

115TH CONGRESS
2D SESSION

S. 3064

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act, 1959, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 13, 2018

Mrs. MURRAY (for herself, Mr. SCHUMER, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HARRIS, Mr. HEINRICH, Ms. HIRONO, Mr. LEAHY, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. MURPHY, Mr. PETERS, Mr. REED, Ms. SMITH, Ms. STABENOW, Mr. UDALL, Mr. VAN HOLLEN, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act, 1959, 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 “Workers’ Freedom to
5 Negotiate Act of 2018”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The National Labor Relations Act (29
4 U.S.C. 151 et seq.) was enacted to encourage the
5 practice of collective bargaining and to protect the
6 exercise by workers of full freedom of association in
7 the workplace. Since its enactment in 1935, tens of
8 millions of workers have bargained with their em-
9 ployers over wages, benefits, and other terms and
10 conditions of employment and have raised the stand-
11 ard of living for all workers.

12 (2) According to the Bureau of Labor Statis-
13 tics, union members earn 25.6 percent more than
14 workers who are not covered by a collective bar-
15 gaining agreement. Workers who are represented by
16 a union are 28 percent more likely to be offered
17 health insurance through work and nearly 5 times
18 more likely to have defined benefit pensions. The
19 wage differential is significant for women and people
20 of color. African-American union members earn 25
21 percent more than African-American workers who
22 are not covered by a collective bargaining agreement,
23 and Latino union members earn 42.6 percent more
24 than Latino workers who are not covered by a collec-
25 tive bargaining agreement. Women union members
26 earn 30 percent more than women who are not cov-

1 ered by a collective bargaining agreement, and the
2 wage gap between men and women is much smaller
3 at workplaces covered by a collective bargaining
4 agreement because collective bargaining agreements
5 ensure the same rate is paid to workers for a par-
6 ticular job without regard to gender. The wage and
7 benefit gains achieved through collective bargaining
8 agreements benefit both workers and their commu-
9 nities.

10 (3) Unions and collective bargaining ensure
11 that productivity gains are shared by working peo-
12 ple. The decline in the percentage of workers covered
13 by collective bargaining has contributed to sky-
14 rocketing income inequality and wage stagnation for
15 the average worker.

16 (4) The National Labor Relations Act protects
17 the right of workers to join together with their co-
18 workers in concerted activities for their mutual aid
19 or protection. This protection applies broadly to all
20 concerted activities by workers aimed at improving
21 the terms and conditions of their employment or aid-
22 ing each other in any way, regardless of whether
23 workers are seeking to form a union or engage in
24 collective bargaining with their employer.

1 (5) The Act protects the right of workers to
2 discuss issues like pay and benefits without retalia-
3 tion or interference by employers. However, the
4 awareness of workers regarding their rights under
5 the Act is lacking, due in part to the absence of any
6 legally required notice informing workers of the
7 rights and responsibilities under the Act. Many em-
8 ployers maintain policies that restrict the ability of
9 workers to discuss workplace issues with each other,
10 directly contravening these rights. Research shows
11 that more than one-half of workers report that their
12 employers have policies that prohibit or discourage
13 workers from discussing pay with their coworkers.
14 These policies and practices impede workers from
15 exercising their rights under the Act and impair
16 their freedom of association at work.

17 (6) Retaliation by employers against workers
18 who exercise their rights under the National Labor
19 Relations Act persists at troubling levels. Employers
20 routinely fire workers for trying to form a union at
21 their workplace. In one out of 3 organizing cam-
22 paigns, one or more workers are discharged for sup-
23 porting or joining a union.

24 (7) The current remedies are inadequate to
25 deter employers from violating the National Labor

1 Relations Act. The remedies and penalties for viola-
2 tions of the Act are far weaker than for other labor
3 and employment laws. Unlike other major labor and
4 employment laws, there are no civil penalties for vio-
5 lations of the National Labor Relations Act. Work-
6 ers cannot go to court to pursue relief on their own
7 and must rely on the National Labor Relations
8 Board to prosecute their case. Should the Board de-
9 cline to prosecute for any reason, aggrieved workers
10 have no other remedy.

11 (8) Unlike orders of other Federal agencies, the
12 orders of the National Labor Relations Board are
13 not enforced until the Board seeks enforcement from
14 the Court of Appeals. As far back as 1969, the Ad-
15 ministrative Conference of the United States recog-
16 nized that the absence of a self-enforcing agency
17 order imposes wasteful delays in the enforcement of
18 the National Labor Relations Act, and recommended
19 that the Board's orders be made self-enforcing like
20 those of other agencies. Congress did not act upon
21 this recommendation, and delays in the Board's en-
22 forcement remain a problem undermining the effec-
23 tiveness of the Act.

24 (9) Many workers do not currently enjoy the
25 protections of the National Labor Relations Act be-

1 cause they are excluded from coverage under the Act
2 or interpretations of the Act.

3 (10) Too often, workers who choose to form
4 unions are frustrated when their employers use delay
5 and other tactics to avoid reaching an initial collec-
6 tive bargaining agreement. Estimates are that in as
7 many as half of new organizing campaigns, workers
8 and their employers fail to reach an initial collective
9 bargaining agreement.

10 (11) While the National Labor Relations Act
11 guarantees workers the right to strike, courts have
12 permitted employers to “permanently replace” work-
13 ers who exercise their right to strike. This is con-
14 trary to Congress’s intent in enacting the National
15 Labor Relations Act and has led to confusion
16 amongst workers regarding their right to strike.

17 (12) Hearings under section 9 of the National
18 Labor Relations Act (29 U.S.C. 159) exist to assure
19 to workers the fullest freedom in exercising the
20 rights guaranteed by the Act. However, some em-
21 ployers have abused the representation process of
22 the National Labor Relations Board to impede work-
23 ers from freely choosing their own representatives
24 and exercising their rights under the Act.

1 (13) So-called “right-to-work” laws do not give
2 any worker the right to a job. While Federal law re-
3 quires unions to fairly represent all members of a
4 given bargaining unit, and thereby expend resources
5 on all unit members, many States’ so-called “right-
6 to-work” laws prohibit unions from charging all
7 members for the representation and services that the
8 unions are legally obliged to render. Section 14(b) of
9 the National Labor Relations Act (29 U.S.C.
10 164(b)) must be reformed to permit unions and em-
11 ployers to mutually agree that payment of fair share
12 fees shall be a condition of employment following ini-
13 tial hiring.

14 (14) Restrictions on so-called “secondary boy-
15 cotts” and “recognitional picketing” unduly impede
16 workers’ ability to engage in peaceful conduct and
17 expression. Workers must be free to act in solidarity
18 with workers in other workplaces in order to improve
19 labor standards and achieve other lawful ends for
20 mutual aid or protection.

