

Union Calendar No. 83

114TH CONGRESS
1ST SESSION

H. R. 1557

[Report No. 114-117]

To amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 2015

Mr. CUMMINGS (for himself and Ms. NORTON) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MAY 15, 2015

Additional sponsors: Mr. CHAFFETZ, Ms. JACKSON LEE, and Mr. SENSENBRENNER

MAY 15, 2015

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal government, 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 “Federal Employee
5 Antidiscrimination Act of 2015”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 Section 102 of the Notification and Federal Em-
8 ployee Antidiscrimination and Retaliation Act of 2002 (5
9 U.S.C. 2301 note) is amended—

10 (1) in paragraph (4), to read as follows:

11 “(4) accountability in the enforcement of Fed-
12 eral employee rights is furthered when Federal agen-
13 cies take appropriate disciplinary action against
14 Federal employees who have been found to have
15 committed discriminatory or retaliatory acts;” and

16 (2) in paragraph (5)(A)—

17 (A) by striking “nor is accountability” and
18 inserting “but accountability is not”; and

19 (B) by inserting “for what by law the
20 agency is responsible” after “under this Act”.

21 **SEC. 3. NOTIFICATION OF VIOLATION.**

22 Section 202 of the Notification and Federal Em-
23 ployee Antidiscrimination and Retaliation Act of 2002 (5
24 U.S.C. 2301 note) is amended by adding at the end the
25 following:

1 “(d) NOTIFICATION OF FINAL AGENCY ACTION.—

2 “(1) Not later than 30 days after a Federal
3 agency takes final action or the Equal Employment
4 Opportunity Commission issues an appellate decision
5 involving a finding of discrimination or retaliation
6 prohibited by a provision of law covered by para-
7 graphs (1) or (2) of section 201(a), as applicable,
8 the head of the agency subject to the finding shall
9 provide notice for at least 1 year on the agency’s
10 Internet Web site in a clear and prominent location
11 linked directly from the agency’s Internet home page
12 stating that a finding of discrimination or retaliation
13 has been made.

14 “(2) The notification shall identify the date the
15 finding was made, the date or dates on which the
16 discriminatory or retaliatory act or acts occurred,
17 and the law or laws violated by the discriminatory
18 or retaliatory act or acts. The notification shall also
19 advise Federal employees of the rights and protec-
20 tions available under the respective provisions of law
21 covered by paragraphs (1) or (2) of section 201(a).”.

22 **SEC. 4. REPORTING REQUIREMENTS.**

23 (a) ELECTRONIC FORMAT REQUIREMENT.—

24 (1) IN GENERAL.—Section 203(a) of the Notifi-
25 cation and Federal Employee Antidiscrimination and

1 Retaliation Act of 2002 (5 U.S.C. 2301 note) is
2 amended by inserting “(in an electronic format pre-
3 scribed by the Office of Personnel Management)”
4 after “an annual report”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall take effect on the date that
7 is 1 year after the date of enactment of this Act.

8 (3) TRANSITION PERIOD.—Notwithstanding the
9 requirements of section 203(a) of the Notification
10 and Federal Employee Antidiscrimination and Retal-
11 iation Act of 2002 (5 U.S.C. 2301 note), the report
12 required under such section may be submitted in an
13 electronic format, as prescribed by the Office of Per-
14 sonnel Management, during the period beginning on
15 the date of enactment of this Act and ending on the
16 effective date in paragraph (2).

17 (b) REPORTING REQUIREMENT FOR DISCIPLINARY
18 ACTION.—Section 203 of such Act is amended by adding
19 at the end the following:

20 “(c) DISCIPLINARY ACTION REPORT.—Not later
21 than 60 days after the date on which a Federal agency
22 takes final action or an agency receives an appellate deci-
23 sion issued by the Equal Employment Opportunity Com-
24 mission involving a finding of discrimination or retaliation
25 in violation of a provision of law covered by paragraphs

1 (1) or (2) of section 201(a), as applicable, the employing
2 Federal agency shall submit to the Commission a report
3 stating whether disciplinary action has been initiated
4 against a Federal employee as a result of the violation.”.

