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(Original Signature of Member)

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.

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 of dis-
22 crimination filed pursuant to section 706 of the Civil
23 Rights Act of 1964 (42 U.S.C. 2000e–5).

24 (3) **COMMISSION.**—The term “Commission”
25 means the Equal Employment Opportunity Commis-
26 sion.

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

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

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

12 (C) a State employee to which section
13 302(a)(1) of the Government Employee Rights
14 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) ap-
15 plies, including an outside worker in such a
16 State employee’s office or place of employment;
17 or

18 (D) a covered employee, as defined in sec-
19 tion 101 of the Congressional Accountability
20 Act of 1995 (2 U.S.C. 1301) or section 411(c)
21 of title 3, United States Code, including an out-
22 side worker in such a covered employee’s office
23 or place of employment.

24 (5) EMPLOYER.—The term “employer”
25 means—

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

3 (B) an entity to which section 703, 704, or
4 717(a) of the Civil Rights Act of 1964 applies;

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

8 (D) an employing office, as defined in sec-
9 tion 101 of the Congressional Accountability
10 Act of 1995 or section 411(c) of title 3, United
11 States Code.

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

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

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

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

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

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

14 (A) a temporary worker hired through an
15 employment agency (as defined in section 701
16 of the Civil Rights Act of 1964 (42 U.S.C.
17 2000e)) to provide services to an employer pur-
18 suant to an agreement between the employment
19 agency and the employer;

20 (B) an independent contractor for an em-
21 ployer or a subcontractor thereof; or

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

24 (12) SEXUAL ASSAULT.—The term “sexual as-
25 sault” means any nonconsensual sexual act pro-

1 scribed by Federal, tribal, or State law, including
2 such an act that occurs when the victim lacks capac-
3 ity to consent.

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

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

19 **SEC. 103. PROHIBITING NONDISPARAGEMENT AND NON-**
20 **DISCLOSURE CLAUSES THAT COVER WORK-**
21 **PLACE HARASSMENT, INCLUDING SEXUAL**
22 **HARASSMENT.**

23 (a) UNLAWFUL PRACTICES.—

24 (1) PROHIBITION ON WORKPLACE HARASSMENT
25 NONDISCLOSURE CLAUSE.—Subject to subsection

1 (b)(1), it shall be an unlawful practice for an em-
2 ployer to enter into a contract or agreement with an
3 employee or applicant, as a condition of employment,
4 promotion, compensation, benefits, or change in em-
5 ployment status or contractual relationship, or as a
6 term, condition, or privilege of employment, if that
7 contract or agreement contains a nondisparagement
8 or nondisclosure clause that covers workplace har-
9 assment, including sexual harassment or retaliation
10 for reporting, resisting, opposing, or assisting in the
11 investigation of workplace harassment.

12 (2) PROHIBITION ON ENFORCEMENT.—Not-
13 withstanding any other provision of law, it shall be
14 an unlawful practice and otherwise unlawful for an
15 employer to enforce or attempt to enforce a non-
16 disparagement clause or nondisclosure clause de-
17 scribed in paragraph (1).

18 (b) SETTLEMENT OR SEPARATION AGREEMENTS.—

19 (1) IN GENERAL.—The provisions of subsection
20 (a) do not apply to a nondisclosure clause or non-
21 disparagement clause contained in a settlement
22 agreement or separation agreement that resolves
23 legal claims or disputes when—

1 (A) such legal claims accrued or such dis-
2 putes arose before the settlement agreement or
3 separation agreement was executed; and

4 (B) such clauses are mutually agreed upon
5 and mutually benefit both the employer and em-
6 ployee.

7 (2) UNLAWFUL PRACTICE.—It shall be an un-
8 lawful practice for an employer to unilaterally in-
9 clude a nondisclosure clause or a nondisparagement
10 clause that solely benefits the employer in a separa-
11 tion or settlement agreement.