21 (15) In order to make the right to collective
22 bargaining and freedom of association in the work-
23 place a reality for workers, the National Labor Rela-
24 tions Act must be strengthened.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (1) to strengthen protections for workers en-
4 gaged in collective bargaining to improve their
5 wages, hours, and terms and conditions of employ-
6 ment;

7 (2) to expand coverage under the National
8 Labor Relations Act (29 U.S.C. 151 et seq.) to more
9 workers;

10 (3) to provide a process by which workers and
11 employers can successfully negotiate an initial collec-
12 tive bargaining agreement;

13 (4) to provide a stronger deterrent and fairer
14 remedies for workers who face retaliation, discrimi-
15 nation, or other interference with their legal rights
16 to act concertedly, join a union, or engage in collec-
17 tive bargaining;

18 (5) to broadly protect workers' right to engage
19 in concerted activities for mutual aid or protection;

20 (6) to streamline the enforcement procedures of
21 the National Labor Relations Board to provide for
22 more timely and effective enforcement of the law;

23 (7) to safeguard the right to strike by prohib-
24 iting “permanent replacement” of striking workers;

25 (8) to repeal specific prohibitions on collective
26 action and peaceful expression;

1 (9) to permit fair share fee arrangements in
2 order to promote workers' freedom of association
3 and encourage the practice of collective bargaining;

4 (10) to improve the purchasing power of wage
5 earners in industry;

6 (11) to promote the stabilization of fair wage
7 rates and humane working conditions within and be-
8 tween industries; and

9 (12) to redress the inequality of bargaining
10 power between workers and employers.

11 **TITLE I—AMENDMENTS TO**
12 **LABOR LAWS**

13 **SEC. 101. AMENDMENTS TO THE NATIONAL LABOR RELA-**
14 **TIONS ACT.**

15 (a) DEFINITIONS OF EMPLOYEE AND SUPERVISOR.—

16 (1) Section 2(3) of the National Labor Rela-
17 tions Act (29 U.S.C. 152(3)) is amended by insert-
18 ing at the end the following: “An individual per-
19 forming any service shall be considered an employee
20 (except as provided in the previous sentence) and
21 not an independent contractor for purposes of this
22 Act, unless—

23 “(A) the individual is free from control and
24 direction in connection with the performance of

1 the service, both under the contract for the per-
2 formance of service and in fact;

3 “(B) the service is performed outside the
4 usual course of the business of the employer;
5 and

6 “(C) the individual is customarily engaged
7 in an independently established trade, occupa-
8 tion, profession, or business of the same nature
9 as that involved in the service performed.”.

10 (2) Section 2(11) of the National Labor Rela-
11 tions Act (29 U.S.C. 152(11)) is amended—

12 (A) by inserting “and for a majority of the
13 individual’s worktime” after “interest of the
14 employer”;

15 (B) by striking “assign,”; and

16 (C) by striking “or responsibly to direct
17 them,”.

18 (b) APPOINTMENT.—Section 4(a) of the National
19 Labor Relations Act (29 U.S.C. 154(a)) is amended by
20 striking “, or for economic analysis”.

21 (c) UNFAIR LABOR PRACTICES.—Section 8 of the
22 National Labor Relations Act (29 U.S.C. 158) is amend-
23 ed—

24 (1) in subsection (a)—

1 (A) in paragraph (5), by striking the pe-
2 riod and inserting “; and”; and

3 (B) by adding at the end the following:

4 “(6) to promise, threaten, or take any action—

5 “(A) to permanently replace an employee
6 who participates in a strike as defined by sec-
7 tion 501(2) of the Labor Management Rela-
8 tions Act, 1947 (29 U.S.C. 142(2)); or

9 “(B) to discriminate against an employee
10 who is working or has unconditionally offered to
11 return to work for the employer because the
12 employee supported or participated in such a
13 strike.”;

14 (2) in subsection (b)—

15 (A) by striking paragraphs (4) and (7);

16 (B) by redesignating paragraphs (5) and
17 (6) as paragraphs (4) and (5), respectively; and

18 (C) in paragraph (5), as so redesignated,
19 by striking “; and” and inserting a period;

20 (3) in subsection (c), by striking the period at
21 the end and inserting the following: “: *Provided*,
22 That it shall be an unfair labor practice under sub-
23 section (a)(1) for any employer to require or coerce
24 an employee to attend or participate in such employ-
25 er’s campaign activities unrelated to the employee’s

1 job duties, including activities that are subject to the
2 requirements under section 203(b) of the Labor-
3 Management Reporting and Disclosure Act, 1959
4 (29 U.S.C. 433(b)).”;

5 (4) by amending subsection (e) to read as fol-
6 lows:

7 “(e) Notwithstanding chapter 1 of title 9, United
8 States Code (commonly known as the ‘Federal Arbitration
9 Act’), or any other provision of law, it shall be an unfair
10 labor practice under subsection (a)(1) for any employer
11 to enter into any contract or agreement, express or im-
12 plied, whereby an employee of the employer undertakes or
13 promises not to pursue, bring, join, litigate, or support any
14 kind of collective legal claim arising from or relating to
15 the employment of such employee in any forum that, but
16 for such contract or agreement, is of competent jurisdic-
17 tion. The provisions of this subsection shall not apply with
18 respect to employees who are represented by a labor orga-
19 nization and covered by a collective-bargaining agreement
20 in effect with the employer. Any contract or agreement
21 entered into heretofore or hereafter containing an agree-
22 ment prohibited by this subsection shall be to such extent
23 unenforceable and void.”; and

24 (5) by adding at the end the following:

1 “(h)(1) The Board shall promulgate regulations re-
2 quiring each employer to post and maintain, in con-
3 spicuous places where notices to employees and applicants
4 for employment are customarily posted both physically and
5 electronically, a notice setting forth the rights and protec-
6 tions afforded employees under this Act. The Board shall
7 make available the form and text of such notice. The
8 Board shall promulgate regulations requiring employers to
9 notify each new employee of the information contained in
10 the notice described in the preceding two sentences.

11 “(2) Whenever the Board directs an election under
12 section 9(c) or approves an election agreement, the em-
13 ployer of employees in the bargaining unit shall, not later
14 than 2 business days after the Board directs such election
15 or approves such election agreement, provide a voter list
16 to a labor organization that has petitioned to represent
17 such employees. Such voter list shall include the names
18 of all employees in the bargaining unit and such employ-
19 ees’ home addresses, work locations, shift, job classifica-
20 tions, and, if available to the employer, personal landline
21 and mobile phone numbers, and work and personal email
22 addresses. Not later than 9 months after the date of en-
23 actment of the Workers’ Freedom to Negotiate Act of
24 2018, the Board shall promulgate regulations imple-
25 menting the requirements of this paragraph.

1 “(i) Whenever collective bargaining is for the purpose
2 of establishing an initial agreement following certification
3 or recognition, the provisions of subsection (d) shall be
4 modified as follows:

5 “(1) Not later than 10 days after receiving a
6 written request for collective bargaining from an in-
7 dividual or labor organization that has been newly
8 organized or certified as a representative as defined
9 in section 9(a), or within such further period as the
10 parties agree upon, the parties shall meet and com-
11 mence to bargain collectively and shall make every
12 reasonable effort to conclude and sign a collective
13 bargaining agreement.

