

117TH CONGRESS  
2D SESSION

# H. R. 8146

To provide that certain agreements containing nondisclosure clauses regarding claims of discrimination, harassment, and retaliation shall not be enforceable, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2022

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 provide that certain agreements containing nondisclosure clauses regarding claims of discrimination, harassment, and retaliation shall not be enforceable, 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 “Accountability for  
5 Workplace Misconduct Act”.

1 **SEC. 2. EMPLOYER REQUIREMENTS PERTAINING TO**  
2 **CLAIMS OF DISCRIMINATION, HARASSMENT**  
3 **AND RETALIATION.**

4 (a) PROCESS.—Not later than 1 year after the date  
5 of the enactment of this Act, an employer shall establish  
6 a process for receiving and investigating allegations of dis-  
7 crimination, harassment and retaliation. Such process  
8 shall—

9 (1) provide multiple methods (e.g., in writing,  
10 verbally, or by electronic submission) for the em-  
11 ployer to receive and respond to a report of unlawful  
12 conduct under the laws described in section 3,

13 (2) allow employees to confidentially report un-  
14 lawful conduct,

15 (3) be provided to each employee upon the be-  
16 ginning of their employment and be prominently  
17 posted for employee reference,

18 (4) require prompt investigation of unlawful  
19 conduct reported by an employee,

20 (5) require notification to the employee of the  
21 initiation, conclusion, and outcome of the investiga-  
22 tion of such reported unlawful conduct, and

23 (6) make available (e.g., through an human re-  
24 sources representative) factual information per-  
25 taining to support services (including medical and  
26 mental health care, seeking legal representation, in-

1 formation about legal rights) the employee may  
2 choose to access.

3 (b) INVESTIGATION.—An employer shall conduct a  
4 thorough and neutral investigation into any report of un-  
5 lawful conduct made by an employee. Such investigation  
6 shall include—

7 (1) appointing impartial individual or entity  
8 that is adequately trained to investigate such con-  
9 duct and notifying the employee of the investigator,  
10 scope of the investigation, and estimated time frame  
11 of the investigation,

12 (2) notifying the employee of the initiation, con-  
13 clusion, and outcome of the investigation of the re-  
14 ported unlawful conduct,

15 (3) informing the employee of investigation sta-  
16 tus upon request of the employee, and

17 (4) to the greatest extent practicable, inter-  
18 viewing witnesses or other individuals identified by  
19 the employee claiming the misconduct under inves-  
20 tigation.

21 (c) REPORT.—The employer shall furnish a report to  
22 the employee that documents the procedure followed by  
23 the employer during an investigation into the unlawful  
24 conduct reported by the employee and that shows the in-

1 vestigation complied with the requirements of subsection  
2 (b).

3 **SEC. 3. UNENFORCEABILITY OF CERTAIN SETTLEMENT**  
4 **AGREEMENTS CONTAINING NONDISCLOSURE**  
5 **CLAUSES.**

6 (a) A nondisclosure clause included in a settlement  
7 agreement shall not be enforceable by an employer if—

8 (1) it prohibits a party to such agreement from  
9 disclosing information to Congress, a Federal, State,  
10 or a local government entity, or a law enforcement  
11 entity, relating to conduct that is unlawful, or that  
12 the employee has reason to believe is unlawful,  
13 under—

14 (A) title VII of the Civil Rights Act of  
15 1964 (42 U.S.C. 2000 seq.),

16 (B) section 6(d) of the Fair Labor Stand-  
17 ards Act (29 U.S.C. 206(d)),

18 (C) title I of the Americans with Disabil-  
19 ities Act of 1990 (42 U.S.C. 12101 et seq.),

20 (D) sections 501 and 505 of the Rehabili-  
21 tation Act of 1973 (29 U.S.C. 791-792),

22 (E) the Age Discrimination in Employment  
23 Act of 1967 (29 U.S.C. 621 et seq.),

1 (F) title II of the Genetic Information  
2 Non-discrimination Act (29 U.S.C. 42 U.S.C.  
3 2000ff-1 et seq.), or

4 (G) the Government Employees Rights Act  
5 of 1991 (2 U.S.C. 1201-1224).

6 (2) the employer has not communicated to the  
7 employee that a nondisclosure agreement does not  
8 restrict disclosing information to Congress, a Fed-  
9 eral, State, or Local government entity, or law en-  
10 forcement,

11 (3) the employer engages in behavior to intimi-  
12 date, hinder, obstruct, impede, retaliate against, or  
13 otherwise discourage an employee subject to a non-  
14 disclosure agreement from communicating with Con-  
15 gress, a Federal, State, or local government entity,  
16 or law enforcement,

17 (4) the employer includes terms in the non-  
18 disclosure agreement that requires an employee to  
19 notify the employer before disclosing information to  
20 Congress, a Federal, State or Local government en-  
21 tity, or law enforcement,

22 (5) the employer fails to include in such non-  
23 disclosure agreement the following statement:  
24 “Nothing in this agreement prevents you from dis-  
25 closing information to Congress, a Federal, State, or

1 Local government entity, or law enforcement about  
2 behavior you reasonably believe constitutes harass-  
3 ment, discrimination, or retaliation.”, or

4 (6) the employer does not grant an employee at  
5 least 21 days to consider an agreement before such  
6 agreement takes effect and allow the employee to re-  
7 scind such agreement for up to 7 days after the  
8 agreement takes effect.

9 **SEC. 4. ENFORCEMENT.**

10 (a) The Equal Employment Opportunity Commission  
11 shall establish a process by which employees may report  
12 a violation of section 2.

13 (b) The Equal Employment Opportunity Commission  
14 shall treat reports of such violations in a manner con-  
15 sistent with title VII of the Civil Rights Act of 1964 (42  
16 U.S.C. 2000e et seq.).

17 (c) No later than 180 days after the date of the en-  
18 actment of this Act, the Equal Employment Opportunity  
19 Commission shall issue rules that prescribe the require-  
20 ments for employer compliance with, and employee notifi-  
21 cation of, the requirements of this Act.

22 **SEC. 5. DEFINITIONS.**

23 For purposes of this Act:

24 (1) NONDISCLOSURE CLAUSE.—The term “non-  
25 disclosure clause” means a provision in a settlement

1 agreement that forbids a party to such agreement  
2 to—

3 (A) make a disparaging statement about a  
4 party to such agreement, relating to an allega-  
5 tion or report relating to unlawful conduct de-  
6 scribed in section 3, or

7 (B) disclose information regarding the ex-  
8 istence of such allegation or such agreement or  
9 of any facts relating to such allegation or such  
10 report.

11 (2) SETTLEMENT.—The term “settlement”  
12 means an agreement to settle an allegation of unlaw-  
13 ful conduct described in section 3 and that—

14 (A) applies to severance and separation  
15 agreements, and

16 (B) precludes an employee from pursuing  
17 legal redress associated with an allegation of  
18 unlawful conduct described in section 3.

19 **SEC. 6. APPLICATION.**

20 This Act shall apply with respect to agreements made  
21 before, on, and after the date of the enactment of this  
22 Act.

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