To provide a right to flexibility and to broaden and increase employee protections at work, to protect small businesses through shared responsibility for workers’ rights, to provide public transparency on workers’ rights violations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. MURRAY (for herself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To provide a right to flexibility and to broaden and increase employee protections at work, to protect small businesses through shared responsibility for workers’ rights, to provide public transparency on workers’ rights violations, 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 “Worker Flexibility and Small Business Protection Act of 2020”.

SECTION 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:
Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—RIGHT TO FLEXIBILITY AND EMPLOYEE PROTECTIONS AT WORK

Sec. 101. Right to flexibility.
Sec. 102. Right to employee protections at work.

TITLE II—SMALL BUSINESS PROTECTION THROUGH SHARED RESPONSIBILITY FOR WORKERS’ RIGHTS

Sec. 201. General shared responsibility for workers’ rights.
Sec. 203. Franchisors.
Sec. 204. Temporary staffing companies.
Sec. 205. Licensors.
Sec. 206. Labor contractors.
Sec. 207. Supply chain responsibility plan.
Sec. 208. Conforming amendments.

TITLE III—PUBLIC TRANSPARENCY ON WORKERS’ RIGHTS VIOLATIONS

Sec. 301. Consumer right to know about compliance with workers’ rights.

TITLE IV—CREATING BROAD AND INCREASING WORKER PROTECTIONS

Sec. 401. General standards for applying and interpreting workers’ rights.
Sec. 402. Statutes of limitation.

TITLE V—GENERAL PROVISIONS

Sec. 501. Severability.

1 TITLE I—RIGHT TO FLEXIBILITY AND EMPLOYEE PROTECTIONS AT WORK

2 SEC. 101. RIGHT TO FLEXIBILITY.

3 (a) IN GENERAL.—The Fair Labor Standards Act of

4 1938 (29 U.S.C. 201 et seq.) is amended—

5 (1) by inserting after section 7 (29 U.S.C. 207) 

6 the following:

7 “SEC. 8. RIGHT TO FLEXIBILITY.

8 “(a) DEFINITIONS.—In this section:
“(1) COVERED EMPLOYEE.—The term ‘covered employee’ means, with respect to an employer, an employee who—

“(A) prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020, was classified by the employer as an independent contractor; and

“(B) in any workweek is engaged in commerce or in the production of goods for commerce, or is employed by an enterprise engaged in commerce or in the production of goods for commerce.

“(2) SCHEDULE AND SCHEDULING FLEXIBILITY.—The term ‘schedule and scheduling flexibility’, with respect to the work of a covered employee under subsection (b), includes—

“(A) the timing of the work throughout an hour, day, week, month, or year;

“(B) the total duration of the work in any given period;

“(C) the location where the work is performed; and

“(D) the ability to perform work for any entity other than the employer of the covered
employee, including any direct competitor of the employer.

“(b) Right To Keep Flexibility.—

“(1) In General.—Any covered employee of an employer has the right to maintain the same schedule and scheduling flexibility that the covered employee possessed at any time while performing labor for such employer as an independent contractor in the 12-month period prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020.

“(2) Duration Of Right.—A covered employee shall continue to possess the right to maintain the same schedule and scheduling flexibility described in paragraph (1) for the duration of the employment of the covered employee with the employer.

“(3) Nonretaliation.—

“(A) In General.—An employer of a covered employee—

“(i) may not discharge the covered employee for any reason except upon a showing of just cause; and

“(ii) may not otherwise discriminate against the covered employee because of or
with relation to the schedule or scheduling flexibility of the employee.

“(B) DISCRIMINATION.—For the purposes of subparagraph (A)(ii), the term ‘discriminate’, with respect to a covered employee, shall include—

“(i) reducing the amount or number of hours of work of the covered employee;

“(ii) restricting or limiting the work of the covered employee for the employer;

or

“(iii) removing the covered employee from the workplace, including by suspending or deactivating an account the covered employee uses to perform work for the employer.

“(C) MOTIVATING FACTOR.—For the purposes of subparagraph (A)(ii), unlawful discrimination is established when a covered employee demonstrates that the schedule or scheduling flexibility of the covered employee was a motivating factor for any adverse employment action taken by an employer, even if such action was also motivated by other factors.

“(c) RIGHT TO REQUEST FUTURE FLEXIBILITY.—
“(1) **Right to Request.**—An employee shall have the right to request to have the schedule that the employee desires, including—

“(A) the number of shifts or other units of work per day or week;

“(B) the number of hours of work per day;

“(C) the number of days of work per week;

“(D) the location where the employee performs the work; and

“(E) any unpaid time off the employee desires to take.

“(2) **Nonretaliation.**—

“(A) **In General.**—An employer shall not discharge or in any other manner discriminate against an employee for making a request described in paragraph (1).

“(B) **Motivating Factor.**—Unlawful discharge or discrimination against an employee is established under subparagraph (A) when the complaining party demonstrates that the request described in paragraph (1) was a motivating factor for such discharge or discrimination, even if such discharge or discrimination was also motivated by other factors.

“(3) **Response.**—
“(A) IN GENERAL.—An employer shall respond to a request described in paragraph (1) by either granting the request in full or providing the employee with a written justification for any portion of the request that the employer denies based on a compelling business necessity.

“(B) REVIEW BY SECRETARY.—If the employer does not grant a request described in paragraph (1) in full, the employee may request review by the Secretary. The Secretary may—

“(i) issue an order to overrule the employer’s denial of the employee’s request, or any portion of the employee’s request, if the Secretary finds that the employer does not have a compelling business necessity for the denial; or

“(ii) issue an order to confirm the employer’s denial of the employee’s request, or any portion of the employee’s request, if the Secretary finds that the employer has a compelling business necessity for the denial.

“(C) APPEALS.—

“(i) IN GENERAL.—An aggrieved employer or employee may—

“(I) appeal an order of the Secretary under subparagraph (B) to an administrative law judge; and

“(II) appeal an order of an administrative law judge under subclause (I) to a Federal or State court of competent jurisdiction.

“(ii) COMPLIANCE WITH ORDER DURING APPEAL.—For the duration of an appeal described in clause (i)(I), the employer and employee shall comply with the order of the Secretary until and unless the order is overturned by an administrative law judge. For the duration of an appeal described in clause (i)(II), the employer and employee shall comply with the order of the administrative law judge until and unless the order is overturned by a Federal or State court of competent jurisdiction.

“(D) COMPELLING BUSINESS NECESSITY.—For purposes of this paragraph, the term ‘compelling business necessity’ means only any of the following:
“(i) A significant burden of additional costs to the employer that would be prohibitive of continuing to conduct business.

“(ii) A complete inability of the employer to reorganize work amongst existing employees.

“(iii) A complete inability of the employer to recruit additional employees.

“(iv) A significant detrimental effect on the ability of the employer to meet customer demand.

“(v) A lack of work during the period the employee proposes to work.

“(vi) A planned structural change to the employer’s business, which was planned before the request was made.

“(vii) Any other grounds as determined by the Secretary through regulation that the Secretary demonstrates satisfy the high bar of being compellingly necessary for an employer to continue conducting business and being more than merely a legitimate business reason.”;

(2) by striking section 10 (29 U.S.C. 210); and
(3) by redesignating section 9 (29 U.S.C. 209) as section 10.

(b) Enforcement.—

(1) Prohibited acts.—Section 15(a)(2) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(2)) is amended by striking “section 6 or 7” and inserting “section 6, 7, or 8”.

(2) Penalties.—Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended by adding at the end the following:

“(6) Penalties for violating right to flexibility.—Any person who violates section 8 shall be subject to a civil penalty, for each employee aggrieved by the violation and for each day in which the employer is in such violation, of—

“(A) $1,000; or

“(B) if the violation is repeated or willful, $5,000.”.

(c) Conforming amendments to other laws.—


SEC. 102. RIGHT TO EMPLOYEE PROTECTIONS AT WORK.

(a) Fair Labor Standards Act of 1938.—

(1) STRENGTHENING EMPLOYEE TEST.—Section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)) is amended by adding at the end the following:

“(6)(A) For purposes of this Act, and except as provided in paragraphs (2), (3), (4), (5), (7), and (9), an individual performing any labor for remuneration for a person shall be an employee employed by the person and not an independent contractor of the person, unless—

“(i) the individual is free from control and direction in connection with the performance of the labor, both under the contract for the performance of the labor and in fact;
“(ii) the labor is performed outside the usual course of the business of the person; and

“(iii) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the labor performed.

“(B)(i) Subparagraph (A) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding when an individual is an employee of another person. Subparagraph (A) shall be considered complete as written, and any judicial or agency interpretation of such subparagraph shall be limited to the explicit requirements of such subparagraph.

“(ii) The requirements of subparagraph (A) shall not be in any way affected by any agreement, written or otherwise, that purports to demonstrate an individual’s acknowledgment of or acquiescence to the absence of an employer-employee relationship with a particular employer.

“(7)(A) Notwithstanding any contrary provisions in this subsection or subsection (d) or (g), in any instance in which there is a non-compete agreement between a person and an individual who performs labor for such person, the presence of the non-compete agreement, without regard to the legality or enforceability of the non-compete
agreement, shall be evidence of control for purposes of paragraph (6)(A)(i), but shall not by itself establish an employment relationship between such person and the individual.

“(B) In this paragraph, the term ‘non-compete agreement’ means an agreement between a person and an individual who performs labor for such person that restricts the individual from performing, either during or after the individual performs labor for such person—

“(i) any labor for another person;

“(ii) any labor for a specified period of time;

“(iii) any labor in a specified geographical area;

or

“(iv) any labor for another person that is similar to the labor such individual performed for the person that is a party to such agreement.”.

(2) Presumption of Employee Status.—

Section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), as amended by paragraph (1), is further amended by adding at the end the following:

“(8) For purposes of this Act, an individual performing any labor for remuneration for a person shall be presumed to be an employee of the person, unless the party seeking to assert otherwise establishes by clear and
convincing evidence that the individual is not an employee in accordance with paragraphs (1) through (7) and paragraph (9).”.

(3) MISCLASSIFICATION AS A STANDALONE VIOLATION.—

(A) IN GENERAL.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended—

(i) by inserting after section 4 (29 U.S.C. 204) the following:

“SEC. 5. MISCLASSIFICATION.

“No employer shall misclassify any employee, who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, of the employer as not an employee of the employer for purposes of this Act.”; and

(ii) in section 15(a) (29 U.S.C. 215(a))—

(I) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(II) by adding at the end the following:

“(6) to violate section 5;”.
(B) INCORPORATION TO FURTHER VIOLATIONS.—Section 15(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)), as amended by subparagraph (A)(ii), is further amended by adding at the end the following:

“(7) for the purpose, in whole or in part, of facilitating, or evading detection of, a violation of this Act, including a violation of paragraph (6)—

“(A) to incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity; or

“(B) to pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity; or”.

(C) PENALTIES.—Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)), as amended by section 101(b)(2), is further amended by adding at the end the following:

“(7) PENALTIES FOR MISCLASSIFICATION AND INCORPORATION TO FURTHER VIOLATIONS.—
“(A) In general.—Any person who violates paragraph (6) or (7) of section 15(a) shall be subject to a civil penalty of—

“(i) subject to clauses (ii) and (iii), $10,000;

“(ii) if the violation is repeated or willful, $30,000; or

“(iii) if the violation is widespread, 1 percent of the net profits of the person for the year in which the person had the highest net profits out of all years in which the person was in such violation.

“(B) Repeated, or willful, and widespread violations.—If a violation of paragraph (6) or (7) of section 15(a) is repeated or willful, as described in subparagraph (A)(ii), and is widespread, as described in subparagraph (A)(iii), the higher penalty of the penalties described in such subparagraphs shall apply.

“(C) Payment of penalties.—Any penalty assessed under subparagraph (A) for a violation of paragraph (6) or (7) of section 15(a) shall be paid from an account of the person in such violation and not paid, or reimbursed, by any insurance plan that would indemnify the person from violations of such
paragraph (6) or (7), respectively. If a person receives a payment from an insurance plan to indemnify the person from a violation of such paragraph, the person shall transfer the payment to the Secretary, in addition to the amount to be paid from the account of the person for the penalty. The amount of a payment transferred to the Secretary under this subparagraph shall be treated as a civil penalty under this section for a violation of section 15 for purposes of paragraph (5) of this subsection and subsection (f).”.


(A) by striking “employee because such employee has filed” and inserting “employee because—

“(A) such employee has filed;”; and

(B) by striking “committee;” and inserting “committee; or”; and

(C) by adding at the end the following:

“(B) such employee—

“(i) is required, pursuant to the enactment of the Worker Flexibility and Small Business
Protection Act of 2020, to be classified as an employee of the person for purposes of this Act and not an independent contractor; and

“(ii) was classified by the person as an independent contractor prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020;”.

(5) Rules regarding unlawful discharge or discrimination.—Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 215) is amended by adding at the end the following:

“(c) Rules regarding unlawful discharge or discrimination.—

“(1) Presumption of retaliation.—Any action taken against an employee within 90 days of the employee taking any action described in subsection (a)(3)(A), including taking any such action with respect to exercising the right of the employee pursuant to section 5 to not be misclassified, shall establish a rebuttable presumption that the action is discrimination against the employee in violation of subsection (a)(3).

“(2) Motivating factor.—Unlawful discharge or other discrimination against an employee under subsection (a)(3) is established when the com-
plaining party demonstrates that one of the actions
or the classification described in such subsection was
a motivating factor for such discharge or other discrim-
ination, even if such discharge or other discrimina-
tion was also motivated by other factors.”.

(6) **STATUTORY EMPLOYERS IN HEAVILY
MISCLASSIFIED INDUSTRIES.**—

(A) **DEFINITION OF EMPLOYER.**—Section
3(d) of the Fair Labor Standards Act of 1938
(29 U.S.C. 203(d)) is amended to read as fol-

ows:

“(d) **EMPLOYER.**—

“(1) **IN GENERAL.**—The term ‘employer’ in-
cludes any person acting directly or indirectly in the
interest of an employer in relation to an employee.

“(2) **INCLUSIONS AND EXCLUSIONS.**—The term
‘employer’ includes a public agency but does not in-
clude any labor organization (other than when acting
as an employer) or anyone acting in the capacity of
officer or agent of such labor organization.

“(3) **APPLICATION WITH REFERENCE TO
OTHER DEFINITIONS.**—The term ‘employer’ shall be
interpreted and applied in a manner that is con-
sistent with the other definitions in this section and
that incorporates the term ‘employee’, as defined in
subsection (e), and the term ‘employ’, as defined in subsection (g).

“(4) Statutory employers in certain industries.—The term ‘employer’ shall include any person, except a person excluded under paragraph (2), with respect to an individual described in subsection (e)(9) performing labor that is beneficial to the person, that is engaged in any of the following work:

“(A) Transportation, including any person that benefits from labor performed by individuals in the form of transportation in a motorized or unmotorized vehicle, by foot, or by any other means, including transportation network companies, technology platform companies, passenger transportation or food transportation companies, and cargo transportation companies.

“(B) Network dispatching, including any person that uses a digital network to connect individuals or entities seeking services or labor with individuals or entities seeking to provide services or labor, but not including any person who owns, controls, or manages—

“(i) a completely neutral physical or internet marketplace where the procure-
ment of goods or services takes place be-
tween individuals who are completely inde-
dependent from and free from any and all di-
rection or control by the person owning,
controlling, or managing the neutral mar-
ketplace, including such person having ab-
solutely no role in the setting of prices or
rates, in the assignment or referral of re-
quests for goods or services to individuals
who could potentially provide such goods
or services, and in the acceptance or rejec-
tion of any requests for goods or services;
and
“(ii) a labor organization hiring
hall.”.

(B) DEFINITION OF EMPLOYEE.—Section
3(e) of the Fair Labor Standards Act of 1938
(29 U.S.C. 203(e)), as amended by paragraph
(2), is further amended by adding at the end
the following:
“(9) Notwithstanding paragraphs (1) or (6) of this
subsection, subsection (d) (other than paragraph (4) of
such subsection), or subsection (g), and except as provided
in paragraphs (2), (3), (4), and (5), the term ‘employee’,
with respect to an employer described in subsection (d)(4),
shall include any individual performing labor that is benef-

cial to the employer, including—

“(A) with respect to transportation described in
subparagraph (A) of such subsection, any individual
who performs any portion of the labor included
under such subparagraph, including individuals who
perform labor in the form of engaging in transpor-
tation beneficial to transportation network compa-
nies, technology platform companies, passenger
transportation or food transportation companies, or
cargo transportation companies; and

“(B) with respect to network dispatching de-
scribed in subparagraph (B) of such subsection, any
individual who performs any portion of the services
or labor included under such subparagraph, includ-
ing providing the services or labor to the individuals
or entities seeking such services or labor.”.

(C) COMPENSABLE TIME WORKED.—

(i) IN GENERAL.—The Fair Labor
Standards Act of 1938 (29 U.S.C. 201 et
seq.) is amended by inserting after section
8 the following:
"SEC. 9. SPECIAL REQUIREMENTS FOR CERTAIN WORKERS."

"(a) Determining Compensable Hours Worked for Transportation and Network Dispatching Workers.—

"(1) Determining hours worked.—

“(A) In general.—For the purposes of sections 6 and 7, in determining the hours for which an employee described in section 3(e)(9) is employed, there shall be included any reasonable amount of time, as determined by the Secretary in accordance with subparagraph (C), spent on waiting for, receiving, reviewing, considering, accepting, and transporting oneself to fulfill an assignment or request to perform any portion of labor immediately before performing such portion of labor, including through a smartphone application, technology platform, dispatch network, or any other mechanism that is used to connect individuals or entities seeking services or labor with employees seeking to provide services or labor.

“(B) Rate of compensation.—Compensation paid for any reasonable amount of time described in subparagraph (A) shall be paid at a rate no less than the employee’s regular rate of pay."
“(C) Determination of amount of time.—The Secretary shall have discretion to determine a reasonable amount of time for purposes of subparagraph (A) given the specific circumstances involved, except that in all cases—

“(i) the minimum amount of the reasonable amount of time for the activities described in subparagraph (A) before accepting and performing a portion of labor shall be 3 minutes; and

“(ii) the maximum amount of such reasonable amount of time shall be 30 minutes.

“(D) Collective bargaining.—Notwithstanding subparagraph (A), no employer shall be determined to have violated section 6 or 7 by employing any employee described in section 3(e)(9) without providing such employee compensation for the reasonable amount of time under subparagraph (A) if such employee is so employed in pursuance of an agreement, made as a result of collective bargaining by a bona fide representative of employees for purposes of section 8(f) or (9)(a) of the National Labor Re-
lations Act (29 U.S.C. 158(f), 159(a)), that alters or waives the compensation requirements of this paragraph.

“(2) INFORMATION.—The Secretary shall have the authority to request, inspect, and pursue subpoenas for any information or data held by an employer that the Secretary determines to be relevant—

“(A) in determining the reasonable amount of time under paragraph (1)(A) for which an employee described in section 3(e)(9) should be compensated;

“(B) in determining an employee’s regular rate of pay for purposes of paragraph (1)(B); or

“(C) for any other purpose related to this subsection.”.

(ii) PENALTIES.—Section 15(a)(2) is amended by inserting “including violations due to failure to comply with section 9(a),” after “section 7,”.

(7) MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS AND STOP WORK ORDERS.—
(A) IN GENERAL.—Section 17 of the Fair Labor Standards Act of 1938 (29 U.S.C. 217) is amended—

(i) by striking “The district courts” and inserting “(a) The district courts”;

(ii) by inserting “orders issued under subsection (b)(1) or (c)(1) or violations of” before “section 15,”; and

(iii) by adding at the end the following:

“(b) MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS.—

“(1) IN GENERAL.—If the Secretary determines, after an investigation under section 11, that an employer has misclassified 1 or more individuals who are employees of the employer as not employees in violation of section 15(a)(6)—

“(A) the Secretary shall issue, not later than 24 hours after making such determination, an order against the employer requiring the employer to immediately classify the 1 or more individuals as employees of the employer; and

“(B) the employer shall immediately comply with the order issued under subparagraph
(A) or shall otherwise be in violation of section 15(a)(6).

“(2) ORDERS.—An order issued under paragraph (1) shall—

“(A) be effective at the time at which the order is served upon the employer, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer; and

“(B) remain in effect during any review conducted under paragraph (3) with respect to such order and during any hearing and appeal of such order under paragraph (4).

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—An employer against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

“(B) REQUESTS.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) REQUIREMENTS FOR REVIEW.—

“(i) IN GENERAL.—A review under this paragraph shall—
“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.

“(ii) Determination.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) Hearings and Appeals.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to a Federal or State court of competent jurisdiction.

“(5) Injunction Proceedings.—The Secretary may seek an injunction proceeding under subsection (a) against any employer that violates an order issued under paragraph (1). A court shall issue such injunction if the Secretary has demonstrated it is just and proper.
“(6) Successfully disproving occurrence
of misclassification.—

“(A) In general.—If an employer with
respect to whom an order was issued under
paragraph (1) successfully proves through a re-
view under paragraph (3), or a hearing or ap-
peal under paragraph (4), that the 1 or more
individuals who were the subject of the order
were not misclassified in violation of section
15(a)(6)—

“(i) the order issued under paragraph
(1) shall cease to be in effect;

“(ii) the employer shall not be liable
for any applicable unpaid minimum wages,
unpaid overtime compensation, other dam-
ages, or civil penalties owed by the em-
ployer under section 16 with respect to the
misclassification of such 1 or more individ-
uals; and

“(iii) the Secretary of Labor, adminis-
trative law judge, or the court shall award
(and the Secretary of the Treasury shall,
in accordance with subparagraph (B), pay)
to the employer reasonable fees and ex-
penses of attorneys in the same manner as
such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the employer was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any fees or expenses awarded under subparagraph (A)(iii) from amounts in the general fund of the Treasury.

“(c) MISCLASSIFICATION ENFORCEMENT THROUGH STOP WORK ORDERS.—

“(1) IN GENERAL.—In any case where an employer does not comply with a reclassification order issued by the Secretary under subsection (b)(1), with respect to 2 or more individuals who are misclassified in violation of section 15(a)(6), within 30 days of being served with the order, the Secretary shall issue—

“(A) subject to subparagraph (B), an order against the employer requiring the cessation of all business operations of such employer at the location of the violation; or
“(B) if an order described in subparagraph (A) has been previously issued against the employer by any Federal, State, or local agency for misclassifying an employee as not an employee in violation of section 15(a)(6), or an equivalent State or local law as determined by the Secretary, an order against the employer requiring the cessation of all business operations of such employer at all business locations of the employer, including locations other than the location where the misclassification occurred.

“(2) ORDERS.—

“(A) APPLICABILITY.—An order issued under paragraph (1) shall—

“(i) be effective at the time at which the order is served upon the employer, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer; and

“(ii) remain in effect—

“(I) during any review conducted under paragraph (3) with respect to such order and during any hearing
and appeal of such order under paragraph (4); and

“(II) until the Secretary issues a release order under subparagraph (B).

“(B) RELEASE ORDERS.—

“(i) IN GENERAL.—An order issued under paragraph (1) (that is not revoked by the Secretary or held unlawful or set aside by an administrative law judge or a court) shall remain in effect until the Secretary issues another order releasing the order issued under such paragraph upon a finding by the Secretary that the employer—

“(I) has corrected the violation of section 15(a)(6) with respect to the 2 or more individuals who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable unpaid minimum wages, unpaid overtime compensation, other damages, and civil penalties owed by the employer under section 16.
“(ii) Reinstatement.—If, at any time after the Secretary issues a release order under clause (i), the employer fails to comply with the terms of the payment schedule described in clause (i)(II), the Secretary shall reinstate the order issued under paragraph (1) until the employer is in compliance with such terms.

“(3) Review for reconsideration.—

“(A) In general.—An employer against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

“(B) Requests.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) Requirements for review.—

“(i) In general.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.
“(ii) Determination.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) Hearings and Appeals.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to a Federal or State court of competent jurisdiction.

“(5) Injunction Proceedings.—The Secretary may seek an injunction proceeding under subsection (a) against any employer that violates an order issued under paragraph (1). A court shall issue such injunction if the Secretary has demonstrated it is just and proper.

“(6) Compensation for Lost Work.—

“(A) In General.—Subject to subparagraph (B), an employer with respect to whom an order is issued under paragraph (1) shall pay each employee of the employer, who loses compensation due to the work of such employee
ceasing as a result of such order, the compensa-
tion that would be owed to such employee if the order was not issued.

“(B) LIMITATION.—Compensation paid under subparagraph (A) shall be for each day, not to exceed 10 days, for which the employee would be paid if the order described in such subparagraph were not in effect.