14 “(2) If after the expiration of the 90-day period
15 beginning on the date on which bargaining is com-
16 menced, or such additional period as the parties may
17 agree upon, the parties have failed to reach an
18 agreement, either party may notify the Federal Me-
19 diation and Conciliation Service of the existence of
20 a dispute and request mediation. Whenever such a
21 request is received, it shall be the duty of the Service
22 promptly to put itself in communication with the
23 parties and to use its best efforts, by mediation and
24 conciliation, to bring them to agreement.

1 “(3) If after the expiration of the 30-day period
2 beginning on the date on which the request for me-
3 diation is made under paragraph (2), or such addi-
4 tional period as the parties may agree upon, the
5 Service is not able to bring the parties to agreement
6 by conciliation, the Service shall refer the dispute to
7 a tripartite arbitration panel established in accord-
8 ance with such regulations as may be prescribed by
9 the Service, with one member selected by the labor
10 organization, one member selected by the employer,
11 and one neutral member mutually agreed to by the
12 parties. A majority of the tripartite arbitration panel
13 shall render a decision settling the dispute and such
14 decision shall be binding upon the parties for a pe-
15 riod of 2 years, unless amended during such period
16 by written consent of the parties. Such decision shall
17 be based on the following considerations:

18 “(A) the employer’s financial status and
19 prospects;

20 “(B) the size and type of the employer’s
21 operations and business;

22 “(C) the employees’ cost of living;

23 “(D) the employees’ ability to sustain
24 themselves, their families, and their dependents

1 on the wages and benefits they earn from the
2 employer; and

3 “(E) the wages and benefits other employ-
4 ers in the same business provide their employ-
5 ees.”.

6 (d) REPRESENTATIVES AND ELECTIONS.—Section 9
7 of the National Labor Relations Act (29 U.S.C. 159) is
8 amended—

9 (1) in subsection (c)—

10 (A) in paragraph (1)—

11 (i) by striking “as may be” and all
12 that follows through “by an employee” and
13 inserting “as may be prescribed by the
14 Board, by an employee”;

15 (ii) by striking “; or” and all that fol-
16 lows through “the Board shall investigate”
17 and inserting “, the Board shall inves-
18 tigate”; and

19 (iii) by adding at the end the fol-
20 lowing: “No employer shall have standing
21 as a party, or to intervene, in any rep-
22 resentation proceeding under this sec-
23 tion.”;

1 (B) in paragraph (3), by striking “an eco-
2 nomic strike who are not entitled to reinstatement”
3 and inserting “a strike”;

4 (C) by redesignating paragraphs (4) and
5 (5) as paragraphs (6) and (7), respectively;

6 (D) by inserting after paragraph (3) the
7 following:

8 “(4) If the Board finds that, in an election
9 under paragraph (1), a majority of the valid votes
10 cast in a unit appropriate for purposes of collective
11 bargaining have been cast in favor of representation
12 by the labor organization, the Board shall certify the
13 labor organization as the representative of the em-
14 ployees in such unit and shall issue an order requir-
15 ing the employer of such employees to collectively
16 bargain with the labor organization in accordance
17 with section 8(d). This order shall be deemed an
18 order under section 10(c) of this Act, without need
19 for a determination of an unfair labor practice.

20 “(5)(A) If the Board finds that, in an election
21 under paragraph (1), a majority of the valid votes
22 cast in a unit appropriate for purposes of collective
23 bargaining have not been cast in favor of representa-
24 tion by the labor organization, the Board shall dis-

1 miss the petition, subject to subparagraphs (B) and
2 (C).

3 “(B) In any case in which a majority of the
4 valid votes cast in a unit appropriate for purposes
5 of collective bargaining have not been cast in favor
6 of representation by the labor organization and the
7 Board determines that the election should be set
8 aside because the employer has committed a viola-
9 tion of this Act or otherwise interfered with a fair
10 election, and the employer has not demonstrated
11 that the violation or other interference is unlikely to
12 have affected the outcome of the election, the Board
13 shall, without ordering a new or rerun election, cer-
14 tify the labor organization as the representative of
15 the employees in such unit and issue an order re-
16 quiring the employer to bargain with the labor orga-
17 nization in accordance with section 8(d) if, at any
18 time during the period beginning 1 year preceding
19 the date of the commencement of the election and
20 ending on the date upon which the Board makes the
21 determination of a violation or other interference, a
22 majority of the employees in the bargaining unit
23 have signed authorizations designating the labor or-
24 ganization as their collective bargaining representa-
25 tive.

1 “(C) In any case where the Board determines
2 that an election under this paragraph should be set
3 aside, the Board shall direct a rerun election with
4 appropriate additional safeguards necessary to en-
5 sure a fair election process, except in cases where
6 the Board issues a bargaining order under subpara-
7 graph (B).”; and

8 (E) by inserting after paragraph (7), as so
9 redesignated, the following:

10 “(8) Except under extraordinary cir-
11 cumstances—

12 “(A) a pre-election hearing under this sub-
13 section shall begin not later than 8 days after
14 a notice of such hearing is served on the par-
15 ties; and

16 “(B) a post-election hearing under this
17 subsection shall begin not later than 14 days
18 after the filing of objections, if any.”; and

19 (2) in subsection (d), by striking “(e) or” and
20 inserting “(d) or”.

21 (e) PREVENTION OF UNFAIR LABOR PRACTICES.—

22 (1) IN GENERAL.—Section 10(c) of the Na-
23 tional Labor Relations Act (29 U.S.C. 160(c)) is
24 amended by striking “suffered by him” and insert-
25 ing “suffered by such employee: *Provided further,*

1 That if the Board finds that an employer has dis-
2 criminated against an employee in violation of para-
3 graph (3) or (4) of section 8(a) or has committed a
4 violation of section 8(a) that results in the discharge
5 of an employee or other serious economic harm to an
6 employee, the Board shall award the employee back
7 pay without any reduction (including any reduction
8 based on the employee’s interim earnings or failure
9 to earn interim earnings), front pay (when appro-
10 priate), consequential damages, and an additional
11 amount as liquidated damages equal to 2 times the
12 amount of damages awarded: *Provided further*, no
13 relief under this subsection shall be denied on the
14 basis that the employee is, or was during the time
15 of relevant employment or during the back pay pe-
16 riod, an unauthorized alien as defined in section
17 274A(h)(3) of the Immigration and Nationality Act
18 (8 U.S.C. 1324a(h)(3)) or any other provision of
19 Federal law relating to the unlawful employment of
20 aliens”;

21 (f) ENFORCING COMPLIANCE WITH ORDERS OF THE
22 BOARD.—Section 10 of the National Labor Relations Act
23 (29 U.S.C. 160) is amended—

24 (1) by striking subsection (e);

1 (2) by redesignating subsection (d) as sub-
2 section (e);

3 (3) by inserting after subsection (c) the fol-
4 lowing:

5 “(d)(1) Each order of the Board shall take effect
6 upon issuance of such order, unless otherwise directed by
7 the Board, and shall remain in effect unless modified by
8 the Board or unless a court of competent jurisdiction
9 issues a superseding order.

