116TH 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. Frankel (for herself and ____ ) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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2
SECTION 1. SHORT TITLE.

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

TITLE I—PREVENTING AND RESPONDING TO WORKPLACE HARASSMENT

SEC. 101. PURPOSE AND AUTHORITY.

It is the purpose of this title, through the exercise by Congress of its power to regulate commerce among the several States, to deter, prevent, reduce, and respond to harassment in the workplace, including sexual harassment, sexual assault, and harassment based on other protected categories.

SEC. 102. DEFINITIONS.

In this title:

(1) APPLICANT.—The term “applicant” means an applicant for employment as an employee, independent contractor, or outside worker.

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

(3) COMMISSION.—The term “Commission” means the Equal Employment Opportunity Commission.
(4) EMPLOYEE.—The term “employee” means—

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

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

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

or

(D) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code, including an outside worker in such a covered employee’s office or place of employment.

(5) EMPLOYER.—The term “employer” means—
(A) a person engaged in an industry affecting commerce, and any agent of such a person;

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

(C) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies; or

(D) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code.

(6) FAIR EMPLOYMENT PRACTICES AGENCIES.—The term “fair employment practices agencies” means State and local agencies with the authority to enforce laws or regulations to prohibit discrimination in employment.

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

(8) LAW ENFORCEMENT AGENCY.—The term “law enforcement agency” means a government agency with criminal or civil law enforcement powers, which may include a government agency with regulatory or licensing authority.
(9) NONDISCLOSURE CLAUSE.—The term “non-disclosure clause” means a provision in a contract or agreement establishing that the parties to the contract or agreement agree not to disclose information covered by the terms and conditions of the contract or agreement.

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

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

(A) a temporary worker hired through an employment agency (as defined in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e)) to provide services to an employer pursuant to an agreement between the employment agency and the employer;

(B) an independent contractor for an employer or a subcontractor thereof; or

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

(12) SEXUAL ASSAULT.—The term “sexual assault” means any nonconsensual sexual act pro-
scribed by Federal, tribal, or State law, including such an act that occurs when the victim lacks capacity to consent.

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

(14) WORKPLACE HARASSMENT.—The term “workplace harassment” means unwelcome or offensive conduct based on sex (including such conduct based on sexual orientation, gender identity, and pregnancy), race, color, national origin, disability, age, or religion, whether that conduct occurs in-person or through an electronic medium (which may include social media), in a work or work-related context, which affects any term, condition, or privilege of employment.

SEC. 103. PROHIBITING NONDISPARAGEMENT AND NON-DISCLOSURE CLAUSES THAT COVER WORKPLACE HARASSMENT, INCLUDING SEXUAL HARASSMENT.

(a) UNLAWFUL PRACTICES.—

(1) PROHIBITION ON WORKPLACE HARASSMENT NONDISCLOSURE CLAUSE.—Subject to subsection
(b)(1), it shall be an unlawful practice for an employer to enter into a contract or agreement with an employee or applicant, as a condition of employment, promotion, compensation, benefits, or change in employment status or contractual relationship, or as a term, condition, or privilege of employment, if that contract or agreement contains a nondisparagement or nondisclosure clause that covers workplace harassment, including sexual harassment or retaliation for reporting, resisting, opposing, or assisting in the investigation of workplace harassment.

(2) Prohibition on enforcement.—Notwithstanding any other provision of law, it shall be an unlawful practice and otherwise unlawful for an employer to enforce or attempt to enforce a nondisparagement clause or nondisclosure clause described in paragraph (1).

(b) Settlement or Separation Agreements.—

(1) In general.—The provisions of subsection (a) do not apply to a nondisclosure clause or nondisparagement clause contained in a settlement agreement or separation agreement that resolves legal claims or disputes when—
(A) such legal claims accrued or such disputes arose before the settlement agreement or separation agreement was executed; and

(B) such clauses are mutually agreed upon and mutually benefit both the employer and employee.

(2) UNLAWFUL PRACTICE.—It shall be an unlawful practice for an employer to unilaterally include a nondisclosure clause or a nondisparagement clause that solely benefits the employer in a separation or settlement agreement.

(c) RIGHT TO REPORT RESERVED.—Notwithstanding signing (before or after the effective date of this title) any nondisparagement or nondisclosure clause including a clause referred to in subsection (a)(1), an employee or applicant retains any right that person would otherwise have had to report a concern about workplace harassment, including sexual harassment or another violation of the law to the Commission, another Federal agency (including an office of the legislative or judicial branch), a State or local fair employment practices agency or any State or local agency, or a law enforcement agency, and any right that person would otherwise have had to bring an action in a court of the United States.

