



# HOUSE COMMITTEE ON **OVERSIGHT AND REFORM** CHAIRWOMAN **CAROLYN B. MALONEY**

## **Accountability for Workplace Misconduct Act** **Chairwoman Carolyn B. Maloney**

**The Accountability for Workplace Misconduct Act** makes reforms that would safeguard against the abuse of non-disclosure, confidentiality, and non-disparagement agreements (collectively known as NDAs) that silence victims of workplace misconduct and establish requirements for employers when conducting investigations of harassment, discrimination, and retaliation complaints.

Workplace misconduct is a deeply entrenched problem experienced by workers in every industry. To conceal workplace misconduct, employers have increasingly used NDAs to silence victims inside and outside of the workplace. According to the National Women's Law Center, more than one-third of the U.S. workforce is bound by some form of non-disclosure agreement, which allows employers to silence employees and evade accountability for workplace misconduct.

Employers' policies addressing the handling of workplace misconduct vary widely and there is no uniform standard that must be followed when conducting investigations into related complaints. Employers often fail to provide complainants information on the status of their complaints, including whether an investigation has been initiated or even the outcome of the investigation once concluded. This lack of transparency can foster distrust and contribute to unhealthy workplaces.

### **Safeguard Against Abuse of NDAs**

The Accountability for Workplace Misconduct Act would:

- Prohibit the use of post-dispute NDAs that limit, prevent, or interfere with an employee's ability to disclose harassment, discrimination, or retaliation to Congress or government agencies, including law enforcement;
- Require employers to inform employees that post-dispute NDAs do not prevent the disclosure of harassment, discrimination, or retaliation to Congress or government agencies, including law enforcement;
- Prohibit the use of notification provisions that require notice to employers when employees disclose information to Congress or government agencies, including law enforcement, related to harassment, discrimination, or retaliation;
- Require employers to provide employees who agree to post-dispute NDAs a 21-day consideration period and 7-day revocation period; and

- Prohibit employers from attempting to intimidate, hinder, obstruct, impede, or retaliate against employees who disclose or attempt to disclose harassment, discrimination, or retaliation to Congress, government agencies, or law enforcement.

### **Hold Employers Responsible for Conducting Thorough Investigations**

The Accountability for Workplace Misconduct Act would establish basic guardrails for employers' handling of workplace investigations. Under the bill, employers must:

- Establish and communicate to employees a policy that includes multiple methods and avenues for reporting workplace misconduct, including a method for confidential reporting;
- Establish a policy requiring employers to take specific steps to satisfy their obligation to conduct thorough investigations;
- Solicit input from complainants when conducting investigations; and
- Furnish to employees interim and final reports regarding the status and outcome of investigations.

### **Improve Awareness and Transparency of Workplace Settlements for Workers**

The Accountability for Workplace Misconduct Act would direct the Equal Employment Opportunity Commission to:

- Prescribe regulations to notify and educate employers of their responsibilities and employees of their rights under the bill when enacted; and
- Process complaints regarding violations of the bill.

Employees who choose to enter into post-dispute settlements to resolve complaints of harassment, discrimination, or retaliation in the workplace have the right to be informed about the limitations of NDAs. Employers must also be held accountable for failing to establish clear policies for reporting and fairly investigating complaints of workplace misconduct. **The Accountability for Workplace Misconduct Act** would establish standards for employers to protect workers and encourage them to foster workplace cultures that aim to *prevent*—rather than *conceal*—workplace misconduct.