To provide that certain agreements containing nondisclosure clauses regarding claims of discrimination, harassment, and retaliation shall not be enforceable, 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 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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Accountability for Workplace Misconduct Act”.

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

(a) Process.—Not later than 1 year after the date of the enactment of this Act, an employer shall establish a process for receiving and investigating allegations of discrimination, harassment and retaliation. Such process shall—

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

(2) allow employees to confidentially report unlawful conduct,

(3) be provided to each employee upon the beginning of their employment and be prominently posted for employee reference,

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

(5) require notification to the employee of the initiation, conclusion, and outcome of the investigation of such reported unlawful conduct, and

(6) make available (e.g., through an human resources representative) factual information pertaining to support services (including medical and mental health care, seeking legal representation, in-
formation about legal rights) the employee may choose to access.

(b) INVESTIGATION.—An employer shall conduct a thorough and neutral investigation into any report of unlawful conduct made by an employee. Such investigation shall include—

(1) appointing impartial individual or entity that is adequately trained to investigate such conduct and notifying the employee of the investigator, scope of the investigation, and estimated time frame of the investigation,

(2) notifying the employee of the initiation, conclusion, and outcome of the investigation of the reported unlawful conduct,

(3) informing the employee of investigation status upon request of the employee, and

(4) to the greatest extent practicable, interviewing witnesses or other individuals identified by the employee claiming the misconduct under investigation.

c) REPORT.—The employer shall furnish a report to the employee that documents the procedure followed by the employer during an investigation into the unlawful conduct reported by the employee and that shows the in-
vestigation complied with the requirements of subsection (b).

SEC. 3. UNENFORCEABILITY OF CERTAIN SETTLEMENT AGREEMENTS CONTAINING NONDISCLOSURE CLAUSES.

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

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

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

(B) section 6(d) of the Fair Labor Standards Act (29 U.S.C. 206(d)),

(C) title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.),

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

(E) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.),
(F) title II of the Genetic Information Non-discrimination Act (29 U.S.C. 42 U.S.C. 2000ff-1 et seq.), or


(2) the employer has not communicated to the employee that a nondisclosure agreement does not restrict disclosing information to Congress, a Federal, State, or Local government entity, or law enforcement,

(3) the employer engages in behavior to intimidate, hinder, obstruct, impede, retaliate against, or otherwise discourage an employee subject to a nondisclosure agreement from communicating with Congress, a Federal, State, or local government entity, or law enforcement,

(4) the employer includes terms in the nondisclosure agreement that requires an employee to notify the employer before disclosing information to Congress, a Federal, State or Local government entity, or law enforcement,

(5) the employer fails to include in such nondisclosure agreement the following statement: “Nothing in this agreement prevents you from disclosing information to Congress, a Federal, State, or
Local government entity, or law enforcement about behavior you reasonably believe constitutes harassment, discrimination, or retaliation.”, or

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

SEC. 4. ENFORCEMENT.

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

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

(c) No later than 180 days after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall issue rules that prescribe the requirements for employer compliance with, and employee notification of, the requirements of this Act.

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) NONDISCLOSURE CLAUSE.—The term “non-disclosure clause” means a provision in a settlement
agreement that forbids a party to such agreement

to—

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

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

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

(A) applies to severance and separation
agreements, and

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

SEC. 6. APPLICATION.

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