f) STATE AND FEDERAL IMMUNITY.—

4 (1) ABROGATION OF STATE IMMUNITY.—A
5 State shall not be immune under the 11th Amend-
6 ment to the Constitution from a suit brought in a
7 Federal court of competent jurisdiction for a viola-
8 tion of this section.

9 (2) WAIVER OF STATE IMMUNITY.—

10 (A) IN GENERAL.—

11 (i) WAIVER.—A State’s receipt or use
12 of Federal financial assistance for any pro-
13 gram or activity of a State shall constitute
14 a waiver of sovereign immunity, under the
15 11th Amendment to the Constitution or
16 otherwise, to a suit brought by an em-
17 ployee or applicant for employment of that
18 program or activity under this section for
19 a remedy authorized under subsection (d).

20 (ii) DEFINITION.—In this paragraph,
21 the term “program or activity” has the
22 meaning given the term in section 606 of
23 the Civil Rights Act of 1964 (42 U.S.C.
24 2000d–4a).

1 (B) EFFECTIVE DATE.—With respect to a
2 particular program or activity, subparagraph
3 (A) applies to conduct occurring on or after the
4 day, after the date of enactment of this Act, on
5 which a State first receives or uses Federal fi-
6 nancial assistance for that program or activity.

7 (3) REMEDIES AGAINST STATE OFFICIALS.—An
8 official of a State may be sued in the official capac-
9 ity of the official by any employee or applicant for
10 employment who has complied with the applicable
11 procedures of subsection (d), for equitable relief that
12 is authorized under this section. In such a suit the
13 court may award to the prevailing party those costs
14 authorized by section 722 of the Revised Statutes
15 (42 U.S.C. 1988).

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

1 (A) punitive damages are not available;
2 and

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

6 **SEC. 104. SEC FILINGS AND MATERIAL DISCLOSURES AT**
7 **PUBLIC COMPANIES.**

8 (a) DEFINITIONS.—In this section—

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

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

15 (b) FINDINGS.—Congress finds that—

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

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

21 (B) along with the executives and man-
22 agers of those corporations—

23 (i) are complying with prohibitions
24 against workplace harassment, including
25 sexual harassment; and

1 (ii) facilitate a culture of silence, dis-
2 respect, intimidation, and abuse that nega-
3 tively impacts the health and safety of the
4 workers of those corporations and the
5 value of those corporations; and

6 (2) the requirements of this section will—

7 (A) establish necessary transparency and
8 accountability; and

9 (B) provide an incentive for corporations
10 to—

11 (i) promptly address workplace har-
12 assment, including sexual harassment, as
13 that misconduct occurs; and

14 (ii) foster a culture in which work-
15 place harassment is not protected and does
16 not occur.

17 (c) INFORMATION REQUIRED.—Not later than 1 year
18 after the date of enactment of this Act, the Securities and
19 Exchange Commission shall promulgate a regulation that
20 requires any issuer that is required to submit annually a
21 report using Form 10-K to include in any such submis-
22 sion—

23 (1) during the then most recent 5-year period
24 covered by the submission—

1 (A) with respect to workplace harassment,
2 including sexual harassment, and retaliation for
3 reporting, resisting, opposing, assisting, or oth-
4 erwise participating in a workplace harassment
5 proceeding—

6 (i) the number of settlements reached
7 by the issuer as a signatory or when the
8 issuer is a beneficiary of a release of
9 claims; and

10 (ii) whether any judgments or awards
11 (including awards through arbitration or
12 administrative proceedings) were entered
13 against the issuer in part or in whole, or
14 any payments made in connection with a
15 release of claims; and

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

18 (i) the settlements described in sub-
19 paragraph (A)(i); and

20 (ii) the judgments described in sub-
21 paragraph (A)(ii); and

22 (2) information regarding whether, in the ag-
23 gregate, including the period covered by the submis-
24 sion, there have been three or more settlements
25 reached by, or judgments against, the issuer with re-

1 spect to workplace harassment, including sexual har-
2 assment, or retaliation for reporting, resisting, op-
3 posing, assisting, or otherwise participating in a
4 workplace harassment proceeding that relate to a
5 particular individual employed by the issuer, without
6 identifying that individual by name.

