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.

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

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.

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

SECTION 1. SHORT TITLE; FINDINGS.

(a) Short Title.—This Act may be cited as the “Ending Secrecy About Workplace Sexual Harassment Act”.

(b) Findings.—Congress finds that the following:
(1) Thirty years after the United States Supreme Court held in Meritor Savings Bank v. Vinson that sexual harassment creates a hostile or abusive work environment and is a violation of title VII of the Civil Rights Act of 1964, sexual harassment remains a widespread problem, affecting victims in every industry, at every level of employment.

(2) In fiscal year 2015, almost one-third of the 90,000 charges filed with the Equal Employment Opportunity Commission involved harassment, and nearly a quarter of those harassment charges involved sexual harassment. Of the total number of charges received that alleged harassment from employees working for private employers or for State and local government employers, approximately 45 percent alleged harassment on the basis of sex.

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

(A) causes mental and physical harm to the victim, as the study concluded that “employees experiencing sexual harassment are more likely to report symptoms of depression, general stress and anxiety, posttraumatic stress
disorder (PTSD), and overall impaired psychological well-being’’;

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

(4) Prevalence of sexual harassment in the workplace causes substantial financial harm to victims, as they often try to avoid the harassing behavior by taking leave without pay or leaving the workplace entirely, resulting in a loss of wages. The U.S. Merit Systems Protection Board’s 1995 report on Sexual Harassment in the Federal Workplace found sexual harassment cost Federal employees $4.4 million between 1992 and 1994.

(5) According to Commission records, from fiscal year 2010 to 2016, U.S. companies have paid out more than $295 million in public penalties over sexual harassment claims. This sum does not include any private settlements or internally resolved com-
plaints about which there is limited public information.

(6) The Commission is responsible for enforcing Federal anti-discrimination laws that protect job applicants and employees, and has the authority to investigate charges of discrimination against employers who are covered by the law.

(7) The Commission does not currently receive disclosures from employers on annual EEO–1 reports regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment made directly to the employer and resolved internally through out-of-court settlements or other mediation.

SEC. 2. EMPLOYER REPORTING REQUIREMENT.

(a) REPORTING REQUIREMENT.—Every employer required to submit to the Equal Employment Opportunity Commission an Employer Information Report EEO–1 shall include in such report the number of settlements reached by the employer with an employee in the resolution of claims pertaining to discrimination on the basis of sex, including verbal and physical sexual harassment.

(b) REQUIRED REPORTING.—Examples of settlements required to be reported under this section include any agreement where anything of value is conferred to the
individual raising the claim in return for such individual declining to further pursue the claim, any internal mediation or other workplace resolution that results in the individual declining to further pursue the claim.

(c) EXAMPLES OF OFFENSIVE CONDUCT THAT CONSTITUTE SEXUAL HARASSMENT.—Claims pertaining to sexual harassment are those that complain of acts such as—

(1) inappropriate or unwanted touching;

(2) verbal comments about sex or of a sexual nature, which may include comments to an individual about her or his body or sexual or romantic activity, or the body or sexual or romantic activity of the individual making the comments;

(3) referring to another individual by a name or nickname of a romantic, demeaning, or sexual nature;

(4) inappropriate gestures of a sexual nature;

(5) unwanted proposals for sexual activity;

(6) showing another individual photos or other images that are sexually explicit or are otherwise of a sexual nature; or

(7) undue attention to or questions about a person’s sexual relationships, sexual history, sexual orientation, or gender identity.
SEC. 3. RIGHTS OF EMPLOYEES.

(a) PROTECTION FROM RETALIATION.—

(1) CONDUCT PROHIBITED.—An employer may not terminate any employee nor discriminate against any such employee with regards to terms and conditions of employment because such employee—

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

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

(2) ENFORCEMENT.—

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

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

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate;

(iii) an additional amount as liquidated damages equal to the sum of the
amount described in clause (i) and the interest described in clause (ii); and

(iv) such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(B) Right of Action.—An action to recover the damages or equitable relief prescribed in subparagraph (A) may be maintained against any employer in any Federal or State court of competent jurisdiction by any one or more employees for and on behalf of—

(i) the employee or employees; or

(ii) the employees and other employees similarly situated.

(C) Fees and Costs.—The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney’s fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(b) Confidentiality Agreements and Settlements.—

(1) Rule of Construction.—Nothing in this Act shall be construed to interfere with the right of an employee to enter into a confidentiality agree-
ment with his or her employer with respect to a claim of discrimination on the basis of sex, including verbal and physical sexual harassment, the investigation of such a claim, or the out-of-court settlement of such a claim.

(2) LIMITATIONS ON AGREEMENTS.—

(A) An employer may not use a confidentiality agreement described in paragraph (1) as a basis for not submitting the information required by section 2.

(B) A confidentiality agreement described in paragraph (1) shall not be construed as prohibiting any party to such agreement from cooperating with law enforcement investigations into any claims of discrimination on the basis of sex, including verbal and physical sexual harassment.

SEC. 4. EEOC REPORT TO CONGRESS.

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

(1) the number of settlements that were reported to the Commission as defined by and reported pursuant to section 2;
(2) the number of charges alleging discrimination on the basis of sex that were reported to the Equal Employment Opportunity Commission, including verbal and physical sexual harassment made directly to the Commission; and

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

SEC. 5. GAO STUDY AND REPORT.

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