“(7) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—In any case where an employer with respect to whom an order was issued under paragraph (1) successfully proves, through a review under paragraph (3) or a subsequent hearing or appeals proceeding under paragraph (4), that the 2 or more individuals who were the subject of the order were not misclassified in violation of section 15(a)(6)—

“(i) the order issued under paragraph (1), and any order issued against the em-
ployer under subsection (b)(1) with respect to such 2 or more individuals, shall cease to be in effect;

“(ii) the employer shall not be liable for any applicable unpaid minimum wages,
unpaid overtime compensation, other damages, or civil penalties owed by the employer under section 16 with respect to the misclassification of such 2 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or the court shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the employer—

“(I) an amount equal to any demonstrable lost net profits resulting from the order, as demonstrated by clear and convincing evidence; and

“(II) reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the employer was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.— The Secretary of the Treasury shall, upon notification by the
Secretary of Labor, administrative law judge, or
court, as applicable, pay any amounts, fees, or
expenses awarded under subparagraph (A)(iii)
from amounts available in the general fund of
the Treasury.”.

(B) PENALTIES.—Section 16(e) of the
216(e)), as amended by paragraph (3)(C), is
further amended by adding at the end the fol-
lowing:

“(8) PENALTIES FOR VIOLATING RECLASSIFICATION
ORDERS.—

“(A) CIVIL PENALTIES.—Any person who vio-
lates a reclassification order issued by the Secretary
under section 17(b)(1) shall be subject to a civil pen-
alty of not less than $5,000 per day, with each day
constituting a separate offense.

“(B) ADDITIONAL DAMAGES.—In any case in
which an employer contests a reclassification order
issued under paragraph (1) of section 17(b) in a re-
view under paragraph (3) of such section, a hearing
under paragraph (4)(A) of such section, and a sub-
sequent judicial proceeding under paragraph (4)(B)
of such section, and the court in such proceeding
rules in favor of the Secretary—
“(i) the court shall determine if, during the period between the issuance of such order and the conclusion of the proceeding, the employer violated such order by not classifying the 1 or more individuals as employees during that period; and

“(ii) if the court determines the employer so violated the order during that period—

“(I) the court shall determine the amount of net profits derived by the employer from the individuals’ labor during that period; and

“(II) the court shall assess damages in the amount determined under subclause (I), which damages shall be awarded to such individuals by the court.”.

(C) CONFORMING AMENDMENTS.—Sections 12(b) and 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 212(b) and 216(b)) are amended by striking “section 17” each place it appears and inserting “section 17(a)”.

(8) PRIVATE ATTORNEYS GENERAL.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216), as amended by paragraph (7)(B), is further amended—
(A) in subsection (b), by inserting after the third sentence the following: “Any employer who violates a provision of this Act for which a civil penalty may be assessed by the Secretary under this Act may, in accordance with subsection (f), be liable to the employee or employees affected in the amount of the civil penalty.”;

(B) in subsection (e)—

(i) in paragraph (3), in the matter preceding subparagraph (A) of the second sentence, by inserting “, except as provided in subsection (f)(3)(A),” after “may”; and

(ii) in paragraph (5)—

(I) in the first sentence, by inserting “and as provided in subsection (f)(3)(B),” after “Except for civil penalties collected for violations of section 12”; and

(II) in the second sentence, by striking “Civil penalties” and inserting “Except as provided in subsection (f)(3)(B), civil penalties”; and

(C) by adding at the end the following:

“(f) PRIVATE RIGHT OF ACTION FOR PENALTIES.—
“(1) IN GENERAL.—Notwithstanding any other provision in this Act, an employee that is affected by a violation of a provision of this Act for which a civil penalty may be assessed by the Secretary under this Act may, subject to paragraph (2), bring a civil action in accordance with subsection (b) for the recovery of the amount of the penalty on behalf of the employee and any other employees similarly situated (subject to the requirements for being a party plaintiff under such subsection).

“(2) NOTICE.—

“(A) IN GENERAL.—Prior to filing the civil action described in paragraph (1), the employee filing such action shall file with the Secretary a notice of—

“(i) the complaint of the employee;

and

“(ii) the intention of the employee to file the action and recover the amount of the penalty and any other amount the employee is seeking under subsection (b) from the employer.

“(B) NOTIFICATION BY SECRETARY TO EMPLOYEE.—
“(i) In general.—The Secretary shall, not later than 60 days after receiving the notice under subparagraph (A), notify the employee of whether the Secretary has assessed, is assessing, or plans to assess the civil penalty in accordance with this Act.

“(ii) Termination of employee right.—The right of an employee to bring an action under subsection (b) to recover a civil penalty under this subsection shall terminate upon the filing of a notification by the Secretary under clause (i) that the Secretary has assessed, is assessing, or plans to assess the civil penalty in accordance with this Act.

“(3) Treatment of penalties recovered by employees.—In a case in which the Secretary notifies the employee that the Secretary has not assessed, is not assessing, and plans not to assess the civil penalty (or fails to meet the required deadline for notifying the employee under paragraph (2)(B)(i))—

“(A) the second sentence of paragraph (3), and paragraph (5), of subsection (e) shall not
apply with respect to the civil penalty sought by
the employee; and

“(B) if the penalty is successfully recov-
ered through a civil action by the employee, the
employee and any other similarly situated em-
ployee (as applicable) shall retain the amount of
the penalty in accordance with paragraph (4)
(as applicable).

“(4) MULTIPLE EMPLOYEES.—In a case in
which an employee brings a civil action in any Fed-
eral or State court of competent jurisdiction under
this subsection for the recovery of a civil penalty
under this Act on behalf of the employee and other
similarly situated employees—

“(A) the employee bringing the action shall
be entitled to—

“(i) 100 percent of the amount of the
penalty assessed for such employee; and

“(ii) 25 percent of the amount of the
penalty assessed for similarly situated em-
ployees involved in the action; and

“(B) the court shall determine how to di-
vide the remainder of the amount of the penalty
assessed for similarly situated employees in-
volved in the action equitably among such em-
ployees.

“(5) Arbitration.—

“(A) In General.—Notwithstanding any
other provision of Federal law and except as
provided in subparagraph (B), the right to
bring a civil action under this subsection may
not be waived, limited, or otherwise restricted
by any contract or other agreement between an
employee and an employer entered into before
the events giving rise to the civil action under
this subsection occurred, including any contract
or other agreement to resolve disputes through
arbitration.

“(B) Consent of Secretary.—No civil
action brought under this subsection may be
sent to or resolved through arbitration, regard-
less of whether all parties to the civil action
have consented to arbitration, without the ex-
plicit consent of the Secretary for sending that
specific action to arbitration.”.

(b) National Labor Relations Act.—

(1) Strengthening Employee Test.—Sec-
tion 2(3) of the National Labor Relations Act (29
U.S.C. 152(3)) is amended—
(A) by striking “The term” and inserting “(A) The term”;

(B) by striking “employment, but shall not” and inserting “employment. Such term shall not”; and

(C) by adding at the end the following:

“(B)(i) For purposes of this Act, and except as provided in the second sentence of subparagraph (A) and subparagraphs (C) and (E), an individual performing any labor for remuneration for a person shall be an employee employed by such person and not an independent contractor of the person, unless—

“(I) the individual is free from control and direction in connection with the performance of the labor, both under the contract for the performance of the labor and in fact;

“(II) the labor is performed outside the usual course of the business of the person; and

“(III) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the labor performed.

“(ii)(I) Clause (i) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding
when an individual is an employee of another person. Clause (i) shall be considered complete as written, and any judicial or agency interpretation of such clause shall be limited to the explicit requirements of such clause.

“(II) The requirements of clause (i) shall not be in any way affected by any agreement, written or otherwise, that purports to demonstrate an individual’s acknowledgment of or acquiescence to the absence of an employer-employee relationship with a particular employer.

“(C)(i) Notwithstanding any contrary provisions in this paragraph or paragraph (2), in any instance in which there is a non-compete agreement between a person and an individual who performs labor for such person, the presence of the non-compete agreement, without regard to the legality or enforceability of the non-compete agreement, shall be evidence of control for purposes of subparagraph (B)(i)(I), but shall not by itself establish an employment relationship between such person and the individual.

“(ii) In this subparagraph, the term ‘non-compete agreement’ means an agreement between a person and an individual who performs labor for such person that restricts the individual from performing, either during or after the individual performs labor for such person—

“(I) any labor for another person;

“(II) any labor for a specified period of time;
“(III) any labor in a specified geographical area; or

“(IV) any labor for another person that is similar to the labor such individual performed for the person that is a party to such agreement.”.

(2) PRESUMPTION OF EMPLOYEE STATUS.—

Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)), as amended by paragraph (1), is further amended by adding at the end the following:

“(D) For purposes of this Act, an individual performing any labor for remuneration for a person shall be presumed to be an employee of the person, unless the party seeking to assert otherwise establishes by clear and convincing evidence that the individual is not an employee of the person in accordance with this paragraph.”.

(3) MISCLASSIFICATION AS A STANDALONE VIOLATION.—

(A) IN GENERAL.—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(i) in paragraph (5), by striking the period at the end and inserting a semi-colon; and
(ii) by adding at the end the following:

“(6) to misclassify an employee of the employer, who is engaged in commerce or an industry affecting commerce, as not an employee of the employer for purposes of this Act;”.

(B) INCORPORATION TO FURTHER VIOLATIONS.—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)), as amended by subparagraph (A), is further amended by adding at the end the following:

“(7) for the purpose, in whole or in part, of facilitating, or evading detection of, a violation of this Act, including a violation of paragraph (6)—

“(A) to incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity; or

“(B) to pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity; or”.

(C) PENALTIES.—Section 12 of the National Labor Relations Act (29 U.S.C. 162) is amended to read as follows:
"SEC. 12. PENALTIES."

“(a) IN GENERAL.—Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

“(b) CIVIL PENALTIES FOR MISCLASSIFICATION OR INCORPORATION TO FURTHER VIOLATIONS.—

“(1) IN GENERAL.—Any person who violates paragraph (6) or (7) of section 8(a) shall be subject to a civil penalty of—

“(A) subject to subparagraphs (B) and (C), $10,000;

“(B) if the violation is repeated or willful, $30,000; or

“(C) if the violation is widespread, 1 percent of the net profits of the person for the year in which the person had the highest net profits out of all years in which the person was in such violation.

“(2) REPEATED, OR WILLFUL, AND WIDESPREAD VIOLATIONS.—If a violation of paragraph (6) or (7) of section 8(a) is repeated or willful, as described in paragraph (1)(B), and is widespread, as described in paragraph (1)(C), the higher penalty of
the penalties described in such paragraphs shall apply.

“(3) PAYMENT OF PENALTIES.—Any penalty assessed under paragraph (1) for a violation of paragraph (6) or (7) of section 8(a) shall be paid from an account of the person in such violation and not paid, or reimbursed, by any insurance plan that would indemnify the person from violations of such paragraph (6) or (7), respectively. If a person receives a payment from an insurance plan to indemnify the person from a violation of such paragraph, the person shall transfer the payment to the Board, in addition to the amount to be paid from the account of the person for the penalty.”.

(4) PROTECTION FROM RETALIATION FOR BEING AN EMPLOYEE.—Section 8(a)(4) of the National Labor Relations Act (29 U.S.C. 158(a)(4)) is amended—

(A) by striking “employee because he has filed” and inserting “employee because—

“(A) such employee has filed;”;

(B) by striking “Act;” and inserting “Act; or”; and

(C) by adding at the end the following:

“(B) such employee—
“(i) is required, pursuant to the enactment of the Worker Flexibility and Small Business Protection Act of 2020, to be classified as an employee of the employer for purposes of this Act and not an independent contractor; and

“(ii) was classified by the employer as an independent contractor prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020;”.

(5) Presumption of Retaliation.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following:

“(h) Presumption of Retaliation.—Any action taken against an employee within 90 days of the employee taking any action described in subsection (a)(4)(A), including taking any such action with respect to exercising the right of the employee pursuant to subsection (a)(6) to not be misclassified, shall establish a rebuttable presumption that the action is discrimination against the employee in violation of subsection (a)(4).”.

(6) Statutory Employers in Heavily Misclassified Industries.—
(A) DEFINITION OF EMPLOYER.—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)) is amended to read as follows:

“(2) EMPLOYER.—

“(A) IN GENERAL.—The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

“(B) STATUTORY EMPLOYERS IN CERTAIN INDUSTRIES.—The term ‘employer’ shall include any person (except a person described as excluded from the term under subparagraph (A)), with respect to an individual described in paragraph (3)(E) performing labor that is beneficial to the person, that is engaged in any of the following work:

“(i) Transportation, including any person that benefits from labor performed by individuals in the form of transportation in a motorized or unmotorized vehicle, by foot, or by any
other means, including transportation network
companies, technology platform companies, pas-
senger transportation or food transportation
companies, and cargo transportation companies.

“(ii) Network dispatching, including any
person that uses a digital network to connect
individuals or entities seeking services or labor
with individuals or entities seeking to provide
services or labor, but not including any person
who owns, controls or manages—

“(I) a completely neutral physical or
internet marketplace where the procure-
ment of goods or services takes place be-
tween individuals who are completely inde-
dendent from and free from any and all di-
rection or control by the person owning,
controlling, or managing the neutral mar-
ketplace, including such person having ab-
солutely no role in the setting of prices or
rates, in the assignment or referral of re-
quests for goods or services to individuals
who could potentially provide such goods
or services, and in the acceptance or rejec-
tion of any requests for goods or services;
and
“(II) a labor organization hiring hall.”.

(B) Definition of Employee.—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)), as amended by paragraph (2), is further amended by adding at the end the following:

“(E) Notwithstanding subparagraphs (A) (except the second sentence of such subparagraph) and (B) of this paragraph or paragraph (2) (other than subparagraph (B) of such paragraph), and except as provided in the second sentence of such subparagraph (A), the term ‘employee’, with respect to an employer described in paragraph (2)(B), shall include any individual performing labor that is beneficial to the employer, including—

“(i) with respect to transportation described in clause (i) of such paragraph, any individual who performs any portion of the labor included under such clause, including individuals who perform labor in the form of engaging in transportation beneficial to transportation network companies, technology platform companies, passenger transportation or food transportation companies, or cargo transportation companies; and
“(ii) with respect to network dispatching described in clause (ii) of such paragraph, any individual who performs any portion of the labor included under such clause, including providing the services or labor described in such clause to the individuals or entities seeking such services or labor.”.

(7) Misclassification Enforcement through Reclassification Orders and Stop Work Orders.—

(A) In general.—Section 10 of the National Labor Relations Act (29 U.S.C. 160) is amended by adding at the end the following:

“(n) Misclassification Enforcement Through Reclassification Orders.—

“(1) In general.—If a regional director, after an investigation under section 11, has reasonable cause to believe that an employer has misclassified 1 or more individuals who are employees of the employer as not employees in violation of section 8(a)(6) and that, regardless of whether a charge has been or will be filed, if charged a complaint would issue—

“(A) the regional director shall issue, not later than 24 hours after making such determination, an order against the employer requir-
ing the employer to immediately classify the 1
or more individuals as employees of the em-
ployer; and

“(B) the employer shall immediately com-
ply with the order issued under subparagraph
(A) or shall otherwise be in violation of section
8(a)(6).

“(2) ORDERS.—An order issued under para-
graph (1) shall—

“(A) be effective at the time at which the
order is served upon the employer, which may
be accomplished by the posting of a copy of the
order in a conspicuous location at the place of
business of the employer; and

“(B) remain in effect during any review
conducted under paragraph (3) with respect to
such order and during any hearing and appeal
regarding such order under paragraph (4).

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—An employer against
whom an order is issued under paragraph (1)
may request a review for reconsideration with
the General Counsel to contest the order.

“(B) REQUESTS.—A request under sub-
paragraph (A) shall be made in writing to the
General Counsel not more than 5 days after the issuance of the order.

“(C) REQUIREMENTS FOR REVIEW.—

“(i) IN GENERAL.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.

“(ii) DETERMINATION.—Not later than 72 hours after a review concludes under clause (i)(II), the General Counsel shall determine whether to affirm, modify, or revoke the contested order.

“(4) HEARINGS AND APPEALS.—Any person aggrieved by a determination of the General Counsel under paragraph (3)(C)(ii) may—

“(A) request a hearing on the merits before an Administrative Law Judge;

“(B) appeal the determination of an Administrative Law Judge under subparagraph (A) to the Board; and

“(C) appeal an order of the Board under subparagraph (B) to any court of appeals of the
United States in the circuit wherein the
misclassification in question was alleged to have
been engaged in or wherein such person resides
or transacts business, or to the United States
Court of Appeals for the District of Columbia.

“(5) TEMPORARY RELIEF OR RESTRAINING
ORDER.—The regional director issuing an order
under paragraph (1) may seek, in any court de-
scribed in paragraph (4)(C) against an employer
that violates an order issued under paragraph (1),
temporary relief or a restraining order to bring the
employer into compliance with such order issued
under paragraph (1). A court shall issue such tem-
porary relief or restraining order if the regional di-
rector has demonstrated it is just and proper.

“(6) SUCCESSFULLY DISPROVING OCCURRENCE
OF MISCLASSIFICATION.—

“(A) IN GENERAL.—If an employer with
respect to whom an order was issued under
paragraph (1) successfully proves through a re-
view under paragraph (3), or a subsequent
hearing or appeals proceeding under paragraph
(4), that the 1 or more individuals who were
the subject of the order were not misclassified
in violation of section 8(a)(6)—
“(i) the order issued under paragraph (1) shall cease to be in effect;

“(ii) the employer shall not be liable for any applicable back pay, damages, or civil penalties owed by the employer under this Act with respect to the misclassification of such 1 or more individuals; and

“(iii) the General Counsel, the Administrative Law Judge, the Board, or the court (as applicable) shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the employer reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the employer was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the General Counsel, the Administrative Law Judge, the Board, or the court, as applicable,
pay any fees or expenses awarded under subparagraph (A)(iii) from amounts in the general fund of the Treasury.

“(o) MISCLASSIFICATION ENFORCEMENT THROUGH STOP WORK ORDERS.—

“(1) In general.—In any case where a regional director has reasonable cause to believe that an employer has not complied with a reclassification order issued by a regional director under subsection (n)(1), with respect to 2 or more individuals who are misclassified, within 30 days of being served with the order, the regional director shall issue—

“(A) subject to subparagraph (B), an order against the employer requiring the cessation of all business operations of such employer at the location of the violation; or

“(B) if an order described in subparagraph (A) has been previously issued against the employer by any Federal, State, or local agency for misclassifying an employee as not an employee in violation of section 8(a)(6), or an equivalent State or local law as determined by the General Counsel, an order against the employer requiring the cessation of all business operations of such employer at all business loca-
tions of the employer, including locations other
than the location where the misclassification oc-
curred.

“(2) ORDERS.—

“(A) APPLICABILITY.—An order issued
under paragraph (1) shall—

“(i) be effective at the time at which
the order is served upon the employer,
which may be accomplished by the posting
of a copy of the order in a conspicuous lo-
cation at the place of business of the em-
ployer; and

“(ii) remain in effect—

“(I) during any review under
paragraph (3) with respect to such
order or hearing and appeal of such
order under paragraph (4); and

“(II) until the regional director
issues a release order under subpara-
graph (B).

“(B) RELEASE ORDERS.—

“(i) IN GENERAL.—An order issued
under paragraph (1) (that is not revoked
by the General Counsel or the Board or
held unlawful or set aside by a court) shall
remain in effect until the regional director issues another order releasing the order issued under paragraph (1) upon a finding by the regional director that the employer—

“(I) has corrected the violation of section 8(a)(6) with respect to the 2 or more individuals who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable back pay, damages, and civil penalties owed by the employer under this Act.

“(ii) **REINSTATEMENT.**—If, at any time after the regional director issues a release order under clause (i), the employer fails to comply with the terms of the payment schedule described in clause (i)(II), the regional director shall reinstate the order issued under paragraph (1) until the employer is in compliance with such terms.

“(3) **REVIEW FOR RECONSIDERATION.**—

“(A) **IN GENERAL.**—An employer against whom an order is issued under paragraph (1)
may request a review for reconsideration by the General Counsel to contest the order.

“(B) REQUESTS.—A request under subparagraph (A) shall be made in writing to the General Counsel not more than 5 days after the issuance of the order.

“(C) REQUIREMENTS FOR REVIEW.—

“(i) IN GENERAL.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.

“(ii) DETERMINATION.—Not later than 72 hours after a review concludes under clause (i)(II), the General Counsel shall determine whether to affirm, modify, or revoke the contested order.

“(4) HEARINGS AND APPEALS.—Any person aggrieved by a determination of the General Counsel under paragraph (3)(C)(ii) may—

“(A) request a hearing on the merits before an Administrative Law Judge;
“(B) appeal a determination by an Administrative Law Judge under subparagraph (A) to the Board; and

“(C) appeal an order of the Board under subparagraph (B) to any court of appeals of the United States in the circuit wherein the misclassification in question was alleged to have been engaged in or wherein such person resides or transacts business, or to the United States Court of Appeals for the District of Columbia.

“(5) Temporary relief or restraining orders.—The regional director may seek, in any court described in paragraph (4)(C) against an employer that violates an order issued under paragraph (1), temporary relief or a restraining order to bring the employer into compliance with such order. A court shall issue such temporary relief or restraining order if the regional director has demonstrated it is just and proper.

“(6) Compensation for lost work.—

“(A) In general.—Subject to subparagraph (B), an employer with respect to whom an order is issued under paragraph (1) shall pay each employee of the employer, who loses compensation due to the work of such employee
ceasing as a result of such order, the compensa-
tion that would be owed to such employee if the 
order was not issued.

“(B) LIMITATION.—Compensation paid 
under subparagraph (A) shall be for each day, 
not to exceed 10 days, for which the employee 
would be paid if the order described in such 
 subparagraph were not in effect.

“(7) SUCCESSFULLY DISPROVING OCCURRENCE 
of misclassification.—

“(A) IN GENERAL.—In any case where an 
employer with respect to whom an order was 
issued under paragraph (1) successfully proves, 
through a review under paragraph (3) or a sub-
sequent hearing or appeals proceeding under 
paragraph (4), that the 2 or more individuals 
who were the subject of the order were not 
imclassified in violation of section 8(a)(6)—

“(i) the order issued under paragraph 
(1), and any order issued against the em-
ployer under subsection (n)(1) with respect 
to such 2 or more individuals, shall cease 
to be in effect;

“(ii) the employer shall not be liable 
for any applicable back pay, damages, or
civil penalties owed by the employer under
this Act with respect to the
misclassification of such 2 or more individ-
uals; and

“(iii) the General Counsel, the Admin-
istrative Law Judge, the Board, or the
court, as applicable, shall award (and the
Secretary of the Treasury shall, in accord-
ance with subparagraph (B), pay) to the
employer—

“(I) the amount equal to any de-
monstrable lost net profits resulting
from the order, as demonstrated by
clear and convincing evidence; and

“(II) reasonable fees and ex-
penses of attorneys in the same man-
ner as such fees and expenses could
be awarded under section 2412 of title
28, United States Code, if the em-
ployer was a prevailing party and the
review, hearing, or appeals proceeding
was a civil action brought by or
against the United States.

“(B) SOURCE OF FUNDS.—The Secretary
of the Treasury shall, upon notification by the
General Counsel, the Administrative Law Judge, the Board, or the court, as applicable, pay any amounts, fees, or expenses awarded under subparagraph (A)(iii) from amounts available in the general fund of the Treasury.”.

(B) PENALTIES.—Section 12 of the National Labor Relations Act (29 U.S.C. 162), as amended by paragraph (3)(C), is further amended by adding at the end the following:

“(c) PENALTIES FOR VIOLATIONS OF RECLASSIFICATION ORDERS.—

“(1) CIVIL PENALTIES.—Any person who violates a reclassification order issued by a regional director under section 10(n)(1) shall be subject to a civil penalty of not less than $5,000 per day, with each day constituting a separate offense.

“(2) ADDITIONAL DAMAGES.—In any case where an employer contests a reclassification order issued by a regional director under paragraph (1) of section 10(n) in a review under paragraph (3) of such section, a hearing under paragraph (4)(A) of such section, an appeal to the Board under paragraph (4)(B) of such section, and a subsequent judicial proceeding under paragraph (4)(C) of such sec-
tion and a court rules in favor of the regional director—

“(A) the court shall determine if, during
the period between the issuance of the order
and the conclusion of the proceeding, the em-
ployer violated such order by not classifying the
1 or more individuals as employees during that
period; and

“(B) if the court determines the employer
so violated the order during that period—

“(i) the court shall determine the
amount of net profits derived by the em-
ployer from the individuals’ labor during
that period; and

“(ii) the court shall assess damages in
the amount determined under clause (i),
which damages shall be awarded to such
individuals by the court.”.