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

25 (d) ENFORCEMENT.—

1 (1) ENFORCEMENT POWERS.—With respect to
2 the administration and enforcement of this section
3 in the case of a claim alleged by an employee for a
4 violation of this section—

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

8 (i) title VII of the Civil Rights Act of
9 1964 (42 U.S.C. 2000e et seq.); or

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

13 in the case of a claim alleged by such employee
14 for a violation of such title, or of section
15 302(a)(1) of the Government Employee Rights
16 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), re-
17 spectively;

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

24 (C) the Board (as defined in section 101 of
25 the Congressional Accountability Act of 1995 (2

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

7 (D) the Attorney General shall have the
8 same powers as the Attorney General has to ad-
9 minister and enforce—

10 (i) title VII of the Civil Rights Act of
11 1964 (42 U.S.C. 2000e et seq.); or

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

15 in the case of a claim alleged by such employee
16 for a violation of such title, or of section
17 302(a)(1) of the Government Employee Rights
18 Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), re-
19 spectively;

20 (E) the President, the Commission, and
21 the Merit Systems Protection Board shall have
22 the same powers as the President, the Commis-
23 sion, and the Board, respectively, have to ad-
24 minister and enforce chapter 5 of title 3,
25 United States Code, in the case of a claim al-

1 leged by such employee for a violation of section
2 411 of such title;

3 (F) the Commission shall have the same
4 powers as described in subparagraph (A) to ad-
5 minister and enforce a claim by any employee
6 who is not otherwise able to seek remedy for a
7 claim through an enforcement entity described
8 in subparagraph (A) through (E); and

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

12 (i) title VII of the Civil Rights Act of
13 1964 (42 U.S.C. 2000e et seq.) in the case
14 of a claim alleged by such employee for a
15 violation of such title or in the case of a
16 claim described in subparagraph (F);

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

23 (iii) the Congressional Accountability
24 Act of 1995 (2 U.S.C. 1301 et seq.) in the
25 case of a claim alleged by such employee

1 for a violation of section 201(a)(1) of such
2 Act (2 U.S.C. 1311(a)(1)); and

3 (iv) chapter 5 of title 3, United States
4 Code, in the case of a claim alleged by
5 such employee for a violation of section
6 411 of such title.

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

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

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

22 (C) the procedures and remedies applicable
23 for a violation of section 201(a)(1) of the Con-
24 gressional Accountability Act of 1995 (2 U.S.C.
25 1311(a)(1)) in the case of a claim alleged by

1 such employee for a violation of such section;
2 and

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

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

17 (e) REGULATIONS.—

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

22 (2) LIBRARIAN OF CONGRESS.—The Librarian
23 of Congress shall have authority to issue regulations
24 to carry out this section with respect to employees

1 and applicants for employment of the Library of
2 Congress.

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

10 (4) PRESIDENT.—The President shall have au-
11 thority to issue regulations to carry out this section
12 with respect to covered employees, as defined in sec-
13 tion 411(c) of title 3, United States Code, and appli-
14 cants for employment as such employees.

15 (f) STATE AND FEDERAL IMMUNITY.—

16 (1) ABROGATION OF STATE IMMUNITY.—A
17 State shall not be immune under the 11th Amend-
18 ment to the Constitution from a suit brought in a
19 Federal court of competent jurisdiction for a viola-
20 tion of this section.

21 (2) WAIVER OF STATE IMMUNITY.—

22 (A) IN GENERAL.—

23 (i) WAIVER.—A State's receipt or use
24 of Federal financial assistance for any pro-
25 gram or activity of a State shall constitute

1 a waiver of sovereign immunity, under the
2 11th Amendment to the Constitution or
3 otherwise, to a suit brought by an em-
4 ployee or applicant for employment of that
5 program or activity under this section for
6 a remedy authorized under subsection (d).

