

116TH CONGRESS  
1ST SESSION

# H. R. 1828

To require annual reporting by employers of the number of settlements with employees regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2019

Mrs. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To require annual reporting by employers of the number of settlements with employees regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment, 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; FINDINGS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Ending Secrecy About Workplace Sexual Harassment  
6       Act”.

7       (b) **FINDINGS.**—Congress finds that the following:

1           (1) Thirty years after the United States Su-  
2           preme Court held in *Meritor Savings Bank v. Vinson*  
3           that sexual harassment creates a hostile or abusive  
4           work environment and is a violation of title VII of  
5           the Civil Rights Act of 1964, sexual harassment re-  
6           mains a widespread problem, affecting victims in  
7           every industry, at every level of employment.

8           (2) In fiscal year 2015, almost one-third of the  
9           90,000 charges filed with the Equal Employment  
10          Opportunity Commission involved harassment, and  
11          nearly a quarter of those harassment charges in-  
12          volved sexual harassment. Of the total number of  
13          charges received that alleged harassment from em-  
14          ployees working for private employers or for State  
15          and local government employers, approximately 45  
16          percent alleged harassment on the basis of sex.

17          (3) According to the Commission’s Select Task  
18          Force in 2016, on the Study of Harassment in the  
19          Workplace, the prevalence of such harassment—

20                (A) causes mental and physical harm to  
21                the victim, as the study concluded that “em-  
22                ployees experiencing sexual harassment are  
23                more likely to report symptoms of depression,  
24                general stress and anxiety, posttraumatic stress

1 disorder (PTSD), and overall impaired psycholo-  
2 gical well-being”;

3 (B) results in harms, which are not limited  
4 to victims, as the study concluded that “em-  
5 ployees, female and male alike, who observed  
6 hostility directed toward female coworkers (both  
7 incivility and sexually harassing behavior) were  
8 more likely to experience lower psychological  
9 well-being”, which were “in turn linked to lower  
10 physical well-being”.

11 (4) Prevalence of sexual harassment in the  
12 workplace causes substantial financial harm to vic-  
13 tims, as they often try to avoid the harassing behav-  
14 ior by taking leave without pay or leaving the work-  
15 place entirely, resulting in a loss of wages. The U.S.  
16 Merit Systems Protection Board’s 1995 report on  
17 Sexual Harassment in the Federal Workplace found  
18 sexual harassment cost Federal employees \$4.4 mil-  
19 lion between 1992 and 1994.

20 (5) According to Commission records, from fis-  
21 cal year 2010 to 2016, U.S. companies have paid  
22 out more than \$295 million in public penalties over  
23 sexual harassment claims. This sum does not include  
24 any private settlements or internally resolved com-

1       plaints about which there is limited public informa-  
2       tion.

3               (6) The Commission is responsible for enforcing  
4       Federal anti-discrimination laws that protect job ap-  
5       plicants and employees, and has the authority to in-  
6       vestigate charges of discrimination against employ-  
7       ers who are covered by the law.

8               (7) The Commission does not currently receive  
9       disclosures from employers on annual EEO-1 re-  
10      ports regarding claims of discrimination on the basis  
11      of sex, including verbal and physical sexual harass-  
12      ment made directly to the employer and resolved in-  
13      ternally through out-of-court settlements or other  
14      mediation.

15 **SEC. 2. EMPLOYER REPORTING REQUIREMENT.**

16       (a) REPORTING REQUIREMENT.—Every employer re-  
17      quired to submit to the Equal Employment Opportunity  
18      Commission an Employer Information Report EEO-1  
19      shall include in such report the number of settlements  
20      reached by the employer with an employee in the resolu-  
21      tion of claims pertaining to discrimination on the basis  
22      of sex, including verbal and physical sexual harassment.

23       (b) REQUIRED REPORTING.—Examples of settle-  
24      ments required to be reported under this section include  
25      any agreement where anything of value is conferred to the

1 individual raising the claim in return for such individual  
2 declining to further pursue the claim, any internal medi-  
3 ation or other workplace resolution that results in the indi-  
4 vidual declining to further pursue the claim.

5 (c) EXAMPLES OF OFFENSIVE CONDUCT THAT CON-  
6 STITUTE SEXUAL HARASSMENT.—Claims pertaining to  
7 sexual harassment are those that complain of acts such  
8 as—

- 9 (1) inappropriate or unwanted touching;
- 10 (2) verbal comments about sex or of a sexual  
11 nature, which may include comments to an indi-  
12 vidual about her or his body or sexual or romantic  
13 activity, or the body or sexual or romantic activity  
14 of the individual making the comments;
- 15 (3) referring to another individual by a name or  
16 nickname of a romantic, demeaning, or sexual na-  
17 ture;
- 18 (4) inappropriate gestures of a sexual nature;
- 19 (5) unwanted proposals for sexual activity;
- 20 (6) showing another individual photos or other  
21 images that are sexually explicit or are otherwise of  
22 a sexual nature; or
- 23 (7) undue attention to or questions about a per-  
24 son’s sexual relationships, sexual history, sexual ori-  
25 entation, or gender identity.