(d) ENFORCEMENT.—
(1) Enforcement powers.—With respect to the administration and enforcement of this section in the case of a claim alleged by an employee for a violation of this section—

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

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


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

(B) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such employee for a violation of such title;

(C) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2
U.S.C. 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

(D) the Attorney General shall have the same powers as the Attorney General has to administer and enforce—

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


(E) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of a claim al-
leged by such employee for a violation of section 411 of such title;

(F) the Commission shall have the same powers as described in subparagraph (A) to administer and enforce a claim by any employee who is not otherwise able to seek remedy for a claim through an enforcement entity described in subparagraph (A) through (E); and

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

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


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

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

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

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

(B) the procedures and remedies applicable
for a violation of section 302(a)(1) of the Gov-
ernment Employee Rights Act of 1991 (42
U.S.C. 2000e–16b(a)(1)) in the case of a claim
alleged by such employee for a violation of such
section;

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

and

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

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

(e) REGULATIONS.—

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

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

(3) BOARD.—The Board referred to in subsection (d)(1)(C) shall have authority to issue regulations to carry out this section, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to covered employees, as defined in section 101 of such Act (2 U.S.C. 1301).

(4) PRESIDENT.—The President shall have authority to issue regulations to carry out this section with respect to covered employees, as defined in section 411(c) of title 3, United States Code, and applicants for employment as such employees.

(f) STATE AND FEDERAL IMMUNITY.—

(1) ABROGATION OF STATE IMMUNITY.—A State shall not be immune under the 11th Amendment to the Constitution from a suit brought in a Federal court of competent jurisdiction for a violation of this section.

(2) WAIVER OF STATE IMMUNITY.—

(A) IN GENERAL.—

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

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

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

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

(4) Remedies against the United States
and the States.—Notwithstanding any other pro-
vision of this title, in an action or administrative
proceeding against the United States or a State for
a violation of this section, remedies (including rem-
edies at law and in equity, and interest) are avail-
able for the violation to the same extent as the rem-
edies are available for a violation of title VII of the
Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
by a private entity, except that—

(A) punitive damages are not available;

and

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

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

(a) Confidential Tip-Line Established.—

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

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

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

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

(i) the Commission; and

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

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

(A) explicitly notify reporting individuals
that the tip-line does not allow anonymous re-
porting, but does allow the submission of con-
fidential reports, independent of a Charge of
Discrimination or a Federal or State adminis-
trative complaint, by those employees or applicants who have experienced workplace harassment, including sexual assault and other forms of sexual harassment, and by those employees, applicants, bystanders, or other individuals who have witnessed such conduct;

(B) provide an option for reporting individuals to make a report that would not identify individual employees, but would identify the entity, employer, division, or subdivision responsible for the workplace harassment, including sexual assault and other forms of sexual harassment;

(C) educate reporting individuals about how to preserve the right to make any reports, complaints, or charges that the individuals would otherwise have been eligible to make, independent of any report to the tip-line, including—

(i) the right of the reporting individual to file a Charge of Discrimination that will result in the Commission or a Commission-approved fair employment practices agency taking action (and the risk of losing that right if the reporting in-
individual fails to file a timely Charge of Discrimination); and

(ii) a clear explanation of any deadlines or limitations periods;

(D) instruct reporting individuals about how to file a Charge of Discrimination with the Commission and encourage reporting individuals to file a Charge of Discrimination in order to allow the Commission to more effectively investigate the workplace harassment;

(E) emphasize that reports to the confidential tip-line—

(i) will not prompt individualized investigations, except in the limited circumstances described in clause (ii), subparagraph (I), and subsection (b), and such investigations will fully comport with applicable due process requirements;

(ii) will be monitored by the Commission and Commission-approved fair employment practices agencies to identify trends and determine whether investigations should be undertaken, for instance, when the Commission has received multiple complaints regarding a particular employer
or there is evidence of a broader pattern or practice of workplace harassment;

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

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

(F) engage fair employment practices agencies at the State and local level to apply and be thoroughly vetted and reviewed for approved access to the confidential tip-line;

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

(H) offer an option to each reporting individual, at the time of reporting, to elect to be informed, to the extent practicable, if the individual’s report leads to an investigation, so that the reporting individual may choose to provide further information or participate in any resulting investigation; and
(I) protect the identity of individuals making reports and employers by making such reports confidential within the tip-line and only available to the Commission and Commission-approved fair employment practices agencies, and require that information obtained can be used only for the purpose of investigation related to the submitted complaint or complaints, in full compliance with applicable due process requirements.

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

(c) Education About the Tip-Line.—The Commission shall disseminate information and educate the public about the tip-line established under this section.