7 (ii) DEFINITION.—In this paragraph,
8 the term “program or activity” has the
9 meaning given the term in section 606 of
10 the Civil Rights Act of 1964 (42 U.S.C.
11 2000d–4a).

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

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

1 authorized by section 722 of the Revised Statutes
2 (42 U.S.C. 1988).

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

13 (A) punitive damages are not available;
14 and

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

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

21 (a) CONFIDENTIAL TIP-LINE ESTABLISHED.—

22 (1) IN GENERAL.—Not later than 1 year after
23 the date of enactment of this Act, the Commission
24 shall establish a confidential tip-line that supple-
25 ments the Commission’s existing process for submit-

1 ting a Charge of Discrimination, and that has the
2 characteristics described in paragraph (2), to—

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

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

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

14 (i) the Commission; and

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

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

21 (A) explicitly notify reporting individuals
22 that the tip-line does not allow anonymous re-
23 porting, but does allow the submission of con-
24 fidential reports, independent of a Charge of
25 Discrimination or a Federal or State adminis-

1 trative complaint, by those employees or appli-
2 cants who have experienced workplace harass-
3 ment, including sexual assault and other forms
4 of sexual harassment, and by those employees,
5 applicants, bystanders, or other individuals who
6 have witnessed such conduct;

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

14 (C) educate reporting individuals about
15 how to preserve the right to make any reports,
16 complaints, or charges that the individuals
17 would otherwise have been eligible to make,
18 independent of any report to the tip-line, in-
19 cluding—

20 (i) the right of the reporting indi-
21 vidual to file a Charge of Discrimination
22 that will result in the Commission or a
23 Commission-approved fair employment
24 practices agency taking action (and the
25 risk of losing that right if the reporting in-

1 dividual fails to file a timely Charge of
2 Discrimination); and

3 (ii) a clear explanation of any dead-
4 lines or limitations periods;

5 (D) instruct reporting individuals about
6 how to file a Charge of Discrimination with the
7 Commission and encourage reporting individ-
8 uals to file a Charge of Discrimination in order
9 to allow the Commission to more effectively in-
10 vestigate the workplace harassment;

11 (E) emphasize that reports to the confiden-
12 tial tip-line—

13 (i) will not prompt individualized in-
14 vestigations, except in the limited cir-
15 cumstances described in clause (ii), sub-
16 paragraph (I), and subsection (b), and
17 such investigations will fully comport with
18 applicable due process requirements;

19 (ii) will be monitored by the Commis-
20 sion and Commission-approved fair em-
21 ployment practices agencies to identify
22 trends and determine whether investiga-
23 tions should be undertaken, for instance,
24 when the Commission has received multiple
25 complaints regarding a particular employer

1 or there is evidence of a broader pattern or
2 practice of workplace harassment;

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

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

9 (F) engage fair employment practices
10 agencies at the State and local level to apply
11 and be thoroughly vetted and reviewed for ap-
12 proved access to the confidential tip-line;

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

19 (H) offer an option to each reporting indi-
20 vidual, at the time of reporting, to elect to be
21 informed, to the extent practicable, if the indi-
22 vidual's report leads to an investigation, so that
23 the reporting individual may choose to provide
24 further information or participate in any result-
25 ing investigation; and

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

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

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

20 (d) UNLAWFUL PRACTICES WITH RESPECT TO THE
21 TIP-LINE.—

22 (1) OTHER UNLAWFUL PRACTICE.—It shall be
23 unlawful to engage in any unlawful employment
24 practice described in section 704 of the Civil Rights
25 Act of 1964 (42 U.S.C. 2000e–3) with respect to the

1 tip-line under this section, including contacting or
2 making threats to contact law enforcement authori-
3 ties, such as the police, immigration officials, or
4 other officials, with respect to an employee or appli-
5 cant because that employee or applicant has made a
6 charge, testified, assisted, or participated in any
7 manner in an investigation, proceeding or hearing
8 under this section.

