117TH CONGRESS
2D SESSION

H. R.

To amend the Fair Labor Standards Act of 1938 to provide for prohibitions on employers relating to the recording and use of employee images, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend the Fair Labor Standards Act of 1938 to provide for prohibitions on employers relating to the recording and use of employee images, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Professional Images Protection Act”.

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SEC. 2. PROHIBITIONS RELATING TO RECORDING AND USE
OF EMPLOYEE IMAGES.

(a) IN GENERAL.—The Fair Labor Standards Act of
1938 (29 U.S.C. 201 et seq.) is amended by inserting
after section 7 the following new section:

“SEC. 8. PROHIBITIONS RELATING TO RECORDING AND
USE OF EMPLOYEE IMAGES.

“(a) IN GENERAL.—It shall be an unlawful practice
for an employer—

“(1) to record or use an image of any employee
(including photographs and audio or video record-
ings) unless—

“(A) prior to the recording of such
image—

“(i) the employer discloses in writing
to the employee—

“(I) each person who will have
access to the image, including any
person not employed by the employer;

“(II) how the image will be used,
which must be for a work-related pur-
pose; and

“(III) when the image will be
used; and
“(ii) the employer obtains written consent to record and use such image in accordance with such disclosure; and

“(B) in any event the employer seeks to use an image already recorded for a purpose not included in such disclosure, the employer issues a new disclosure in writing and obtains written consent for such new purpose.

“(2) to discharge or in any other manner retaliate against any employee or prospective employee because the employee or prospective employee—

“(A) opposed any act or practice made unlawful by this section; or

“(B) took an action for which discrimination is forbidden under section 15(a)(3).

“(b) EXCEPTION.—Subsection (a) shall not apply to the recording or use of any image in which it is impractical to obtain such consent, including recordings of large gatherings or recordings made for security purposes.

“(c) APPLICATION TO INDEPENDENT CONTRACTORS.—This section and section 16(f) shall apply with respect to any contractor of an employer in the same manner as such sections apply to the employees of such employer.

“(d) AUTHORITY TO ISSUE REGULATIONS.—The Secretary of Labor shall issue such regulations or other
guidance as the Secretary considers necessary to assist employers in the implementation of this section.”.

(b) PENALTIES.—Section 16 of such Act (29 U.S.C. 216) is amended by adding at the end the following new subsection:

“(f)(1) Any person who violates the provisions of section 8 shall—

“(A) be subject to a civil penalty—

“(i) in the case of an employer with 100 employees or fewer, of $20,000 for a first offense, increased by an additional $10,000 for each subsequent offense;

“(ii) in the case of an employer with more than 100 employees but not more than 200 employees, of $50,000 for a first offense, increased by an additional $15,000 for each subsequent offense;

“(iii) in the case of an employer with more than 200 employees but not more than 500 employees, of $100,000 for a first offense, increased by an additional $20,000 for each subsequent offense; and

“(iv) in the case of an employer with more than 500 employees, of $300,000 for a first of-
fense, increased by an additional $25,000 for each subsequent offense; and

“(B) be liable to each employee or prospective employee who was the subject of the violation for special damages not to exceed $10,000 plus attorneys’ fees, and shall be subject to such injunctive relief as may be appropriate.

“(2) An action to recover the liability described in paragraph (1)(B) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees or prospective employees for and on behalf of—

“(A) the employees or prospective employees;

and

“(B) other employees or prospective employees similarly situated.”.