

116TH CONGRESS
1ST SESSION

H. R. 135

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2019

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

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 2019”.

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 graph (1) or (2) of section 201(a), as applicable, the
8 head of the agency subject to the finding shall pro-
9 vide notice for at least 1 year on the agency’s inter-
10 net website in a clear and prominent location linked
11 directly from the agency’s internet home page stat-
12 ing 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 paragraph (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—

3 (A) by inserting “Homeland Security and”
4 before “Governmental Affairs”;

5 (B) by inserting “Oversight and” before
6 “Government Reform”; and

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

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

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

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

1 “(c) DISCIPLINARY ACTION REPORT.—Not later
 2 than 60 days after the date on which a Federal agency
 3 takes final action or a Federal agency receives an appel-
 4 late decision issued by the Equal Employment Oppor-
 5 tunity Commission involving a finding of discrimination
 6 or retaliation in violation of a provision of law covered by
 7 paragraph (1) or (2) of section 201(a), as applicable, the
 8 employing Federal agency shall submit to the Commission
 9 a report stating whether disciplinary action has been initi-
 10 ated against a Federal employee as a result of the viola-
 11 tion.”.

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

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

17 (1) in paragraph (9)—

18 (A) in subparagraph (A), by striking
 19 “and” at the end;

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

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

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

1 “(i) the date of the finding;
2 “(ii) the affected agency;
3 “(iii) the law violated; and
4 “(iv) whether a decision has been
5 made regarding necessary disciplinary ac-
6 tion as a result of the finding.”; and

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

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

11 “(A) information regarding the date on
12 which each complaint was filed;

13 “(B) a general summary of the allegations
14 alleged in the complaint;

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

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

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

1 **SEC. 6. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT**
2 **OPPORTUNITY COMMISSION.**

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

7 **SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
8 **DISCRIMINATION AND RETALIATION ACT**
9 **AMENDMENTS.**

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

14 **“SEC. 207. COMPLAINT TRACKING.**

15 “Not later than 1 year after the date of enactment
16 of the Federal Employee Antidiscrimination Act of 2019,
17 each Federal agency shall establish a system to track each
18 complaint of discrimination arising under section
19 2302(b)(1) of title 5, United States Code, and adjudicated
20 through the Equal Employment Opportunity process from
21 inception to resolution of the complaint, including whether
22 a decision has been made regarding necessary disciplinary
23 action as the result of a finding of discrimination.

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

25 “If a Federal agency takes an adverse action covered
26 under section 7512 of title 5, United States Code, against

1 a Federal employee for an act of discrimination or retaliation
 2 tion prohibited by a provision of law covered by paragraph
 3 (1) or (2) of section 201(a), the agency shall, after all
 4 appeals relating to such action have been exhausted, include
 5 a notation of the adverse action and the reason for
 6 the action in the employee's personnel record.”.

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

11 **“TITLE IV—PROCESSING AND**
 12 **REFERRAL**

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

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

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

22 “(2) is devoid of internal conflicts of interest
 23 and ensures fairness and inclusiveness within the or-
 24 ganization; and

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

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

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

11 **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF**
12 **AGENCY.**

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

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

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

23 “(b) REFERRALS TO SPECIAL COUNSEL.—The Office
24 of Special Counsel shall accept and review a referral from
25 the Commission under subsection (a) for purposes of seek-

1 ing disciplinary action under its authority against a Fed-
 2 eral employee who commits an act of discrimination or re-
 3 taliation.

4 “(c) NOTIFICATION.—The Office of Special Counsel
 5 shall notify the Commission in a case in which the Office
 6 of Special Counsel initiates disciplinary action.

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

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

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

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

19 and

20 (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.”.

1 **SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.**

2 Section 2302(b) of title 5, United States Code, is
3 amended—

4 (1) in paragraph (13)—

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

7 (B) by striking “implement” and inserting
8 “(A) implement”; and

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

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

14 “(B) implement or enforce any nondisclo-
15 sure policy, form, or agreement, if such policy,
16 form, or agreement prohibits or restricts an em-
17 ployee from disclosing to Congress, the Office of
18 Special Counsel, or an Office of the Inspector
19 General any information that relates to any vio-
20 lation of any law, rule, or regulation, or mis-
21 management, a gross waste of funds, an abuse
22 of authority, or a substantial, and specific dan-

1 ger to public health or safety, or any other
2 whistleblower protection.”.

Passed the House of Representatives January 15,
2019.

Attest:

KAREN L. HAAS,

Clerk.