5 **SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL**
6 **AGENCIES.**

7 Section 301(b) of the Notification and Federal Em-
8 ployee Antidiscrimination and Retaliation Act of 2002 (5
9 U.S.C. 2301 note) is amended—

10 (1) in paragraph (9)—

11 (A) in subparagraph (A), by striking
12 “and” at the end;

13 (B) in subparagraph (B)(ii), by striking
14 the period at the end and inserting “, and”;
15 and

16 (C) by adding at the end the following:

17 “(C) for each such finding counted under
18 subparagraph (A), the agency shall specify—

19 “(i) the date of the finding,

20 “(ii) the affected agency,

21 “(iii) the law violated, and

22 “(iv) whether a decision has been
23 made regarding necessary disciplinary ac-
24 tion as a result of the finding.”; and

25 (2) by adding at the end the following:

1 “(11) Data regarding each class action com-
2 plaint filed against the agency alleging discrimina-
3 tion or retaliation, including—

4 “(A) information regarding the date on
5 which each complaint was filed,

6 “(B) a general summary of the allegations
7 alleged in the complaint,

8 “(C) an estimate of the total number of
9 plaintiffs joined in the complaint if known,

10 “(D) the current status of the complaint,
11 including whether the class has been certified,
12 and

13 “(E) the case numbers for the civil actions
14 in which discrimination or retaliation has been
15 found.”.

16 **SEC. 6. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT**
17 **OPPORTUNITY COMMISSION.**

18 Section 302(b) of the Notification and Federal Em-
19 ployee Antidiscrimination and Retaliation Act of 2002 (5
20 U.S.C. 2301 note) is amended by striking “(10)” and in-
21 serting “(11)”.

1 **SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
2 **DISCRIMINATION AND RETALIATION ACT**
3 **AMENDMENTS.**

4 (a) NOTIFICATION REQUIREMENTS.—The Notifica-
5 tion and Federal Employee Antidiscrimination and Retal-
6 iation Act of 2002 (5 U.S.C. 2301 note) is amended by
7 adding after section 206 the following:

8 **“SEC. 207. COMPLAINT TRACKING.**

9 “Not later than 1 year after the date of enactment
10 of the Federal Employee Antidiscrimination Act of 2015,
11 each Federal agency shall establish a system to track each
12 complaint of discrimination arising under section
13 2302(b)(1) of title 5, United States Code, and adjudicated
14 through the Equal Employment Opportunity process from
15 inception to resolution of the complaint, including whether
16 a decision has been made regarding necessary disciplinary
17 action as the result of a finding of discrimination.

18 **“SEC. 208. NOTATION IN PERSONNEL RECORD.**

19 “If an agency takes an adverse action covered under
20 section 7512 of title 5, United States Code, against an
21 employee for an act of discrimination or retaliation prohib-
22 ited by a provision of law covered by paragraphs (1) or
23 (2) of section 201(a), the agency shall, after all appeals
24 relating to such action have been exhausted, include a no-
25 tation of the adverse action and the reason for the action
26 in the employee’s personnel record.”.

1 (b) PROCESSING AND REFERRAL.—The Notification
2 and Federal Employee Antidiscrimination and Retaliation
3 Act of 2002 (5 U.S.C. 2301 note) is amended by adding
4 at the end the following:

5 **“TITLE IV—PROCESSING AND**
6 **REFERRAL**

7 **“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.**

8 “Each Federal agency is responsible for the fair, im-
9 partial, processing and resolution of complaints of employ-
10 ment discrimination and retaliation arising in the Federal
11 administrative process and shall establish a model Equal
12 Employment Opportunity Program that—

13 “(1) is not under the control, either structurally
14 or practically, of a Human Capital or General Coun-
15 sel office;

16 “(2) is devoid of internal conflicts of interest
17 and ensures fairness and inclusiveness within the or-
18 ganization; and

19 “(3) ensures the efficient and fair resolution of
20 complaints alleging discrimination or retaliation.