(d) Unlawful Practices With Respect to the Tip-Line.—

(1) Other Unlawful Practice.—It shall be unlawful to engage in any unlawful employment practice described in section 704 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3) with respect to the
tip-line under this section, including contacting or making threats to contact law enforcement authorities, such as the police, immigration officials, or other officials, with respect to an employee or applicant because that employee or applicant has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this section.

(2) CONFIDENTIALITY.—It shall be unlawful for any officer or employee of the Commission, or any Commission-approved fair employment practices agencies, to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section, prior to institution of any proceeding under section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), except that the Commission, or any Commission-approved fair employment practices agency, shall offer information to reporting individuals in accordance with this section.

(3) ENFORCEMENT.—The enforcement provisions described in section 4(d) shall apply in the same manner to the enforcement of a violation described in paragraph (1) or (2).
(c) Effective Date.—This section shall first take effect on the first day of the first fiscal year for which $1,500,000 is appropriated to carry out this section.

(f) Annual Minimum.—The Commission shall not be required to implement this section in any fiscal year for which less than $1,000,000 is appropriated to carry out this section.

SEC. 105. SEC FILINGS AND MATERIAL DISCLOSURES AT PUBLIC COMPANIES.

(a) Definitions.—In this section—

(1) the term “Form 10–K” means the form described in section 249.310 of title 17, Code of Federal Regulations, or any successor regulation; and

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

(b) Findings.—Congress finds that—

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

(A) are expending company funds to resolve, settle, or litigate claims of workplace harassment, including sexual harassment; and

(B) along with the executives and managers of those corporations—
(i) are complying with prohibitions
against workplace harassment, including
sexual harassment; and
(ii) facilitate a culture of silence, dis-
respect, intimidation, and abuse that nega-
tively impacts the health and safety of the
workers of those corporations and the
value of those corporations; and
(2) the requirements of this section will—
(A) establish necessary transparency and
accountability; and
(B) provide an incentive for corporations
to—
(i) promptly address workplace har-
assment, including sexual harassment, as
that misconduct occurs; and
(ii) foster a culture in which work-
place harassment is not protected and does
not occur.
(c) INFORMATION REQUIRED.—Not later than 1 year
after the date of enactment of this Act, the Securities and
Exchange Commission shall promulgate a regulation that
requires any issuer that is required to submit an annual
report using Form 10–K to include in any such submis-

(1) during the period covered by the submission—

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

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

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

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

(i) the settlements described in subparagraph (A)(i); and

(ii) the judgments described in subparagraph (A)(ii); and

(2) information regarding whether, in the aggregate, including the period covered by the submission, there have been three or more settlements
reached by, or judgments against, the issuer with re-
spect to workplace harassment, including sexual har-
assment, or retaliation for reporting, resisting, op-
posing, or assisting in the investigation of workplace
harassment that relate to a particular individual em-
ployed by the issuer, without identifying that indi-
vidual by name.

SEC. 106. PROFESSIONAL TRAINING, INCLUDING BY-
STANDER TRAINING, AND PUBLIC EDU-
CATION CAMPAIGNS.

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

(1) reasonably adjust the fees the Commission
charges for any education, technical assistance, or
training the Commission offers in accordance with
section 705(j)(1) of the Civil Rights Act of 1964 (42

(2) use the materials developed by the Commiss-
ion for any education, technical assistance, or train-
ing offered by the Commission in accordance with
section 705(j)(1) of the Civil Rights Act of 1964 in
any education and outreach activities carried out by
the Commission; and

(3) use funds from the EEOC Education, Tech-
nical Assistance, and Training Revolving Fund, es-
established under section 705(k) of the Civil Rights Act of 1964, to pay the full salaries of any Commission employees that develop and administer any education, technical assistance, or training programs offered by the Commission.

(b) WORKPLACE TRAINING.—

(1) IN GENERAL.—The Commission shall provide for the development and dissemination of workplace training programs and information regarding workplace harassment, including sexual harassment.

(2) CONTENTS OF TRAINING.—The training provided by the Commission under this subsection to managers and nonmanagers shall be consistent with the findings of the Commission, on matters including—

(A) what constitutes workplace harassment, including sexual harassment;

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

(C) how individuals, including bystanders, who encounter workplace harassment can intervene or report the harassment; and
(D) how employers and managers can prevent workplace harassment, including sexual harassment, from occurring in the workplace.

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

(A) prepare and distribute information that is consistent with the findings of the Commission;

(B) develop and disseminate a public service advertisement campaign that—

(i) distributes information with respect to the matters described in paragraph (2); and

(ii) advertises the confidential complaint database established under section 5.