7 **SEC. 105. PROFESSIONAL TRAINING, INCLUDING BY-**
8 **STANDER TRAINING, AND PUBLIC EDU-**
9 **CATION CAMPAIGNS.**

10 (a) COMMISSION AUTHORITY.—The Commission
11 shall have the authority to—

12 (1) reasonably adjust the fees the Commission
13 charges for any education, technical assistance, or
14 training the Commission offers in accordance with
15 section 705(j)(1) of the Civil Rights Act of 1964 (42
16 U.S.C. 2000e–4(j)(1));

17 (2) use the materials developed by the Commis-
18 sion for any education, technical assistance, or train-
19 ing offered by the Commission in accordance with
20 section 705(j)(1) of the Civil Rights Act of 1964 in
21 any education and outreach activities carried out by
22 the Commission; and

23 (3) use funds from the EEOC Education, Tech-
24 nical Assistance, and Training Revolving Fund, es-
25 tablished under section 705(k) of the Civil Rights

1 Act of 1964, to pay the full salaries of any Commis-
2 sion employees that develop and administer any edu-
3 cation, technical assistance, or training programs of-
4 fered by the Commission.

5 (b) WORKPLACE TRAINING.—

6 (1) IN GENERAL.—The Commission shall pro-
7 vide for the development and dissemination of work-
8 place training programs and information regarding
9 workplace harassment, including sexual harassment.

10 (2) CONTENTS OF TRAINING.—The training
11 provided by the Commission under this subsection to
12 managers and nonmanagers shall be consistent with
13 the findings of the Commission, on matters includ-
14 ing—

15 (A) what constitutes workplace harass-
16 ment, including sexual harassment;

17 (B) the rights of individuals with respect
18 to workplace harassment and how to report
19 workplace harassment;

20 (C) how individuals, including bystanders,
21 who encounter workplace harassment can inter-
22 vene or report the harassment; and

23 (D) how employers and managers can pre-
24 vent workplace harassment, including sexual
25 harassment, from occurring in the workplace.

1 (3) CONTENTS OF INFORMATION.—In providing
2 information under this subsection, the Commission
3 shall—

4 (A) prepare and distribute information
5 that is consistent with the findings of the Com-
6 mission;

7 (B) develop and disseminate a public serv-
8 ice advertisement campaign that distributes in-
9 formation with respect to the matters described
10 in paragraph (2).

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

14 **TITLE II—MODIFICATION OF TAX**
15 **TREATMENT OF AMOUNTS**
16 **RELATED TO EMPLOYMENT**
17 **DISCRIMINATION AND WORK-**
18 **PLACE HARASSMENT**

19 **SEC. 201. TAX TREATMENT OF AMOUNTS RELATED TO**
20 **JUDGMENTS.**

21 (a) DENIAL OF DEDUCTION.—

22 (1) IN GENERAL.—Part IX of subchapter B of
23 chapter 1 of the Internal Revenue Code of 1986 is
24 amended by adding at the end the following new sec-
25 tion:

1 **“SEC. 280I. AMOUNTS RELATED TO JUDGMENTS WITH RE-**
2 **SPECT TO WORKPLACE HARASSMENT, IN-**
3 **CLUDING SEXUAL HARASSMENT.**

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

6 “(1) pursuant to any judgment or award in liti-
7 gation related to workplace harassment, including
8 sexual harassment, or

9 “(2) for expenses and attorney’s fees in connec-
10 tion with the litigation resulting in the judgment or
11 award described in paragraph (1) (other than ex-
12 penses or attorney’s fees paid by the workplace har-
13 assment plaintiff or claimant), or for any insurance
14 covering the defense or liability of the underlying
15 claims with respect to such litigation.”.

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

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

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

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to amounts paid or in-

1 curred in taxable years beginning after the date of
2 the enactment of this Act.

3 (b) EXCLUSION FROM INCOME.—

4 (1) IN GENERAL.—Part III of subchapter B of
5 chapter 1 of the Internal Revenue Code of 1986 is
6 amended by inserting after section 139G the fol-
7 lowing new section:

8 **“SEC. 139H. AMOUNTS RECEIVED IN CONNECTION WITH**
9 **JUDGMENTS, AWARDS, AND SETTLEMENTS**
10 **WITH RESPECT TO WORKPLACE HARASS-**
11 **MENT.**

12 “Gross income shall not include any amount received
13 in connection with a judgment or award in, or a settlement
14 of—

15 “(1) a claim related to workplace harassment,
16 including sexual harassment or other unlawful dis-
17 crimination, or

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

20 The preceding sentence shall not include any employment
21 discrimination compensation to which section 1302 ap-
22 plies.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions for part III of subchapter B of chapter 1 of

1 such Code is amended by inserting after the item re-
2 lating to section 139G the following new item:

“Sec. 139H. Amounts received in connection with judgments, awards, and settlements with respect to workplace harassment.”.

