

Suspend the Rules and Pass the Bill, HR. 702, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

115TH CONGRESS
1ST SESSION

H. R. 702

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

JANUARY 27, 2017

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

A BILL

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.

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 “Federal Employee
3 Antidiscrimination Act of 2017”.

4 **SEC. 2. SENSE OF CONGRESS.**

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

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

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

14 (2) in paragraph (5)(A)—

15 (A) by striking “nor is accountability” and
16 inserting “but accountability is not”; and

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

19 **SEC. 3. NOTIFICATION OF VIOLATION.**

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

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

25 “(1) Not later than 30 days after a Federal
26 agency takes final action or the Equal Employment

1 Opportunity Commission issues an appellate decision
2 involving a finding of discrimination or retaliation
3 prohibited by a provision of law covered by para-
4 graph (1) or (2) of section 201(a), as applicable, the
5 head of the agency subject to the finding shall pro-
6 vide notice for at least 1 year on the agency's Inter-
7 net Web site in a clear and prominent location
8 linked directly from the agency's Internet home page
9 stating that a finding of discrimination or retaliation
10 has been made.

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

19 **SEC. 4. REPORTING REQUIREMENTS.**

20 (a) **ELECTRONIC FORMAT REQUIREMENT.—**

21 (1) **IN GENERAL.—**Section 203(a) of the Notifi-
22 cation and Federal Employee Antidiscrimination and
23 Retaliation Act of 2002 (5 U.S.C. 2301 note) is
24 amended—

1 (A) by inserting “Homeland Security and”
2 before “Governmental Affairs”;

3 (B) by inserting “Oversight and” before
4 “Government Reform”; and

5 (C) by inserting “(in an electronic format
6 prescribed by the Office of Personnel Manage-
7 ment)” after “an annual report”.

8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1)(C) shall take effect on the date
10 that is 1 year after the date of enactment of this
11 Act.

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

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

24 “(c) DISCIPLINARY ACTION REPORT.—Not later
25 than 60 days after the date on which a Federal agency

1 takes final action or a Federal agency receives an appel-
2 late decision issued by the Equal Employment Oppor-
3 tunity Commission involving a finding of discrimination
4 or retaliation in violation of a provision of law covered by
5 paragraph (1) or (2) of section 201(a), as applicable, the
6 employing Federal agency shall submit to the Commission
7 a report stating whether disciplinary action has been initi-
8 ated against a Federal employee as a result of the viola-
9 tion.”.

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

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

15 (1) in paragraph (9)—

16 (A) in subparagraph (A), by striking
17 “and” at the end;

18 (B) in subparagraph (B)(ii), by striking
19 the period at the end and inserting “, and”;
20 and

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

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

24 “(i) the date of the finding;

25 “(ii) the affected agency;

1 “(iii) the law violated; and

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

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

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

9 “(A) information regarding the date on
10 which each complaint was filed;

11 “(B) a general summary of the allegations
12 alleged in the complaint;

13 “(C) an estimate of the total number of
14 plaintiffs joined in the complaint if known;

15 “(D) the current status of the complaint,
16 including whether the class has been certified;
17 and

18 “(E) the case numbers for the civil actions
19 in which discrimination or retaliation has been
20 found.”.

21 **SEC. 6. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT**
22 **OPPORTUNITY COMMISSION.**

23 Section 302(b) of the Notification and Federal Em-
24 ployee Antidiscrimination and Retaliation Act of 2002 (5

1 U.S.C. 2301 note) is amended by striking “(10)” and in-
2 serting “(11)”.

3 **SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
4 **DISCRIMINATION AND RETALIATION ACT**
5 **AMENDMENTS.**

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

10 **“SEC. 207. COMPLAINT TRACKING.**

11 “Not later than 1 year after the date of enactment
12 of the Federal Employee Antidiscrimination Act of 2017,
13 each Federal agency shall establish a system to track each
14 complaint of discrimination arising under section
15 2302(b)(1) of title 5, United States Code, and adjudicated
16 through the Equal Employment Opportunity process from
17 inception to resolution of the complaint, including whether
18 a decision has been made regarding necessary disciplinary
19 action as the result of a finding of discrimination.

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

21 “If a Federal agency takes an adverse action covered
22 under section 7512 of title 5, United States Code, against
23 a Federal employee for an act of discrimination or retalia-
24 tion prohibited by a provision of law covered by paragraph
25 (1) or (2) of section 201(a), the agency shall, after all

1 appeals relating to such action have been exhausted, in-
2 clude a notation of the adverse action and the reason for
3 the action in the employee’s personnel record.”.

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

8 **“TITLE IV—PROCESSING AND**
9 **REFERRAL**

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

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

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

19 “(2) is devoid of internal conflicts of interest
20 and ensures fairness and inclusiveness within the or-
21 ganization; and

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

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

3 “Nothing in this title shall prevent a Federal agency’s
4 Human Capital or General Counsel office from providing
5 advice or counsel to Federal agency personnel on the proc-
6 essing and resolution of a complaint, including providing
7 legal representation to a Federal agency in any pro-
8 ceeding.

9 **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF**
10 **AGENCY.**

11 “The head of each Federal agency’s Equal Employ-
12 ment Opportunity Program shall report directly to the
13 head of the agency.

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

15 “(a) EEOC FINDINGS OF DISCRIMINATION.—Not
16 later than 30 days after the Equal Employment Oppor-
17 tunity Commission issues an appellate decision involving
18 a finding of discrimination or retaliation within a Federal
19 agency, the Commission shall refer the matter to the Of-
20 fice of Special Counsel.

21 “(b) REFERRALS TO SPECIAL COUNSEL.—The Office
22 of Special Counsel shall accept and review a referral from
23 the Commission under subsection (a) for purposes of seek-
24 ing disciplinary action under its authority against a Fed-
25 eral employee who commits an act of discrimination or re-
26 taliation.

1 “(c) NOTIFICATION.—The Office of Special Counsel
2 shall notify the Commission in a case in which the Office
3 of Special Counsel initiates disciplinary action.

4 “(d) SPECIAL COUNSEL APPROVAL.—A Federal
5 agency may not take disciplinary action against a Federal
6 employee for an alleged act of discrimination or retaliation
7 referred by the Commission under this section except in
8 accordance with the requirements of section 1214(f) of
9 title 5, United States Code.”.

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

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

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

16 and

17 (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.”.

18 **SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.**

19 Section 2302(b) of title 5, United States Code, is
20 amended—

21 (1) in paragraph (13)—

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

3 (B) by striking “implement” and inserting
4 “(A) implement”; and

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

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

10 “(B) implement or enforce any nondisclosure
11 policy, form, or agreement, if such policy, form, or
12 agreement prohibits or restricts an employee from
13 disclosing to Congress, the Office of Special Counsel,
14 or an Office of the Inspector General any informa-
15 tion that relates to any violation of any law, rule, or
16 regulation, or mismanagement, a gross waste of
17 funds, an abuse of authority, or a substantial, and
18 specific danger to public health or safety, or any
19 other whistleblower protection.”.