(c) Occupational Safety and Health Act of
1970.—

(1) Strengthening Employee Test.—Sec-
tion 3(6) of the Occupational Safety and Health Act
of 1970 (29 U.S.C. 652(6)) is amended—

(A) by striking “The term” and inserting

“(A) The term”; and
(B) by adding at the end the following:

“(B)(i) For purposes of this Act, including any
standard, rule, regulation, or order promulgated pur-
suant to this Act, except as provided in subpara-
graphs (C) and (E), an individual performing any
labor for remuneration for a person shall be an em-
ployee employed by such person and not an inde-
pendent contractor of the person, unless—

“(I) the individual is free from control and
direction in connection with the performance of
the labor, both under the contract for the per-
formance of the labor and in fact;

“(II) the labor is performed outside the
usual course of the business of the person; and

“(III) the individual is customarily en-
gaged in an independently established trade, oc-
cupation, profession, or business of the same
nature as that involved in the labor performed.

“(ii) Clause (i) is not a codification of the com-
mon law and shall not be interpreted to reflect, or
to be limited or restricted by, common law inter-
pretations regarding when an individual is an employee
of another person. Clause (i) shall be considered
complete as written, and any judicial or agency in-
terpretation of such clause shall be limited to the explicit requirements of such clause.

“(iii) The requirements of clause (i) shall not be in any way affected by any agreement, written or otherwise, that purports to demonstrate an individual’s acknowledgment of or acquiescence to the absence of an employer-employee relationship with a particular employer.

“(C)(i) Notwithstanding any contrary provisions in this paragraph or paragraph (5), in any instance in which there is a non-compete agreement between a person and an individual who performs labor for such person, the presence of the non-compete agreement, without regard to the legality or enforceability of the non-compete agreement, shall be evidence of control for purposes of subparagraph (B)(i)(I), but shall not by itself establish an employment relationship between such person and the individual.

“(ii) In this subparagraph, the term ‘non-compete agreement’ means an agreement between a person and an individual who performs labor for such person that restricts the individual from performing, either during or after the individual performs labor for such person—
“(I) any labor for another person;
“(II) any labor for a specified period of time;
“(III) any labor in a specified geographical area; or
“(IV) any labor for another person that is similar to the labor such individual performed for the person that is a party to such agreement.”.

(2) PResumption of Employee status.—
Section 3(6) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(6)), as amended by paragraph (1), is further amended by adding at the end the following:
“(D) For purposes of this Act, including any standard, rule, regulation, or order promulgated pursuant to this Act, an individual performing any labor for remuneration for a person shall be presumed to be an employee of the person, unless the party seeking to assert otherwise establishes by clear and convincing evidence that the individual is not an employee in accordance with this paragraph.”.

(3) Misclassification as a standalone vio-

—
(A) IN GENERAL.—Section 5(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654(a)) is amended—

(i) in paragraph (2), by striking the period at the end and inserting a semi-colon; and

(ii) by adding at the end the following:

“(3) shall not misclassify an employee of the employer as not an employee of the employer for purposes of this Act, including any standard, rule, regulation, or order promulgated pursuant to this Act; and”.

(B) INCORPORATION TO FURTHER VIOLATIONS.—Section 5(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654(a)), as amended by subparagraph (A), is further amended by adding at the end the following:

“(4) shall not, for the purpose, in whole or in part, of facilitating, or evading detection of, a violation of this Act, including a violation of paragraph (3) or any standard, rule, regulation, or order promulgated pursuant to this Act—

“(A) incorporate or form, or assist in the incorporation or formation of, a corporation,
partnership, limited liability corporation, or
other entity; or

“(B) pay or collect a fee for use of a for-
eign or domestic corporation, partnership, lim-
ited liability corporation, or other entity.”.

(C) PENALTIES.—Section 17 of the Occu-
pational Safety and Health Act of 1970 (29
U.S.C. 666) is amended—

(i) by redesignating subsections (j),
(k), and (l) as subsections (o), (p), and (q),
respectively; and

(ii) by inserting after subsection (i)
the following:

“(j) CIVIL PENALTIES FOR MISCLASSIFICATION OR
INCORPORATION TO FURTHER VIOLATIONS.—

“(1) IN GENERAL.—Any person who violates
paragraph (3) or (4) of section 5(a) shall be subject
to a civil penalty of—

“(A) subject to subparagraphs (B) and
(C), $10,000;

“(B) if the violation is repeated or willful,
$30,000; or

“(C) if the violation is widespread, 1 per-
cent of the net profits of the person for the year
in which the person had the highest net profits
out of all years in which the person was in such violation.

“(2) Repeated, or willful, and widespread violations.—If a violation of paragraph (3) or (4) of section 5(a) is repeated or willful, as described in paragraph (1)(B), and is widespread, as described in paragraph (1)(C), the higher penalty of the penalties described in such paragraphs shall apply.

“(3) Payment of penalties.—Any penalty assessed under paragraph (1) for a violation of paragraph (3) or (4) of section 5(a) shall be paid from an account of the person in such violation and not paid, or reimbursed, by any insurance plan that would indemnify the person from violations of such paragraph (3) or (4), respectively. If a person receives a payment from an insurance plan to indemnify the person from a violation of such paragraph, the person shall transfer the payment to the Secretary, in addition to the amount to be paid from the account of the person for the penalty.”.

(4) Protection from retaliation for being an employee.—Section 11(c)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(1)) is amended—
(A) by striking “because such employee” and inserting “because—

“(A) such employee;”;

(B) by striking “afforded by this Act.” and inserting “afforded by this Act; or”; and

(C) by adding at the end the following:

“(B) such employee—

“(i) is required, pursuant to the enactment of the Worker Flexibility and Small Business Protection Act of 2020, to be classified as an employee of the person for purposes of this Act, including any standard, rule, regulation, or order promulgated pursuant to this Act, and not an independent contractor; and

“(ii) was classified by the person as an independent contractor prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020.”.

(5) Rules regarding unlawful discharge or discrimination.—Section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)) is amended by adding at the end the following:
“(4) Presumption of Retaliation.—Any action taken by a person described in paragraph (1)(A) against an employee within 90 days of the employee taking any action described in such paragraph, including taking any such action with respect to exercising the right of the employee pursuant to section 5(a)(3) to not be misclassified, shall establish a rebuttable presumption that the action is discrimination against the employee in violation of paragraph (1).

“(5) Motivating Factor.—Unlawful discharge or other discrimination against an employee under paragraph (1) is established when the complaining party demonstrates that one of the actions or the classification described in such paragraph was a motivating factor for such discharge or other discrimination, even if such discharge or other discrimination was also motivated by other factors.”.

(6) Statutory Employers in Heavily Misclassified Industries.—

(A) Definition of Employer.—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)) is amended to read as follows:

“(5) Employer.—
“(A) IN GENERAL.—The term ‘employer’ means a person engaged in a business affecting commerce who has employees.

“(B) EXCLUSION.—The term ‘employer’ does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State.

“(C) STATUTORY EMPLOYERS IN CERTAIN INDUSTRIES.—The term ‘employer’ shall include any person (except as provided in subparagraph (B)), with respect to an individual described in paragraph (6)(E) performing labor that is beneficial to the person, that is engaged in any of the following work:

“(i) Transportation, including any person that benefits from labor performed by individuals in the form of transportation in a motorized or unmotorized vehicle, by foot, or by any other means, including transportation network companies, technology platform companies, passenger transportation or food transportation companies, and cargo transportation companies.

“(ii) Network dispatching, including any person that uses a digital network to connect individuals or entities seeking services or labor with individuals or entities seeking to provide
services or labor, but not including any person who owns, controls, or manages—

“(I) a completely neutral physical or internet marketplace where the procurement of goods or services takes place between individuals who are completely independent from and free from any and all direction or control by the person owning, controlling, or managing the neutral marketplace, including such person having absolutely no role in the setting of prices or rates, in the assignment or referral of requests for goods or services to individuals who could potentially provide such goods or services, and in the acceptance or rejection of any requests for goods or services; and

“(II) a labor organization hiring hall.”.

(B) DEFINITION OF EMPLOYEE.—Section 3(6) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(6)), as amended by paragraph (2), is further amended by adding at the end the following:
“(E) Notwithstanding subparagraphs (A) and (B) of this paragraph or paragraph (5) (other than subparagraph (C) of such paragraph), the term ‘employee’, with respect to an employer described in paragraph (5)(C), shall include any individual performing labor that is beneficial to the employer, including—

“(i) with respect to transportation described in clause (i) of such paragraph, any individual who performs any portion of the labor included under such clause, including individuals who perform labor in the form of engaging in transportation beneficial to transportation network companies, technology platform companies, passenger transportation or food transportation companies, or cargo transportation companies; and

“(ii) with respect to network dispatching described in clause (ii) of such paragraph, any individual who performs any portion of the labor included under such clause, including providing the services or labor described in such clause to the individuals or entities seeking such services or labor.”.

(7) MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS AND STOP WORK ORDERS.—
(A) IN GENERAL.—The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended by inserting after section 13 (29 U.S.C. 662) the following:

“SEC. 13A. MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS AND STOP WORK ORDERS.

“(a) RECLASSIFICATION ORDERS.—

“(1) IN GENERAL.—If the Secretary determines, after an investigation under section 8, that an employer has misclassified 1 or more individuals who are employees of the employer as not employees in violation of section 5(a)(3)—

“(A) the Secretary shall issue, not later than 24 hours after making such determination, an order against the employer requiring the employer to immediately classify the 1 or more individuals as employees of the employer; and

“(B) the employer shall immediately comply with the order issued under subparagraph (A) or shall otherwise be in violation of section 5(a)(3).

“(2) ORDERS.—An order issued under paragraph (1) shall—
“(A) be effective at the time at which the order is served upon the employer, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer; and

“(B) remain in effect during any review conducted under paragraph (3) with respect to such order and during any hearing and appeal of such order under paragraph (4).

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—An employer against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

“(B) REQUESTS.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) REQUIREMENTS FOR REVIEW.—

“(i) IN GENERAL.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and
“(II) conclude not later than 24 hours after such commencement.

“(ii) DETERMINATION.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) HEARINGS AND APPEALS.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit.

“(5) APPROPRIATE RELIEF.—The Secretary may seek appropriate relief, in a court described in paragraph (4)(B), to restrain any employer that violates an order issued under paragraph (1). A court shall issue such appropriate relief if the Secretary has demonstrated it is just and proper.
“(6) Successfully disproving occurrence of misclassification.—

“(A) In general.—If an employer with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3), or a hearing or appeal under paragraph (4), that the 1 or more individuals who were the subject of the order were not misclassified in violation of section 5(a)(3)—

“(i) the order issued under paragraph (1) shall cease to be in effect;

“(ii) the employer shall not be liable for any applicable back pay, damages, or civil penalties owed by the employer under this Act (including any standard, rule, regulation, or order promulgated pursuant to this Act) with respect to the misclassification of such 1 or more individuals; and

“(iii) the Secretary, administrative law judge, or the court, as applicable, shall award (and the Secretary of Labor shall, in accordance with subparagraph (B), pay) to the employer reasonable fees and ex-
expenses of attorneys in the same manner as
such fees and expenses could be awarded
under section 2412 of title 28, United
States Code, if the employer was a pre-
vailing party and the review, hearing, or
appeals proceeding was a civil action
brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary
of the Treasury shall, upon notification by the
Secretary of Labor, administrative law judge, or
a court, as applicable, pay any fees or expenses
awarded under subparagraph (A)(iii) from
amounts in the general fund of the Treasury.

“(b) STOP WORK ORDERS.—

“(1) IN GENERAL.—In any case where an em-
ployer does not comply with a reclassification order
issued by the Secretary under subsection (a)(1), with
respect to 2 or more individuals who are
misclassified, within 30 days of being served with
the order, the Secretary shall issue—

“(A) subject to subparagraph (B), an
order against the employer requiring the ces-
sation of all business operations of such em-
ployer at the location of the violation; or
“(B) if an order described in subparagraph (A) has been previously issued against the employer by any Federal, State, or local agency for misclassifying an employee as not an employee in violation of section 5(a)(3), or an equivalent State or local law as determined by the Secretary, an order against the employer requiring the cessation of all business operations of such employer at all business locations of the employer, including locations other than the location where the misclassification occurred.

“(2) ORDERS.—

“(A) APPLICABILITY.—An order issued under paragraph (1) shall—

“(i) be effective at the time at which the order is served upon the employer, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer; and

“(ii) remain in effect—

“(I) during any review conducted under paragraph (3) with respect to such order and any hearing and ap-
(4); and

“(II) until the Secretary issues a release order under subparagraph (B).

“(B) RELEASE ORDERS.—

“(i) IN GENERAL.—An order issued under paragraph (1) (that is not revoked by the Secretary or held unlawful or set aside by an administrative law judge or a court) shall remain in effect until the Secretary issues another order releasing the order issued under such paragraph upon a finding by the Secretary that the employer—

“(I) has corrected the violation of section 5(a)(3) with respect to the 2 or more individuals who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable back pay, damages, and civil penalties owed by the employer under this Act, including any standard, rule, regulation, or
order promulgated pursuant to this Act.

“(ii) Reinstatement.—If, at any time after the Secretary issues a release order under subparagraph (A), the employer fails to comply with the terms of the payment schedule described in clause (i)(II), the Secretary shall reinstate the order issued under paragraph (1) until the employer is in compliance with such terms.

“(3) Review for reconsideration.—

“(A) In general.—An employer against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

“(B) Requests.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) Requirements for review.—

“(i) In general.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and
“(II) conclude not later than 24 hours after such commencement.

“(ii) DETERMINATION.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) HEARINGS AND APPEALS.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit.

“(5) APPROPRIATE RELIEF.—The Secretary may seek appropriate relief, in a court described in paragraph (4)(B), to restrain any employer that violates an order issued under paragraph (1). A court shall issue such appropriate relief if the Secretary has demonstrated it is just and proper.
(6) Compensation for lost work.—

(A) In general.—Subject to subparagraph (B), an employer with respect to whom an order is issued under paragraph (1) shall pay each employee of the employer, who loses compensation due to the work of such employee ceasing as a result of such order, the compensation that would be owed to such employee if the order was not issued.

(B) Limitation.—Compensation paid under subparagraph (A) shall be for each day, not to exceed 10 days, for which the employee would be paid if the order described in such paragraph were not in effect.

(7) Successfully disproving occurrence of misclassification.—

(A) In general.—In any case where an employer with respect to whom an order was issued under paragraph (1) successfully proves, through a review under paragraph (3) or a subsequent hearing or appeals proceeding under paragraph (4), that the 2 or more individuals who were the subject of the order were not misclassified in violation of section 5(a)(3)—
“(i) the order issued under paragraph (1), and any order issued against the employer under subsection (a)(1) with respect to such 2 or more individuals, shall cease to be in effect;

“(ii) the employer shall not be liable for any applicable back pay, damages, or civil penalties owed by the employer under this Act (including any standard, rule, regulation, or order promulgated pursuant to this Act) with respect to the misclassification of such 2 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or the court, shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the employer—

“(I) an amount equal to any demonstrable lost net profits resulting from the order, as demonstrated by clear and convincing evidence; and

“(II) reasonable fees and expenses of attorneys in the same manner as such fees and expenses could
be awarded under section 2412 of title 28, United States Code, if the employer was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any amounts, fees, or expenses awarded under subparagraph (A)(iii) from amounts available in the general fund of the Treasury.”.

(B) PENALTIES.—Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666), as amended by paragraph (3)(C), is further amended by inserting after subsection (j) the following:

“(k) PENALTIES FOR VIOLATIONS OF RECLASSIFICATION ORDERS.—

“(1) CIVIL PENALTIES.—Any person who violates a reclassification order issued by the Secretary under section 13A(a)(1) shall be subject to a civil penalty of not less than $5,000 per day, with each day constituting a separate offense.
“(2) ADDITIONAL DAMAGES.—In any case where an employer contests a reclassification order issued by the Secretary under paragraph (1) of section 13A(a) in a review under paragraph (3) of such section, hearing under paragraph (4)(A) of such section, and subsequent judicial proceeding under paragraph (4)(B) of such section and a court rules in favor of the Secretary—

“(A) the court shall determine if, during the period between the issuance of the order and the conclusion of the proceeding, the employer violated such order by not classifying the 1 or more individuals as employees during that period; and

“(B) if the court determines the employer so violated the order during that period—

“(i) the court shall determine the amount of net profits derived by the employer from the individuals’ labor during that period; and

“(ii) the court shall assess damages in the amount determined under clause (i), which damages shall be awarded to such individuals by the court.”.
(d) **Federal Mine Safety and Health Act of 1977.**—

(1) **Strengthening Employee Test.**—The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.) is amended by inserting after section 4 (30 U.S.C. 803) the following:

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"SEC. 4A. EMPLOYEE TEST.

"(a) In General.—For purposes of this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, and except as provided in subsection (c), an individual performing any labor in a coal or other mine for remuneration for a person shall be an employee employed by such person and not an independent contractor of the person, unless—

"(1) the individual is free from control and direction in connection with the performance of the labor, both under the contract for the performance of the labor and in fact;

"(2) the labor is performed outside the usual course of the business of the person; and

"(3) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the labor performed.

"(b) Clarifications.—
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“(1) Relationship with common law.—Subsection (a) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding when an individual is an employee of another person. Subsection (a) shall be considered complete as written, and any judicial or agency interpretation of such subsection shall be limited to the explicit requirements of such subsection.

“(2) Impact of written or other agreements.—The requirements of subsection (a) shall not be in any way affected by any agreement, written or otherwise, that purports to demonstrate an individual’s acknowledgment of or acquiescence to the absence of an employer-employee relationship with a particular employer.

“(c) Non-compete agreements.—

“(1) In general.—Notwithstanding any contrary provisions in this Act, in any instance in which there is a non-compete agreement between a person and an individual who performs labor for such person, the presence of the non-compete agreement, without regard to the legality or enforceability of the non-compete agreement, shall be evidence of control for purposes of subsection (a)(1), but shall not by
itself establish an employment relationship between such person and the individual.

“(2) Definition of non-compete agreement.—In this subsection, the term ‘non-compete agreement’ means an agreement between a person and an individual who performs labor for such person that restricts the individual from performing, either during or after the individual performs labor for such person—

“(A) any labor for another person;

“(B) any labor for a specified period of time;

“(C) any labor in a specified geographical area; or

“(D) any labor for another person that is similar to the labor such individual performed for the person that is a party to such agreement.”.

(2) Presumption of employee status.—

Section 4A of the Federal Mine Safety and Health Act of 1977, as added by paragraph (1), is further amended by adding at the end the following:

“(d) Presumption of employee status.—For purposes of this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated
pursuant to this Act, an individual performing any labor in a coal or other mine for remuneration for a person shall be presumed to be an employee of the person, unless the party seeking to assert otherwise establishes by clear and convincing evidence that the individual is not an employee in accordance with this section.”.

(3) MISCLASSIFICATION AS A STANDALONE VIOLATION.—

(A) IN GENERAL.—Title I of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811 et seq.) is amended by adding at the end the following:

“SEC. 117. MISCLASSIFICATION; INCORPORATION TO FURTHER VIOLATIONS.

“(a) IN GENERAL.—No operator of a coal or other mine shall misclassify an employee of the operator performing labor in a coal or other mine for the operator as not an employee of the person for purposes of this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act.”.

(B) INCORPORATION TO FURTHER VIOLATIONS.—Section 117 of the Federal Mine Safety and Health Act of 1977, as added by subparagraph (A), is amended by adding at the end the following:
“(b) Incorporation to Further Violations.—

No person shall, for the purpose, in whole or in part, of facilitating, or evading detection of, a violation of this Act, including a violation of subsection (a) or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act—

“(1) incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity; or

“(2) pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity.”.

(C) Penalties.—Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820) is amended—

(i) by redesignating subsections (i) through (l) as subsections (l) through (o), respectively; and

(ii) by inserting after subsection (h) the following:

“(i) Penalties for Misclassification and Incorporation to Further Violations.—

“(1) In general.—Any operator of a coal or other mine who violates section 117 shall be subject to a civil penalty of—
“(A) subject to subparagraphs (B) and (C), $10,000;
“(B) if the violation is repeated or willful, $30,000; or
“(C) if the violation is widespread, 1 percent of the net profits of the operator for the year in which the operator had the highest net profits out of all years in which the operator was in such violation.
“(2) Repeated, or willful, and widespread violations.—If a violation of section 117 is repeated or willful, as described in paragraph (1)(B), and is widespread, as described in paragraph (1)(C), the higher penalty of the penalties described in such paragraphs shall apply.
“(3) Payment of penalties.—Any penalty assessed under paragraph (1) for a violation of section 117 shall be paid from an account of the operator in such violation and not paid, or reimbursed, by any insurance plan that would indemnify the operator from violations of such section. If an operator of a coal or other mine receives a payment from an insurance plan to indemnify the person from a violation of such section, the operator shall transfer the payment to the Secretary, in addition to the amount
to be paid from the account of the operator for the penalty.’’.

(4) Protection from Retaliation for Being an Employee.—Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 815(c)(1)) is amended—

(A) by striking ‘‘No person’’ and inserting

‘‘(A) No person’’; and

(B) by adding at the end the following:

‘‘(B) No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, or representative of miners, in any coal or other mine subject to this Act, because such miner—

‘‘(i) is required pursuant to the enactment of the Worker Flexibility and Small Business Protection Act of 2020 to be classified as an employee of the person for purposes of this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, and not as an independent contractor; and

‘‘(ii) was classified by the person as an independent contractor prior to the date of enactment of
the Worker Flexibility and Small Business Protection Act of 2020.”

(5) RULES REGARDING UNLAWFUL DISCHARGE OR DISCRIMINATION.—Section 105(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 815(c)) is amended by adding at the end the following:

“(4) PRESUMPTION OF RETALIATION.—Any action taken by a person described in paragraph (1)(A) against any miner, representative of miners, or applicant for employment in any coal or other mine subject to this Act, within 90 days of the miner, representative, or applicant taking any action described in such paragraph, including taking any such action with respect to exercising the right of an employee pursuant to section 117(a) to not be misclassified, shall establish a rebuttable presumption that the action is discrimination against the miner, representative, or applicant in violation of paragraph (1).

“(5) MOTIVATING FACTOR.—Unlawful discharge or discrimination under paragraph (1) against a miner, representative of miners, or applicant for employment in any coal or other mine subject to this Act is established when the complaining
party demonstrates that one of the actions or the
classification described in such paragraph was a mo-
tivating factor for such discharge or discrimination,
even if such discharge or discrimination was also
motivated by other factors.”.

(6) Misclassification Enforcement

through reclassification orders and stop
work orders.—

(A) In general.—The Federal Mine

Safety and Health Act of 1977 (30 U.S.C. 801
et seq.) is amended by inserting after section

108 (30 U.S.C. 818) the following:

“SEC. 108A. MISCLASSIFICATION ENFORCEMENT THROUGH

RECLASSIFICATION ORDERS AND STOP

WORK ORDERS.

“(a) Reclassification Orders.—

“(1) In general.—If the Secretary deter-
mines, after an investigation under section 103, that
an operator of a coal or other mine has misclassified
1 or more individuals who are employees performing
labor for the operator in a coal or other mine as not
employees in violation of section 117(a)—

“(A) the Secretary shall issue, not later
than 24 hours after making such determination,
an order against the operator requiring the op-
erator to immediately classify the 1 or more individuals as employees of the operator; and

“(B) the operator shall immediately comply with the order issued under subparagraph (A) or otherwise be in violation of section 117(a).

“(2) ORDERS.—An order issued under paragraph (1) shall—

“(A) be effective at the time at which the order is served upon the operator, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the operator; and

“(B) remain in effect during any review conducted under paragraph (3) and during any hearing and appeal of such order under paragraph (4).

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—An operator against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

“(B) REQUESTS.—A request under subparagraph (A) shall be made in writing to the
Secretary not more than 5 days after the issuance of the order.

“(C) REQUIREMENTS FOR REVIEW.—

“(i) IN GENERAL.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.

“(ii) DETERMINATION.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) HEARINGS AND APPEALS.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to the United States Court of Appeals for the District of Columbia Circuit or the circuit wherein such
person resides or has their principal place of business.

“(5) RELIEF.—The Secretary may seek, in a court (including circuit) described in paragraph (4)(B), relief through a civil action under section 108(a) against any operator of a coal or other mine that violates an order issued under paragraph (1). A court shall issue such relief if the Secretary has demonstrated it is just and proper.