3 (3) **EFFECTIVE DATE.**—The amendments made
4 by this subsection shall apply to amounts received in
5 taxable years beginning after the date of the enact-
6 ment of this Act.

7 **SEC. 202. LIMITATION ON TAX BASED ON INCOME AVER-**
8 **AGING FOR COMPENSATION RECEIVED ON**
9 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**
10 **MENT DISCRIMINATION.**

11 (a) **IN GENERAL.**—Part I of subchapter Q of chapter
12 1 of the Internal Revenue Code of 1986 (relating to in-
13 come averaging) is amended by adding at the end the fol-
14 lowing new section:

15 **“SEC. 1302. INCOME FROM BACKPAY AND FRONTPAY RE-**
16 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**
17 **FUL EMPLOYMENT DISCRIMINATION.**

18 “(a) **GENERAL RULE.**—If employment discrimination
19 backpay or frontpay is received by a taxpayer during a
20 taxable year, the tax imposed by this chapter for such tax-
21 able year shall not exceed the sum of—

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

1 “(A) no amount of such backpay or
2 frontpay were included in gross income for such
3 year, and

4 “(B) no deduction were allowed for such
5 year for expenses (otherwise allowable as a de-
6 duction to the taxpayer for such year) in con-
7 nection with making or prosecuting any claim
8 of unlawful employment discrimination by or on
9 behalf of the taxpayer, plus

10 “(2) the product of—

11 “(A) the number of years in the backpay
12 period and frontpay period, and

13 “(B) the amount by which the tax deter-
14 mined under paragraph (1) would increase if
15 the amount on which such tax is determined
16 were increased by the average annual net back-
17 pay and frontpay amount.

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

19 “(1) EMPLOYMENT DISCRIMINATION BACKPAY
20 OR FRONTPAY.—The term ‘employment discrimina-
21 tion backpay or frontpay’ means backpay or
22 frontpay receivable (whether as lump sums or peri-
23 odic payments) on account of a claim of unlawful
24 employment discrimination.

1 “(2) UNLAWFUL EMPLOYMENT DISCRIMINA-
2 TION.—The term ‘unlawful employment discrimina-
3 tion’ has the meaning provided the term ‘unlawful
4 discrimination’ in section 62(e).

5 “(3) BACKPAY AND FRONTPAY.—The terms
6 ‘backpay’ and ‘frontpay’ mean amounts—

7 “(A) which are includible in gross income
8 in the taxable year as compensation which is at-
9 tributable—

10 “(i) in the case of backpay, to services
11 performed, or that would have been per-
12 formed but for a claimed violation of law,
13 as an employee, former employee, or pro-
14 spective employee before such taxable year
15 for the taxpayer’s employer, former em-
16 ployer, or prospective employer, and

17 “(ii) in the case of frontpay, to em-
18 ployment that would have been performed
19 but for a claimed violation of law, in a tax-
20 able year or taxable years following the
21 taxable year, and

22 “(B) which are received on account of a
23 judgment or settlement resulting from a claim
24 for a violation of law.

1 “(4) BACKPAY PERIOD.—The term ‘backpay pe-
2 riod’ means the period during which services are
3 performed (or would have been performed) to which
4 backpay is attributable. If such period is not equal
5 to a whole number of taxable years, such period
6 shall be increased to the next highest number of
7 whole taxable years.

8 “(5) FRONTPAY PERIOD.—The term ‘frontpay
9 period’ means the period of foregone employment to
10 which frontpay is attributable. If such period is not
11 equal to a whole number of taxable years, such pe-
12 riod shall be increased to the next highest number
13 of whole taxable years.

14 “(6) AVERAGE ANNUAL NET BACKPAY AND
15 FRONTPAY AMOUNT.—The term ‘average annual net
16 backpay and frontpay amount’ means the amount
17 equal to—

18 “(A) the excess of—

19 “(i) employment discrimination back-
20 pay and frontpay, over

21 “(ii) the amount of deductions that
22 would have been allowable but for sub-
23 section (a)(1)(B), divided by

24 “(B) the number of years in the backpay
25 period and frontpay period.”.

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

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

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

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

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