

118TH CONGRESS
1ST SESSION

S. 1524

To ensure that whistleblowers, including contractors, are protected from retaliation when a Federal employee orders a reprisal, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2023

Mr. PETERS (for himself and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure that whistleblowers, including contractors, are protected from retaliation when a Federal employee orders a reprisal, 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 “Expanding Whistle-
5 blower Protections for Contractors Act of 2023”.

1 **SEC. 2. DEFENSE CONTRACTOR EMPLOYEES: PROTECTION**
2 **FROM REPRISAL FOR DISCLOSURE OF CER-**
3 **TAIN INFORMATION.**

4 Section 4701 of title 10, United States Code, is
5 amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) in the matter preceding subpara-
9 graph (A)—

10 (I) by striking “An employee”
11 and all that follows through “services
12 contractor” and inserting “A pro-
13 tected individual”; and

14 (II) by striking “disclosing” and
15 all that follows through “evidence of”;
16 and

17 (ii) by striking subparagraphs (A),
18 (B), and (C) and inserting the following
19 subparagraphs:

20 “(A) Objecting or refusing to participate in any
21 activity, policy, practice, or assigned task that the
22 protected individual reasonably believes to be in vio-
23 lation of any law, rule, order, or regulation related
24 to any contract, subcontract, grant, or subgrant.

25 “(B) Disclosing to a person or body described
26 in paragraph (2) information that the protected indi-

1 vidual reasonably believes is evidence of the fol-
2 lowing:

3 “(i) Gross mismanagement of any Depart-
4 ment of Defense contract or grant, any gross
5 waste of Department funds, any abuse of au-
6 thority relating to any Department contract,
7 subcontract, grant, or subgrant, or any viola-
8 tion of law, rule, or regulation related to any
9 Department contract or subcontract (including
10 the competition for or negotiation of a contract
11 or subcontract) or grant or subgrant.

12 “(ii) Gross mismanagement of any Na-
13 tional Aeronautics and Space Administration
14 contract or grant, any gross waste of Adminis-
15 tration funds, any abuse of authority relating to
16 an Administration contract, subcontract, grant,
17 or subgrant, or any violation of law, rule, or
18 regulation related to any Administration con-
19 tract or subcontract (including the competition
20 for or negotiation of a contract or subcontract)
21 or grant or subgrant.

22 “(iii) A substantial and specific danger to
23 public health or safety.”; and

24 (B) in paragraph (3)—

1 (i) in subparagraph (A), by striking
2 “an employee” and inserting “a protected
3 individual”; and

4 (ii) by striking subparagraph (B) and
5 inserting the following subparagraph:

6 “(B) it shall not be within the authority of an
7 executive branch official to request that a con-
8 tractor, subcontractor, grantee, or subgrantee en-
9 gage in a reprisal prohibited by paragraph (1).”;

10 (2) in subsection (c)—

11 (A) in paragraph (1), by adding at the end
12 the following subparagraph:

13 “(E) Propose appropriate disciplinary action
14 against any executive branch official for any request
15 made of a contractor, subcontractor, grantee, or sub-
16 grantee that subjected the complainant to a reprisal
17 prohibited by subsection (a).”; and

18 (B) by striking paragraph (7) and insert-
19 ing the following paragraph:

20 “(7) CLARIFICATION FOR SCOPE OF WAIVER RE-
21 STRICTIONS.—(A) The rights, forum, and remedies pro-
22 vided for in this section may not be waived by any public
23 or private agreement, policy, form, or condition of employ-
24 ment, including by any predispute arbitration agreement.

1 “(B) No predispute arbitration agreement shall be
2 valid or enforceable if it requires arbitration of a dispute
3 arising under this section.”;

4 (3) in subsection (f)—

5 (A) by striking “an employee” and insert-
6 ing “a protected individual”; and

7 (B) by striking “the employee” and insert-
8 ing “the protected individual”;

9 (4) by redesignating subsection (g) as sub-
10 section (h);

11 (5) by inserting after subsection (f) the fol-
12 lowing new subsection:

13 “(g) AFFIRMATIVE DEFENSE.—Engaging in any ac-
14 tivity protected against reprisal under this section shall
15 be an affirmative defense in any civil or criminal action
16 that seeks liability for engaging in such activity.”; and

17 (6) in subsection (h), as so redesignated—

18 (A) in paragraph (3), by inserting “, in-
19 cluding any ‘Federal award’ as defined in sec-
20 tion 2(a) of the Federal Funding Accountability
21 and Transparency Act of 2006 (31 U.S.C. 6101
22 note)” after “agency”;

