

117TH CONGRESS
2D SESSION

H. R. 8618

To require annual reporting by employers to the Equal Employment Opportunity Commission of the number of settlements of employee claims of discrimination based on race, color, national origin, religion, sex (including pregnancy, sexual orientation, or gender identity), age (40 or older), disability, genetic information (including family medical history), or any combination of such factors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2022

Mrs. CAROLYN B. MALONEY of New York (for herself, Mr. CARSON, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mr. GRIJALVA, Mrs. HAYES, Mr. JONES, Mr. LYNCH, Ms. MOORE of Wisconsin, Mr. NADLER, Ms. NORTON, Mr. POCAN, Ms. PORTER, Ms. ROYBAL-ALLARD, Mr. SMITH of Washington, Mr. TAKANO, Ms. TITUS, and Ms. VELÁZQUEZ) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To require annual reporting by employers to the Equal Employment Opportunity Commission of the number of settlements of employee claims of discrimination based on race, color, national origin, religion, sex (including pregnancy, sexual orientation, or gender identity), age (40 or older), disability, genetic information (including family medical history), or any combination of such factors, 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,*

1 **SECTION 1. SHORT TITLE; FINDINGS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Ending Secrecy About Workplace Harassment Act”.

4 (b) FINDINGS.—Congress finds that the following:

5 (1) Thirty years after the United States Su-
6 preme Court held in *Meritor Savings Bank v. Vinson*
7 that workplace harassment creates a hostile or abu-
8 sive work environment and is a violation of title VII
9 of the Civil Rights Act of 1964, sexual harassment
10 remains a widespread problem, affecting victims in
11 every industry, at every level of employment.

12 (2) In fiscal year 2020, the Equal Employment
13 Opportunity Commission (in this Act referred to as
14 the “Commission”) received 67,448 charges of work-
15 place discrimination. The most frequently cited claim
16 was retaliation with 37,632 charges, which made up
17 55.8 percent of all charges filed. This was followed
18 by disability with 24,324 charges (36.1 percent),
19 race with 22,064 charges (32.7 percent), sex with
20 21,398 charges (31.7 percent), age with 14,183
21 charges (21.0 percent), national origin with 6,377
22 charges (9.5 percent), color with 3,562 charges (5.3
23 percent), religion with 2,404 charges (3.6 percent),
24 and genetic information with 440 charges (0.7 per-
25 cent).

1 (3) An analysis of the Commission’s charge
2 data between 2012 and 2016 shows that many indi-
3 viduals experience multiple bases of harassment. For
4 example, 1 in 17 women who filed sexual harassment
5 charges during this period experienced racialized
6 sexual harassment, or harassment based not only on
7 their sex but also their race. In addition, over 35
8 percent of women also alleged retaliation.

9 (4) According to the Commission’s Select Task
10 Force in 2016, on the Study of Harassment in the
11 Workplace, the prevalence of workplace harassment,
12 and in particular sexual harassment—

13 (A) causes mental and physical harm to
14 the victim, which can include symptoms of de-
15 pression, general stress and anxiety,
16 posttraumatic stress disorder (PTSD), and
17 overall impaired psychological well-being; and

18 (B) results in mental and physical harms
19 to those that observe or perceive mistreatment
20 in the workplace, as one study concluded “em-
21 ployees, female and male alike, who observed
22 hostility directed toward female coworkers (both
23 incivility and sexually harassing behavior) were
24 more likely to experience lower psychological

1 well-being”, which were “in turn linked to lower
2 physical well-being”.

3 (5) Prevalence of harassment in the workplace
4 causes substantial financial harm to victims, as they
5 often try to avoid the harassing behavior by taking
6 leave without pay or leaving the workplace entirely,
7 resulting in a loss of wages. The U.S. Merit Systems
8 Protection Board’s 1995 report on Sexual Harass-
9 ment in the Federal Workplace found sexual harass-
10 ment cost Federal employees \$4,400,000 between
11 1992 and 1994.

12 (6) According to Commission records, in fiscal
13 year 2020, the Commission secured \$439,200,000
14 for victims of discrimination in the private sector
15 and State and local government workplaces through
16 voluntary resolutions and litigation.

17 (7) The Commission is responsible for enforcing
18 Federal anti-discrimination laws that protect job ap-
19 plicants and employees, and has the authority to in-
20 vestigate charges of discrimination against employ-
21 ers who are covered by the law.

22 **SEC. 2. EMPLOYER REPORTING REQUIREMENT.**

23 (a) REPORTING REQUIREMENT.—Every employer re-
24 quired to submit to the Equal Employment Opportunity
25 Commission an Employer Information Report EEO–1

1 shall submit annually a separate report that specifies the
2 total number of settlements reached by the employer with
3 employees involving workplace harassment and the num-
4 ber of such settlements in each of following categories:

5 (1) Settlements relating to harassment based on
6 race, color, or national origin.

7 (2) Settlements relating to harassment based on
8 religion.

9 (3) Settlements relating to harassment based on
10 sex (including pregnancy, sexual orientation, or gen-
11 der identity).

12 (4) Settlements relating to harassment based on
13 age (40 or older).

14 (5) Settlements relating to harassment based on
15 disability.

16 (6) Settlements relating to harassment based on
17 genetic information (including family medical his-
18 tory).

19 (7) Settlements relating to harassment based on
20 any combination of the harassment described in
21 paragraphs (1) through (6).