(c) EFFECTIVE DATE.—This section shall not take effect in any fiscal year for which less than $1,500,000 is appropriated to carry out this section.
TITLE II—MODIFICATION OF TAX TREATMENT OF AMOUNTS RELATED TO EMPLOYMENT DISCRIMINATION AND WORKPLACE HARASSMENT

SEC. 201. TAX TREATMENT OF AMOUNTS RELATED TO JUDGMENTS.

(a) Denial of Deduction.—

(1) In General.—Part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 280I. AMOUNTS RELATED TO JUDGMENTS WITH RESPECT TO WORKPLACE HARASSMENT, INCLUDING SEXUAL HARASSMENT.

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

“(1) pursuant to any judgment or award in litigation related to workplace harassment, including sexual harassment, or

“(2) for expenses and attorney’s fees in connection with the litigation resulting in the judgment or award described in paragraph (1) (other than expenses or attorney’s fees paid by the workplace harassment plaintiff or claimant), or for any insurance
covering the defense or liability of the underlying
claims with respect to such litigation.”.

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

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

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

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

(b) EXCLUSION FROM INCOME.—

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

“SEC. 139H. AMOUNTS RECEIVED IN CONNECTION WITH
JUDGMENTS, AWARDS, AND SETTLEMENTS
WITH RESPECT TO WORKPLACE HARAS-
MENT.

“Gross income shall not include any amount received
in connection with a judgment or award in, or a settlement
of—
“(1) a claim related to workplace harassment, including sexual harassment or other unlawful discrimination, or
“(2) any other claim of unlawful discrimination (as defined by section 62(e)).

The preceding sentence shall not include any employment discrimination compensation to which section 1302 applies.”.

(2) Clerical Amendment.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139G the following new item:

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

(3) Effective Date.—The amendments made by this subsection shall apply to amounts received in taxable years beginning after the date of the enactment of this Act.

SEC. 202. LIMITATION ON TAX BASED ON INCOME AVERAGING FOR COMPENSATION RECEIVED ON ACCOUNT OF CERTAIN UNLAWFUL EMPLOYMENT DISCRIMINATION.

(a) In General.—Part I of subchapter Q of chapter 1 of the Internal Revenue Code of 1986 (relating to income averaging) is amended by adding at the end the following new section:
SEC. 1302. INCOME FROM COMPENSATION RECEIVED ON ACCOUNT OF CERTAIN UNLAWFUL EMPLOYMENT DISCRIMINATION.

(a) GENERAL RULE.—In the case of any employment discrimination compensation received during any taxable year, the tax imposed by this chapter for such taxable year with respect to such compensation shall not exceed the sum of—

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

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

(B) no deduction were allowed for such year for expenses otherwise allowable as a deduction to the taxpayer for such year in connection with making or prosecuting any claim of unlawful employment discrimination by or on behalf of the taxpayer, plus

(2) the product of—

(A) the combined number of years in the backpay period and the foregone compensation period, and

(B) the amount by which the tax determined under paragraph (1) would increase if the sum of—
“(i) the average of the average annual net employment discrimination compensation in the backpay period, and

“(ii) the average of the average annual net employment discrimination compensation in the foregone compensation period,

were included in gross income for such year.

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

“(1) EMPLOYMENT DISCRIMINATION COMPENSATION.—The term ‘employment discrimination compensation’ means any backpay or foregone compensation receivable (whether as lump sums or periodic payments) on account of a judgment or settlement resulting from a claim of unlawful discrimination (as defined in section 62(e)) in violation of law which relates to employment.

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

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

“(4) BACKPAY PERIOD.—The term ‘backpay period’ means the period during which services described in paragraph (2) were performed or would have been performed but for the violation of law described in paragraph (1). If such period is not equal to a whole number of taxable years, such period shall be increased to the next highest number of whole taxable years.

“(5) FOREGONE COMPENSATION PERIOD.—The term ‘foregone compensation period’ means the period during which services described in paragraph (3) would have been performed but for the violation of law described in paragraph (1). If such period is not equal to a whole number of taxable years, such period shall be increased to the next highest number of whole taxable years.
'(6) AVERAGE ANNUAL NET EMPLOYMENT DISCRIMINATION COMPENSATION.—The term ‘average annual net employment discrimination compensation’ with respect to any period means the amount equal to—

‘(A) the excess of—

‘(i) employment discrimination compensation attributable to such period, over

‘(ii) the amount of the deductions described in subsection (a)(1)(B), divided by

‘(B) the total number of years in the backpay period and the foregone compensation period.’.

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

‘Sec. 1302. Income from compensation received on account of certain unlawful employment discrimination.’.

(e) INCOME AVERAGING NOT TO INCREASE ALTERNATIVE MINIMUM TAX LIABILITY.—Section 55(c) of the Internal Revenue Code of 1986 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act.