10 “(2) Any person who fails or neglects to obey an
11 order of the Board shall forfeit and pay to the Board a
12 civil penalty of not more than \$10,000 for each violation,
13 which shall accrue to the Board and may be recovered in
14 a civil action brought by the Board to the district court
15 of the United States in which the unfair labor practice
16 or other subject of the order occurred, or in which such
17 person or entity resides or transacts business. No action
18 by the Board under this paragraph may be made until
19 30 days following the issuance of an order. Each separate
20 violation of such an order shall be a separate offense, ex-
21 cept that, in the case of a violation in which a person fails
22 to obey or neglects to obey a final order of the Board,
23 each day such failure or neglect continues shall be deemed
24 a separate offense.

1 “(3) If, after having provided a person or entity with
2 notice and an opportunity to be heard regarding a civil
3 action under subparagraph (2) for the enforcement of an
4 order, the court determines that the order was regularly
5 made and duly served, and that the person or entity is
6 in disobedience of the same, the court shall enforce obedi-
7 ence to such order by a writ of injunction or other proper
8 process, mandatory or otherwise, to—

9 “(A) restrain such person or entity or the offi-
10 cers, agents, or representatives of such person or en-
11 tity, from further disobedience to such order; or

12 “(B) enjoin upon such person or entity, officers,
13 agents, or representatives obedience to the same.”;

14 (4) in subsection (f)—

15 (A) by striking “proceed in the same man-
16 ner as in the case of an application by the
17 Board under subsection (e) of this section,” and
18 inserting “proceed as provided under paragraph
19 (2) of this subsection”;

20 (B) by striking “Any” and inserting the
21 following:

22 “(1) Within 30 days of the issuance of an
23 order, any”; and

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

1 “(2) No objection that has not been urged be-
2 fore the Board, its member, agent, or agency shall
3 be considered by a court, unless the failure or ne-
4 glect to urge such objection shall be excused because
5 of extraordinary circumstances. The findings of the
6 Board with respect to questions of fact if supported
7 by substantial evidence on the record considered as
8 a whole shall be conclusive. If either party shall
9 apply to the court for leave to adduce additional evi-
10 dence and shall show to the satisfaction of the court
11 that such additional evidence is material and that
12 there were reasonable grounds for the failure to ad-
13 duce such evidence in the hearing before the Board,
14 its member, agent, or agency, the court may order
15 such additional evidence to be taken before the
16 Board, its member, agent, or agency, and to be
17 made a part of the record. The Board may modify
18 its findings as to the facts, or make new findings,
19 by reason of additional evidence so taken and filed,
20 and it shall file such modified or new findings, which
21 findings with respect to questions of fact if sup-
22 ported by substantial evidence on the record consid-
23 ered as a whole shall be conclusive, and shall file its
24 recommendations, if any, for the modification or set-
25 ting aside of its original order. Upon the filing of the

1 record with it the jurisdiction of the court shall be
2 exclusive and its judgment and decree shall be final,
3 except that the same shall be subject to review by
4 the appropriate United States court of appeals if ap-
5 plication was made to the district court, and by the
6 Supreme Court of the United States upon writ of
7 certiorari or certification as provided in section 1254
8 of title 28, United States Code.”; and

9 (5) in subsection (g), by striking “subsection
10 (e) or (f) of this section” and inserting “subsection
11 (d) or (f)”.

12 (g) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
13 TICES INVOLVING DISCHARGE OR OTHER SERIOUS ECO-
14 NOMIC LOSS.—Section 10(j) of the National Labor Rela-
15 tions Act (29 U.S.C. 160(j)) is amended—

16 (1) by striking “(j) The Board” and inserting
17 the following:

18 (A) “(j)(1) The Board”; and

19 (B) by adding at the end the following:

20 “(2) Notwithstanding subsection (m), whenever
21 it is charged that an employer has engaged in an
22 unfair labor practice within the meaning of para-
23 graph (1) or (3) of section 8(a) that significantly
24 interferes with, restrains, or coerces employees in
25 the exercise of the rights guaranteed under section

1 7, or involves discharge or other serious economic
 2 harm to an employee, the preliminary investigation
 3 of such charge shall be made forthwith and given
 4 priority over all other cases except cases of like char-
 5 acter in the office where it is filed or to which it is
 6 referred. If, after such investigation, the officer or
 7 regional attorney to whom the matter may be re-
 8 ferred has reasonable cause to believe such charge is
 9 true and that a complaint should issue, such officer
 10 or attorney shall bring a petition for appropriate
 11 temporary relief or restraining order as set forth in
 12 paragraph (1). The district court shall grant the re-
 13 lief requested unless the court concludes that there
 14 is no reasonable likelihood that the Board will suc-
 15 ceed on the merits of the Board's claim.”; and

16 (C) by repealing subsections (k) and (l).

17 (h) PENALTIES.—

18 (1) IN GENERAL.—Section 12 of the National
 19 Labor Relations Act (29 U.S.C. 162) is amended—

20 (A) by striking “Sec. 12. Any person” and
 21 inserting the following:

22 **“SEC. 12. PENALTIES.**

23 “(a) VIOLATIONS FOR INTERFERENCE WITH
 24 BOARD.—Any person”; and

25 (B) by adding at the end the following:

1 “(b) VIOLATIONS FOR POSTING REQUIREMENTS AND
2 VOTER LIST.—If the Board, or any agent or agency des-
3 ignated by the Board for such purposes, determines that
4 an employer has violated section 8(h) or regulations issued
5 thereunder, the Board shall—

6 “(1) state the findings of fact supporting such
7 determination;

8 “(2) issue and cause to be served on such em-
9 ployer an order requiring that such employer comply
10 with section 8(h) or regulations issued thereunder;
11 and

12 “(3) impose a civil penalty in an amount deter-
13 mined appropriate by the Board, except that in no
14 case shall the amount of such penalty exceed \$500
15 for each such violation.

16 “(c) VIOLATIONS CAUSING SERIOUS ECONOMIC
17 HARM TO EMPLOYEES.—

18 “(1) IN GENERAL.—Any employer who commits
19 an unfair labor practice within the meaning of para-
20 graph (3) or (4) of section 8(a), or a violation of
21 section 8(a) that results in the discharge of an em-
22 ployee or other serious economic harm to an em-
23 ployee shall, in addition to any remedy ordered by
24 the Board, be subject to a civil penalty in an amount
25 not to exceed \$50,000 for each violation, except that

1 the Board shall double the amount of such penalty,
2 to an amount not to exceed \$100,000, in any case
3 where the employer has within the preceding 5 years
4 committed another such violation.

5 “(2) CONSIDERATIONS.—In determining the
6 amount of any civil penalty under this subsection,
7 the Board shall consider—

8 “(A) the gravity of the unfair labor prac-
9 tice;

10 “(B) the impact of the unfair labor prac-
11 tice on the charging party, on other persons
12 seeking to exercise rights guaranteed by this
13 Act, and on the public interest; and

14 “(C) the gross income of the employer.

15 “(3) DIRECTOR AND OFFICER LIABILITY.—If
16 the Board determines, based on the particular facts
17 and circumstances presented, that a director or offi-
18 cer’s personal liability is warranted, a civil penalty
19 for a violation described in this subsection may also
20 be assessed against any director or officer of the em-
21 ployer who directed or committed the violation, had
22 established a policy that led to such a violation, or
23 had actual or constructive knowledge of and the au-
24 thority to prevent the violation and failed to prevent
25 the violation.