“(6) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—If an operator with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3), or a hearing or appeal proceeding under paragraph (4), that the 1 or more individuals who were the subject of the order were not misclassified in violation of section 117(a)—

“(i) the order issued under paragraph (1) shall cease to be in effect;

“(ii) the operator shall not be liable for any applicable back pay, damages, or civil penalties owed by the operator under this Act (including any mandatory health
or safety standard, rule, order, or regulation promulgated pursuant to this Act) with respect to the misclassification of such 1 or more individuals; and “(iii) the Secretary of Labor, administrative law judge, or the court, as applicable, shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the operator reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the operator was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States. “(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any fees or expenses awarded under subparagraph (A)(iii) from amounts in the general fund of the Treasury. “(b) STOP WORK ORDERS.—
“(1) IN GENERAL.—In any case where an operator of a coal or other mine does not comply with a reclassification order issued by the Secretary under subsection (a)(1), with respect to 2 or more individuals who are misclassified in violation of section 117(a), within 30 days of being served the order, the Secretary shall issue—

“(A) subject to subparagraph (B), an order against the operator requiring the cessation of all business operations of such operator at the location of the violation; or

“(B) if an order described in subparagraph (A) has been previously issued against the operator by any Federal, State, or local agency for misclassifying an employee performing labor for the operator in a coal or other mine as not an employee in violation of section 117(a), or an equivalent State or local law as determined by the Secretary, an order against the operator requiring the cessation of all business operations of such operator at all business locations of the operator, including locations other than the location where the misclassification occurred.

“(2) ORDERS.—
“(A) APPLICABILITY.—An order issued under paragraph (1) shall—

“(i) be effective at the time at which the order is served upon the operator, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the operator; and

“(ii) remain in effect—

“(I) during any review conducted under paragraph (3) with respect to such order and during any hearing and appeal of such order under paragraph (4); and

“(II) until the Secretary issues a release order under subparagraph (B).

“(B) RELEASE ORDERS.—

“(i) IN GENERAL.—An order issued under paragraph (1) (that is not revoked by the Secretary or held unlawful or set aside by an administrative law judge or a court) shall remain in effect until the Secretary issues another order releasing the order issued under such paragraph upon a
finding by the Secretary that the operator—

“(I) has corrected the violation of section 117(a) with respect to the 2 or more individuals who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable back pay, damages, and civil penalties owed by the operator under this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act.

“(ii) REINSTATEMENT.—If, at any time after the Secretary issues a release order under paragraph (1), the operator fails to comply with the terms of the payment schedule described in clause (i)(II), the Secretary shall reinstate the order issued under paragraph (1) until the operator is in compliance with such terms.

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—An operator of a coal or other mine against whom an order is issued
under paragraph (1) may request a review by
the Secretary to contest the order.

“(B) REQUESTS.—A request under sub-
paragraph (A) shall be made in writing to the
Secretary not more than 5 days after the
issuance of the order.

“(C) REQUIREMENTS FOR REVIEW.—

“(i) IN GENERAL.—A review under
this paragraph shall—

“(I) commence not later than 24
hours after a request is made under
subparagraph (B); and

“(II) conclude not later than 24
hours after such commencement.

“(ii) DETERMINATION.—Not later
than 72 hours after a review concludes
under clause (i)(II), the Secretary shall de-
termine whether to affirm, modify, or re-
voke the contested order.

“(4) HEARING AND APPEALS.—Any person ag-
grieved by a determination of the Secretary under
paragraph (3)(C)(ii) may—

“(A) appeal such determination to an ad-
ministrative law judge; and
“(B) appeal an order of an administrative law judge under subparagraph (A) to the United States Court of Appeals for the District of Columbia Circuit or the circuit wherein such person resides or has their principal place of business.

“(5) RELIEF.—The Secretary may seek, in any court (including circuit) described in paragraph (4)(B), relief through a civil action under section 108(a) against any operator of a coal or other mine that violates an order issued under paragraph (1). A court shall issue such relief if the Secretary has demonstrated it is just and proper.

“(6) COMPENSATION FOR LOST WORK.—

“(A) IN GENERAL.—Subject to subparagraph (B), an operator of a coal or other mine with respect to whom an order is issued under paragraph (1) shall pay each miner who loses compensation due to the work of such miner ceasing as a result of such order, the compensation that would be owed to such miner if the order was not issued.

“(B) LIMITATION.—Compensation paid under subparagraph (A) shall be for each day, not to exceed 10 days, for which the miner
would be paid if the order described in such paragraph were not in effect.

“(7) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—In any case where an operator of a coal or other mine with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3), or a subsequent hearing or appeals proceeding under paragraph (4), that the 2 or more individuals who were the subject of the order were not misclassified in violation of section 117(a)—

“(i) the order issued under paragraph (1), and any order issued against the operator under subsection (a)(1) with respect to such 2 or more individuals, shall cease to be in effect;

“(ii) the operator shall not be liable for any applicable back pay, damages, or civil penalties owed by the operator under this Act (including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act)
with respect to the misclassification of such 2 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or court shall award (and the Secretary of the Treasury, shall in accordance with subparagraph (B), pay) to the operator—

“(I) an amount equal to any demonstrable lost net profits resulting from the order, as demonstrated by clear and convincing evidence; and

“(II) reasonable attorney fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the operator was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any amounts, fees, or expenses awarded under subparagraph (A)(iii)
from amounts available in the general fund of the Treasury.”.

(B) Penalties.—Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820), as amended by paragraph (3)(C), is further amended by inserting after subsection (i), as so redesignated, the following:

“(j) Penalties for Violating Reclassification Orders.—

“(1) Civil Penalties.—Any operator of a coal or other mine who violates a reclassification order issued by the Secretary under section 108A(a)(1) shall be subject to a civil penalty of not less than $5,000 per day, with each day constituting a separate offense.

“(2) Additional Damages.—In any case in which an operator of a coal or other mine contests a reclassification order issued under paragraph (1) of section 108A(a) in a review under paragraph (3) of such section, a hearing under paragraph (4)(A) of such section, and a subsequent judicial proceeding under paragraph (4)(B) of such section, and the court rules in favor of the Secretary—

“(A) the court shall determine if, during the period between the issuance of such order
and the conclusion of the proceeding, the operator violated such order by not classifying the 1 or more individuals as employees during that period; and

“(B) if the court determines the operator so violated the order during that period—

“(i) the court shall determine the amount of the net profits derived by the operator from the individuals’ labor during that period; and

“(ii) the court shall assess damages in the amount determined under clause (i), which damages shall be awarded to such individuals by the court.”.

(c) MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—

(1) STRENGTHENING EMPLOYEE TEST.—The Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.) is amended—

(A) by redesignating section 4 (29 U.S.C. 1803) as section 5; and

(B) by inserting after section 3 (29 U.S.C. 1802) the following:
“SEC. 4. EMPLOYEE TEST.

“(a) IN GENERAL.—For purposes of this Act, including any regulation under this Act and except as provided in subsection (c), an individual performing any service or activity described in section 3(3), including the handling, planting, drying, packing, packaging, processing, freezing, or grading described in such section, for remuneration for a person shall be an employee employed in agricultural employment by such person and not an independent contractor of the person, unless—

“(1) the individual is free from control and direction in connection with the performance of the service or activity, both under the contract for the performance of the service or activity and in fact;

“(2) the service or activity is performed outside the usual course of the business of the person; and

“(3) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service or activity performed.

“(b) CLARIFICATION.—

“(1) RELATIONSHIP WITH COMMON LAW.—Subsection (a) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding when an individual is an employee of an-
other person. Subsection (a) shall be considered complete as written, and any judicial or agency interpretation of such subsection shall be limited to the explicit requirements of such subsection.

“(2) IMPACT OF WRITTEN OR OTHER AGREEMENTS.—The requirements of subsection (a) shall not be in any way affected by any agreement, written or otherwise, that purports to demonstrate an individual’s acknowledgment of or acquiescence to the absence of an employer-employee relationship with a particular employer.

“(c) NON-COMPETE AGREEMENTS.—

“(1) IN GENERAL.—Notwithstanding any contrary provisions in this Act, in any instance in which there is a non-compete agreement between a person and an individual who performs labor for such person, the presence of the non-compete agreement, without regard to the legality or enforceability of the non-compete agreement, shall be evidence of control for purposes of subsection (a)(1), but shall not by itself establish an employment relationship between such person and the individual.

“(2) DEFINITION OF NON-COMPETE AGREEMENT.—In this subsection, the term ‘non-compete agreement’ means an agreement between a person
and an individual who performs labor for such person that restricts the individual from performing, either during or after the individual performs labor for such person—

“(A) any labor for another person;

“(B) any labor for a specified period of time;

“(C) any labor in a specified geographical area; or

“(D) any labor for another person that is similar to the labor such individual performed for the person that is a party to such agreement.”.

(2) PRESUMPTION OF EMPLOYEE STATUS.—

Section 4 of the Migrant and Seasonal Agricultural Worker Protection Act, as amended by paragraph (1), is further amended by adding at the end the following:

“(d) PRESUMPTION OF EMPLOYEE STATUS.—For purposes of this Act, including any regulation under this Act, an individual performing any service or activity described in section 3(3), including the handling, planting, drying, packing, packaging, processing, freezing, or grading described in such section, for remuneration for a person shall be presumed to be an employee employed in agri-
cultural employment of the person, unless the party seek-
ing to assert otherwise establishes by clear and convincing
evidence that the individual is not such an employee in
accordance with this section.”.

(3) MISCLASSIFICATION AS A STANDALONE VIOLATION.—

(A) In General.—Title IV of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841 et seq.) is amended by adding at the end the following:

“SEC. 405. MISCLASSIFICATION; INCORPORATION TO FURTHER VIOLATIONS.

“(a) In General.—No agricultural employer, agricultural association, or farm labor contractor shall misclassify a migrant agricultural worker or seasonal agricultural worker employed as an employee by the employer, association, or contractor as not a migrant agricultural worker or seasonal agricultural worker employed as an employee by the employer, association, or contractor for purposes of this Act, including any regulation under this Act.”.

(B) Incorporation to Further Violations.—Section 405 of the Migrant and Seasonal Agricultural Worker Protection Act, as
added by subparagraph (A), is amended by adding at the end the following:

“(b) INCORPORATION TO FURTHER VIOLATIONS.—

No person shall, for the purpose, in whole or in part, of facilitating, or evading detection of, a violation of this Act, including a violation of subsection (a) or any regulation under this Act—

“(1) incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity; or

“(2) pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity.”.

(C) PENALTIES.—Section 503(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853(a)) is amended—

(i) in paragraph (1), by striking “paragraph (2)” and inserting “paragraphs (2), (3), (4), and (5)”; and

(ii) by adding at the end the following:

“(3) PENALTIES FOR MISCLASSIFICATION AND INCORPORATION TO FURTHER VIOLATIONS.—
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“(A) IN GENERAL.—Any person who violates section 405 shall be subject to a civil penalty of—

“(i) subject to clauses (ii) and (iii), $10,000;

“(ii) if the violation is repeated or willful, $30,000; or

“(iii) if the violation is widespread, 1 percent of the net profits of the person for the year in which the person had the highest net profits out of all years in which the person was in such violation.

“(B) REPEATED, OR WILLFUL, AND WIDESPREAD VIOLATIONS.—If a violation of section 405 is repeated or willful, as described in subparagraph (A)(ii), and is widespread, as described in subparagraph (A)(iii), the higher penalty of the penalties described in such subparagraphs shall apply.

“(C) PAYMENT OF PENALTIES.—Any penalty assessed under subparagraph (A) for a violation of section 405 shall be paid from an account of the person in such violation and not paid, or reimbursed, by any insurance plan that would indemnify the person from violations of
such section. If a person receives a payment
from an insurance plan to indemnify the person
from a violation of such section, the person
shall transfer the payment to the Secretary, in
addition to the amount to be paid from the ac-
count of the person for the penalty.”.

(4) Protection from Retaliation for
Being an Employee.—Part A of title V of the Mi-
grant and Seasonal Agricultural Worker Protection
Act (29 U.S.C. 1851 et seq.) is amended—

(A) by redesignating sections 505 and 506
(29 U.S.C. 1855 and 1856) as sections 506 and
507, respectively; and

(B) in section 506(a) (29 U.S.C. 1855(a)),
as so redesignated—

(i) by striking “No person” and in-
serting “(1) No person”; and

(ii) by adding at the end the fol-
lowing:

“(2) No person shall intimidate, threaten, restrain,
occur, blacklist, discharge, or in any manner discriminate
against any migrant agricultural worker or seasonal agri-
cultural worker because such worker—

“(A) is required to be classified as employed in
agricultural employment by the person for purposes
of this Act, including any regulation under this Act,
and not as an independent contractor; and

“(B) was classified by the person as an inde-
pendent contractor prior to the date of enaetment of
the Worker Flexibility and Small Business Protec-
tion Act of 2020.”.

(5) RULES REGARDING UNLAWFUL DISCHARGE
OR DISCRIMINATION.—Section 506 of the Migrant
and Seasonal Agricultural Worker Protection Act
(29 U.S.C. 1855), as so redesignated, is amended by
adding at the end the following:

“(c) RULES REGARDING UNLAWFUL DISCHARGE OR
DISCRIMINATION.—

“(1) PRESUMPTION OF RETALIATION.—Any ac-
tion taken by a person described in subsection (a)(1)
against any migrant agricultural worker or seasonal
agricultural worker within 90 days of the worker
taking any action described in such subsection, in-
cluding taking any such action with respect to exer-
cising the right pursuant to section 405(a) to not be
misclassified, shall establish a rebuttable presump-
tion that the action is discrimination against the
worker in violation of subsection (a).

“(2) MOTIVATING FACTOR.—Unlawful discrimi-
nation, including by intimidation, threat, restraint,
coercion, blacklisting, or discharge as described in subsection (a), against a migrant agricultural worker or seasonal agricultural worker under such subsection, is established when the complaining party demonstrates that one or more actions or the classification described in such subsection was a motivating factor for such discrimination, even if such discrimination was also motivated by other factors.”.

(6) MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS AND STOP WORK ORDERS.—

(A) IN GENERAL.—Part A of title V of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1851 et seq.), as amended by paragraph (5), is further amended by adding at the end the following:

“SEC. 508. MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS AND STOP WORK ORDERS.

“(a) RECLASSIFICATION ORDERS.—

“(1) IN GENERAL.—If the Secretary determines, after an investigation under section 512, that an agricultural employer, agricultural association, or farm labor contractor has misclassified 1 or more individuals who are migrant agricultural workers or
seasonal agricultural workers employed by the employer, association, or contractor as not such workers employed by such employer, association, or contractor in violation of section 405(a)—

“(A) the Secretary shall issue, not later than 24 hours after making such determination, an order against the employer, association, or contractor requiring the employer, association, or contractor to immediately classify the 1 or more individuals as employed by the employer, association, or contractor; and

“(B) the employer, association, or contractor shall immediately comply with the order issued under subparagraph (A) or shall otherwise be in violation of section 405(a).

“(2) ORDERS.—An order issued under paragraph (1) shall—

“(A) be effective at the time at which the order is served upon the employer, association, or contractor, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer, association, or contractor; and

“(B) remain in effect during any review under paragraph (3) with respect to such order
and during any hearing and appeal of such order under paragraph (4).

“(3) Review for reconsideration.—

“(A) In general.—An agricultural employer, agricultural association, or farm labor contractor against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

“(B) Requests.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) Requirements for review.—

“(i) In general.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.

“(ii) Determination.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.
“(4) HEARINGS AND APPEALS.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to the United States district court for any district in which the person is located or the United States District Court for the District of Columbia.

“(5) TEMPORARY OR PERMANENT INJUNCTIVE RELIEF.—The Secretary may petition any court described in paragraph (4)(B) for temporary or permanent injunctive relief under section 502(a) against any agricultural employer, agricultural association, or farm labor contractor that violates an order issued under paragraph (1). A court shall issue such temporary or permanent injunctive relief if the Secretary has demonstrated it is just and proper.

“(6) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—If an agricultural employer, agricultural association, or farm labor contractor with respect to whom an order was issued under paragraph (1) successfully proves
through a review under paragraph (3), or a subsequent hearing or appeals proceeding under paragraph (4), that the 1 or more individuals who were the subject of the order were not misclassified in violation of section 405(a)—

“(i) the order issued under paragraph (1) shall cease to be in effect;

“(ii) the employer, association, or contractor shall not be liable for any applicable back pay, damages, or civil penalties owed by the employer, association, or contractor under this Act (including any regulation under this Act) with respect to the misclassification of such 1 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or court, as applicable, shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the employer, association, or contractor reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the employer, association,
or contractor was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any fees or expenses awarded under subparagraph (A)(iii) from amounts in the general fund of the Treasury.

“(b) STOP WORK ORDERS.—

“(1) IN GENERAL.—In any case where an agricultural employer, agricultural association, or farm labor contractor does not comply with a reclassification order issued by the Secretary under subsection (a)(1), with respect to 2 or more individuals who are misclassified in violation of section 405(a), the Secretary shall issue—

“(A) subject to subparagraph (B), an order against the employer, association, or contractor requiring the cessation of all business operations of such employer, association, or contractor at the location of the violation; or

“(B) if an order described in subparagraph (A) has been previously issued against the emp-
ployer, association, or contractor by any Federal, State, or local agency for misclassifying an individual who is a migrant agricultural worker or seasonal agricultural worker employed as an employee by the employer, association, or contractor as not such an employee in violation of section 405(a), or an equivalent State or local law as determined by the Secretary, an order against the employer, association, or contractor requiring the cessation of all business operations of such employer, association, or contractor at all business locations of the employer, association, or contractor, including locations other than the location where the misclassification occurred.

“(2) ORDERS.—

“(A) APPLICABILITY.—An order issued under paragraph (1) shall—

“(i) be effective at the time at which the order is served upon the employer, association, or contractor, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer, association, or contractor;
“(ii) remain in effect—

“(I) during any review conducted under paragraph (3) with respect to such order and during any hearing and appeal of such order under paragraph (4); and

“(II) until the Secretary issues a release order under subparagraph (B).

“(B) Release orders.—

“(i) In general.—An order issued under paragraph (1) (that is not revoked by the Secretary or held unlawful or set aside by an administrative law judge or a court) shall remain in effect until the Secretary issues another order releasing the order issued under such paragraph upon a finding by the Secretary that the employer, association, or contractor—

“(I) has corrected the violation of section 405(a) with respect to the 2 or more individuals who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable back pay,
damages, and civil penalties owed by
the employer, association, or con-
tractor under this Act, including any
regulation under this Act.

“(ii) Reinstatement.—If, at any
time after the Secretary issues a release
order under clause (i), the employer, asso-
ciation, or contractor fails to comply with
the terms of the payment schedule de-
dscribed in clause (i)(II), the Secretary shall
reinstate the order issued under paragraph
(1) until the employer, association, or con-
tractor is in compliance with such terms.

“(3) Review for reconsideration.—

“(A) In general.—An agricultural em-
ployer, agricultural association, or farm labor
contractor against whom an order is issued
under paragraph (1) may request a review by
the Secretary to contest the order.

“(B) Requests.—A request under sub-
paragraph (A) shall be made in writing to the
Secretary not more than 5 days after the
issuance of the order.

“(C) Requirements for review.—
“(i) IN GENERAL.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.

“(ii) DETERMINATION.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) APPEALS.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to the United States district court for any district in which the person is located or the United States District Court for the District of Columbia.

“(5) TEMPORARY OR PERMANENT INJUNCTIVE RELIEF.—The Secretary may petition a court described in paragraph (4)(B) for temporary or perma-
nent injunctive relief under section 502(a) against any agricultural employer, agricultural association, or farm labor contractor that violates an order issued under paragraph (1). A court shall issue such temporary or permanent injunctive relief if the Secretary has demonstrated it is just and proper.

“(6) COMPENSATION FOR LOST WORK.—

“(A) IN GENERAL.—Subject to subparagraph (B), an agricultural employer, agricultural association, or farm labor contractor with respect to whom an order is issued under paragraph (1) shall pay each migrant agricultural worker or seasonal agricultural worker employed by the employer, association, or contractor, who loses compensation due to the work of such worker ceasing as a result of such order, the compensation that would be owed to such worker if the order was not issued.

“(B) LIMITATION.—Compensation paid under subparagraph (A) shall be for each day, not to exceed 10 days, for which the migrant agricultural worker or seasonal agricultural worker would be paid if the order described in such subparagraph were not in effect.
“(7) Successfully disproving occurrence of misclassification.—

“(A) In general.—In any case where an agricultural employer, agricultural association, or farm labor contractor with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3) or a subsequent hearing or appeals proceeding under paragraph (4) that the 2 or more individuals who were the subject of the order were not misclassified in violation of section 405(a)—

“(i) the order issued under paragraph (1), and any order issued against the employer, association, or contractor under subsection (a)(1), with respect to such 2 or more individuals, shall cease to be in effect;

“(ii) the employer, association, or contractor shall not be liable for any applicable back pay, damages, or civil penalties owed by the employer, association, or contractor under this Act (including any regulation under this Act) with respect to the
misclassification of such 2 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or court shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the employer, association, or contractor—

“(I) an amount equal to any demonstrable lost net profits resulting from the order, as demonstrated by clear and convincing evidence; and

“(II) reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the employer, association, or contractor was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or
a court, as applicable, pay any amounts, fees, or expenses awarded under subparagraph (A)(iii) from amounts available in the general fund of the Treasury.”.

(B) PENALTIES.—Section 503(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853(a)), as amended by paragraph (3)(C), is further amended by adding at the end the following:

“(4) PENALTIES FOR VIOLATING RECLASSIFICATION ORDERS.—

“(A) CIVIL PENALTIES.—Any person who violates a reclassification order issued by the Secretary under section 508(a)(1) shall be subject to a civil penalty of not less than $5,000 per day, with each day constituting a separate offense.

“(B) ADDITIONAL DAMAGES.—In any case in which an agricultural employer, agricultural association, or farm labor contractor contests a reclassification order issued under paragraph (1) of section 508(a) in a review under paragraph (3) of such section, a hearing under paragraph (4)(A) of such section, and a subsequent judicial proceeding under paragraph
(4)(B) of such section, and the court in such proceeding rules in favor of the Secretary—

“(i) the court shall determine if, during the period between the issuance of such order and the conclusion of the proceeding, the employer, association, or contractor violated such order by not classifying the 1 or more individuals as employees employed by the employer, association, or contractor during that period; and

“(ii) if the court determines the employer, association, or contractor so violated the order during that period—

“(I) the court shall determine the amount of net profits derived by the employer, association, or contractor from the individuals' labor during that period; and

“(II) the court shall assess damages in the amount determined under subclause (I), which damages shall be awarded to such individuals by the court.”.

(f) Davis-Bacon Act,—
(1) **STRENGTHENING EMPLOYEE TEST.**—Subchapter IV of chapter 31 of title 40, United States Code, is amended by inserting after section 3141 the following:

“§ 3141a. Employee test

“(a) **IN GENERAL.**—For purposes of this subchapter and except as provided in subsection (c), a laborer or mechanic performing any labor under a contract or subcontract to which this subchapter applies shall be an employee employed by the contractor or subcontractor of the contract or subcontract and not an independent contractor, unless—

“(1) the laborer or mechanic is free from control and direction in connection with the performance of the labor, both under the contract or subcontract for the performance of the labor and in fact;

“(2) the labor is performed outside the usual course of the business of such contractor or subcontractor; and

“(3) the laborer or mechanic is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the labor performed.

“(b) **CLARIFICATIONS.**—
“(1) Relationship with common law.—Subsection (a) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding when an individual is an employee of another person. Subsection (a) shall be considered complete as written, and any judicial or agency interpretation of such subsection shall be limited to the explicit requirements of such subsection.

“(2) Impact of written or other agreements.—The requirements of subsection (a) shall not be in any way affected by any agreement, written or otherwise, that purports to demonstrate an individual’s acknowledgment of or acquiescence to the absence of an employer-employee relationship with a particular employer.

“(c) Non-compete agreements.—

“(1) In general.—Notwithstanding any contrary provisions in this subchapter, in any instance in which there is a non-compete agreement between a person and an individual who performs labor for such person, the presence of the non-compete agreement, without regard to the legality or enforceability of the non-compete agreement, shall be evidence of control for purposes of subsection (a)(1), but shall
not by itself establish an employment relationship between such person and the individual.

“(2) **DEFINITION OF NON-COMPETE AGREEMENT.**—In this subsection, the term ‘non-compete agreement’ means an agreement between a person and an individual who performs labor for such person that restricts the individual from performing, either during or after the individual performs labor for such person—

“(A) any labor for another person;

“(B) any labor for a specified period of time;

“(C) any labor in a specified geographical area; or

“(D) any labor for another person that is similar to the labor such individual performed for the person that is a party to such agreement.”.