1 **SEC. 3. RIGHTS OF EMPLOYEES.**

2 (a) PROTECTION FROM RETALIATION.—

3 (1) CONDUCT PROHIBITED.—An employer may  
4 not terminate any employee nor discriminate against  
5 any such employee with regards to terms and condi-  
6 tions of employment because such employee—

7 (A) inquires about an employer’s meeting  
8 of the requirements of this Act; or

9 (B) complains about an employer’s failure  
10 to meet the requirements of this Act.

11 (2) ENFORCEMENT.—

12 (A) LIABILITY.—In addition to civil rights  
13 protections and remedies for retaliation avail-  
14 able under other Federal, State, or local law,  
15 any employer who violates paragraph (1) shall  
16 be liable to any eligible employee affected for—

17 (i) damages equal to the amount of  
18 any wages, salary, employment benefits, or  
19 other compensation denied or lost to such  
20 employee by reason of the violation;

21 (ii) the interest on the amount de-  
22 scribed in clause (i) calculated at the pre-  
23 vailing rate;

24 (iii) an additional amount as liq-  
25 uidated damages equal to the sum of the

1 amount described in clause (i) and the in-  
2 terest described in clause (ii); and

3 (iv) such equitable relief as may be  
4 appropriate, including employment, rein-  
5 statement, and promotion.

6 (B) RIGHT OF ACTION.—An action to re-  
7 cover the damages or equitable relief prescribed  
8 in subparagraph (A) may be maintained against  
9 any employer in any Federal or State court of  
10 competent jurisdiction by any one or more em-  
11 ployees for and on behalf of—

12 (i) the employee or employees; or

13 (ii) the employees and other employ-  
14 ees similarly situated.

15 (C) FEES AND COSTS.—The court in such  
16 an action shall, in addition to any judgment  
17 awarded to the plaintiff, allow a reasonable at-  
18 torney's fee, reasonable expert witness fees, and  
19 other costs of the action to be paid by the de-  
20 fendant.

21 (b) CONFIDENTIALITY AGREEMENTS AND SETTLE-  
22 MENTS.—

23 (1) RULE OF CONSTRUCTION.—Nothing in this  
24 Act shall be construed to interfere with the right of  
25 an employee to enter into a confidentiality agree-

1       ment with his or her employer with respect to a  
2       claim of discrimination on the basis of sex, including  
3       verbal and physical sexual harassment, the investiga-  
4       tion of such a claim, or the out-of-court settlement  
5       of such a claim.

6               (2) LIMITATIONS ON AGREEMENTS.—

7                       (A) An employer may not use a confiden-  
8                       tiality agreement described in paragraph (1) as  
9                       a basis for not submitting the information re-  
10                      quired by section 2.

11                     (B) A confidentiality agreement described  
12                     in paragraph (1) shall not be construed as pro-  
13                     hibiting any party to such agreement from co-  
14                     operating with law enforcement investigations  
15                     into any claims of discrimination on the basis  
16                     of sex, including verbal and physical sexual har-  
17                     assment.

18 **SEC. 4. EEOC REPORT TO CONGRESS.**

19       The Equal Employment Opportunity Commission  
20       shall annually report to Congress information relating to  
21       claims of discrimination on the basis of sex, including  
22       verbal and physical sexual harassment, including—

23                     (1) the number of settlements that were re-  
24                     ported to the Commission as defined by and re-  
25                     ported pursuant to section 2;

1           (2) the number of charges alleging discrimina-  
2           tion on the basis of sex that were reported to the  
3           Equal Employment Opportunity Commission, includ-  
4           ing verbal and physical sexual harassment made di-  
5           rectly to the Commission; and

6           (3) a summary of any action taken by the Com-  
7           mission based upon any such charges or complaints  
8           collected pursuant to this Act, such as litigation or  
9           settlements facilitated by the Commission pertaining  
10          to discrimination on the basis of sex, including  
11          verbal and physical sexual harassment, including a  
12          brief description of any outcome of such actions.

13 **SEC. 5. GAO STUDY AND REPORT.**

14          The Comptroller General of the United States shall  
15          conduct a comprehensive study of claims of discrimination  
16          on the basis of sex, including verbal and physical sexual  
17          harassment involving both government and private sector  
18          employees and shall report to Congress not later than one  
19          year after the date of enactment of this Act the results  
20          of such study and recommendations for legislation or other  
21          action for improving transparency and accountability re-  
22          garding such claims.

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