22 (b) REQUIRED REPORTING.—Examples of settle-
23 ments required to be reported under this section include
24 any written or oral agreement where anything of value is
25 conferred to an individual because of an allegation that

1 the individual has been a victim of workplace harassment
2 on the basis of race, color, national origin, religion, sex
3 (including pregnancy, sexual orientation, or gender iden-
4 tity), age (40 or older), disability, genetic information (in-
5 cluding family medical history), any combination of such
6 factors in return for such individual declining to further
7 pursue resolution of the allegation through litigation or
8 any internal process, mediation, or other workplace resolu-
9 tion.

10 **SEC. 3. RIGHTS OF EMPLOYEES.**

11 (a) PROTECTION FROM RETALIATION.—

12 (1) CONDUCT PROHIBITED.—An employer may
13 not terminate any employee nor discriminate against
14 any such employee with regards to terms and condi-
15 tions of employment because such employee—

16 (A) inquires about an employer’s meeting
17 of the requirements of this Act; or

18 (B) complains about an employer’s failure
19 to meet the requirements of this Act.

20 (2) ENFORCEMENT.—

21 (A) LIABILITY.—In addition to civil rights
22 protections and remedies for retaliation avail-
23 able under other Federal, State, or local law,
24 any employer who violates paragraph (1) shall
25 be liable to any eligible employee affected for—

1 (i) damages equal to the amount of
2 any wages, salary, employment benefits, or
3 other compensation denied or lost to such
4 employee by reason of the violation;

5 (ii) the interest on the amount de-
6 scribed in clause (i) calculated at the pre-
7 vailing rate;

8 (iii) an additional amount as liq-
9 uidated damages equal to the sum of the
10 amount described in clause (i) and the in-
11 terest described in clause (ii); and

12 (iv) such equitable relief as may be
13 appropriate, including employment, rein-
14 statement, and promotion.

15 (B) RIGHT OF ACTION.—An action to re-
16 cover the damages or equitable relief prescribed
17 in subparagraph (A) may be maintained against
18 any employer in any Federal or State court of
19 competent jurisdiction by any one or more em-
20 ployees for and on behalf of—

21 (i) the employee or employees; or

22 (ii) the employees and other employ-
23 ees similarly situated.

24 (C) FEES AND COSTS.—The court in such
25 an action shall, in addition to any judgment

1 awarded to the plaintiff, allow a reasonable at-
2 torney's fee, reasonable expert witness fees, and
3 other costs of the action to be paid by the de-
4 fendant.

5 (b) CONFIDENTIALITY AGREEMENTS AND SETTLE-
6 MENTS.—

7 (1) RULE OF CONSTRUCTION.—Nothing in this
8 Act shall be construed to interfere with the right of
9 an employee to enter into a confidentiality agree-
10 ment with the employee's employer with respect to
11 a claim of discrimination based on race, color, na-
12 tional origin, religion, sex (including pregnancy, sex-
13 ual orientation, gender identity), age (40 or older),
14 disability, genetic information (including family med-
15 ical history), or any combination of such factors, the
16 investigation of such a claim, or the out-of-court set-
17 tlement of such a claim.

18 (2) LIMITATIONS ON AGREEMENTS.—

19 (A) An employer may not use a confiden-
20 tiality agreement described in paragraph (1) as
21 a basis for not submitting the information re-
22 quired by section 2.

23 (B) A confidentiality agreement described
24 in paragraph (1) shall not be construed as pro-
25 hibiting any party to such agreement from co-

operating with law enforcement investigations into any claims of discrimination based on race, color, national origin, religion, sex (including pregnancy, sexual orientation, gender identity), age (40 or older), disability, genetic information (including family medical history), or any combination of such factors.

SEC. 4. EEOC REPORT TO CONGRESS.

The Equal Employment Opportunity Commission shall annually report to Congress information relating to claims of discrimination based on race, color, national origin, religion, sex (including pregnancy, sexual orientation, or gender identity), age (40 or older), disability, genetic information (including family medical history), and any combination of such factors, including—

(1) the number of settlements that were reported to the Commission as defined by and reported pursuant to section 2;

(2) the number of charges alleging discrimination based on race, color, national origin, religion, sex (including pregnancy, sexual orientation, or gender identity), age (40 or older), disability, genetic information (including family medical history), and any combination of such factors that were reported to the Equal Employment Opportunity Commission;

1 (3) a summary of any action taken by the Com-
2 mission based upon any such charges or complaints
3 collected pursuant to this Act, such as litigation or
4 settlements facilitated by the Commission pertaining
5 to discrimination based on race, color, national ori-
6 gin, religion, sex (including pregnancy, sexual ori-
7 entation, or gender identity), age (40 or older), dis-
8 ability, genetic information (including family medical
9 history), and any combination of such factors, in-
10 cluding a brief description of any outcome of such
11 actions; and

12 (4) a summary of mechanisms the Commission
13 can take to increase public transparency of this data
14 by individual employer without sacrificing the identi-
15 ties of the victims.

16 **SEC. 5. GAO STUDY AND REPORT.**

17 The Comptroller General of the United States shall
18 conduct a comprehensive study of claims of discrimination
19 based on race, color, national origin, religion, sex (includ-
20 ing pregnancy, sexual orientation, or gender identity), age
21 (40 or older), disability, genetic information (including
22 family medical history), or any combination of such fac-
23 tors involving both government and private sector employ-
24 ees and shall report to Congress not later than one year
25 after the date of enactment of this Act the results of such

- 1 study and recommendations for legislation or other action
- 2 for improving transparency and accountability regarding
- 3 such claims.

