

103^D CONGRESS
2^D SESSION

S. 1864

To prohibit sexual harassment by employers with fewer than 15 employees.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 22), 1994

Mrs. FEINSTEIN (for herself, Mrs. MURRAY, Mr. KENNEDY, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mr. SIMON, and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To prohibit sexual harassment by employers with fewer than
15 employees.

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 “Harassment-Free
5 Workplace Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to provide Federal protection to small busi-
9 ness employees from sexual harassment in their
10 workplaces;

1 (2) to extend the sexual harassment provisions
2 of current civil rights laws to private sector employ-
3 ers who are not currently covered by Federal law re-
4 lating to sexual harassment; and

5 (3) to authorize the Equal Employment Oppor-
6 tunity Commission to enforce sexual harassment
7 laws with respect to small businesses in the same
8 manner as the Commission currently enforces em-
9 ployment discrimination laws with respect to other
10 businesses.

11 **SEC. 3. DEFINITIONS.**

12 As used in this Act:

13 (1) **COMMERCE.**—The term “commerce” means
14 trade, traffic, commerce, transportation, trans-
15 mission, or communication—

16 (A) among the several States;

17 (B) between a State and any place outside
18 thereof;

19 (C) within the District of Columbia, or a
20 possession of the United States; or

21 (D) between points in the same State but
22 through a point outside thereof.

23 (2) **COMMISSION.**—The term “Commission”
24 means the Equal Employment Opportunity Commis-

1 sion established under section 705 of the Civil
2 Rights Act of 1964 (42 U.S.C. 2000e-4).

3 (3) COMPLAINING PARTY.—The term “com-
4 plaining party” means the Commission, the Attorney
5 General, or a person who may bring an action or
6 proceeding under this Act.

7 (4) EMPLOYEE.—The term “employee” means
8 an individual employed by an employer, except that
9 the term “employee” shall not include any person
10 elected to public office in any State or political sub-
11 division of any State by the qualified voters thereof,
12 or any person chosen by such officer to be on such
13 officer’s personal staff, or an appointee on the policy
14 making level or an immediate adviser with respect to
15 the exercise of the constitutional or legal powers of
16 the office. The exemption set forth in the preceding
17 sentence shall not include employees subject to the
18 civil service laws of a State government, govern-
19 mental agency, or political subdivision. With respect
20 to employment in a foreign country, such term in-
21 cludes an individual who is a citizen of the United
22 States.

23 (5) EMPLOYER.—The term “employer” means
24 a person engaged in an industry affecting commerce
25 who has fewer than fifteen employees for each work-

1 ing day in each of 33 or more calendar weeks in the
2 current and in the preceding calendar year.

3 (6) EMPLOYMENT AGENCY.—The term “em-
4 ployment agency” means any person regularly un-
5 dertaking with or without compensation to procure
6 employees for an employer or to procure for employ-
7 ees opportunities to work for an employer, and in-
8 cludes an agent of such a person.

9 (7) INDUSTRY AFFECTING COMMERCE.—The
10 term “industry affecting commerce” means any ac-
11 tivity, business, or industry in commerce or in which
12 a labor dispute would hinder or obstruct commerce
13 or the free flow of commerce and includes any activ-
14 ity or industry “affecting commerce” within the
15 meaning of the Labor-Management Reporting and
16 Disclosure Act of 1959, and further includes any
17 governmental industry, business, or activity.

18 (8) LABOR ORGANIZATION.—The term “labor
19 organization” means a labor organization engaged in
20 an industry affecting commerce, and any agent of
21 such an organization, and includes any organization
22 of any kind, any agency, or employee representation
23 committee, group, association, or plan so engaged in
24 which employees participate and which exists for the
25 purpose, in whole or in part, of dealing with employ-

1 ers concerning grievances, labor disputes, wages,
2 rates of pay hours, or other items or conditions of
3 employment, and any conference, general committee,
4 joint or system board, or joint council so engaged
5 which is subordinate to a national or international
6 labor organization.

7 (9) LABOR ORGANIZATION DEEMED TO BE EN-
8 GAGED IN AN INDUSTRY AFFECTING COMMERCE.—A
9 labor organization shall be deemed to be engaged in
10 an industry affecting commerce if—

11 (A)(i) it maintains or operates a hiring hall
12 or hiring office which procures employees for an
13 employer or procures for employees opportuni-
14 ties to work for an employer; or

15 (ii) the number of its members (or, where
16 it is a labor organization composed of other
17 labor organizations or their representatives, if
18 the aggregate number of the members of such
19 other labor organizations) is fewer than 15; and

20 (B) such labor organization—

21 (i) is the certified representative of
22 employees under the provisions of the Na-
23 tional Labor Relations Act or the Railway
24 Labor Act;

1 (ii) although not certified, is a na-
2 tional or international labor organization
3 or a local labor organization recognized or
4 acting as the representative of employees
5 of an employer or employers engaged in an
6 industry affecting commerce;

7 (iii) has chartered a local labor orga-
8 nization or subsidiary body which is rep-
9 resenting or actively seeking to represent
10 employees of employers within the meaning
11 of clause (i) or (ii);

12 (iv) has been chartered by a labor or-
13 ganization representing or actively seeking
14 to represent employees within the meaning
15 of clause (i) or (ii) as the local or subordi-
16 nate body through which such employees
17 may enjoy membership or become affiliated
18 with such labor organization; or

19 (v) is a conference, general committee,
20 joint or system board, or joint council sub-
21 ordinate to a national or international
22 labor organization, which includes a labor
23 organization engaged in an industry affect-
24 ing commerce within the meaning of any of
25 clauses (i), (ii), (iii), or (iv).