23 (B) in paragraph (4), by inserting “, in-
24 cluding any person that is recipient of a ‘Fed-
25 eral award’ as defined in section 2(a) of the

1 Federal Funding Accountability and Trans-
2 parency Act of 2006 (31 U.S.C. 6101 note)”
3 after “agency”; and

4 (C) by adding at the end the following new
5 paragraph:

6 “(8) The term ‘protected individual’ means—

7 “(A) a contractor, subcontractor, grantee,
8 or subgrantee of the Department of Defense or
9 the National Aeronautics and Space Adminis-
10 tration, including—

11 “(i) the government of each of the
12 several States, the District of Columbia, an
13 Indian tribe or authorized tribal organiza-
14 tion, the Commonwealth of Puerto Rico,
15 Guam, American Samoa, the Virgin Is-
16 lands, the Commonwealth of the Northern
17 Mariana Islands, or any other territory or
18 possession of the United States;

19 “(ii) the government of any political
20 subdivision of, agency of, or instrumen-
21 tality of, a government listed in clause (i);
22 and

23 “(iii) any entity that is recipient of a
24 ‘Federal award’ as defined in section 2(a)
25 of the Federal Funding Accountability and

1 Transparency Act of 2006 (31 U.S.C.
2 6101 note);

3 “(B) an employee, applicant, or former
4 employee of a contractor, subcontractor, grant-
5 ee, or subgrantee of the Department of Defense
6 or the National Aeronautics and Space Admin-
7 istration, including an employee of—

8 “(i) the government of each of the
9 several States, the District of Columbia, an
10 Indian tribe or authorized tribal organiza-
11 tion, the Commonwealth of Puerto Rico,
12 Guam, American Samoa, the Virgin Is-
13 lands, the Commonwealth of the Northern
14 Mariana Islands, or any other territory or
15 possession of the United States; and

16 “(ii) the government of any political
17 subdivision of, agency of, or instrumen-
18 tality of, a government listed in clause (i);
19 or

20 “(C) a person performing personal services
21 for the Department of Defense or the National
22 Aeronautics and Space Administration pursuant
23 to a contractual agreement for the performance
24 of personal services, including a personal serv-
25 ices contract or personal services agreement,

1 and who engages in an activity for which any
 2 reprisal is prohibited under subsection (a), in-
 3 cluding a person performing personal services
 4 pursuant such a contractual agreement for—

5 “(i) the government of each of the
 6 several States, the District of Columbia, an
 7 Indian tribe or authorized tribal organiza-
 8 tion, the Commonwealth of Puerto Rico,
 9 Guam, American Samoa, the Virgin Is-
 10 lands, the Commonwealth of the Northern
 11 Mariana Islands, or any other territory or
 12 possession of the United States; and

13 “(ii) the government of any political
 14 subdivision of, agency of, or instrumen-
 15 tality of, a government listed in clause
 16 (i).”.

17 **SEC. 3. ENHANCEMENT OF NON-DEFENSE CONTRACTOR**
 18 **PROTECTION FROM REPRISAL FOR DISCLO-**
 19 **SURE OF CERTAIN INFORMATION.**

20 Section 4712 of title 41, United States Code, is
 21 amended—

22 (1) in subsection (a)—

23 (A) by striking paragraph (1) and insert-
 24 ing the following paragraph:

1 “(1) IN GENERAL.—A protected individual may
2 not be discharged, demoted, or otherwise discrimi-
3 nated against as a reprisal for the following:

4 “(A) Objecting or refusing to participate in
5 any activity, policy, practice, or assigned task
6 that the protected individual reasonably believes
7 to be in violation of any law, rule, order, or reg-
8 ulation related to any contract, subcontract,
9 grant, or subgrant.

10 “(B) Disclosing to a person or body de-
11 scribed in paragraph (2) information that the
12 protected individual reasonably believes is evi-
13 dence of the following:

14 “(i) Gross mismanagement of any
15 Federal contract or grant, any gross waste
16 of Federal funds, any abuse of authority
17 relating to any Federal contract, sub-
18 contract, grant, or subgrant, or any viola-
19 tion of law, rule, or regulation related to
20 any Federal contract or subcontract (in-
21 cluding the competition for or negotiation
22 of a contract or subcontract) or grant or
23 subgrant.

