



OFFSHORE OIL AND GAS WORKER  
WHISTLEBLOWERS PROTECTION  
ACT OF 2010

Mr. GEORGE MILLER of California. Mr. Speaker, pursuant to House Resolution 1574, I call up the bill (H.R. 5851) to provide whistleblower protections to certain workers in the offshore oil and gas industry, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5851

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Offshore Oil and Gas Worker Whistleblower Protection Act of 2010”.

**SEC. 2. WHISTLEBLOWER PROTECTIONS; EMPLOYEE PROTECTION FROM OTHER RETALIATION.**

(a) PROHIBITION AGAINST RETALIATION.—

(1) IN GENERAL.—No employer may discharge or otherwise discriminate against a covered employee because the covered employee, whether at the covered employee's initiative or in the ordinary course of the covered employee's duties—

(A) provided, caused to be provided, or is about to provide or cause to be provided to the employer or to a Federal or State Government official, information relating to any violation of, or any act or omission the covered employee reasonably believes to be a violation of, any provision of the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.), or any order, rule, regulation, standard, or prohibition under that Act, or exercised any rights provided to employees under that Act;

(B) testified or is about to testify in a proceeding concerning such violation;

(C) assisted or participated or is about to assist or participate in such a proceeding;

(D) testified or is about to testify before Congress on any matter covered by such Act;

(E) objected to, or refused to participate in any activity, policy, practice, or assigned task that the covered employee reasonably believed to be in violation of any provision of such Act, or any order, rule, regulation, standard, or ban under such Act;

(F) reported to the employer or a State or Federal Government official any of the following related to the employer's activities described in section 3(1): an illness, injury, unsafe condition, or information regarding the adequacy of any oil spill response plan required by law; or

(G) refused to perform the covered employee's duties, or exercised top work authority, related to the employer's activities described in section 3(1) if the covered employee had a good faith belief that performing such duties could result in injury to or impairment of the health of the covered employee or other employees, or cause an oil spill to the environment.

(2) GOOD FAITH BELIEF.—For purposes of paragraph (1)(E), the circumstances causing the covered employee's good faith belief that performing such duties would pose a health and safety hazard shall be of such a nature that a reasonable person under circumstances confronting the covered employee would conclude there is such a hazard.

(b) PROCESS.—

(1) IN GENERAL.—A covered employee who believes that he or she has been discharged or otherwise discriminated against (hereafter referred to as the “complainant”) by any employer in violation of subsection

(a)(1) may, not later than 180 days after the date on which such alleged violation occurs or the date on which the covered employee knows or should reasonably have known that such alleged violation occurred, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor (referred to in this section as the “Secretary”) alleging such discharge or discrimination and identifying employer or employers responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the employer or employers named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION.—

(A) IN GENERAL.—Not later than 90 days after the date of receipt of a complaint filed under paragraph (1) the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the employer or employers alleged to have committed a violation of subsection (a)(1) of the Secretary's findings. The Secretary shall, during such investigation afford the complainant and the employer or employers named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses. The complainant shall be provided with an opportunity to review the information and evidence provided by employer or employers to the Secretary, and to review any response or rebuttal by such the complainant, as part of such investigation.

(B) REASONABLE CAUSE FOUND; PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a)(1) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, the employer or employers alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record before an administrative law judge of the Department of Labor. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review. The Secretary of Labor is authorized to enforce preliminary reinstatement orders in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia.

(C) DISMISSAL OF COMPLAINT.—

(i) STANDARD FOR COMPLAINANT.—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the adverse action alleged in the complaint.

(ii) STANDARD FOR EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the em-

ployer would have taken the same adverse action in the absence of that behavior.

(iii) VIOLATION STANDARD.—The Secretary may determine that a violation of subsection (a)(1) has occurred only if the complainant demonstrates that any behavior described in subparagraphs (A) through (F) of such subsection was a contributing factor in the adverse action alleged in the complaint.

(iv) RELIEF STANDARD.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same adverse action in the absence of that behavior.

(3) ORDERS.—

(A) IN GENERAL.—Not later than 90 days after the receipt of a request for a hearing under subsection (b)(2)(B), the administrative law judge shall issue findings of fact and order the relief provided under this paragraph or deny the complaint. At any time before issuance of an order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation. Such a settlement may not be agreed by such parties if it contains conditions which conflict with rights protected under this Act, are contrary to public policy, or include a restriction on a complainant's right to future employment with employers other than the specific employers named in the complaint.

(B) CONTENT OF ORDER.—If, in response to a complaint filed under paragraph (1), the administrative law judge determines that a violation of subsection (a)(1) has occurred, the administrative law judge shall order the employer or employers who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay and prejudgment interest) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory and consequential damages, and, as appropriate, exemplary damages to the complainant.

(C) ATTORNEY FEES.—If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the employer or employers a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued at the conclusion of any stage of the proceeding.

(D) BAD FAITH CLAIM.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer reasonable attorneys' fees, not exceeding \$1,000, to be paid by the complainant.

(E) ADMINISTRATIVE APPEAL.—Not later than 30 days after the receipt of findings of fact or an order under subparagraph (B), the employer or employers alleged to have committed the violation or the complainant may file, with objections, an administrative appeal with the Secretary, who may designate such appeal to a review board. In reviewing a decision and order of the administrative law judge, the Secretary shall affirm the decision and order if it is determined that the factual findings set forth therein are supported by substantial evidence and the decision and order are made in accordance with applicable law. The Secretary shall issue a final decision and order affirming, or reversing, in whole or in part, the decision under