1 (10) PERSON.—The term “person” includes one
2 or more individuals, governments, governmental
3 agencies, political subdivisions, labor unions, part-
4 nerships, associations, corporations, legal representa-
5 tives, mutual companies, joint-stock companies,
6 trusts, unincorporated organizations, trustees, trust-
7 ees in cases under title 11, United States Code, or
8 receivers.

9 (11) RESPONDENT.—The term “respondent”
10 means—

11 (A) an employer, employment agency, labor
12 organization; or

13 (B) a joint labor-management committee
14 controlling apprenticeship or other training or
15 retraining program, including an on-the-job
16 training program, that serves an employer or an
17 employee.

18 (12) STATE.—The term “State” includes a
19 State of the United States, the District of Columbia,
20 Puerto Rico, the Virgin Islands, American Samoa,
21 Guam, Wake Island, the Canal Zone, and Outer
22 Continental Shelf lands defined in the Outer Con-
23 tinental Shelf Lands Act.

1 **SEC. 4. SEXUAL HARASSMENT.**

2 (a) IN GENERAL.—It shall be an unlawful employ-
3 ment practice for a respondent to engage in a practice that
4 constitutes sexual harassment, within the meaning of title
5 VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et
6 seq.) (including any regulation or administrative guideline
7 issued under such title, or any applicable case law issued
8 by a Federal court with respect to such title, regarding
9 such harassment) against an employee or an applicant for
10 employment with an employer.

11 (b) ANTI-RETALIATION.—It shall be an unlawful em-
12 ployment practice for a respondent to discriminate against
13 any such employee or applicant because the employee or
14 applicant has opposed any practice made an unlawful em-
15 ployment practice by this Act, or because the employee
16 or applicant has made a charge, testified, assisted, or par-
17 ticipated in any manner in an investigation, proceeding,
18 or hearing under this Act.

19 **SEC. 5. ENFORCEMENT, REMEDIES, AND RELATED PROVI-**
20 **SIONS.**

21 (a) ENFORCEMENT AND REMEDIES.—

22 (1) IN GENERAL.—This Act provides the pow-
23 ers, remedies, and procedures set forth in sections
24 705, 706, 707, 709, 710, 713, and 714 of the Civil
25 Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5,
26 2000e-6, 2000e-8, 2000e-9, 2000e-12, and 2000e-

1 13) to the Commission, to the Attorney General, or
2 to any person alleging a violation of any provision of
3 this Act, as appropriate.

4 (2) DAMAGES.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), in an action brought by a
7 complaining party under paragraph (1) in ac-
8 cordance with section 706 of the Civil Rights
9 Act of 1964 (42 U.S.C. 2000e–5) against a re-
10 spondent who engaged in a practice that vio-
11 lates a provision of this Act, the complaining
12 party may be awarded compensatory and puni-
13 tive damages as allowed in section 1977A(b) of
14 the Revised Statutes (42 U.S.C. 1981a(b)), in
15 addition to any relief authorized by section
16 706(g) of the Civil Rights Act of 1964, from
17 the respondent.

18 (B) LIMITATIONS.—If—

19 (i) a complaining party is awarded,
20 under this paragraph, compensatory dam-
21 ages for future pecuniary losses, emotional
22 pain, suffering, inconvenience, mental an-
23 guish, loss of enjoyment of life, or other
24 nonpecuniary losses, or punitive damages;
25 and

1 (ii) on the day on which the complain-
2 ing party is awarded damages described in
3 clause (i) there is in effect under section
4 1977A of the Revised Statutes a limit on
5 the sum of the amount of such damages
6 that may be awarded under such section in
7 an action in which the respondent has
8 more than 14 and fewer than 101 employ-
9 ees in each of 20 or more calendar weeks
10 in the current or preceding calendar year,
11 the sum of the amount of such damages that
12 the complaining party may be awarded under
13 this paragraph may not exceed the sum de-
14 scribed in clause (ii).

15 (C) JURY TRIAL.—If a complaining party
16 seeks compensatory or punitive damages under
17 this paragraph—

18 (i) any party may demand a trial by
19 jury; and

20 (ii) the court shall not inform the jury
21 of the limitations described in subpara-
22 graph (B).

23 (b) EXTRATERRITORIAL APPLICATION.—Section 702
24 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) shall
25 apply with respect to the application of this Act to an em-

1 ployer, employing agency, labor organization, or commit-
2 tee, in the same manner and to the same extent as such
3 section applies with respect to the application of title VII
4 of such Act (42 U.S.C. 2000e et seq.) to an employer,
5 employing agency, labor organization, or committee, re-
6 spectively, as such terms are used in such Act.

7 (c) EFFECT ON STATE LAWS.—Section 708 of the
8 Civil Rights Act of 1964 (42 U.S.C. 2000e–7) shall apply
9 with respect to the construction of this Act in the same
10 manner and to the same extent as such section applies
11 with respect to the construction of title VII of such Act.

12 **SEC. 6. POSTING NOTICES.**

13 (a) NOTICE.—Every respondent shall post and keep
14 posted, in the manner prescribed by section 711 of the
15 Civil Rights Act of 1964 (42 U.S.C. 2000e–10), a notice
16 describing the applicable provisions of this Act, to be pre-
17 pared or approved by the Commission and to appear in
18 an accessible format, for employees and applicants for em-
19 ployment with employers.

20 (b) PENALTY.—A willful violation of this section shall
21 be punishable by a fine of not more than \$100 for each
22 separate offense.

23 **SEC. 7. EFFECTIVE DATE.**

24 This Act shall take effect 6 months after the date
25 of enactment of this Act.