9 (2) CONFIDENTIALITY.—It shall be unlawful
10 for any officer or employee of the Commission, or
11 any Commission-approved fair employment practices
12 agencies, to make public in any manner whatever
13 any information obtained by the Commission pursu-
14 ant to its authority under this section, prior to insti-
15 tution of any proceeding under section 706 of the
16 Civil Rights Act of 1964 (42 U.S.C. 2000e–5), ex-
17 cept that the Commission, or any Commission-ap-
18 proved fair employment practices agency, shall offer
19 information to reporting individuals in accordance
20 with this section.

21 (3) ENFORCEMENT.—The enforcement provi-
22 sions described in section 4(d) shall apply in the
23 same manner to the enforcement of a violation de-
24 scribed in paragraph (1) or (2).

1 (e) EFFECTIVE DATE.—This section shall first take
2 effect on the first day of the first fiscal year for which
3 \$1,500,000 is appropriated to carry out this section.

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

8 **SEC. 105. SEC FILINGS AND MATERIAL DISCLOSURES AT**
9 **PUBLIC COMPANIES.**

10 (a) DEFINITIONS.—In this section—

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

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

17 (b) FINDINGS.—Congress finds that—

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

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

23 (B) along with the executives and man-
24 agers of those corporations—

1 (i) are complying with prohibitions
2 against workplace harassment, including
3 sexual harassment; and

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

9 (2) the requirements of this section will—

10 (A) establish necessary transparency and
11 accountability; and

12 (B) provide an incentive for corporations
13 to—

14 (i) promptly address workplace har-
15 assment, including sexual harassment, as
16 that misconduct occurs; and

17 (ii) foster a culture in which work-
18 place harassment is not protected and does
19 not occur.

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

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

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

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

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

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

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

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

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

1 reached by, or judgments against, the issuer with re-
2 spect to workplace harassment, including sexual har-
3 assment, or retaliation for reporting, resisting, op-
4 posing, or assisting in the investigation of workplace
5 harassment that relate to a particular individual em-
6 ployed by the issuer, without identifying that indi-
7 vidual by name.

8 **SEC. 106. PROFESSIONAL TRAINING, INCLUDING BY-**
9 **STANDER TRAINING, AND PUBLIC EDU-**
10 **CATION CAMPAIGNS.**

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

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

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

24 (3) use funds from the EEOC Education, Tech-
25 nical Assistance, and Training Revolving Fund, es-

1 established under section 705(k) of the Civil Rights
2 Act of 1964, to pay the full salaries of any Commis-
3 sion employees that develop and administer any edu-
4 cation, technical assistance, or training programs of-
5 fered by the Commission.

6 (b) WORKPLACE TRAINING.—

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

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

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

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

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

1 (D) how employers and managers can pre-
2 vent workplace harassment, including sexual
3 harassment, from occurring in the workplace.

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

7 (A) prepare and distribute information
8 that is consistent with the findings of the Com-
9 mission;

10 (B) develop and disseminate a public serv-
11 ice advertisement campaign that—

12 (i) distributes information with re-
13 spect to the matters described in para-
14 graph (2); and

15 (ii) advertises the confidential com-
16 plaint database established under section
17 5.

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

1 **TITLE II—MODIFICATION OF TAX**
2 **TREATMENT OF AMOUNTS**
3 **RELATED TO EMPLOYMENT**
4 **DISCRIMINATION AND WORK-**
5 **PLACE HARASSMENT**

6 **SEC. 201. TAX TREATMENT OF AMOUNTS RELATED TO**
7 **JUDGMENTS.**

8 (a) DENIAL OF DEDUCTION.—

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

13 **“SEC. 280I. AMOUNTS RELATED TO JUDGMENTS WITH RE-**
14 **SPECT TO WORKPLACE HARASSMENT, IN-**
15 **CLUDING SEXUAL HARASSMENT.**

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

18 “(1) pursuant to any judgment or award in liti-
19 gation related to workplace harassment, including
20 sexual harassment, or

21 “(2) for expenses and attorney’s fees in connec-
22 tion with the litigation resulting in the judgment or
23 award described in paragraph (1) (other than ex-
24 penses or attorney’s fees paid by the workplace har-
25 assment plaintiff or claimant), or for any insurance

1 covering the defense or liability of the underlying
2 claims with respect to such litigation.”.