1 “(d) JOINT EMPLOYMENT.—Two or more persons
2 shall be employers for purposes of this Act with respect
3 to employees if each such person possesses sufficient con-
4 trol over the employees’ essential terms and conditions of
5 employment to permit meaningful collective bargaining. In
6 applying this inquiry, the Board or a court of competent
7 jurisdiction shall consider as relevant direct control, indi-
8 rect control, reserved authority to control, and control ex-
9 ercised in fact: *Provided*, That nothing in this paragraph
10 shall be construed to bring within the definition of em-
11 ployer under section 2(2) the United States or any wholly
12 owned Government corporation, or any Federal Reserve
13 Bank, or any State or political subdivision thereof, or any
14 person subject to the Railway Labor Act, as amended from
15 time to time, or any labor organization (other than when
16 acting as an employer), or anyone acting in the capacity
17 of officer or agent of such labor organization.

18 “(e) RIGHT TO CIVIL ACTION.—

19 “(1) IN GENERAL.—Any person who is injured
20 by reason of a violation of paragraph (1) or (3) of
21 section 8(a) may, in addition to or in lieu of filing
22 a charge alleging such unfair labor practice with the
23 Board in accordance with this Act, bring a civil ac-
24 tion in the appropriate district court of the United
25 States against the employer within 180 days of the

1 violation. No relief under this subsection shall be de-
2 nied on the basis that the employee is, or was during
3 the time of relevant employment or during the back
4 pay period, an unauthorized alien as defined in sec-
5 tion 274A(h)(3) of the Immigration and Nationality
6 Act (8 U.S.C. 1324a(h)(3)) or any other provision of
7 Federal law relating to the unlawful employment of
8 aliens.

9 “(2) AVAILABLE RELIEF.—Relief granted in an
10 action under paragraph (1) may include—

11 “(A) back pay without any reduction, in-
12 cluding any reduction based on the employee’s
13 interim earnings or failure to earn interim earn-
14 ings;

15 “(B) front pay (when appropriate);

16 “(C) consequential damages;

17 “(D) an additional amount as liquidated
18 damages equal to 2 times the cumulative
19 amount of damages awarded under subpara-
20 graphs (A) through (C);

21 “(E) in appropriate cases, punitive dam-
22 ages in accordance with paragraph (4); and

23 “(F) any other relief authorized by section
24 706(g) of the Civil Rights Act of 1964 (42

1 U.S.C. 2000e–5(g)) or by section 1977A(b) of
2 the Revised Statutes (42 U.S.C. 1981a(b)).

3 “(3) ATTORNEY’S FEES.—In any civil action
4 under this subsection, the court may allow the pre-
5 vailing party a reasonable attorney’s fee (including
6 expert fees) and other reasonable costs associated
7 with maintaining the action.

8 “(4) PUNITIVE DAMAGES.—In awarding puni-
9 tive damages under paragraph (2)(E), the court
10 shall consider—

11 “(A) the gravity of the unfair labor prac-
12 tice;

13 “(B) the impact of the unfair labor prac-
14 tice on the charging party, on other persons
15 seeking to exercise rights guaranteed by this
16 Act, and on the public interest; and

17 “(C) the gross income of the employer.”.

18 (2) CONFORMING AMENDMENTS.—Section
19 10(b) of the National Labor Relations Act is amend-
20 ed by striking “six months” and inserting “180
21 days” and by striking “the six-month period” and
22 inserting “the 180-day period”.

23 (i) LIMITATIONS.—Section 13 of the National Labor
24 Relations Act (29 U.S.C. 163) is amended by striking the
25 period at the end and inserting the following: “: *Provided,*

1 That the duration, scope, frequency, or intermittence of
2 any strike or strikes shall not render such strike or strikes
3 unprotected or prohibited.”.

4 (j) FAIR SHARE AGREEMENTS PERMITTED.—Section
5 14(b) of the National Labor Relations Act (29 U.S.C.
6 164(b)) is amended by striking the period at the end and
7 inserting the following: “: *Provided*, That collective bar-
8 gaining agreements providing that all employees in a bar-
9 gaining unit shall contribute fees to a labor organization
10 for the cost of bargaining and representation as a condi-
11 tion of employment shall be valid and enforceable notwith-
12 standing any State or Territorial law.”.

13 **SEC. 102. AMENDMENTS TO THE LABOR MANAGEMENT RE-**
14 **LATIONS ACT, 1947.**

15 Section 303 of the Labor Management Relations Act,
16 1947 (29 U.S.C. 187) is repealed.

17 **SEC. 103. AMENDMENTS TO THE LABOR-MANAGEMENT RE-**
18 **PORTING AND DISCLOSURE ACT OF 1959.**

19 Section 203(c) of the Labor-Management Reporting
20 and Disclosure Act of 1959 (29 U.S.C. 433(c)) is amended
21 by striking the period at the end and inserting the fol-
22 lowing “: *Provided*, That this subsection shall not exempt
23 from the requirements of this section any arrangement or
24 part of an arrangement in which a party agrees, for an
25 object described in section (b)(1), to plan or conduct em-

1 ployee meetings; train supervisors or employer representa-
 2 tives to conduct meetings; coordinate or direct activities
 3 of supervisors or employer representatives; establish or fa-
 4 cilitate employee committees; identify employees for dis-
 5 ciplinary action, reward, or other targeting; or draft or
 6 revise employer personnel policies, speeches, presentations,
 7 or other written, recorded, or electronic communications
 8 to be delivered or disseminated to employees.”.

9 **TITLE II—FAIR PAY AND SAFE**
 10 **WORKPLACES**

11 **SEC. 201. DEFINITIONS.**

12 In this title:

13 (1) COVERED CONTRACT.—The term “covered
 14 contract” means a Federal contract for the procure-
 15 ment of property or services, including construction,
 16 valued in excess of \$500,000.

17 (2) COVERED SUBCONTRACT.—The term “cov-
 18 ered subcontract”—

19 (A) means a subcontract for property or
 20 services under a Federal contract that is valued
 21 in excess of \$500,000; and

22 (B) does not include a subcontract for the
 23 procurement of commercially available off-the-
 24 shelf items.

1 (3) EXECUTIVE AGENCY.—The term “executive
2 agency” has the meaning given the term in section
3 133 of title 41, United States Code.

4 **SEC. 202. PURPOSE.**

5 The purpose of this title is to—

6 (1) ensure that the purchasing power of the
7 Federal Government is employed to raise labor
8 standards, improve working conditions, and
9 strengthen workers’ bargaining power; and

10 (2) increase efficiency and cost savings in the
11 work performed by parties who contract with the
12 Federal Government by ensuring that they under-
13 stand and comply with labor laws, which are de-
14 signed to promote safe, healthy, fair, and effective
15 workplaces and increase the likelihood of enhanced
16 productivity in the workplace and the timely, pre-
17 dictable, and satisfactory delivery of goods and serv-
18 ices to the Federal Government.