21 **“SEC. 402. NO LIMITATION ON HUMAN CAPITAL OR GEN-**
22 **ERAL COUNSEL ADVICE.**

23 “Nothing in this title shall prevent a Federal agency’s
24 Human Capital or General Counsel office from providing
25 advice or counsel to agency personnel on the processing

1 and resolution of a complaint, including providing legal
2 representation to an agency in any proceeding.

3 **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF**
4 **AGENCY.**

5 “The head of each Federal agency’s Equal Employ-
6 ment Opportunity Program shall report directly to the
7 head of the agency.

8 **“SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.**

9 “(a) EEOC FINDINGS OF DISCRIMINATION.—Not
10 later than 30 days after the Equal Employment Oppor-
11 tunity Commission issues an appellate decision involving
12 a finding of discrimination or retaliation within a Federal
13 agency the Commission shall refer the matter to the Office
14 of Special Counsel.

15 “(b) REFERRALS TO SPECIAL COUNSEL.—The Office
16 of Special Counsel shall accept and review a referral from
17 the Commission under subsection (a) for purposes of seek-
18 ing disciplinary action under its authority against an Fed-
19 eral employee who commits an act of discrimination or re-
20 taliation.

21 “(c) NOTIFICATION.—The Office of Special Counsel
22 shall notify the Commission in a case in which the Office
23 of Special Counsel initiates disciplinary action.

24 “(d) SPECIAL COUNSEL APPROVAL.—An agency may
25 not take disciplinary action against a Federal employee

1 for an alleged act of discrimination or retaliation referred
 2 by the Commission under this section except in accordance
 3 with the requirements of section 1214(f) of title 5, United
 4 States Code.”.

5 (c) CONFORMING AMENDMENTS.—The table of con-
 6 tents in section 1(b) of the Notification and Federal Em-
 7 ployee Antidiscrimination and Retaliation Act of 2002 (5
 8 U.S.C. 2301 note) is amended—

9 (1) by inserting after the item relating to sec-
 10 tion 206 the following:

“Sec. 207. Complaint tracking.
 “Sec. 208. Notation in personnel record.”;

11 and

12 (2) by adding at the end the following:

“TITLE IV—PROCESSING AND REFERRAL

“Sec. 401. Processing and resolution of complaints.
 “Sec. 402. No limitation on Human Capital or General Counsel advice.
 “Sec. 403. Head of Program reports to head of agency.
 “Sec. 404. Referrals of findings of discrimination.”.

13 **SEC. 8. NON-DISCLOSURE AGREEMENT LIMITATION.**

14 Section 2302(b) of title 5, United States Code is
 15 amended—

16 (1) in paragraph (13)—

17 (A) by inserting “or the Office of Special
 18 Counsel” after “Inspector General”;

19 (B) by striking “implement” and inserting
 20 “(A) implement”; and

1 (C) by striking the period that follows the
2 quoted material and inserting “; or”;

3 (2) by adding after subparagraph (A), as added
4 by paragraph (1)(B), and preceding the flush left
5 matter that follows paragraph (13), the following:

6 “(B) implement or enforce any nondisclo-
7 sure policy, form, or agreement, if such policy,
8 form, or agreement prohibits or restricts an em-
9 ployee from disclosing to Congress, the Office of
10 Special Counsel, or an Office of the Inspector
11 General any information that relates to any vio-
12 lation of any law, rule, or regulation, or mis-
13 management, a gross waste of funds, an abuse
14 of authority, or a substantial, and specific dan-
15 ger to public health or safety, or any other
16 whistleblower protection.”.

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