

117TH CONGRESS
2D SESSION

H. R. 8145

To amend the Fair Labor Standards Act of 1938 to provide for prohibitions on employers relating to the recording and use of employee images, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2022

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Fair Labor Standards Act of 1938 to provide for prohibitions on employers relating to the recording and use of employee images, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Professional Images
5 Protection Act”.

1 **SEC. 2. PROHIBITIONS RELATING TO RECORDING AND USE**
2 **OF EMPLOYEE IMAGES.**

3 (a) IN GENERAL.—The Fair Labor Standards Act of
4 1938 (29 U.S.C. 201 et seq.) is amended by inserting
5 after section 7 the following new section:

6 **“SEC. 8. PROHIBITIONS RELATING TO RECORDING AND**
7 **USE OF EMPLOYEE IMAGES.**

8 “(a) IN GENERAL.—It shall be an unlawful practice
9 for an employer—

10 “(1) to record or use an image of any employee
11 (including photographs and audio or video record-
12 ings) unless—

13 “(A) prior to the recording of such
14 image—

15 “(i) the employer discloses in writing
16 to the employee—

17 “(I) each person who will have
18 access to the image, including any
19 person not employed by the employer;

20 “(II) how the image will be used,
21 which must be for a work-related pur-
22 pose; and

23 “(III) when the image will be
24 used; and

1 “(ii) the employer obtains written con-
2 sent to record and use such image in ac-
3 cordance with such disclosure; and

4 “(B) in any event the employer seeks to
5 use an image already recorded for a purpose
6 not included in such disclosure, the employer
7 issues a new disclosure in writing and obtains
8 written consent for such new purpose; or

9 “(2) to discharge or in any other manner retali-
10 ate against any employee or prospective employee
11 because the employee or prospective employee—

12 “(A) opposed any act or practice made un-
13 lawful by this section; or

14 “(B) took an action for which discrimina-
15 tion is forbidden under section 15(a)(3).

16 “(b) EXCEPTION.—Subsection (a) shall not apply to
17 the recording or use of any image in which it is impractical
18 to obtain such consent, including recordings of large gath-
19 erings or recordings made for security purposes.

20 “(c) APPLICATION TO INDEPENDENT CONTRAC-
21 TORS.—This section and section 16(f) shall apply with re-
22 spect to any contractor of an employer in the same manner
23 as such sections apply to the employees of such employer.

24 “(d) AUTHORITY TO ISSUE REGULATIONS.—The
25 Secretary of Labor shall issue such regulations or other

1 guidance as the Secretary considers necessary to assist
2 employers in the implementation of this section.”.

3 (b) PENALTIES.—Section 16 of such Act (29 U.S.C.
4 216) is amended by adding at the end the following new
5 subsection:

6 “(f)(1) Any person who violates the provisions of sec-
7 tion 8 shall—

8 “(A) be subject to a civil penalty—

9 “(i) in the case of an employer with 100
10 employees or fewer, of \$20,000 for a first of-
11 fense, increased by an additional \$10,000 for
12 each subsequent offense;

13 “(ii) in the case of an employer with more
14 than 100 employees but not more than 200 em-
15 ployees, of \$50,000 for a first offense, increased
16 by an additional \$15,000 for each subsequent
17 offense;

18 “(iii) in the case of an employer with more
19 than 200 employees but not more than 500 em-
20 ployees, of \$100,000 for a first offense, in-
21 creased by an additional \$20,000 for each sub-
22 sequent offense; and

23 “(iv) in the case of an employer with more
24 than 500 employees, of \$300,000 for a first of-

1 fense, increased by an additional \$25,000 for
2 each subsequent offense; and

3 “(B) be liable to each employee or prospective
4 employee who was the subject of the violation for
5 special damages not to exceed \$10,000 plus attor-
6 neys’ fees, and shall be subject to such injunctive re-
7 lief as may be appropriate.

8 “(2) An action to recover the liability described in
9 paragraph (1)(B) may be maintained against any em-
10 ployer (including a public agency) in any Federal or State
11 court of competent jurisdiction by any one or more em-
12 ployees or prospective employees for and on behalf of—

13 “(A) the employees or prospective employees;
14 and

15 “(B) other employees or prospective employees
16 similarly situated.”.

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