19 **SEC. 203. REQUIRED PRE-CONTRACT AWARD ACTIONS.**

20 (a) DISCLOSURES.—The head of an executive agency
21 shall ensure that the solicitation for a covered contract re-
22 quires the offeror—

23 (1) to represent, to the best of the offeror’s
24 knowledge and belief, whether there has been any
25 administrative merits determination, arbitral award

1 or decision, or civil judgment, as defined in guidance
2 issued by the Secretary of Labor, rendered against
3 the offeror in the preceding 3 years for violations
4 of—

5 (A) the Fair Labor Standards Act of 1938
6 (29 U.S.C. 201 et seq.);

7 (B) the Occupational Safety and Health
8 Act of 1970 (29 U.S.C. 651 et seq.);

9 (C) the Migrant and Seasonal Agricultural
10 Worker Protection Act (29 U.S.C. 1801 et
11 seq.);

12 (D) the National Labor Relations Act (29
13 U.S.C. 151 et seq.);

14 (E) subchapter IV of chapter 31 of title
15 40, United States Code (commonly known as
16 the “Davis-Bacon Act”);

17 (F) chapter 67 of title 41, United States
18 Code (commonly known as the “Service Con-
19 tract Act”);

20 (G) Executive Order 11246 (42 U.S.C.
21 2000e note; relating to equal employment op-
22 portunity);

23 (H) section 503 of the Rehabilitation Act
24 of 1973 (29 U.S.C. 793);

1 (I) section 4212 of title 38, United States
2 Code;

3 (J) the Family and Medical Leave Act of
4 1993 (29 U.S.C. 2601 et seq.);

5 (K) title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq.);

7 (L) the Americans with Disabilities Act of
8 1990 (42 U.S.C. 12101 et seq.);

9 (M) the Age Discrimination in Employ-
10 ment Act of 1967 (29 U.S.C. 621 et seq.);

11 (N) Executive Order 13658 (79 Fed. Reg.
12 9851; relating to establishing a minimum wage
13 for contractors); or

14 (O) equivalent State laws, as defined in
15 guidance issued by the Secretary of Labor;

16 (2) to require each subcontractor for a covered
17 subcontract—

18 (A) to represent to the offeror and the en-
19 tity designated by the final rule reissued under
20 subsection (a) of section 206, to the best of the
21 subcontractor's knowledge and belief, whether
22 there has been any administrative merits deter-
23 mination, arbitral award or decision, or civil
24 judgment, as defined in guidance issued by the
25 Department of Labor, rendered against the

1 subcontractor in the preceding 3 years for viola-
2 tions of any of the labor laws and executive or-
3 ders listed under paragraph (1); and

4 (B) to update such information every 6
5 months for the duration of the subcontract; and

6 (3) to consider the advice rendered by the enti-
7 ty designated by the final rule reissued under sub-
8 section (a) of section 206 or information submitted
9 by a subcontractor pursuant to paragraph (2) in de-
10 termining whether the subcontractor is a responsible
11 source with a satisfactory record of integrity and
12 business ethics—

13 (A) prior to awarding the subcontract; or

14 (B) in the case of a subcontract that is
15 awarded or will become effective within 5 days
16 of the prime contract being awarded, not later
17 than 30 days after awarding the subcontract.

18 (b) PRE-AWARD CORRECTIVE MEASURES.—

19 (1) IN GENERAL.—A contracting officer, prior
20 to awarding a covered contract, shall, as part of the
21 responsibility determination, provide an offeror who
22 makes a disclosure pursuant to subsection (a) an op-
23 portunity to report any steps taken to correct the
24 violations of or improve compliance with the labor
25 laws listed in paragraph (1) of such subsection, in-

1 including any agreements entered into with an en-
2 forcement agency.

3 (2) CONSULTATION.—The executive agency’s
4 Labor Compliance Advisor designated pursuant to
5 section 205, in consultation with relevant enforce-
6 ment agencies, shall advise the contracting officer
7 whether agreements are in place or are otherwise
8 needed to address appropriate remedial measures,
9 compliance assistance, steps to resolve issues to
10 avoid further violations, or other related matters
11 concerning the offeror.

12 (3) RESPONSIBILITY DETERMINATION.—The
13 contracting officer, in consultation with the executive
14 agency’s Labor Compliance Advisor, shall consider
15 information provided by the offeror under this sub-
16 section in determining whether the offeror is a re-
17 sponsible source with a satisfactory record of integ-
18 rity and business ethics. The determination shall be
19 based on the guidelines reissued under subsection
20 (b)(1) of section 206 and the final rule reissued
21 under subsection (a) of such section.

22 (c) REFERRAL OF INFORMATION TO SUSPENSION
23 AND DEPARTMENT OFFICIALS.—As appropriate, con-
24 tracting officers, in consultation with their executive agen-
25 cy’s Labor Compliance Advisor, shall refer matters related

1 to information provided pursuant to paragraphs (1) and
2 (2) of subsection (a) to the executive agency's suspension
3 and debarment official in accordance with agency proce-
4 dures.

5 **SEC. 204. POST-AWARD CONTRACT ACTIONS.**

6 (a) INFORMATION UPDATES.—The contracting offi-
7 cer for a covered contract shall require that the contractor
8 update the information provided under paragraphs (1)
9 and (2) of section 203(a) every 6 months.

10 (b) CORRECTIVE ACTIONS.—

11 (1) PRIME CONTRACT.—The contracting officer,
12 in consultation with the Labor Compliance Advisor
13 designated pursuant to section 205, shall determine
14 whether any information provided under subsection
15 (a) warrants corrective action. Such action may in-
16 clude—

17 (A) an agreement requiring appropriate re-
18 medial measures;

19 (B) compliance assistance;

20 (C) resolving issues to avoid further viola-
21 tions;

22 (D) the decision not to exercise an option
23 on a contract or to terminate the contract; or

24 (E) referral to the agency suspending and
25 debarring official.

1 (2) SUBCONTRACTS.—The prime contractor for
2 a covered contract, in consultation with the Labor
3 Compliance Advisor, shall determine whether any in-
4 formation provided under section 203(a)(2) warrants
5 corrective action, including remedial measures, com-
6 pliance assistance, and resolving issues to avoid fur-
7 ther violations.

8 (3) DEPARTMENT OF LABOR.—The Department
9 of Labor shall, as appropriate, inform executive
10 agencies of its investigations of contractors and sub-
11 contractors on current Federal contracts for pur-
12 poses of determining the appropriateness of actions
13 described under paragraphs (1) and (2).

14 **SEC. 205. LABOR COMPLIANCE ADVISORS.**

15 (a) IN GENERAL.—Each executive agency shall des-
16 ignate a senior official to act as the agency’s Labor Com-
17 pliance Advisor.