24 “(ii) A substantial and specific danger
25 to public health or safety.”; and

1 (B) in paragraph (3)—

2 (i) in subparagraph (A), by striking
3 “an employee” and inserting “a protected
4 individual”; and

5 (ii) by striking subparagraph (B) and
6 inserting the following subparagraph:

7 “(B) it shall not be within the authority of
8 an executive branch official to request that a
9 contractor, subcontractor, grantee, or sub-
10 grantee engage in a reprisal prohibited by para-
11 graph (1).”;

12 (2) in subsection (c)—

13 (A) in paragraph (1), by adding at the end
14 the following new subparagraph:

15 “(E) Propose appropriate disciplinary ac-
16 tion against any executive branch official for
17 any request made of a contractor, subcon-
18 tractor, grantee, or subgrantee that subjected
19 the complainant to a reprisal prohibited by sub-
20 section (a).”; and

21 (B) by striking paragraph (7) and insert-
22 ing the following paragraph:

23 “(7) RIGHTS, FORUM, AND REMEDIES NOT
24 WAIVABLE.—

1 “(A) IN GENERAL.—The rights, forum,
2 and remedies provided for in this section may
3 not be waived by any public or private agree-
4 ment, policy, form, or condition of employment,
5 including by any predispute arbitration agree-
6 ment.

7 “(B) VALIDITY.—No predispute arbitra-
8 tion agreement shall be valid or enforceable if
9 it requires arbitration of a dispute arising
10 under this section.”;

11 (3) in subsection (e)—

12 (A) by striking “an employee” and insert-
13 ing “a protected individual”; and

14 (B) by striking “the employee” and insert-
15 ing “the protected individual”;

16 (4) in subsection (g)—

17 (A) by redesignating paragraph (2) as
18 paragraph (3);

19 (B) by inserting after paragraph (1) the
20 following new paragraph (2):

21 “(2) The term ‘contract’ includes any ‘Federal
22 award’ as defined in section 2(a) of the Federal
23 Funding Accountability and Transparency Act of
24 2006 (31 U.S.C. 6101 note).”;

1 (C) by inserting after paragraph (3), as so
2 redesignated, the following new paragraph:

3 “(4) The term ‘protected individual’ means—

4 “(A) a contractor, subcontractor, grantee,
5 or subgrantee of the Federal Government, in-
6 cluding—

7 “(i) the government of each of the
8 several States, the District of Columbia, an
9 Indian tribe or authorized tribal organiza-
10 tion, the Commonwealth of Puerto Rico,
11 Guam, American Samoa, the Virgin Is-
12 lands, the Commonwealth of the Northern
13 Mariana Islands, or any other territory or
14 possession of the United States;

15 “(ii) the government of any political
16 subdivision of, agency of, or instrumen-
17 tality of, a government listed in clause (i);
18 and

19 “(iii) any entity that is recipient of a
20 ‘Federal award’ as defined in section 2(a)
21 of the Federal Funding Accountability and
22 Transparency Act of 2006 (31 U.S.C.
23 6101 note);

24 “(B) an employee, applicant, or former
25 employee of a contractor, subcontractor, grant-

1 ee, or subgrantee of the Federal Government,
2 including an employee of—

3 “(i) the government of each of the
4 several States, the District of Columbia, an
5 Indian tribe or authorized tribal organiza-
6 tion, the Commonwealth of Puerto Rico,
7 Guam, American Samoa, the Virgin Is-
8 lands, the Commonwealth of the Northern
9 Mariana Islands, or any other territory or
10 possession of the United States; and

11 “(ii) the government of any political
12 subdivision of, agency of, or instrumen-
13 tality of, a government listed in clause (i);
14 or

15 “(C) a person performing personal services
16 for the Federal Government pursuant to a con-
17 tractual agreement for the performance of per-
18 sonal services, including a personal services con-
19 tract or personal services agreement, including
20 a person performing personal services pursuant
21 to such a contractual agreement for—

22 “(i) the government of each of the
23 several States, the District of Columbia, an
24 Indian tribe or authorized tribal organiza-
25 tion, the Commonwealth of Puerto Rico,

1 Guam, American Samoa, the Virgin Is-
2 lands, the Commonwealth of the Northern
3 Mariana Islands, or any other territory or
4 possession of the United States; and

5 “(ii) the government of any political
6 subdivision of, agency of, or instrumen-
7 tality of, a government listed in clause
8 (i).”;

9 (5) by redesignating subsection (h) as sub-
10 section (i); and

11 (6) by inserting after subsection (g) the fol-
12 lowing new subsection:

13 “(h) AFFIRMATIVE DEFENSE.—Engaging in any ac-
14 tivity protected against reprisal under this section shall
15 be an affirmative defense in any civil or criminal action
16 that seeks liability for engaging in such activity.”.

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