(2) **PRESUMPTION OF EMPLOYEE STATUS.**—Section 3141a of title 40, United States Code, as added by paragraph (1), is amended by adding at the end the following:

“(d) **PRESUMPTION OF EMPLOYEE STATUS.**—For purposes of this subchapter, a laborer or mechanic performing any labor under a contract or subcontract to
which this subchapter applies shall be an employee em-
ployed by the contractor or subcontractor of the contract
or subcontract and not an independent contractor, unless
the party seeking to assert otherwise establishes by clear
and convincing evidence that the laborer or mechanic is
not such an employee in accordance with this section.”.

(3) **Misclassification as a standalone violation; incorporation to further violations.**—Subchapter IV of chapter 31 of title 40, United States Code, is amended by inserting after section 3144, the following:

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§ 3144a. Prohibitions against misclassification, incor-
poration to further violations, and re-
taliation; reclassification orders and stop
work orders

“(a) **Misclassification.**—No contractor or subcon-
tractor of a contract or subcontract to which this sub-
chapter applies shall misclassify a laborer or mechanic,
who is an employee of the contractor or subcontractor and
is performing any labor under the contract or subcontract,
as not an employee of the contractor or subcontractor for
purposes of this subchapter.

“(b) **Incorporation to Further Violations.**—
No contractor or subcontractor, for the purpose, in whole
or in part, of facilitating, or evading detection of, a viola-
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tion of this subchapter, including a violation of subsection (a), shall—

“(1) incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity; or

“(2) pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity.”.

(4) Protection from Retaliation for Being an Employee; Presumption of Retaliation.—Section 3144a of title 40, United States Code, added by paragraph (3), is amended by adding at the end the following:

“(c) Retaliation.—

“(1) In general.—A contractor or subcontractor of a contract or subcontract to which this subchapter applies shall not discharge or in any other manner discriminate against a laborer or mechanic who is employed by the contractor or subcontractor and is performing any labor under the contract or subcontract, because—

“(A) such laborer or mechanic has filed any complaint or instituted or caused to be instituted any proceeding under or related to this subchapter, or has testified or is about to tes-
tify in any such proceeding, or has served or is about to serve on an industry committee; or

“(B) such laborer or mechanic—

“(i) is required, pursuant to the enactment of the Worker Flexibility and Small Business Protection Act of 2020, to be classified as an employee of the contractor or subcontractor for purposes of this subchapter and not an independent contractor; and

“(ii) was classified by the contractor or subcontractor as an independent contractor prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020.

“(2) Rules regarding unlawful discharge or discrimination.—

“(A) Presumption of retaliation.— Any action taken by a contractor or subcontractor of a contract or subcontract to which this subchapter applies against a laborer or mechanic who is employed by the contractor or subcontractor, and is performing any labor under the contract or subcontract, within 90 days of the laborer or mechanic taking any ac-
tion described in paragraph (1)(A), including
taking any such action with respect to exer-
cising the right of the laborer or mechanic pur-
suant to subsection (a) to not be misclassified,
shall establish a rebuttable presumption that
the action is discrimination against the laborer
or mechanic in violation of paragraph (1).

“(B) MOTIVATING FACTOR.—Unlawful dis-
charge or other discrimination against a laborer
or mechanic under paragraph (1) is established
when the complaining party demonstrates that
one of the actions or the classification described
in such paragraph was a motivating factor for
such discharge or other discrimination, even if
such discharge or other discrimination was also
motivated by other factors.”.

(5) MISCLASSIFICATION ENFORCEMENT
THROUGH RECLASSIFICATION ORDERS AND STOP
WORK ORDERS.—Section 3144a of title 40, United
States Code, as amended by paragraph (4), is fur-
ther amended by adding at the end the following:

“(d) MISCLASSIFICATION ENFORCEMENT THROUGH
RECLASSIFICATION ORDERS.—

“(1) IN GENERAL.—If the Secretary determines
that a contractor or subcontractor of a contract or
subcontract to which this subchapter applies has
misclassified 1 or more laborers or mechanics in vio-
lation of subsection (a)—

“(A) the Secretary shall issue, not later
than 24 hours after making such determination,
an order against the contractor or subcon-
tractor requiring the contractor or subcon-
tractor to immediately classify the 1 or more la-
borers or mechanics as employees of the con-
tractor or subcontractor; and

“(B) the contractor or subcontractor shall
immediately comply with the order issued under
subparagraph (A) or shall otherwise be in viola-
tion of subsection (a)

“(2) ORDERS.—An order issued under para-
graph (1) shall—

“(A) be effective at the time at which the
order is served upon the contractor or subcon-
tractor, which may be accomplished by the post-
ing of a copy of the order in a conspicuous loca-
tion at the place of business of the contractor
or subcontractor; and

“(B) remain in effect during any review
conducted under paragraph (3) and during any
(3) Review for reconsideration.—

(A) In general.—A contractor or subcontractor against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

(B) Requests.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

(C) Requirements for review.—

(i) In general.—A hearing under this paragraph shall—

(I) commence not later than 24 hours after a request is made under subparagraph (B); and

(II) conclude not later than 24 hours after such commencement.

(ii) Determination.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.
“(4) Hearings and Appeals.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to a court of competent jurisdiction.

“(5) Temporary or Permanent Injunctive Relief.—The Secretary may petition any court of competent jurisdiction for temporary or permanent injunctive relief against any contractor or subcontractor that violates an order issued under paragraph (1). A court shall issue such temporary or permanent injunctive relief if the Secretary has demonstrated it is just and proper.

“(6) Successfully Disproving Occurrence of Misclassification.—

“(A) In General.—If a contractor or subcontractor with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3), or a subsequent hearing or appeals proceeding under paragraph (4), that the 1 or more laborers or mechanics who were the subject of the order
were not misclassified in violation of subsection (a)—

“(i) the order issued under paragraph (1) shall cease to be in effect;

“(ii) the contractor or subcontractor shall not be liable for any applicable back pay, damages, or civil penalties owed by the contractor or subcontractor under this subchapter with respect to the misclassification of such 2 or more laborers or mechanics;

“(iii) the Secretary of Labor, administrative law judge, or court, as applicable, shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the contractor or subcontractor reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the contractor or subcontractor was a prevailing party and the hearing or appeals proceeding was a civil action brought by or against the United States.
“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any fees or expenses awarded under subparagraph (A)(iii) from amounts in the general fund of the Treasury.

“(e) MISCLASSIFICATION ENFORCEMENT THROUGH STOP WORK ORDERS.—

“(1) IN GENERAL.—In any case where a contractor or subcontractor of a contract or subcontract to which this subchapter applies does not comply with a reclassification order issued by the Secretary under subsection (d)(1), with respect to 2 or more laborers or mechanics who are misclassified in violation of subsection (a), the Secretary shall issue—

“(A) subject to subparagraph (B), an order against the contractor or subcontractor requiring the cessation of all business operations of such contractor or subcontractor at the location of the violation; or

“(B) if an order described in subparagraph (A) has been previously issued against the contractor or subcontractor by any Federal, State, or local agency for misclassifying a laborer or mechanic employed by the contractor or subcon-
tractor and performing any labor under the contract or subcontract, as not an employee of the contractor or subcontractor in violation of subsection (a), or an equivalent State or local law as determined by the Secretary, an order against the contractor or subcontractor requiring the cessation of all business operations of such contractor or subcontractor at all business locations of the contractor or subcontractor, including locations other than the location where the misclassification occurred.

“(2) ORDERS.—

“(A) APPLICABILITY.—An order issued under paragraph (1) shall—

“(i) be effective at the time at which the order is served upon the contractor or subcontractor, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the contractor or subcontractor; and

“(ii) remain in effect—

“(I) during any review conducted under paragraph (3) with respect to such order and during any hearing
and appeal of such order under paragraph (4); and

“(II) until the Secretary issues a release order under subparagraph (B).

“(B) RELEASE ORDERS.—

“(i) IN GENERAL.—An order issued under paragraph (1) (that is not revoked by the Secretary or held unlawful or set aside by an administrative law judge or a court) shall remain in effect until the Secretary issues another order releasing the order issued under such paragraph upon a finding by the Secretary that the contractor or subcontractor—

“(I) has corrected the violation of subsection (a) with respect to the 2 or more laborers or mechanics who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable back pay, damages, and civil penalties owed by the contractor or subcontractor under this subchapter.
“(ii) REINSTATEMENT.—If, at any
time after the Secretary issues a release
order under clause (i), the contractor or
subcontractor fails to comply with the
terms of the payment schedule described in
clause (i)(II), the Secretary shall reinstate
the order issued under paragraph (1) until
the contractor or subcontractor is in com-
pliance with such terms.

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—A contractor or sub-
contractor against whom an order is issued
under paragraph (1) may request a review by
the Secretary to contest the order.

“(B) REQUESTS.—A request under sub-
paragraph (A) shall be made in writing to the
Secretary not more than 5 days after the
issuance of the order.

“(C) REQUIREMENTS FOR REVIEW.—

“(i) IN GENERAL.—A review under
this paragraph shall—

“(I) commence not later than 24
hours after a request is made under
subparagraph (B); and
“(II) conclude not later than 24
hours after such commencement.

“(D) Determination.—Not later than 72
hours after a review concludes under clause
(i)(II), the Secretary shall determine whether to
affirm, modify, or revoke the contested order.

“(4) Hearing and Appeals.—Any person ag-
grieved by a determination of the Secretary under
paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such de-
termination to an administrative law judge; and

“(B) appeal an order of an administrative
law judge under subparagraph (A) to a court of
competent jurisdiction.

“(5) Temporary or Permanent Injunctive
Relief.—The Secretary may petition any court of
competent jurisdiction for temporary or permanent
injunctive relief against any contractor or subcon-
tractor that violates an order issued under para-
graph (1). A court shall issue such temporary or
permanent injunctive relief if the Secretary has dem-
onstrated it is just and proper.

“(6) Compensation for Lost Work.—

“(A) In General.—Subject to subpara-
graph (B), a contractor or subcontractor with
respect to whom an order is issued under paragraph (1) shall pay each laborer or mechanic described in subparagraph (C) the compensation that would be owed to such laborer or mechanic if the order was not issued.

“(B) LIMITATION.—Compensation paid under subparagraph (A) shall be for each day, not to exceed 10 days, for which the laborer or mechanic would be paid if the order described in such subparagraph were not in effect.

“(C) APPLICABILITY.—Subparagraph (A) applies to a laborer or mechanic who—

“(i) is an employee of the contractor or subcontractor against whom an order is issued under paragraph (1);

“(ii) is performing labor under the contract or subcontract, respectively, that is subject to the order; and

“(iii) loses compensation due to the work of such laborer or mechanic ceasing as a result of such order.

“(7) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—In any case where a contractor or subcontractor with respect to
whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3) or subsequent hearing or appeals proceeding under paragraph (4) that the 2 or more laborers or mechanics who were the subject of the order were not misclassified in violation of subsection (a)—

“(i) the order issued under paragraph (1), and any order issued against the contractor or subcontractor under subsection (d)(1) with respect to such 2 or more laborers or mechanics, shall cease to be in effect;

“(ii) the contractor or subcontractor shall not be liable for any applicable back pay, damages, or civil penalties owed by the contractor or subcontractor under this subchapter with respect to the misclassification of such 2 or more laborers or mechanics; and

“(iii) the Secretary of Labor, administrative law judge, or the court shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the contractor or subcontractor—
“(I) an amount equal to any demonstrable lost net profits resulting from the order, as demonstrated by clear and convincing evidence; and

“(II) reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the contractor or subcontractor was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any amounts, fees, or expenses awarded under subparagraph (A)(iii) from amounts available in the general fund of the Treasury.”.

(6) PENALTIES FOR VIOLATIONS OF NEW REQUIREMENTS.—Subchapter IV of chapter 31 of title 40, United States Code, is amended by inserting
after section 3144a, as added by paragraph (3), the
following:

§ 3144c. Penalties; expanded liability

“(a) Misclassification; Incorporation to Furt-
ther Violations; Retaliation.—

“(1) In general.—A contractor or subcon-
tractor that violates subsection (a), (b), or (e) of sec-
tion 3144a of this title shall be subject to a civil
penalty of—

“(A) subject to subparagraphs (B) and

(C), $10,000;

“(B) if the violation is repeated or willful,

$30,000; or

“(C) if the violation is widespread, 1 per-
cent of the net profits of the contractor or sub-
contractor for the year in which the contractor
or subcontractor had the highest net profits out
of all years in which the contractor or subcon-
tractor was in such violation.

“(2) Repeated, or willful, and wide-
spread violations.—If the violation of subsection
(a), (b), or (e) of section 3144a of this title is re-
peated or willful, as described in paragraph (1)(B),
and is widespread, as described in paragraph (1)(C),
the higher amount of the amounts described in such paragraphs shall apply.

“(3) PAYMENT OF DAMAGES.—Any penalty assessed under paragraph (1) for a violation of subsection (a), (b), or (c) of section 3144a of this title shall be paid from an account of the contractor or subcontractor in such violation for the violation and not paid, or reimbursed, by any insurance plan that would indemnify the contractor or subcontractor from violations of such subsection. If a contractor or subcontractor receives a payment from an insurance plan to indemnify the contractor or subcontractor from a violation of such subsection, the contractor or subcontractor shall transfer the payment to the Secretary, in addition to the amount to be paid from the account of the contractor or subcontractor for the penalty.

“(b) MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS.—

“(1) CIVIL PENALTIES.—A contractor or subcontractor that violates a reclassification order issued under section 3144a(d)(1) shall be subject to a civil penalty of not less than $5,000 per day, with each day constituting a separate offense.
“(2) ADDITIONAL DAMAGES.—In any case in which a contractor or subcontractor contests a reclassification order issued under paragraph (1) of section 3144a(d) in a review under paragraph (3) of such section, a hearing under paragraph (4)(A) of such section, and a subsequent judicial proceeding under paragraph (4)(B) of such section, and the court in such proceeding rules in favor of the Secretary—

“(A) the court shall determine if, during the period between the issuance of such order and the conclusion of the proceeding, the contractor or subcontractor violated such order by not classifying the 1 or more laborer or mechanic as employees during that period; and

“(B) if the court determines the contractor or subcontractor so violated the order during that period—

“(i) the court shall determine the amount of net profits derived by the contractor or subcontractor from the labor of the laborers or mechanics during that period; and

“(ii) the court shall assess damages in the amount determined under clause (i),
which damages shall be awarded to such individuals by the court.”.

(7) CONFORMING AMENDMENTS.—The table of sections for subchapter IV of chapter 31 of title 40, United States Code, is amended—

(A) by inserting after the item relating to section 3141 the following:

"Sec. 3141a. Employee test.”; and

(B) by inserting after the item relating to section 3144 the following:

"Sec. 3144a. Prohibitions against misclassification, incorporation to further violations, and retaliation; reclassification and stop work orders. 
Sec. 3144c. Penalties; expanded liability.”.

(g) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

(1) STRENGTHENING EMPLOYEE TEST.—Chapter 65 of title 41, United States Code, is amended by inserting after section 6501 of such title the following:

“§ 6501a. Employee test

“(a) IN GENERAL.—For purposes of this chapter and except as provided in subsection (c), an individual performing any labor, with respect to the manufacture or furnishing of materials, supplies, articles, or equipment, under a contract to which this chapter applies, shall be an employee employed by the contractor of such contract and not an independent contractor, unless—
“(1) the individual is free from control and direction in connection with the performance of the labor, both under the contract for the performance of the labor and in fact;

“(2) the labor is performed outside the usual course of the business of such contractor; and

“(3) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the labor performed.

“(b) CLARIFICATIONS.—

“(1) RELATIONSHIP WITH COMMON LAW.—Subsection (a) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding when an individual is an employee of another person. Subsection (a) shall be considered complete as written, and any judicial or agency interpretation of such subsection shall be limited to the explicit requirements of such subsection.

“(2) IMPACT OF WRITTEN OR OTHER AGREEMENTS.—The requirements of subsection (a) shall not be in any way affected by any agreement, written or otherwise, that purports to demonstrate an individual’s acknowledgment of or acquiescence to
the absence of an employer-employee relationship
with a particular employer.

“(c) NON-COMPETE AGREEMENTS.—

“(1) IN GENERAL.—Notwithstanding any con-
trary provisions in this chapter, in any instance in
which there is a non-compete agreement between a
person and an individual who performs labor for
such person, the presence of the non-compete agree-
ment, without regard to the legality or enforceability
of the non-compete agreement, shall be evidence of
control for purposes of subsection (a)(1), but shall
not by itself establish an employment relationship
between such person and the individual.

“(2) DEFINITION OF NON-COMPETE Agree-
ment.—In this subsection, the term ‘non-compete
agreement’ means an agreement between a person
and an individual who performs labor for such per-
son that restricts the individual from performing, ei-
ther during or after the individual performs labor
for such person—

“(A) any labor for another person;

“(B) any labor for a specified period of
time;

“(C) any labor in a specified geographical
area; or
“(D) any labor for another person that is similar to the labor such individual performed for the person that is a party to such agreement.”.

(2) PRESUMPTION OF EMPLOYEE STATUS.—
Section 6501a of title 41, United States Code, as added by paragraph (1), is amended by adding at the end the following:

“(d) PRESUMPTION OF EMPLOYEE STATUS.—For purposes of this chapter, an individual performing any labor, with respect to the manufacture or furnishing of materials, supplies, articles, or equipment, under a contract to which this chapter applies, shall be an employee employed by the contractor of such contract unless the party seeking to assert otherwise establishes by clear and convincing evidence that the individual is not such an employee in accordance with this section.”.

(3) MISCLASSIFICATION AS A STANDALONE VIOLATION.—

(A) IN GENERAL.—Section 6502 of title 41, United States Code, is amended by adding at the end the following:

“(5) MISCLASSIFICATION.—The contractor shall not misclassify an individual performing any labor, with respect to the manufacture or furnishing of ma-
terials, supplies, articles, or equipment under the contract, who is an employee of the contractor as not such an employee for purposes of this chapter.”.

(B) INCORPORATION TO FURTHER VIOLATIONS.—Section 6502 of title 41, United States Code, as amended by subparagraph (A), is further amended by adding at the end the following:

“(6) INCORPORATION TO FURTHER VIOLATIONS.—The contractor shall not, for the purpose, in whole or in part, of facilitating, or evading detection of, a violation of this chapter, including a violation of paragraph (5)—

“(A) incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity; or

“(B) pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity.”.

(4) PROTECTION FROM RETALIATION FOR BEING AN EMPLOYEE; RULES REGARDING UNLAWFUL DISCHARGE OR DISCRIMINATION.—Section 6502 of title 41, United States Code, as amended by para-
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graph (4), is further amended by adding at the end the following:

“(7) Retaliation.—

“(A) In general.—The contractor shall not discharge or in any other manner discriminate against an individual employed by the contractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract, because—

“(i) such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee; or

“(ii) such individual—

“(I) is required, pursuant to the enactment of the Worker Flexibility and Small Business Protection Act of 2020, to be classified as an employee of the contractor for purposes of this chapter and not an independent contractor; and
“(II) was classified by the contractor as an independent contractor prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020.

“(B) Rules regarding unlawful discharge or discrimination.—

“(i) Presumption of retaliation.—Any action taken against an individual, employed by the contractor or subcontractor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract, within 90 days of the individual taking any action described in subparagraph (A)(i), including taking any such action with respect to exercising the right of the individual pursuant to paragraph (5) to not be misclassified, shall establish a rebuttable presumption that the action is discrimination against the individual in violation of subparagraph (A).

“(ii) Motivating factor.—Unlawful discharge or other discrimination against an employee under subparagraph (A) is es-
established when the complaining party demonstrates that one of the actions or the classification described in such subparagraph was a motivating factor for such discharge or other discrimination, even if such discharge or other discrimination was also motivated by other factors.”.

(5) **Misclassification Enforcement Through Reclassification Orders and Stop Work Orders.**—Chapter 65 of title 41, United States Code, is amended by inserting after section 6506 the following:

“§ 6506a. Misclassification enforcement through reclassification orders and stop work orders

“(a) **Reclassification Orders.**—

“(1) **In General.**—If the Secretary determines, after an investigation under section 6506(e), that a contractor of a contract to which this chapter applies has misclassified 1 or more individuals who are employees of the contractor performing any labor, with respect to the manufacture or furnishing of materials, supplies, articles, or equipment, under the contract, as not employees of the contractor, in violation of section 6502(5)—
“(A) the Secretary shall issue, not later than 24 hours after making such determination, an order against the contractor requiring the contractor to immediately classify the 1 or more individuals as employees of the contractor; and

“(B) the contractor shall immediately comply with the order issued under subparagraph (A) or shall otherwise be in violation of section 6502(5).

“(2) ORDERS.—An order issued under paragraph (1) shall—

“(A) be effective at the time at which the order is served upon the contractor, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the contractor; and

“(B) remain in effect during any review conducted under paragraph (3) and during any hearing and appeal of such order under paragraph (4).

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—A contractor against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.
“(B) Requests.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) Requirements for review.—

“(i) In general.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement

“(ii) Determination.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) Hearings and appeals.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to a court of jurisdiction as described in section 6507(d).
“(5) TEMPORARY OR PERMANENT INJUNCTIVE RELIEF.—The Secretary may petition a court of jurisdiction as described in section 6507(d) for temporary or permanent injunctive relief against any contractor that violates an order issued under paragraph (1). A court shall issue such temporary or permanent injunctive relief if the Secretary has demonstrated it is just and proper.

“(6) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—If contractor with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3), or a subsequent hearing or appeals proceeding under paragraph (4), that the 1 or more individuals who were the subject of the order were not misclassified in violation of section 6502(5)—

“(i) the order issued under paragraph (1) shall cease to be in effect;

“(ii) the contractor shall not be liable for any applicable back pay, damages, or civil penalties owed by the contractor under this chapter with respect to the
misclassification of such 1 or more individuals;

“(iii) the Secretary of Labor, administrative law judge, or the court, as applicable, shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the contractor reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the contractor was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any fees or expenses awarded under subparagraph (A)(iii) from amounts in the general fund of the Treasury.

“(b) STOP WORK ORDERS.—

“(1) IN GENERAL.—In any case where a contractor does not comply with a reclassification order issued by the Secretary under subsection (a)(1), with
respect to 2 or more individuals who are
misclassified in violation of section 6502(5), within
30 days of being served with the order, the Sec-
retary shall issue—

“(A) subject to subparagraph (B), an
order against the contractor requiring the ces-
sation of all business operations of such con-
tractor at the location of the violation; or

“(B) if an order described in subparagraph
(A) has been previously issued against the con-
tractor by any Federal, State, or local agency
for misclassifying an employee performing any
labor, with respect to the manufacture or fur-
nishing of materials, supplies, articles, or equip-
ment under the contract, as not such an em-
ployee in violation of section 6502(5), or an
equivalent State or local law as determined by
the Secretary, an order against the contractor
requiring the cessation of all business oper-
ations of such contractor at all business loca-
tions of the contractor, including locations other
than the location where the misclassification oc-
curred.

“(2) ORDERS.—
“(A) APPLICABILITY.—An order issued under paragraph (1) shall—

“(i) be effective at the time at which the order is served upon the contractor, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the contractor; and

“(ii) remain in effect—

“(I) during any review conducted under paragraph (3) with respect to such order and during any hearing and appeal of such order under paragraph (4); and

“(II) until the Secretary issues a release order under subparagraph (B).

“(B) RELEASE ORDERS.—

“(i) IN GENERAL.—An order issued under paragraph (1) (that is not revoked by the Secretary or held unlawful or set aside by an administrative law judge or a court) shall remain in effect until the Secretary issues another order releasing the order issued under such subsection upon a
finding by the Secretary that the contractor—

“(I) has corrected the violation of section 6502(5) with respect to the 2 or more individuals who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable back pay, damages, and civil penalties owed by the contractor under this chapter.

“(ii) REINSTATEMENT.—If, at any time after the Secretary issues a release order under clause (i), the contractor fails to comply with the terms of the payment schedule described in clause (i)(II), the Secretary shall reinstate the order issued under paragraph (1) until the contractor is in compliance with such terms.

“(3) REVIEW FOR RECONSIDERATION.—

“(A) IN GENERAL.—A contractor against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.
“(B) Requests.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) Requirements for Review.—

“(i) In general.—A review under this paragraph shall—

“(I) commence not later than 24 hours after a request is made under subparagraph (B); and

“(II) conclude not later than 24 hours after such commencement.