18 (b) DUTIES.—The Labor Compliance Advisor shall—

19 (1) meet quarterly with the Deputy Secretary,
20 Deputy Administrator, or equivalent executive agen-
21 cy official with regard to matters covered under this
22 title;

23 (2) work with the acquisition workforce, agency
24 officials, and agency contractors to promote greater
25 awareness and understanding of labor law require-

1 ments, including record keeping, reporting, and no-
2 tice requirements, as well as best practices for ob-
3 taining compliance with these requirements;

4 (3) coordinate assistance for executive agency
5 contractors seeking help in addressing and pre-
6 venting labor violations;

7 (4) in consultation with the Department of
8 Labor or other relevant enforcement agencies, and
9 pursuant to section 203(b) as necessary, provide as-
10 sistance to contracting officers regarding appro-
11 priate actions to be taken in response to violations
12 identified prior to or after contracts are awarded,
13 and address complaints in a timely manner, by—

14 (A) providing assistance to contracting of-
15 ficers and other executive agency officials in re-
16 viewing the information provided pursuant to
17 subsections (a) and (b) of section 203 and sec-
18 tion 204(a), or other information indicating a
19 violation of a labor law in order to assess the
20 serious, repeated, willful, or pervasive nature of
21 any violation and evaluate steps contractors
22 have taken to correct violations or improve com-
23 pliance with relevant requirements;

24 (B) helping agency officials determine the
25 appropriate response to address violations of

1 the requirements of the labor laws listed in sec-
2 tion 203(a)(1) or other information indicating
3 such a labor violation (particularly serious, re-
4 peated, willful, or pervasive violations), includ-
5 ing agreements requiring appropriate remedial
6 measures, decisions not to award a contract or
7 exercise an option on a contract, contract termi-
8 nation, or referral to the executive agency sus-
9 pension and debarment official;

10 (C) providing assistance to appropriate ex-
11 ecutive agency officials in receiving and re-
12 sponding to, or making referrals of, complaints
13 alleging violations by agency contractors and
14 subcontractors of the requirements of the labor
15 laws listed in section 203(a)(1); and

16 (D) supporting contracting officers, sus-
17 pension and debarment officials, and other
18 agency officials in the coordination of actions
19 taken pursuant to this subsection to ensure
20 agency-wide consistency, to the extent prac-
21 ticable;

22 (5) as appropriate, send information to agency
23 suspension and debarment officials in accordance
24 with agency procedures;

1 (6) consult with the agency’s Chief Acquisition
2 Officer and Senior Procurement Executive, and the
3 Department of Labor as necessary, in the develop-
4 ment of regulations, policies, and guidance address-
5 ing labor law compliance by contractors and sub-
6 contractors;

7 (7) make recommendations to the agency to
8 strengthen agency management of contractor compli-
9 ance with labor laws;

10 (8) publicly report, on an annual basis, a sum-
11 mary of agency actions taken to promote greater
12 labor compliance, including the agency’s response
13 pursuant to this order to serious, repeated, willful,
14 or pervasive violations of the requirements of the
15 labor laws listed in section 203(a)(1); and

16 (9) participate in the interagency meetings reg-
17 ularly convened by the Secretary of Labor pursuant
18 to section 206(b)(2)(C).

19 **SEC. 206. MEASURES TO ENSURE GOVERNMENT-WIDE CON-**
20 **SISTENCY.**

21 (a) **FEDERAL ACQUISITION REGULATION.—**

22 (1) **IN GENERAL.—**Notwithstanding Public Law
23 115–11 (131 Stat. 75) and section 553 of title 5,
24 United States Code, not later than 1 year after the
25 date of enactment of this Act, the Secretary of De-

1 fense, the Administrator of the General Services Ad-
2 ministration, and the Administrator of the National
3 Aeronautics and Space Administration shall reissue
4 the final rule entitled “Federal Acquisition Regula-
5 tion; Fair Pay and Safe Workplaces” (81 Fed. Reg.
6 58,562 (Aug. 25, 2016)), subject to paragraph (2).

7 (2) UPDATED DATES.—The agencies described
8 in paragraph (1) may, in reissuing the final rule
9 under such paragraph, update any date provided in
10 such final rule as reasonable and necessary.

11 (b) DEPARTMENT OF LABOR.—

12 (1) GUIDANCE.—Not later than 1 year after
13 the date of enactment of this Act, the Secretary of
14 Labor shall reissue the guidance entitled “Guidance
15 for Executive Order 13673, ‘Fair Pay and Safe
16 Workplaces’” (81 Fed. Reg. 58,564 (Aug. 25,
17 2016)). In reissuing such guidance, the Secretary of
18 Labor may update any date provided in such guid-
19 ance as reasonable.

20 (2) ADDITIONAL ACTIVITIES.—The Secretary of
21 Labor shall—

22 (A) develop a process—

23 (i) for the Labor Compliance Advisors
24 designated pursuant to section 205 to con-
25 sult with the Secretary of Labor in car-

1 rying out their responsibilities under sec-
2 tion 205(b)(4);

3 (ii) by which contracting officers and
4 Labor Compliance Advisors may give ap-
5 propriate consideration to determinations
6 and agreements made by the Secretary of
7 Labor and the heads of other executive
8 agencies; and

9 (iii) by which contractors may enter
10 into agreements with the Secretary of
11 Labor, or the head of another executive
12 agency, prior to being considered for a con-
13 tract;

14 (B) review data collection requirements
15 and processes, and work with the Director of
16 the Office of Management and Budget, the Ad-
17 ministrators for General Services, and other
18 agency heads to improve such requirements and
19 processes, as necessary, to reduce the burden on
20 contractors and increase the amount of infor-
21 mation available to executive agencies;

22 (C) regularly convene interagency meetings
23 of Labor Compliance Advisors to share and pro-
24 mote best practices for improving labor law
25 compliance; and

1 (D) designate an appropriate contact for
2 executive agencies seeking to consult with the
3 Secretary of Labor with respect to the require-
4 ments and activities under this title.

5 (c) OFFICE OF MANAGEMENT AND BUDGET.—The
6 Director of the Office of Management and Budget shall—

7 (1) work with the Administrator of General
8 Services to include in the Federal Awardee Perform-
9 ance and Integrity Information System the informa-
10 tion provided by contractors pursuant to sections
11 203(a)(1) and 204(a) and data on the resolution of
12 any issues related to such information; and

13 (2) designate an appropriate contact for agen-
14 cies seeking to consult with the Office of Manage-
15 ment and Budget on matters arising under this title.

16 (d) GENERAL SERVICES ADMINISTRATION.—

17 (1) IN GENERAL.—The Administrator of Gen-
18 eral Services, in consultation with other relevant ex-
19 ecutive agencies, shall establish a single Internet
20 website for Federal contractors to use for all Federal
21 contract reporting requirements under this title, as
22 well as any other Federal contract reporting require-
23 ments to the extent practicable.

24 (2) AGENCY COOPERATION.—The heads of ex-
25 ecutive agencies with covered contracts shall provide

1 the Administrator of General Services with the data
2 necessary to maintain the Internet website estab-
3 lished under paragraph (1).

4 (e) **MINIMIZING COMPLIANCE BURDEN.**—After re-
5 issuing the guidance under subsection (b)(1) or the final
6 rule under subsection (a), the Secretary of Labor or the
7 Secretary of Defense, the Administrator of the General
8 Services Administration, and the Administrator of the Na-
9 tional Aeronautics and Space Administration may, respec-
10 tively, amend such guidance or final rule consistent with
11 the requirements under chapter 5 of title 5, United States
12 Code.