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

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

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

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

13 (b) EXCLUSION FROM INCOME.—

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

18 **“SEC. 139H. AMOUNTS RECEIVED IN CONNECTION WITH**
19 **JUDGMENTS, AWARDS, AND SETTLEMENTS**
20 **WITH RESPECT TO WORKPLACE HARASS-**
21 **MENT.**

22 “Gross income shall not include any amount received
23 in connection with a judgment or award in, or a settlement
24 of—

1 “(1) a claim related to workplace harassment,
2 including sexual harassment or other unlawful dis-
3 crimination, or

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

6 The preceding sentence shall not include any employment
7 discrimination compensation to which section 1302 ap-
8 plies.”.

9 (2) CLERICAL AMENDMENT.—The table of sec-
10 tions for part III of subchapter B of chapter 1 of
11 such Code is amended by inserting after the item re-
12 lating to section 139G the following new item:

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

13 (3) EFFECTIVE DATE.—The amendments made
14 by this subsection shall apply to amounts received in
15 taxable years beginning after the date of the enact-
16 ment of this Act.

17 **SEC. 202. LIMITATION ON TAX BASED ON INCOME AVER-**
18 **AGING FOR COMPENSATION RECEIVED ON**
19 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**
20 **MENT DISCRIMINATION.**

21 (a) IN GENERAL.—Part I of subchapter Q of chapter
22 1 of the Internal Revenue Code of 1986 (relating to in-
23 come averaging) is amended by adding at the end the fol-
24 lowing new section:

1 **“SEC. 1302. INCOME FROM COMPENSATION RECEIVED ON**
2 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**
3 **MENT DISCRIMINATION.**

4 “(a) GENERAL RULE.—In the case of any employ-
5 ment discrimination compensation received during any
6 taxable year, the tax imposed by this chapter for such tax-
7 able year with respect to such compensation shall not ex-
8 ceed the sum of—

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

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

13 “(B) no deduction were allowed for such
14 year for expenses otherwise allowable as a de-
15 duction to the taxpayer for such year in connec-
16 tion with making or prosecuting any claim of
17 unlawful employment discrimination by or on
18 behalf of the taxpayer, plus

19 “(2) the product of—

20 “(A) the combined number of years in the
21 backpay period and the foregone compensation
22 period, and

23 “(B) the amount by which the tax deter-
24 mined under paragraph (1) would increase if
25 the sum of—

1 “(i) the average of the average annual
2 net employment discrimination compensa-
3 tion in the backpay period, and

4 “(ii) the average of the average an-
5 nual net employment discrimination com-
6 pensation in the foregone compensation pe-
7 riod,

8 were included in gross income for such year.

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

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

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

1 year for the taxpayer's employer, former employer,
2 or prospective employer.

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

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

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

1 “(6) AVERAGE ANNUAL NET EMPLOYMENT DIS-
2 CRIMINATION COMPENSATION.—The term ‘average
3 annual net employment discrimination compensation’
4 with respect to any period means the amount equal
5 to—

6 “(A) the excess of—

7 “(i) employment discrimination com-
8 pensation attributable to such period, over

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

11 “(B) the total number of years in the
12 backpay period and the foregone compensation
13 period.”.

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

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

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

23 “(3) COORDINATION WITH INCOME AVERAGING
24 FOR AMOUNTS RECEIVED ON ACCOUNT OF EMPLOY-

1 MENT DISCRIMINATION.—Solely for purposes of this
2 section, section 1302 shall not apply in computing
3 the regular tax liability.”.

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