“(ii) Determination.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

“(4) Hearings and Appeals.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to a court of jurisdiction as described in section 6507(d).
'"(5) Temporary or permanent injunctive relief.—The Secretary may petition a court of jurisdiction as described in section 6507(d) for temporary or permanent injunctive relief against any contractor that violates an order issued under paragraph (1). A court shall issue such temporary or permanent injunctive relief if the Secretary has demonstrated it is just and proper.

"(6) Compensation for lost work.—

"(A) In general.—Subject to subparagraph (B), a contractor with respect to whom an order is issued under paragraph (1) shall pay each employee described in subparagraph (C) the compensation that would be owed to such employee if the order described in such paragraph were not in effect.

"(B) limitation.—Compensation paid under subparagraph (A) shall be for each day, not to exceed 10 days, for which the employee would be paid if the order described in such paragraph were not in effect.

"(C) applicable employees.—An employee described in this subparagraph is an individual who—
“(i) is an employee of a contractor against whom an order is issued under paragraph (1);

“(ii) performs labor with respect to the manufacture or furnishing of materials, supplies, articles, or equipment under the contract that is subject to the order; and

“(iii) loses compensation due to the work of such employee ceasing as a result of such order.

“(7) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—In any case where a contractor with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3) or a subsequent hearing or appeals proceeding under paragraph (4) that the 2 or more individuals who were the subject of the order were not misclassified in violation of section 6502(5)—

“(i) the order issued under paragraph (1), and any order issued against the contractor under subsection (a)(1) with re-
spect to such 2 or more individuals, shall cease to be in effect;

“(ii) the contractor shall not be liable for any applicable back pay, damages, or civil penalties owed by the contractor under this chapter with respect to the misclassification of such 2 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or court, as applicable, shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the contractor—

“(I) an amount equal to any demonstrable lost net profits resulting from the order, as demonstrated by clear and convincing evidence; and

“(II) reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the contractor was a prevailing party and the review, hearing, or appeals proceeding
was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any amounts, fees, or expenses awarded under subparagraph (A)(iii) from amounts available in the general fund of the Treasury.”.

(6) PENALTIES FOR VIOLATIONS OF NEW REQUIREMENTS.—Chapter 65 of title 41, United States Code, as amended by paragraph (5), is further amended by inserting after section 6506a the following:

§ 6506b. Penalties; expanded liability

“(a) MISCLASSIFICATION AND INCORPORATION TO FURTHER VIOLATIONS.—

“(1) IN GENERAL.—A contractor that violates paragraph (5), (6), or (7) of section 6502 of this title shall be subject to a civil penalty of—

“(A) subject to subparagraphs (B) and (C), $10,000;

“(B) if the violation is repeated or willful, $30,000; or
“(C) if the violation is widespread, 1 percent of the net profits of the contractor for the year in which the contractor had the highest net profits out of all years in which the contractor was in such violation.

“(2) Repeated, or willful, and widespread violations.—If the violation of paragraph (5), (6), or (7) of section 6502 of this title is repeated or willful, as described in paragraph (1)(B), and is widespread, as described in paragraph (1)(C), the higher amount of the amounts described in such paragraphs shall apply.

“(3) Payment of damages.—Any penalty assessed under paragraph (1) for a violation of paragraph (5), (6), or (7) of section 6502 of this title shall be paid from an account of the contractor in such violation and not paid, or reimbursed, by any insurance plan that would indemnify the contractor from violations of such paragraph (5), (6), or (7). If a contractor receives a payment from an insurance plan to indemnify the contractor from a violation of such paragraph (5), (6), or (7), the contractor shall transfer the payment to the Secretary, in addition to the amount to be paid from the account of the contractor for the penalty.
“(b) **Reclassification Orders.**—

“(1) **Civil Penalties.**—A contractor that violates a reclassification order issued under section 6506a(a)(1) shall be subject to a civil penalty in an amount not less than $5,000 per day, with each day constituting a separate offense.

“(2) **Additional Damages.**—In any case in which a contractor contests a reclassification order issued under paragraph (1) of section 6506a(a) in a review under paragraph (3) of such section, a hearing under paragraph (4)(A) of such section, and a subsequent judicial proceeding under paragraph (4)(B) of such section, and the court in such proceeding rules in favor of the Secretary—

“(A) the court shall determine if, during the period between the issuance of such order and the conclusion of the proceeding, the contractor violated such order by not classifying the 1 or more individuals as employees during that period; and

“(B) if the court determines the contractor so violated the order during that period—

“(i) the court shall determine the amount of net profits derived by the con-
tractor from the individuals’ labor during that period; and

“(ii) the court shall assess damages in the amount determined under clause (i), which damages shall be awarded to such individuals by the court.”.

(7) CONFORMING AMENDMENTS.—The table of sections for chapter 65 of title 41, United States Code, is amended—

(A) by inserting after the item relating to section 6501 the following:

"Sec. 6501a. Employee test."; and

(B) by inserting after the item relating to section 6506 the following:

"Sec. 6506a. Misclassification enforcement through reclassification orders and stop work orders.
"Sec. 6506b. Penalties; expanded liability.").

(h) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

(1) MISCLASSIFICATION AS A STANDALONE VIOLATION.—

(A) IN GENERAL.—Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615) is amended by adding at the end the following:

"(c) MISCLASSIFICATION.—It shall be unlawful for any employer to misclassify an eligible employee of the em-
ployer as not an employee of the employer for purposes
of this title.”.

(B) INCORPORATION TO FURTHER VIOLATIONS.—Section 105 of the Family and Medical
Leave Act of 1993 (29 U.S.C. 2615), as amended by subparagraph (A), is further
amended by adding at the end the following:

“(d) INCORPORATION TO FURTHER VIOLATIONS.—It
shall be unlawful for any employer to, for the purpose,
in whole or in part, of facilitating, or evading detection
of, a violation of this title, including a violation of sub-
section (c)—

“(1) incorporate or form, or assist in the incor-
poration or formation of, a corporation, partnership,
limited liability corporation, or other entity; or

“(2) pay or collect a fee for use of a foreign or
domestic corporation, partnership, limited liability
corporation, or other entity.”.

(C) PENALTIES.—Section 107(b) of the
Family and Medical Leave Act of 1993 (29
U.S.C. 2617(b)) is amended by adding at the
end the following:

“(4) PENALTIES FOR MISCLASSIFICATION AND
INCORPORATION TO FURTHER VIOLATIONS.—
“(A) In General.—Any employer who violates subsections (e) or (d) of section 105 shall be subject to a civil penalty of—

“(i) subject to clauses (ii) and (iii), $10,000;

“(ii) if the violation is repeated or willful, $30,000; or

“(iii) if the violation is widespread, 1 percent of the net profits of the employer for the year in which the employer had the highest net profits out of all years in which the employer was in such violation.

“(B) Repeated, or Willful, and Widespread Violations.—If a violation of subsection (e) or (d) of section 105 is repeated or willful, as described in subparagraph (A)(ii), and is widespread, as described in subparagraph (A)(iii), the higher penalty of the penalties described in such subparagraphs shall apply.

“(C) Payment of Penalties.—Any penalty assessed under subparagraph (A) for a violation of subsection (e) or (d) of section 105 shall be paid from an account of the employer in such violation and not paid, or reimbursed,
by any insurance plan that would indemnify the employer from violations of such subsection (c) or (d), respectively. If an employer receives a payment from an insurance plan to indemnify the employer from a violation of such subsection, the employer shall transfer the payment to the Secretary, in addition to the amount to be paid from the account of the employer for the penalty.”.

(2) Protection from Retaliation for Being an Employee; Presumption of Retaliation.—Section 105(b) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615(b)) is amended—

(A) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and indenting appropriately;

(B) by striking “It shall” and inserting the following:

“(1) IN GENERAL.—It shall”;

(C) in subparagraph (B), as so redesignated, by striking “; or” and inserting a semicolon;
(D) in subparagraph (C), as so redesignated, by striking the period at the end and inserting “; or”; and

(E) by adding at the end the following:

“(D)(i) is required, pursuant to the enactment of the Worker Flexibility and Small Business Protection Act of 2020, to be classified as an employee of the person for purposes of this title and not an independent contractor; and

“(ii) was classified by the person as an independent contractor prior to the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020.

“(2) RULES REGARDING UNLAWFUL DISCHARGE OR DISCRIMINATION.—

“(A) PRESUMPTION OF RETALIATION.—

Any action taken against an individual within 90 days of the individual taking any action described in any of subparagraph (A), (B), or (C) of paragraph (1), including taking any such action with respect to exercising the right of an employee pursuant to subsection (c) to not be misclassified, shall establish a rebuttable presumption that the action is discrimination

charge or discrimination.—
against the individual in violation of paragraph (1).

“(B) MOTIVATING FACTOR.—Unlawful discharge or other discrimination against an employee under paragraph (1) is established when the complaining party demonstrates that one of the actions or the classification described in such paragraph was a motivating factor for such discharge or other discrimination, even if such discharge or other discrimination was also motivated by other factors.”.

(3) STATUTORY EMPLOYERS IN HEAVILY MISCLASSIFYING INDUSTRIES.—Section 101(4) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(4)) is amended by adding at the end the following:

“(C) STATUTORY EMPLOYERS IN HEAVILY MISCLASSIFYING INDUSTRIES.—The term ‘employer’ shall include any person who—

“(i) is described in subparagraph (A)(i); and

“(ii) is described in section 3(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)(4)).”.”
(4) **Misclassification Enforcement Through Stop Work Orders.**—

(A) **In General.**—Title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) is amended by inserting after section 107 (29 U.S.C. 2617) the following:

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"SEC. 107A. MISCLASSIFICATION ENFORCEMENT THROUGH RECLASSIFICATION ORDERS AND STOP WORK ORDERS.

"(a) **Reclassification Orders.**—

"(1) **In General.**—If the Secretary determines, after an investigation under section 106, that an employer has misclassified 1 or more individuals who are eligible employees of the employer as not employees in violation of section 105(c)—

"(A) the Secretary shall issue, not later than 24 hours after making such determination, an order against the employer requiring the employer to immediately classify the 1 or more individuals as eligible employees of the employer; and

"(B) the employer shall immediately comply with the order issued under subparagraph (A) or shall otherwise be in violation of section 105(c).
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“(2) Orders.—An order issued under paragraph (1) shall—

“(A) be effective at the time at which the order is served upon the employer, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer; and

“(B) remain in effect during any review conducted under paragraph (3) with respect to such order and during any hearing and appeal of such order under paragraph (4).

“(3) Review for reconsideration.—

“(A) In general.—An employer against whom an order is issued under paragraph (1) may request a review by the Secretary to contest the order.

“(B) Requests.—A request under subparagraph (A) shall be made in writing to the Secretary not more than 5 days after the issuance of the order.

“(C) Requirements for review.—

“(i) In general.—A review under this paragraph shall—
(I) commence not later than 24 hours after a request is made under subparagraph (B); and

(II) conclude not later than 24 hours after such commencement.

(ii) Determination.—Not later than 72 hours after a review concludes under clause (i)(II), the Secretary shall determine whether to affirm, modify, or revoke the contested order.

(4) Hearings and Appeals.—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

(A) request a hearing to appeal such determination to an administrative law judge; and

(B) appeal an order of an administrative law judge under subparagraph (A) to any Federal or State court of competent jurisdiction.

(5) Action for Injunction.—The Secretary may petition any district court of the United States to restrain a violation of an order issued under paragraph (1). A court shall issue such relief if the Secretary has demonstrated it is just and proper.

(6) Successfully Disproving Occurrence of Misclassification.—
“(A) IN GENERAL.—If an employer with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3), or a subsequent hearing or appeals proceeding under paragraph (4), that the 1 or more individuals who were the subject of the order were not misclassified in violation of section 105(c)—

“(i) the order issued under paragraph (1) shall cease to be in effect;

“(ii) the employer shall not be liable for any applicable back pay, damages, or civil penalties owed by the employer under this title with respect to the misclassification of such 2 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or court, as applicable, shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the employer reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the
employer was a prevailing party and the
review, hearing, or appeals proceeding was
a civil action brought by or against the
United States.

“(B) SOURCE OF FUNDS.—The Secretary
of the Treasury shall, upon notification by the
Secretary of Labor, administrative law judge, or
court, as applicable, pay any fees or expenses
awarded under subparagraph (A)(iii) from
amounts in the general fund of the Treasury.

“(b) STOP WORK ORDERS.—

“(1) IN GENERAL.—In any case where an em-
ployer does not comply with a reclassification order
issued by the Secretary under subsection (a)(1), with
respect to 2 or more individuals who are
misclassified in violation of section 105(c), within 30
days of being served the order, the Secretary shall
issue—

“(A) subject to subparagraph (B), an
order against the employer requiring the ces-
sation of all business operations of such em-
ployer at the location of the violation; or

“(B) if an order described in subparagraph
(A) has been previously issued against the em-
ployer by any Federal, State, or local agency
for misclassifying an eligible employee as not an employee in violation of section 105(e), or an equivalent State or local law as determined by the Secretary, an order against the employer requiring the cessation of all business operations of such employer at all business locations of the employer, including locations other than the location where the misclassification occurred.

“(2) ORDERS.—

“(A) APPLICABILITY.—An order issued under paragraph (1) shall—

“(i) be effective at the time at which the order is served upon the employer, which may be accomplished by the posting of a copy of the order in a conspicuous location at the place of business of the employer; and

“(ii) remain in effect—

“(I) during any review conducted under paragraph (3) with respect to such order and during any hearing and appeal of such order under paragraph (4); and

“(II) until the Secretary issues a release order under subparagraph (B).
“(B) Release orders.—

“(i) In general.—An order issued under paragraph (1) (that is not revoked by the Secretary or held unlawful or set aside by an administrative law judge or a court) shall remain in effect until the Secretary issues another order releasing the order issued under such paragraph upon a finding by the Secretary that the employer—

“(I) has corrected the violation of section 105(c) with respect to the 2 or more individuals who were misclassified resulting in the order; and

“(II) has agreed to a payment schedule for all applicable back pay, damages, and civil penalties owed by the employer under this title.

“(ii) Reinstatement.—If, at any time after the Secretary issues a release order under clause (i), the employer fails to comply with the terms of the payment schedule described in clause (i)(II), the Secretary shall reinstate the order issued
under paragraph (1) until the employer is
in compliance with such terms.

“(3) Review for reconsideration.—

“(A) In general.—An employer against
whom an order is issued under paragraph (1)
may request a review by the Secretary to con-
test the order.

“(B) Requests.—A request under sub-
paragraph (A) shall be made in writing to the
Secretary not more than 5 days after the
issuance of the order.

“(C) Requirements for review.—

“(i) In general.—A review under
this paragraph shall—

“(I) commence not later than 24
hours after a request is made under
subparagraph (B); and

“(II) conclude not later than 24
hours after such commencement.

“(ii) Determination.—Not later
than 72 hours after a review concludes
under clause (i)(II), the Secretary shall de-
terminate whether to affirm, modify, or re-
voke the contested order.
“(4) **Hearing and Appeals.**—Any person aggrieved by a determination of the Secretary under paragraph (3)(C)(ii) may—

“(A) request a hearing to appeal such determination to an administrative law judge; and

“(B) appeal an order of an administrative law judge under subparagraph (A) to any Federal or State court of competent jurisdiction.

“(5) **Action for Injunction.**—The Secretary may petition any district court of the United States to restrain a violation of an order issued under paragraph (1). A court shall issue such relief if the Secretary has demonstrated it is just and proper.

“(6) **Compensation for Lost Work.**—

“(A) **In General.**—Subject to subparagraph (B), an employer with respect to whom an order is issued under paragraph (1) shall pay each eligible employee of the employer who loses compensation due to the work of such employee ceasing as a result of such order, the compensation that would be owed to such employee if the order was not issued.

“(B) **Limitation.**—Compensation paid under subparagraph (A) shall be for each day, not to exceed 10 days, for which the eligible
employee would be paid if the order described in such subparagraph were not in effect.

“(7) SUCCESSFULLY DISPROVING OCCURRENCE OF MISCLASSIFICATION.—

“(A) IN GENERAL.—In any case where an employer with respect to whom an order was issued under paragraph (1) successfully proves through a review under paragraph (3), or a subsequent hearing or appeals proceeding under paragraph (4), that the 2 or more individuals who were the subject of the order were not misclassified in violation of section 105(c)—

“(i) the order issued under paragraph (1), and any order issued against the employer under subsection (a)(1) with respect to such 2 or more individuals, shall cease to be in effect;

“(ii) the employer shall not be liable for any applicable back pay, damages, or civil penalties owed by the employer under this title with respect to the misclassification of such 2 or more individuals; and

“(iii) the Secretary of Labor, administrative law judge, or court, as applicable,
shall award (and the Secretary of the Treasury shall, in accordance with subparagraph (B), pay) to the employer—

“(I) an amount equal to any demonstrable lost net profits resulting from the order, as demonstrated by clear and convincing evidence; and

“(II) reasonable fees and expenses of attorneys in the same manner as such fees and expenses could be awarded under section 2412 of title 28, United States Code, if the employer was a prevailing party and the review, hearing, or appeals proceeding was a civil action brought by or against the United States.

“(B) SOURCE OF FUNDS.—The Secretary of the Treasury shall, upon notification by the Secretary of Labor, administrative law judge, or court, as applicable, pay any amounts, fees, or expenses awarded under subparagraph (A)(iii) from amounts available in the general fund of the Treasury.”.

(B) PENALTIES.—Section 107(b) of the Family and Medical Leave Act of 1993 (29
U.S.C. 2617(b)), as amended by paragraph (1)(C), is further amended by adding at the end the following:

“(5) **Penalties for Violations of Reclassification Orders.**—

“(A) **Civil Penalties.**—Any employer who violates a reclassification order issued by the Secretary under section 107A(a)(1) shall be subject to a civil penalty of not less than $5,000 per day, with each day constituting a separate offense.

“(B) **Additional Damages.**—In any case in which an employer contests a reclassification order issued under paragraph (1) of section 107A(a) in a review under paragraph (3) of such section, a hearing under paragraph (4)(A) of such section, and a subsequent judicial proceeding under paragraph (4)(B) of such section, and the court in such proceeding rules in favor of the Secretary—

“(i) the court shall determine if, during the period between the issuance of such order and the conclusion of the proceeding, the employer violated such order by not
classifying the 1 or more individuals as eligible employees during that period; and

“(ii) if the court determines the employer so violated the order during that period—

“(I) the court shall determine the amount of net profits derived by the employer from the individuals’ labor during that period; and

“(II) the court shall assess damages in the amount determined under subclause (I), which damages shall be awarded to such individuals by the court.”.

(i) Federal Unemployment Tax Act (FUTA).—

(1) In general.—Section 3306 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(w) Special Rules for Purposes of Defining Employer and Employee.—In defining employer and employee for purposes of this chapter, such definitions shall comply with the following:

“(1) Paragraph (4) of section 3(d) of the Fair Labor Standards Act of 1938.
“(2) Paragraphs (6), (7), (8), and (9) of section 3(e) of such Act.”

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to services rendered on or after January 1, 2022.

TITLE II—SMALL BUSINESS PROTECTION THROUGH SHARED RESPONSIBILITY FOR WORKERS’ RIGHTS

SEC. 201. GENERAL SHARED RESPONSIBILITY FOR WORKERS’ RIGHTS.

(a) Fair Labor Standards Act of 1938.—Section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)), as amended by section 102(a)(6)(A), is further amended by adding at the end the following:

“(5) Multiple employers.—

“(A) Rule of Interpretation.—This paragraph—

“(i) is to be read as an addition to, and an augmentation and expansion of, all relevant judicial and agency interpretations in existence on the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020 regarding which persons qualify as employers in relation to
a given employee under this Act, including
in a multiple employer or joint employment
structure;

“(ii) shall not be interpreted by any
court or agency as a restriction on, or nar-
rowing of, any such interpretations; and

“(iii) is not a codification of the com-
mon law and shall not be interpreted to re-
fect, or to be limited or restricted by, com-
mon law interpretations regarding whether
a person is an employer of a given em-
ployee or whether multiple persons are em-
ployers of a given employee.

“(B) IN GENERAL.—Two or more persons
shall be employers with respect to an employee
if each such person individually, acting directly
or indirectly, is an employer of the employee,
based on and in accordance with the meaning
given the term ‘employer’ under paragraphs
(1), (2), and (3) of this subsection, the defini-
tion of ‘employee’ under subsection (e), and the
definition of ‘employ’ under subsection (g).

“(C) ADDITIONAL MULTIPLE EMPLOYER
DETERMINATIONS.—Notwithstanding subpara-
graph (B), 2 or more persons shall be employ-
ers, acting directly or indirectly, with respect to
an employee if—

“(i) each such person directly or indi-
directly benefits or seeks to directly or indi-
directly benefit from the performance of
labor by an employee; and

“(ii)(I) each such person exerts actual
direction or control, directly or indirectly,
over any material term or condition of em-
ployment of the employee, including
through an intermediary;

“(II) each such person exerts func-
tional direction or control, directly or indi-
directly, over any material term or condition
of employment of the employee, including
through an intermediary;

“(III) each such person is legally ca-
pable, without regard as to whether such
capability is used, of directly or indi-
rectly—

“(aa) exerting direction or con-
trol over any material term or condi-
tion of employment of the employee;

“(bb) ensuring compliance with
the requirements of this Act with re-
203
gard to the employee’s performance of
such labor; or

“(cc) upholding the rights and
 protections of this Act with regard to
the employee’s performance of such
labor; or

“(IV) based on an act or omission of
the 2 or more persons, the employee rea-
sonably believed that such persons were
the employee’s employers and the employee
did not have actual knowledge that any of
the persons were not the employee’s em-
ployer under this Act.”.

(b) NATIONAL LABOR RELATIONS ACT.—Section
2(2) of the National Labor Relations Act (29 U.S.C.
152(2)), as amended by section 102(b)(6)(A), is further
amended by adding at the end the following:

“(C) MULTIPLE EMPLOYERS.—

“(i) RULE OF INTERPRETATION.—

This subparagraph—

“(I) is to be read as an addition
to, and an augmentation and expan-
sion of, all relevant judicial and agen-
cy interpretations in existence on the
date of enactment of the Worker
Flexibility and Small Business Protection Act of 2020 regarding which persons qualify as employers in relation to a given employee under this Act, including in a multiple employer or joint employment structure;

“(II) shall not be interpreted by any court or agency as a restriction on, or narrowing of, any such interpretations; and

“(III) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding whether a person is an employer of a given employee or whether multiple persons are employers of a given employee.

“(ii) IN GENERAL.—Two or more persons shall be employers with respect to an employee if each such person individually, acting directly or indirectly, is an employer of the employee, based on and in accordance with the meanings given the term
of the term ‘employee’ under paragraph (3).

“(iii) ADDITIONAL MULTIPLE EMPLOYER DETERMINATIONS.—Notwithstanding clause (ii), 2 or more persons shall be employers, acting directly or indirectly, with respect to an employee if—

“(I) each such person directly or indirectly benefits or seeks to directly or indirectly benefit from the performance of labor by an employee; and

“(II)(aa) each such person exerts actual direction or control, directly or indirectly, over any material term or condition of employment of the employee, including through an intermediary;

“(bb) each such person exerts functional direction or control, directly or indirectly, over any material term or condition of employment of the employee, including through an intermediary;

“(cc) each such person is legally capable, without regard as to whether
such capability is used, of directly or indirectly—

“(AA) exerting direction or control over any material term or condition of employment of the employee;

“(BB) ensuring compliance with the requirements of this Act with regard to the employee’s performance of such labor; or

“(CC) upholding the rights and protections of this Act with regard to the employee’s performance of such labor;

“(dd) based on an act or omission of the 2 or more persons, the employee reasonably believed that such persons were the employee’s employers and the employee did not have actual knowledge that any of the persons were not the employee’s employer under this Act; or

“(ee) based on the totality of the circumstances of the industrial realities, including the way separate per-
sons have structured their commercial relationship, 2 or more persons wield sufficient influence over any material term or condition of employment of the employee such that meaningful bargaining could not occur in the absence of the 2 or more persons.”.

(c) OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)), as amended by section 102(c)(6)(A), is further amended by adding at the end the following:

“(C) MULTIPLE EMPLOYERS.—

“(i) RULE OF INTERPRETATION.—This subparagraph—

“(I) is to be read as an addition to, and an augmentation and expansion of, all relevant judicial and agency interpretations in existence on the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020 regarding which persons qualify as employers in relation to a given employee under this Act, including in a multiple employer or joint employment structure;
“(II) shall not be interpreted by any
court or agency as a restriction on, or nar-
rowing of, any such interpretations; and

“(III) is not a codification of the com-
mon law and shall not be interpreted to re-
fect, or to be limited or restricted by, com-
mon law interpretations regarding whether
a person is an employer of a given em-
ployee or whether multiple persons are em-
ployers of a given employee.