13 **SEC. 207. PAYCHECK TRANSPARENCY.**

14 (a) **IN GENERAL.**—Each executive agency entering
15 into a covered contract, or covered subcontract, shall en-
16 sure that provisions in solicitations for such contracts, or
17 subcontracts, and clauses in such contracts, or sub-
18 contracts, shall provide that, for each pay period, contrac-
19 tors or subcontractors provide each individual described
20 in subsection (b) with a document containing information
21 with respect to such individual for the pay period con-
22 cerning hours worked, overtime hours worked, pay, and
23 any additions made to or deductions made from pay.

24 (b) **INDIVIDUALS DESCRIBED.**—An individual de-
25 scribed in this subsection is any individual performing

1 work under a contract or subcontract for which the con-
2 tractor or subcontractor is required to maintain wage
3 records under—

4 (1) the Fair Labor Standards Act of 1938 (29
5 U.S.C. 201 et seq.);

6 (2) subchapter IV of chapter 31 of title 40,
7 United States Code (commonly referred to as the
8 “Davis-Bacon Act”);

9 (3) chapter 67 of title 41, United States Code
10 (commonly known as the “Service Contract Act”); or

11 (4) an applicable State law.

12 (c) EXCEPTIONS.—

13 (1) EMPLOYEES EXEMPT FROM OVERTIME RE-
14 QUIREMENTS.—The document provided under sub-
15 section (a) to individuals who are exempt under sec-
16 tion 13 of the Fair Labor Standards Act of 1938
17 (29 U.S.C. 213) from the overtime compensation re-
18 quirements under section 7 of such Act (29 U.S.C.
19 207) shall not be required to include a record of the
20 hours worked if the contractor or subcontractor in-
21 forms the individual of the status of such individual
22 as exempt from such requirements.

23 (2) SUBSTANTIALLY SIMILAR STATE LAWS.—

24 The requirements under this section shall be deemed
25 to be satisfied if the contractor or subcontractor

1 complies with State or local requirements that the
2 Secretary of Labor has determined are substantially
3 similar to the requirements under this section.

4 (d) INDEPENDENT CONTRACTORS.—If the contractor
5 or subcontractor is treating an individual performing work
6 under a covered contract or subcontract as an independent
7 contractor, and not as an employee, the contractor or sub-
8 contractor shall provide the individual a document inform-
9 ing the individual of their status as an independent con-
10 tractor.

11 **SEC. 208. COMPLAINT AND DISPUTE TRANSPARENCY.**

12 (a) IN GENERAL.—

13 (1) CONTRACTS.—The head of an executive
14 agency may not enter into a contract for the pro-
15 curement of property or services valued in excess of
16 \$500,000 unless the contractor agrees that any deci-
17 sion to arbitrate the claim of an employee or inde-
18 pendent contractor performing work under the con-
19 tract that arises under title VII of the Civil Rights
20 Act of 1964 (42 U.S.C. 2000e et seq.) or any tort
21 related to or arising out of sexual assault or sexual
22 harassment may only be made with the voluntary
23 consent of the employee or independent contractor
24 after the dispute arises.

1 (2) SUBCONTRACTS.—The head of an executive
2 agency shall require that a contractor covered under
3 paragraph (1) incorporate the requirement under
4 such subsection into each subcontract for the pro-
5 curement of property or services valued in excess of
6 \$500,000 at any tier under the contract.

7 (b) EXCEPTIONS.—

8 (1) CONTRACTS FOR COMMERCIAL ITEMS AND
9 COMMERCIALLY AVAILABLE OFF-THE-SHELF
10 ITEMS.—The requirements under subsection (a) do
11 not apply to contracts or subcontracts for the acqui-
12 sition of commercial items or commercially available
13 off-the-shelf items (as those terms are defined in
14 sections 103(1) and 104, respectively, of title 41,
15 United States Code).

16 (2) EMPLOYEES AND INDEPENDENT CONTRAC-
17 TORS NOT COVERED.—The requirements under sub-
18 section (a) do not apply with respect to an employee
19 or independent contractor who—

20 (A) is covered by a collective bargaining
21 agreement negotiated between the contractor or
22 subcontractor and a labor organization rep-
23 resenting the employee or independent con-
24 tractor; or

1 (B) entered into a valid agreement to arbi-
2 trate claims covered under such subsection be-
3 fore the contractor or subcontractor bid on the
4 contract covered under such subsection, except
5 that such requirements do apply—

6 (i) if the contractor or subcontractor
7 is permitted to change the terms of the ar-
8 bitration agreement with the employee or
9 independent contractor; or

10 (ii) in the event the arbitration agree-
11 ment is renegotiated or replaced after the
12 contractor or subcontractor bids on the
13 contract.

14 **SEC. 209. NEUTRALITY.**

15 (a) Costs incurred in maintaining satisfactory rela-
16 tions between a contractor, and its employees, on a cov-
17 ered contract or a subcontractor, and its employees, on
18 a covered subcontract (other than those made unallowable
19 in subsection (b) of this section), including costs of shop
20 stewards, labor management committees, employee publi-
21 cations, and other related activities, are allowable.

22 (b) No Federal funds made available through a cov-
23 ered contract or covered subcontract may be used to en-
24 gage in activities undertaken to persuade employees, of
25 any entity, to exercise or not to exercise, or concerning

1 the manner of exercising, the right to organize and bar-
2 gain collectively through representatives of the employees'
3 own choosing or any other activities that are subject to
4 the requirements under section 203(b) of the Labor-Man-
5 agement Reporting and Disclosure Act of 1959 (29 U.S.C.
6 433(b)). Examples of unallowable costs under this sub-
7 section include the costs of—

8 (1) preparing and distributing materials;

9 (2) hiring or consulting legal counsel or consult-
10 ants;

11 (3) meetings (including paying the salaries of
12 the attendees at meetings held for this purpose); and

13 (4) planning or conducting activities by man-
14 agers, supervisors, or union representatives during
15 work hours.

16 **SEC. 210. IMPLEMENTING REGULATIONS.**

17 Not later than 9 months after the date of enactment
18 of this Act, the Federal Acquisition Regulatory Council
19 shall amend the Federal Acquisition Regulation to carry
20 out the provisions of this title, including sections 207 and
21 208.

22 **SEC. 211. SEVERABILITY.**

23 If any provision of this title or the application of any
24 such provision to any person or circumstance is held to
25 be unconstitutional, the remaining provisions of this title

1 and the application of such provisions to any person or
2 circumstance shall not be affected by such holding.

3 **SEC. 212. RULES OF CONSTRUCTION.**

4 Nothing in this title shall be construed as—

5 (1) impairing or otherwise affecting the author-
6 ity granted by law to an executive agency or the
7 head thereof; or

8 (2) impairing or otherwise affecting the func-
9 tions of the Director of the Office of Management
10 and Budget relating to budgetary, administrative, or
11 legislative proposals.

12 **TITLE III—AUTHORIZATION OF**
13 **APPROPRIATIONS**

14 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated such sums
16 as may be necessary to carry out the provisions of this
17 Act, including any amendments made by this Act.

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