“(ii) IN GENERAL.—Two or more persons
shall be employers with respect to an employee
if each such person individually, acting directly
or indirectly, is an employer of the employee,
based on and in accordance with the meaning
given the term ‘employer’ under subparagraph
(A) and the definition of ‘employee’ under para-
graph (6).

“(iii) ADDITIONAL MULTIPLE EMPLOYER
dETERMINATIONS.—Notwithstanding clause
(ii), 2 or more persons shall be employers, act-
ing directly or indirectly, with respect to an em-
ployee if—

“(I) each such person directly or indi-
rectly benefits or seeks to directly or indi-
rectly benefit from the performance of labor by an employee; and

“(II)(aa) each such person exerts actual direction or control, directly or indirectly, over any material term or condition of employment of the employee, including through an intermediary;

“(bb) each such person exerts functional direction or control, directly or indirectly, over any material term or condition of employment of the employee, including through an intermediary;

“(cc) each such person is legally capable, without regard as to whether such capability is used, of directly or indirectly—

“(AA) exerting direction or control over any material term or condition of employment of the employee;

“(BB) ensuring compliance with the requirements of this Act with regard to the employee’s performance of such labor; or
“(CC) upholding the rights and protections of this Act with regard to the employee’s performance of such labor; or
“(dd) based on an act or omission of the 2 or more persons, the employee reasonably believed that such persons were the employee’s employers and the employee did not have actual knowledge that any of the persons were not the employee’s employer under this Act.”.

(d) Federal Mine Safety and Health Act of 1977.—The Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), as amended by paragraphs (1) and (2) of section 102(d), is further amended by inserting after section 4A the following:

“SEC. 4B. APPLICABILITY TO MULTIPLE EMPLOYERS AND RELATED ENTITIES.

“(a) Multiple Employers.—
“(1) Rule of Interpretation.—This subsection—
“(A) is to be read as an addition to, and an augmentation and expansion of, all relevant judicial and agency interpretations in existence
on the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020 regarding which persons qualify as operators in relation to a given miner under this Act, including in a multiple employer or joint employment structure;

“(B) shall not be interpreted by any court or agency as a restriction on, or narrowing of, any such interpretations; and

“(C) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding whether a person is an employer of a given miner or whether multiple persons are employers with respect to a given miner.

“(2) IN GENERAL.—Two or more persons shall be employers with respect to a miner of a coal or other mine if, based on the definitions given the terms ‘operator’ and ‘miner’ in section 3, each such person individually satisfies the definition of an operator under this Act in relation to a given miner.

“(3) ADDITIONAL MULTIPLE EMPLOYER DETERMINATIONS.—Notwithstanding paragraph (2), 2 or more persons shall be employers, acting directly
or indirectly, with respect to a miner of a coal or other mine if—

“(A) one of the persons is an operator of a coal or other mine and the miner is performing labor for the operator;

“(B) each such person directly or indirectly benefits or seeks to directly or indirectly benefit from the performance of labor by the miner; and

“(C)(i) each such person exerts actual direction or control, directly or indirectly, over any material term or condition of employment of the miner, including through an intermediary;

“(ii) each such person exerts functional direction or control, directly or indirectly, over any material term or condition of employment of the miner, including through an intermediary;

“(iii) each such person is legally capable, without regard as to whether such capability is used, of directly or indirectly—

“(I) exerting direction or control over any material term or condition of employment of the miner;
“(II) ensuring compliance with the requirements of this Act with regard to the miner’s performance of such labor; or

“(III) upholding the rights and protections of this Act with regard to the miner’s performance of such labor; or

“(iv) based on an act or omission of the 2 or more persons, the miner reasonably believed that such persons were the miner’s employers and the miner did not have actual knowledge that any of the persons were not the miner’s employer under this Act.”.

(e) MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—Section 5 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1803), as redesignated by section 102(e)(1)(A), is further amended by adding at the end the following

“(c) EXPANDED APPLICABILITY.—

“(1) RESPONSIBILITY OF AGRICULTURAL EMPLOYERS AND AGRICULTURAL ASSOCIATIONS FOR WORKERS OF FARM LABOR CONTRACTORS.—In any case where an agricultural employer or an agricultural association has entered into an agreement with a farm labor contractor to provide migrant agricultural workers or seasonal agricultural workers to the
employer or association, both the agricultural em-
ployer or association and the farm labor contractor
shall be responsible for the rights and protections of
this Act with regard to the migrant agricultural
worker or seasonal agricultural worker, as the case
may be, in any case where the farm labor contractor
is responsible for the rights and protections of this
Act.

“(2) Multiple employers.—

“(A) Rule of interpretation.—This
paragraph—

“(i) is to be read as an addition to,
and an augmentation and expansion of, all
relevant judicial and agency interpretations
in existence on the date of enactment of
the Worker Flexibility and Small Business
Protection Act of 2020 regarding which
persons qualify as agricultural employers,
agricultural associations, or farm labor
contractors in relation to a given employee
under this Act, including in a multiple em-
ployer or joint employment structure;

“(ii) shall not be interpreted by any
court or agency as a restriction on, or nar-
rowing of, any such interpretations; and
“(iii) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding whether a person is an employer of a given migrant agricultural worker or seasonal agricultural worker or whether multiple persons are employers of a given worker.

“(B) IN GENERAL.—Two or more persons, acting directly or indirectly, shall be responsible for the rights and protections of this Act with respect to a migrant agricultural worker or seasonal agricultural worker, if based on the application of the definitions of ‘agricultural association’, ‘agricultural employer’, ‘agricultural employment’, ‘employ’, ‘farm labor contractor’, ‘migrant agricultural worker’, and ‘seasonal agricultural worker’ under section 3, each such person individually satisfies the definition of a farm labor contractor, agricultural employer, or agricultural association under this Act in relation to a given migrant agricultural worker or seasonal agricultural worker.

“(C) ADDITIONAL MULTIPLE EMPLOYER DETERMINATIONS.—Notwithstanding subpara-
graph (B), 2 or more persons, acting directly or
indirectly, shall be responsible for the rights
and protections of this Act with respect to a mi-
grant agricultural worker or seasonal agricul-
tural worker if—

“(i) one of the persons is a farm labor
contractor, agricultural employer, or agri-
cultural association and the migrant agri-
cultural worker or seasonal agricultural
worker is performing labor for such per-
son;

“(ii) each such person directly or indi-
directly benefits or seeks to directly or indi-
directly benefit from the performance of
labor by the worker; and

“(iii)(I) each such person exerts ac-
tual direction or control, directly or indi-
directly, over any material term or condition
of employment of the worker, including
through an intermediary;

“(II) each such person exerts func-
tional direction or control, directly or indi-
directly, over any material term or condition
of employment of the worker, including
through an intermediary;
“(III) each such person is legally capable, without regard as to whether such capability is used, of directly or indirectly—

“(aa) exerting direction or control over any material term or condition of employment of the worker;

“(bb) ensuring compliance with the requirements of this Act with regard to the worker’s performance of such labor; or

“(cc) upholding the rights and protections of this Act with regard to the worker’s performance of such labor; or

“(IV) based on an act or omission of the 2 or more persons, the worker reasonably believed that each such person was a farm labor contractor, agricultural employer, or agricultural association that employed the worker and the worker did not have actual knowledge that any of the persons were not the worker’s employer for purposes of this Act.
“(3) Interaction With Registration Requirements.—Notwithstanding paragraph (2), an agricultural employer or agricultural association shall not be subject to liability for any violation of title I by a farm labor contractor.”.

(f) Davis-Bacon Act.—Subchapter IV of chapter 31 of title 40, United States Code, as amended by section 102(f)(5), is further amended by inserting after section 3144a the following:

“§ 3144b. Applicability to multiple employers and related entities

“(a) Multiple Employers.—

“(1) Rule of Interpretation.—This subsection—

“(A) is to be read as an addition to, and an augmentation and expansion of, all relevant judicial and agency interpretations in existence on the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020 regarding which persons qualify as employers in relation to a given laborer or mechanic under this subchapter, including in a multiple employer or joint employment structure;
“(B) shall not be interpreted by any court or agency as a restriction on, or narrowing of, any such interpretations; and

“(C) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding whether a person is an employer of a given laborer or mechanic or whether multiple persons are employers of a laborer or mechanic.

“(2) ADDITIONAL MULTIPLE EMPLOYER DETERMINATIONS.—Two or more persons, acting directly or indirectly, shall be responsible for the rights and protections of this subchapter with respect to a laborer or mechanic if—

“(A) one of the persons is a contractor, or subcontractor, for a contract to which this subchapter applies and the laborer or mechanic is performing labor under such contract;

“(B) each such person directly or indirectly benefits or seeks to directly or indirectly benefit from the performance of labor by the laborer or mechanic; and

“(C)(i) each such person exerts actual direction or control, directly or indirectly, over
any material term or condition of employment
of the laborer or mechanic, including through
an intermediary;

“(ii) each such person exerts functional di-
rection or control, directly or indirectly, over
any material term or condition of employment
of the laborer or mechanic, including through
an intermediary;

“(iii) each such person is legally capable,
without regard as to whether such capability is
used, of directly or indirectly—

“(I) exerting direction or control over
any material term or condition of employ-
ment of the laborer or mechanic;

“(II) ensuring compliance with the re-
quirements of this subchapter with regard
to the laborer or mechanic’s performance
of such labor; or

“(III) upholding the rights and pro-
tections of this subchapter with regard to
the laborer or mechanic’s performance of
such labor; or

“(iv) based on an act or omission of the 2
or more persons, the laborer or mechanic rea-
onably believed that such persons were the la-
borer or mechanic’s employers and the laborer or mechanic did not have actual knowledge that any of the persons were not the laborer or mechanic’s employer under this subchapter.”.

(g) McNamara-O’Hara Service Contract Act.—Chapter 67 of title 41, United States Code, is amended by inserting after section 6701 the following:

“§ 6701a. Applicability to multiple employers and related entities

“(a) Multiple Employers.—

“(1) Rule of Interpretation.—This subsection—

“(A) is to be read as an addition to, and an augmentation and expansion of, all relevant judicial and agency interpretations in existence on the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020 regarding which persons qualify as employers in relation to a given service employee under this chapter, including in a multiple employer or joint employment structure;

“(B) shall not be interpreted by any court or agency as a restriction on, or narrowing of, any such interpretations; and
“(C) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding whether a person is an employer of a given service employee or whether multiple persons are employers of a service employee.

“(2) ADDITIONAL MULTIPLE EMPLOYER DETERMINATIONS.—Two or more persons, acting directly or indirectly, shall be responsible for the rights and protections of this chapter with respect to a service employee if—

“(A) one of the persons is a contractor, or subcontractor, for a contract to which this chapter applies and the service employee is performing labor under such contract;

“(B) each such person directly or indirectly benefits or seeks to directly or indirectly benefit from the performance of labor by the service employee; and

“(C)(i) each such person exerts actual direction or control, directly or indirectly, over any material term or condition of employment of the service employee, including through an intermediary;
“(ii) each such person exerts functional direction or control, directly or indirectly, over any material term or condition of employment of the service employee, including through an intermediary;

“(iii) each such person is legally capable, without regard as to whether such capability is used, of directly or indirectly—

“(I) exerting direction or control over any material term or condition of employment of the service employee;

“(II) ensuring compliance with the requirements of this chapter with regard to the service employee’s performance of such labor; or

“(III) upholding the rights and protections of this chapter with regard to the service employee’s performance of such labor; or

“(iv) based on an act or omission of the 2 or more persons, the service employee reasonably believed that such persons were the service employee’s employers and the service employee did not have actual knowledge that any of the
persons were not the service employee’s em-
ployer under this chapter.”.

(h) Walsh-Healey Public Contracts Act.—
Chapter 65 of title 41, United States Code, is amended
by inserting after section 6501a the following:

“§ 6501b. Applicability to multiple employers and re-
lated entities

“(a) Multiple Employers.—

“(1) Rule of interpretation.—This sub-
section—

“(A) is to be read as an addition to, and
an augmentation and expansion of, all relevant
judicial and agency interpretations in existence
on the date of enactment of the Worker Flexi-
bility and Small Business Protection Act of
2020 regarding which persons qualify as em-
ployers in relation to a given individual per-
forming labor in the manufacture or furnishing
of materials, supplies, articles, or equipment
under a contract subject to this chapter, includ-
ing in a multiple employer or joint employment
structure;

“(B) shall not be interpreted by any court
or agency as a restriction on, or narrowing of,
any such interpretations; and
“(C) is not a codification of the common law and shall not be interpreted to reflect, or to be limited or restricted by, common law interpretations regarding whether a person is an employer of an individual described in subparagraph (A) or whether multiple persons are employers of such individual.

“(2) ADDITIONAL MULTIPLE EMPLOYER DETERMINATIONS.—Two or more persons, acting directly or indirectly, shall be responsible for the rights and protections of this chapter with respect to an individual if—

“(A) one of the persons is a contractor for a contract to which this chapter applies and the individual is performing labor in the manufacture or furnishing of materials, supplies, articles, or equipment under the contract;

“(B) each such person directly or indirectly benefits or seeks to directly or indirectly benefit from such performance of labor by the individual; and

“(C)(i) each such person exerts actual direction or control, directly or indirectly, over any material term or condition of employment of the individual;
“(ii) each such person exerts functional direction or control, directly or indirectly, over any material term or condition of employment of the individual, including through an intermediary;

“(iii) each such person is legally capable, without regard as to whether such capability is used, of directly or indirectly—

“(I) exerting direction or control over any material term or condition of employment of the individual;

“(II) ensuring compliance with the requirements of this chapter with regard to the individual’s performance of such labor; or

“(III) upholding the rights and protections of this chapter with regard to the individual’s performance of such labor; or

“(iv) based on an act or omission of the 2 or more persons, the individual reasonably believed that such persons were the individual’s employers and the individual did not have actual knowledge that any of the persons were not the individual’s employer under this chapter.”.
(i) **Family and Medical Leave Act of 1993.**—

Section 101(4) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(4)), as amended by section 102(h)(3), is further amended by adding at the end the following:

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"(D) Multiple employers.—

"(i) Rule of interpretation.—

This subparagraph—

"(I) is to be read as an addition to, and an augmentation and expansion of, all relevant judicial and agency interpretations in existence on the date of enactment of the Worker Flexibility and Small Business Protection Act of 2020 regarding which persons qualify as employers in relation to a given employee under this Act, including in a multiple employer or joint employment structure;

"(II) shall not be interpreted by any court or agency as a restriction on, or narrowing of, any such interpretations; and

"(III) is not a codification of the common law and shall not be inter-
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preted to reflect, or to be limited or
restricted by, common law interpreta-
tions regarding whether a person is
an employer of a given employee or
whether multiple persons are employ-
ers of a given employee.

“(ii) In general.—Two or more per-
sons shall be employers with respect to an
employee if each such person individually,
acting directly or indirectly, is an em-
ployer, based on and in accordance with
the meaning given the term ‘employer’
under subparagraphs (A) and (B) of this
paragraph, and the definitions of ‘employ’
and ‘employee’ under paragraph (3).

“(iii) Additional multiple em-
ployer determinations.—Notwith-
standing clause (ii), 2 or more persons
shall be employers, acting directly or indi-
directly, with respect to an employee if—

“(I) each such person directly or
indirectly benefits or seeks to directly
or indirectly benefit from the perform-
ance of labor by an employee; and
“(II)(aa) each such person exerts actual direction or control, directly or indirectly, over any material term or condition of employment of the employee, including through an intermediary;

“(bb) each such person exerts functional direction or control, directly or indirectly, over any material term or condition of employment of the employee, including through an intermediary;

“(cc) each such person is legally capable, without regard as to whether such capability is used, of directly or indirectly—

“(AA) exerting direction or control over any material term or condition of employment of the employee;

“(BB) ensuring compliance with the requirements of this Act with regard to the employee; or
“(CC) upholding the rights and protections of this Act with regard to the employee; or
“(dd) based on an act or omission of the 2 or more persons, the employee reasonably believed that such persons were the employee’s employers and the employee did not have actual knowledge that any of the persons were not the employee’s employer under this Act.”.

(j) Federal Unemployment Tax Act (FUTA).—

(1) In general.—Section 3306(w) of the Internal Revenue Code of 1986, as added by section 102(j), is amended by adding at the end the following new paragraph:

“(3) Paragraph (5) of section 3(d) of such Act.”.

(2) Effective date.—The amendment made by paragraph (1) shall apply to services rendered on or after January 1, 2022.

SEC. 202. MASSIVE CORPORATIONS.

(a) Joint Responsibility for All Corporate Family Employees.—
(1) **Fair Labor Standards Act of 1938.**—

Section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)), as amended by section 201(a), is further amended by adding at the end the following:

“(6) **Subsidiaries.**—An employer shall also be responsible for the rights and protections of this Act with regard to an employee of a subsidiary of the employer, or subsidiary under a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this Act for the employee.”.

(2) **National Labor Relations Act.**—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)), as amended by section 201(b), is further amended by adding at the end the following:

“(D) **Subsidiaries.**—An employer shall also be responsible for the rights and protections of this Act with regard to an employee of a subsidiary of the employer, or subsidiary under a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this Act for the employee.”.

(3) **Occupational Safety and Health Act of 1970.**—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)), as
amended by section 201(c), is further amended by adding at the end the following:

“(E) Subsidiaries.—An employer shall also be responsible for the rights and protections of this Act with regard to an employee of a subsidiary of the employer, or subsidiary under a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this Act for the employee.”.

(4) Federal Mine Safety and Health Act of 1977.—Section 4B of the Federal Mine Safety and Health Act of 1977, as added by section 201(d), is further amended by adding at the end the following:

“(b) Subsidiaries.—An employer shall also be responsible for the rights and protections of this Act with regard to a miner of a coal or other mine who is an employee of a subsidiary of the employer, or subsidiary under a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this Act for the miner.”.

(5) Migrant and Seasonal Agricultural Worker Protection Act.—Section 5(e) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1803(e)), as added by section
201(e), is further amended by adding at the end the following:

“(4) SUBSIDIARIES.—An entity shall also be responsible for the rights and protections of this Act with regard to an individual who is a migrant agricultural worker or seasonal agricultural worker employed by a farm labor contractor, agricultural employer, or agricultural association, that is a subsidiary of the entity, or a subsidiary under such a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this Act for the migrant agricultural worker or seasonal agricultural worker.”.

(6) DAVIS-BACON ACT.—Section 3144b of title 40, United States Code, as added by section 201(f), is further amended by adding at the end the following:

“(b) SUBSIDIARIES.—An entity shall also be responsible for the rights and protections of this subchapter with regard to a laborer or mechanic employed by a contractor or any subcontractor that is a subsidiary of the entity, or a subsidiary under such a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this subchapter for the laborer or mechanic.”.
(7) McNamara-O'Hara Service Contract Act.—Section 6701a of title 41, United States Code, as added by section 201(g), is further amended by adding at the end the following:

“(b) Subsidiaries.—An entity shall also be responsible for the rights and protections of this chapter with regard to a service employee of a contractor that is a subsidiary of the entity, or a subsidiary under such a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this chapter for the service employee.”.

(8) Walsh-Healey Public Contracts Act.—

Section 6501b of title 41, United States Code, as added by section 201(h), is further amended by adding at the end the following:

“(b) Subsidiaries.—An entity shall also be responsible for the rights and protections of this chapter with regard to an individual employed by a contractor that is a subsidiary of the entity, or a subsidiary under such a subsidiary, in any case where the subsidiary is responsible for the rights and protections of this chapter for the individual.”.

(9) Family and Medical Leave Act of 1993.—Section 101(4) of the Family and Medical Leave Act of 1993 (20 U.S.C. 2611(4)), as amended
by section 201(i), is further amended by adding at
the end the following:

“(E) SUBSIDIARIES.—An employer shall
also be responsible for the rights and protec-
tions of this Act with regard to an employee of
a subsidiary of the employer, or subsidiary
under a subsidiary, in any case where the sub-
sidiary is responsible for the rights and protec-
tions of this Act for the employee.”.

(10) FEDERAL UNEMPLOYMENT TAX ACT

(FUTA).—

(A) IN GENERAL.—Section 3306(w) of the
Internal Revenue Code of 1986, as amended by
section 201(j), is amended by adding at the end
the following new paragraph:

“(4) Paragraph (6) of section 3(d) of such
Act.”.

(B) EFFECTIVE DATE.—The amendment
made by subparagraph (A) shall apply to serv-
ices rendered on or after January 1, 2022.

(b) JOINT RESPONSIBILITY AS OWNERS, DIRECTORS,
OFFICERS, AND MANAGING AGENTS.—

(1) FAIR LABOR STANDARDS ACT OF 1938.—
Section 16 of the Fair Labor Standards Act of 1938
(29 U.S.C. 216), as amended by section
102(a)(8)(C), is further amended by adding at the end the following:

“(g) OWNERS, DIRECTORS, OFFICERS, AND MANAGING AGENTS.—

“(1) IN GENERAL.—In any action or proceeding for a violation of this Act, the Secretary or court may also assess a civil penalty for such violation against an owner, director, officer, or managing agent of the employer if the Secretary or court determines, based on the particular facts and circumstances presented, that personal liability for the violation is warranted because the owner, director, officer, or managing agent—

“(A) directed or committed the violation;

“(B) established a policy that led to such a violation; or

“(C) had actual or constructive knowledge of the violation, had the authority to prevent the violation, and failed to prevent the violation.

“(2) AMOUNT OF CIVIL PENALTY.—The amount of, or range for, a civil penalty for a violation under paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that
may be assessed against the employer for such violation.”.

(2) National labor relations act.—Section 12 of the National Labor Relations Act (29 U.S.C. 162), as amended by section 102(b)(7)(B), is further amended by adding at the end the following:

“(e) Owners, Directors, Officers, and Managing Agents.—

“(1) In general.—In any action or proceeding for a violation of this Act, the Board or court may also assess a civil penalty for such violation against an owner, director, officer, or managing agent of the employer if the Board or court determines, based on the particular facts and circumstances presented, that personal liability for the violation is warranted because the owner, director, officer, or managing agent—

“(A) directed or committed the violation;

“(B) established a policy that led to such a violation; or

“(C) had actual or constructive knowledge of the violation, had the authority to prevent the violation, and failed to prevent the violation.

“(2) Amount of civil penalty.—The amount of, or range for, a civil penalty for a violation under
paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that may be assessed against the employer for such violation.”.

(3) OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.—Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666), as amended by section 102(c)(7)(B), is amended by inserting after subsection (k) the following:

“(m) OWNERS, DIRECTORS, OFFICERS, AND MANAGING AGENTS.—

“(1) IN GENERAL.—In any action or proceeding for a violation of this Act, including any standard, rule, regulation, or order promulgated pursuant to this Act, the Secretary or court may also assess a civil penalty for such violation against an owner, director, officer, or managing agent of the employer if the Secretary or court determines, based on the particular facts and circumstances presented, that personal liability for the violation is warranted because the owner, director, officer, or managing agent—

“(A) directed or committed the violation;

“(B) established a policy that led to such a violation; or
“(C) had actual or constructive knowledge of the violation, had the authority to prevent the violation, and failed to prevent the violation.

“(2) AMOUNT OF CIVIL PENALTY.—The amount of, or range for, a civil penalty for a violation under paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that may be assessed against the employer for such violation.”.

(4) FEDERAL MINE SAFETY AND HEALTH ACT OF 1977.—

(A) IN GENERAL.—Title I of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820), as amended by section 102(d), is further amended by adding at the end the following:

“SEC. 118. LIABILITY OF OWNERS, DIRECTORS, OFFICERS, MANAGING AGENTS, AND LARGE SHAREHOLDERS; INDEMNIFICATION.

“(a) OWNERS, DIRECTORS, OFFICERS, AND MANAGING AGENTS.—

“(1) IN GENERAL.—In any action or proceeding for a violation of this Act including any mandatory health or safety standard, rule, order, or regulation
promulgated pursuant to this Act, the Secretary or
court may also assess a civil penalty against an
owner, director, officer, or managing agent of the
operator or employer if the Secretary or court deter-
mines, based on the particular facts and cir-
cumstances presented, that personal liability for the
violation is warranted because the owner, director,
officer, or managing agent—

"(A) directed or committed the violation;

"(B) established a policy that led to such
a violation; or

"(C) had actual or constructive knowledge
of the violation, had the authority to prevent
the violation, and failed to prevent the violation.

"(2) AMOUNT OF CIVIL PENALTY.—The amount
of, or range for, a civil penalty for a violation under
paragraph (1) shall, in any case where a similar civil
penalty against the employer is established by law,
be the amount or range for the civil penalty that
may be assessed against the employer for such viola-
tion.”.

(5) MIGRANT AND SEASONAL AGRICULTURAL
WORKER PROTECTION ACT.—Title V of the Migrant
and Seasonal Agricultural Worker Protection Act
(29 U.S.C. 1851 et seq.), as amended by section
102(c)(5)(A), is further amended by inserting after section 504 the following:

"SEC. 505. LIABILITY OF OWNERS, DIRECTORS, OFFICERS, MANAGING AGENTS, AND LARGE SHAREHOLDERS; INDEMNIFICATION."

“(a) Civil Penalty Liability for Owners, Directors, Officers, and Managing Agents of Farm Labor Contractors, Agricultural Employers, or Agricultural Associations.—

“(1) In general.—In any action or proceeding for a violation of this Act, including any regulation under this Act, by a farm labor contractor, agricultural employer, or agricultural association, the Secretary or court may also assess a civil penalty for such violation against an owner, director, officer, or managing agent of the farm labor contractor, agricultural employer, or agricultural association if the Secretary or court determines, based on the particular facts and circumstances presented, that personal liability for the violation is warranted because the owner, director, officer, or managing agent—

“(A) directed or committed the violation;

“(B) established a policy that led to such a violation; or
“(C) had actual or constructive knowledge of the violation, had the authority to prevent the violation, and failed to prevent the violation.

“(2) AMOUNT OF CIVIL PENALTY.—The amount of, or range for, a civil penalty for a violation under paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that may be assessed against the employer for such violation.”

(6) DAVIS-BACON ACT.—Section 3144c of title 40, United States Code, as amended by section 102(f)(6), is further amended by adding at the end the following:

“(d) CIVIL PENALTY LIABILITY FOR OWNERS, DIRECTORS, OFFICERS, AND MANAGING AGENTS.—

“(1) IN GENERAL.—In any action or proceeding for a violation of this subchapter, the Secretary of Labor or court may also assess a civil penalty for such violation against an owner, director, officer, or managing agent of the contractor or subcontractor if the Secretary or court determines, based on the particular facts and circumstances presented, that personal liability for the violation is warranted because the owner, director, officer, or managing agent—
“(A) directed or committed the violation;

“(B) established a policy that led to such a violation; or

“(C) had actual or constructive knowledge of the violation, had the authority to prevent the violation, and failed to prevent the violation.

“(2) AMOUNT OF CIVIL PENALTY.—The amount of, or range for, a civil penalty for a violation under paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that may be assessed against the contractor or subcontractor for such violation.”.

(7) McNAMARA-O’HARA SERVICE CONTRACT ACT.—Chapter 67 of title 41, United States Code, is amended—

(A) by redesignating sections 6705, 6706, and 6707 as sections 6706, 6708, and 6709, respectively; and

(B) by inserting after section 6706 the following:
§ 6707. Civil penalties assessed against owners, directors, officers, managing agents, and large shareholders; indemnification

“(a) Civil Penalty Liability for Owners, Directors, Officers, and Managing Agents.—

“(1) In general.—In any action or proceeding for a violation of this chapter, the Secretary or court may also assess a civil penalty for such violation against an owner, director, officer, or managing agent of the contractor if the Secretary or court determines, based on the particular facts and circumstances presented, that personal liability for the violation is warranted because the owner, director, officer, or managing agent—

“(A) directed or committed the violation;

“(B) established a policy that led to such a violation; or

“(C) had actual or constructive knowledge of the violation, had the authority to prevent the violation, and failed to prevent the violation.

“(2) Amount of Civil Penalty.—The amount of, or range for, a civil penalty for a violation under paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that
may be assessed against the contractor for such vi-

(8) WALKHEALEY PUBLIC CONTRACTS ACT.—

Section 6506b of title 41, United States Code, as
amended by section 102(g)(6), is further amended
by adding at the end the following:

“(d) CIVIL PENALTIES ASSESSED AGAINST OWNERS,
DIRECTORS, OFFICERS, MANAGING AGENTS, AND LARGE
SHAREHOLDERS.—

“(1) IN GENERAL.—In any action or proceeding
for a violation of this chapter, the Secretary or court
may also assess a civil penalty for such violation
against an owner, director, officer, or managing
agent of the contractor if the Secretary or court de-
determines, based on the particular facts and cir-
cumstances presented, that personal liability for the
violation is warranted because the owner, director,
officer, or managing agent—

“(A) directed or committed the violation;

“(B) established a policy that led to such
a violation; or

“(C) had actual or constructive knowledge
of the violation, had the authority to prevent
the violation, and failed to prevent the violation.
“(2) AMOUNT OF CIVIL PENALTY.—The amount of, or range for, a civil penalty for a violation under paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that may be assessed against the contractor for such violation.”.

(9) FAMILY AND MEDICAL LEAVE ACT OF 1993.—Section 107 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2617) is amended—

(A) by redesignating subsections (e) and (f) as subsections (i) and (j), respectively; and

(B) by inserting after subsection (d) the following:

“(e) OWNERS, DIRECTORS, OFFICERS, AND MANAGING AGENTS.—

“(1) IN GENERAL.—In any action or proceeding for a violation of this Act, the Secretary or court may also assess a civil penalty for such violation against an owner, director, officer, or managing agent of the employer if the Secretary or court determines, based on the particular facts and circumstances presented, that personal liability for the violation is warranted because the owner, director, officer, or managing agent—
“(A) directed or committed the violation;

“(B) established a policy that led to such a violation; or

“(C) had actual or constructive knowledge of the violation, had the authority to prevent the violation, and failed to prevent the violation.

“(2) AMOUNT OF CIVIL PENALTY.—The amount of, or range for, a civil penalty for a violation under paragraph (1) shall, in any case where a similar civil penalty against the employer is established by law, be the amount or range for the civil penalty that may be assessed against the employer for such violation.”.

(e) RESPONSIBILITIES OF 10 LARGEST SHAREHOLDERS.—

(1) FAIR LABOR STANDARDS ACT OF 1938.—Section 16 of the Fair Labor Standards Act of 1938 (20 U.S.C. 216), as amended by subsection (b)(1), is further amended by adding at the end the following:

“(h) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

“(1) IN GENERAL.—In any action or proceeding for a violation of this Act, the 10 largest shareholders of an employer, as determined by the fair value for their beneficial interest as of the beginning
of the period during which the violation occurred, shall—

“(A) jointly and severally be personally liable for all violations of this Act and for all damages awarded and civil penalties assessed for violations of this Act; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the employer for the violations, with the employer responsible for not more than 90 percent.

“(2) No reimbursement.—An employer may not refund in any way any amounts paid by a shareholder under paragraph (1).”.

(2) National labor relations act.—Section 12 of the National Labor Relations Act (29 U.S.C. 162), as amended by subsection (b)(2), is further amended by adding at the end the following:

“(f) Joint liability of large shareholders.—

“(1) In general.—In any action or proceeding for a violation of this Act, the 10 largest shareholders of an employer, as determined by the fair value for their beneficial interest as of the beginning
of the period during which the violation occurred,

shall—

“(A) jointly and severally be personally lia-

bale for all violations of this Act and for all dam-

ages awarded and civil penalties assessed for

violations of this Act; and

“(B) notwithstanding subparagraph (A),

be personally responsible for 10 percent of any
damages, civil penalties, or other restitution or
fees assessed against the employer for the viola-
tions, with the employer responsible for not
more than 90 percent.

“(2) No Reimbursement.—An employer may
not refund in any way any amounts paid by a share-
holder under paragraph (1).”.

(3) Occupational Safety and Health Act
of 1970.—Section 17 of the Occupational Safety
and Health Act of 1970 (29 U.S.C. 666), as amend-
ed by subsection (b)(3), is further amended by add-
ing at the end the following:

“(n) Joint Liability of Large Shareholders.—

“(1) In General.—In any action or proceeding
for a violation of this Act, including any standard,
rule, regulation, or order promulgated pursuant to
this Act, the 10 largest shareholders of an employer,
as determined by the fair value for their beneficial interest as of the beginning of the period during which the violation occurred, shall—

“(A) jointly and severally be personally lia-

ble for all violations of this Act and for all dam-
ages awarded and civil penalties assessed for violations of this Act; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the employer for the violations, with the employer responsible for not more than 90 percent.

“(2) NO REIMBURSEMENT.—An employer may not refund in any way any amounts paid by a share-

holder under paragraph (1).”.

(4) FEDERAL MINE SAFETY AND HEALTH ACT OF 1977.—Section 118 of the Federal Mine Safety and Health Act of 1977, as added by subsection (b)(4), is further amended by adding at the end the following:

“(b) JOINT LIABILITY OF LARGE SHAREHOLDERS.—

“(1) IN GENERAL.—In any action or proceeding for a violation of this Act, including any mandatory health or safety standard, rule, order, or regulation
promulgated pursuant to this Act, the 10 largest shareholders of an operator of a coal or other mine, as determined by the fair value for their beneficial interest as of the beginning of the period during which such violation occurred, shall—

“(A) jointly and severally be personally liable for all such violations, and for all damages awarded and civil penalties assessed for such violations; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the operator for all violations, with the operator responsible for not more than 90 percent.

“(2) No reimbursement.—An operator may not refund in any way any amounts paid by a shareholder under paragraph (1).”.

(5) Migrant and Seasonal Agricultural Worker Protection Act.—Section 505 of the Migrant and Seasonal Agricultural Worker Protection Act, as added by subsection (b)(5), is further amended by adding at the end the following:

“(b) Joint Liability of Large Shareholders.—
“(1) In general.—In any action or proceeding for a violation of this Act, including any regulation under this Act, the 10 largest shareholders of a farm labor contractor, agricultural employer, or agricultural association, as determined by the fair value for their beneficial interest as of the beginning of the period during which such violation occurred, shall—

“(A) jointly and severally be personally liable for all violations of this Act, including any regulation under this Act, and for all damages awarded and civil penalties assessed for such violations; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the farm labor contractor, agricultural employer, or agricultural association for all violations, with the farm labor contractor, agricultural employer, or agricultural association (respectively) responsible for not more than 90 percent.

“(2) No reimbursement.—A farm labor contractor, agricultural employer, or agricultural association may not refund in any way any amounts paid by a shareholder under paragraph (1).”.
(6) **Davis-Bacon Act.**—Section 3144c of title 40, United States Code, as amended by subsection (b)(6), is further amended by adding at the end the following:

“(e) **Joint Liability of Large Shareholders.**—

“(1) **In general.**—In any action or proceeding for a violation of this subchapter, the 10 largest shareholders of a contractor or subcontractor, as determined by the fair value for their beneficial interest as of the beginning of the period during which the violation occurred, shall—

“(A) jointly and severally be personally liable for all violations of this subchapter, and for all damages awarded and civil penalties assessed for violations of this subchapter; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the contractor or subcontractor for the violations, with the contractor or subcontractor responsible for not more than 90 percent.

“(2) **No Reimbursement.**—A contractor or subcontractor may not refund in any way any
amounts paid by a shareholder under paragraph (1).”.

(7) McNamara-O’Hara Service Contract Act.—Section 6707 of title 41, United States Code, as amended by subsection (b)(7)(A), is further amended by adding at the end the following:

“(b) Joint Liability of Large Shareholders.—

“(1) In general.—In any action or proceeding for a violation of this chapter, the 10 largest shareholders of a contractor, as determined by the fair value for their beneficial interest as of the beginning of the period during which the violation occurred, shall—

“(A) jointly and severally be personally liable for all violations of this chapter, and for all damages awarded and civil penalties assessed for violations of this chapter; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the contractor for the violations, with the contractor responsible for not more than 90 percent.
“(2) No Reimbursement.—A contractor may not refund in any way any amounts paid by a shareholder under paragraph (1).”.

(8) Walsh-Healey Public Contracts Act.—Section 6506b of title 41, United States Code, as amended by subsection (b)(8), is further amended by adding at the end the following:

“(e) Joint Liability of Large Shareholders.—

“(1) In General.—In any action or proceeding for a violation of this chapter, the 10 largest shareholders of a contractor, as determined by the fair value for their beneficial interest as of the beginning of the period during which the violation occurred, shall—

“(A) jointly and severally be personally liable for all violations of this chapter, and for all damages awarded and civil penalties assessed for violations of this chapter; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the contractor for the violations, with the contractor responsible for not more than 90 percent.
“(2) No reimbursement.—A contractor may not refund in any way any amounts paid by a shareholder under paragraph (1).”.

(9) Family and Medical Leave Act of 1993.—Section 107 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2617), as amended by subsection (b)(9), is further amended by inserting after subsection (e) the following:

“(f) Joint Liability of Large Shareholders.—

“(1) In general.—In any action or proceeding for a violation of this Act, the 10 largest shareholders of an employer, as determined by the fair value for their beneficial interest as of the beginning of the period during which the violation occurred, shall—

“(A) jointly and severally be personally liable for all violations of this Act and for all damages awarded and civil penalties assessed for violations of this Act; and

“(B) notwithstanding subparagraph (A), be personally responsible for 10 percent of any damages, civil penalties, or other restitution or fees assessed against the employer for the violations, with the employer responsible for not more than 90 percent.
“(2) NO REIMBURSEMENT.—An employer may not refund in any way any amounts paid by a share-
holder under paragraph (1).”.

SEC. 203. FRANCHISORS.

(a) Fair Labor Standards Act of 1938.—

(1) IN GENERAL.—Section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)), as amended by section 202(a)(1), is further amended by adding at the end the following:

“(7) FRANCHISORS AND FRANCHISEES.—A franchisor shall also be responsible for the rights and protections of this Act with regard to an em-
ployee, in any case where a franchisee of the franchisor is responsible for the rights and protec-
tions of this Act for the employee.”.

(2) INDEMNIFICATION.—Section 16 of the Fair Labor Standards Act of 1938, as amended by sec-
tion 202(c)(1), is further amended by adding at the end the following:

“(i) FRANCHISEES AND FRANCHISORS.—

“(1) INDEMNIFICATION BY FRANCHISOR.—An employer or entity that is found to be in violation of this Act and is a franchisee shall have the right to indemnification as described in paragraph (2) from the franchisor, in any case where the violation was—
“(A) at the behest of the franchisor;

“(B) at the direction of the franchisor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or

“(D) due to other direct or indirect control or pressure from the franchisor.

“(2) Process for and type of indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a franchisee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the franchisee as a result of the violation of this Act.

“(3) Prohibition on waiver.—

“(A) In general.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.

“(B) Remedy and civil penalty.—If a franchisor violates subparagraph (A)—
“(i) any indemnification waiver obtained shall be null and void; and

“(ii) the franchisor shall be subject to a civil penalty of $100,000.

“(4) Prohibition on Retaliation.—

“(A) In general.—A franchisor shall not end a franchise agreement with, take adverse action in relation to, or otherwise discriminate against, a franchisee for pursuing indemnification under this subsection.

“(B) Remedy and Civil Penalty.—Any franchisor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(b) National Labor Relations Act.—

(1) In general.—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)), as amended by section 202(a)(2), is further amended by adding at the end the following:

“(E) Franchisors and Franchisees.—A franchisor shall also be responsible for the rights and protections of this Act with regard to an employee, in any case where a franchisee of the franchisor is responsible for the rights and protections of this Act for the employee.”.
(2) INDEMNIFICATION.—Section 12 of the National Labor Relations Act (29 U.S.C. 162), as amended by section 202(c)(2), is further amended by adding at the end the following:

“(g) FRANCHISEES AND FRANCHISORS.—

“(1) INDEMNIFICATION BY FRANCHISOR.—An employer or entity that is found to be in violation of this Act and is a franchisee shall have the right to indemnification as described in paragraph (2) from the franchisor, in any case where the violation was—

“(A) at the behest of the franchisor;

“(B) at the direction of the franchisor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or

“(D) due to other direct or indirect control or pressure from the franchisor.

“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—

“(A) may be sought by a franchisee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by
the franchisee as a result of the violation of this Act.

“(3) Prohibition on waiver.—

“(A) In general.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.

“(B) Remedy and civil penalty.—If a franchisor violates subparagraph (A)—

“(i) any indemnification waiver obtained shall be null and void; and

“(ii) the franchisor shall be subject to a civil penalty of $100,000.

“(4) Prohibition on retaliation.—

“(A) In general.—A franchisor shall not end a franchise agreement with, take adverse action in relation to, or otherwise discriminate against, a franchisee for pursuing indemnification under this subsection.

“(B) Remedy and civil penalty.—Any franchisor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(e) Occupational Safety and Health Act of 1970.—
(1) IN GENERAL.—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)), as amended by section 202(a)(3), is further amended by adding at the end the following:

“(F) FRANCHISORS AND FRANCHISEES.—
A franchisor shall also be responsible for the rights and protections of this Act with regard to an employee, in any case where a franchisee of the franchisor is responsible for the rights and protections of this Act for the employee.”.

(2) INDEMNIFICATION.—Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666), as amended by section 202(c)(3), is further amended by adding at the end the following:

“(o) FRANCHISEES AND FRANCHISORS.—
“(1) INDEMNIFICATION BY FRANCHISOR.—An employer or other entity that is a franchisee and is found to be in violation of this Act shall have the right to indemnification as described in paragraph (2) from the franchisor, in any case where the violation was—
“(A) at the behest of the franchisor;
“(B) at the direction of the franchisor;
“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or

“(D) due to other direct or indirect control or pressure from the franchisor.

“(2) Process for and Type of Indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a franchisee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the franchisee as a result of the violation of this Act.

“(3) Prohibition on Waiver.—

“(A) In General.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.

“(B) Remedy and Civil Penalty.—If a franchisor violates subparagraph (A)—

“(i) any indemnification waiver obtained shall be null and void; and
“(ii) the franchisor shall be subject to
a civil penalty of $100,000.

“(4) Prohibition on retaliation.—

“(A) In general.—A franchisor shall not
end a franchise agreement with, take adverse
action in relation to, or otherwise discriminate
against, a franchisee for pursuing indemnifica-
tion under this subsection.

“(B) Remedy and civil penalty.—Any
franchisor who violates subparagraph (A) shall
be subject to a civil penalty of $100,000.”.

(d) Federal Mine Safety and Health Act of
1977.—

(1) In general.—Section 4B of the Federal
Mine Safety and Health Act of 1977, as amended by
section 202(a)(4), is further amended by adding at
the end the following:

“(c) Franchisors and Franchisees.—A
franchisor shall also be responsible for the rights and pro-
tections of this Act with regard to a miner, in any case
where a franchisee of the franchisor is responsible for the
rights and protections of this Act for the miner.”.

(2) Indemnification.—Section 118 of the
Federal Mine Safety and Health Act of 1977, as
amended by section 202(c)(4), is further amended by adding at the end the following:

“(c) Franchisees and Franchisors.—

“(1) Indemnification by Franchisor.—An operator or other entity that is found to be in violation of this Act and is a franchisee shall have the right to indemnification as described in paragraph (2) from the franchisor, in any case where the violation was—

“(A) at the behest of the franchisor;

“(B) at the direction of the franchisor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or

“(D) due to other direct or indirect control or pressure from the franchisor.

“(2) Process for and Type of Indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a franchisee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by
the franchisee as a result of the violation of this Act.

“(3) Prohibition on Waiver.—

“(A) In General.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.

“(B) Remedy and Civil Penalty.—If a franchisor violates subparagraph (A)—

“(i) any indemnification waiver obtained shall be null and void; and

“(ii) the franchisor shall be subject to a civil penalty of $100,000.

“(4) Prohibition on Retaliation.—

“(A) In General.—A franchisor shall not end a franchise agreement with, take adverse action in relation to, or otherwise discriminate against, a franchisee for pursuing indemnification under this subsection.

“(B) Remedy and Civil Penalty.—Any franchisor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(e) Migrant and Seasonal Agricultural Worker Protection Act.—
(1) IN GENERAL.—Section 5(c) of the Migrant and Seasonal Agricultural Worker Protection Act, as amended by section 202(a)(5), is further amended by adding at the end the following:

“(4) Franchisors and franchisees.—A franchisor shall also be responsible for the rights and protections of this Act with regard to an individual who is a migrant agricultural worker or seasonal agricultural worker employed by a farm labor contractor, agricultural employer, or agricultural association, in any case where a franchisee of the franchisor is responsible for the rights and protections of this Act for the migrant agricultural worker or seasonal agricultural worker.”.

(2) INDEMNIFICATION.—Section 505 of the Migrant and Seasonal Agricultural Worker Protection Act, as amended by section 202(c)(5), is further amended by adding at the end the following:

“(c) Franchisees and Franchisors.—

“(1) Indemnification by franchisor.—A farm labor contractor, agricultural employer, agricultural association, or other entity that is found to be in violation of this Act and is a franchisee shall have the right to indemnification as described in para-
(2) graph (2) from the franchisor, in any case where the violation was—

“(A) at the behest of the franchisor;

“(B) at the direction of the franchisor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or

“(D) due to other direct or indirect control or pressure from the franchisor.

“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—

“(A) may be sought by a franchisee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the franchisee as a result of the violation of this Act.

“(3) PROHIBITION ON WAIVER.—

“(A) IN GENERAL.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.
“(B) Remedy and Civil Penalty.—If a franchisor violates subparagraph (A)—

“(i) any indemnification waiver obtained shall be null and void; and

“(ii) the franchisor shall be subject to a civil penalty of $100,000.

“(4) Prohibition on Retaliation.—

“(A) In General.—A franchisor shall not end a franchise agreement with, take adverse action in relation to, or otherwise discriminate against, a franchisee for pursuing indemnification under this subsection.

“(B) Remedy and Civil Penalty.—Any franchisor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(f) Davis-Bacon Act.—

(1) In General.—Section 3144b of title 40, United States Code, as amended by section 202(a)(6), is further amended by adding at the end the following:

“(c) Franchisors and Franchisees.—A franchisor shall also be responsible for the rights and protections of this subchapter with regard to a laborer or mechanic in any case where a franchisee of the franchisor
is responsible for the rights and protections of this sub-
chapter for the laborer or mechanic.”.

(2) INDEMNIFICATION.—Section 3144c of title
40, United States Code, as amended by section
202(c)(6), is further amended by adding at the end
the following:

“(f) FRANCHISEES AND FRANCHISORS.—

“(1) INDEMNIFICATION BY FRANCHISOR.—A
contractor, subcontractor, or other entity that is
found to be in violation of this subchapter and is a
franchisee shall have the right to indemnification as
described in paragraph (2) from the franchisor, in
any case where the violation was—

“(A) at the behest of the franchisor;
“(B) at the direction of the franchisor;
“(C) pursuant to any policies, agreements,
or contractual obligations emanating from the
franchisor; or
“(D) due to other direct or indirect control
or pressure from the franchisor.

“(2) PROCESS FOR AND TYPE OF INDEMNIFICA-
tion.—Indemnification under paragraph (1)—
“(A) may be sought by a franchisee in any
court of competent jurisdiction; and
“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the franchisee as a result of the violation of this subchapter.

“(3) PROHIBITION ON WAIVER.—

“(A) IN GENERAL.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.

“(B) REMEDY AND CIVIL PENALTY.—If a franchisor violates subparagraph (A)—

“(i) any indemnification waiver obtained shall be null and void; and

“(ii) the franchisor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A franchisor shall not end a franchise agreement with, take adverse action in relation to, or otherwise discriminate against, a franchisee for pursuing indemnification under this subsection.
“(B) Remedy and civil penalty.—Any franchisor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(g) McNamara-O’Hara Service Contract Act.—

(1) In general.—Section 6701a of title 41, United States Code, as amended by section 202(a)(7), is further amended by adding at the end the following:

“(c) Franchisors and Franchisees.—A franchisor shall also be responsible for the rights and protections of this chapter with regard to a service employee in any case where a franchisee of the franchisor is responsible for the rights and protections of this chapter for the service employee.”.

(2) Indemnification.—Section 6707 of title 41, United States Code, as amended by section 202(c)(7), is further amended by adding at the end the following:

“(c) Franchisees and Franchisors.—

“(1) Indemnification by franchisor.—A contractor, subcontractor, or other entity that is found to be in violation of this chapter and is a franchisee shall have the right to indemnification as described in paragraph (2) from the franchisor, in any case where the violation was—
“(A) at the behest of the franchisor;
“(B) at the direction of the franchisor;
“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or
“(D) due to other direct or indirect control or pressure from the franchisor.
“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—
“(A) may be sought by a franchisee in any court of competent jurisdiction; and
“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the franchisee as a result of the violation of this chapter.
“(3) PROHIBITION ON WAIVER.—
“(A) IN GENERAL.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.
“(B) REMEDY AND CIVIL PENALTY.—If a franchisor violates subparagraph (A)—
“(i) any indemnification waiver obtained shall be null and void; and

“(ii) the franchisor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A franchisor shall not end a franchise agreement with, take adverse action in relation to, or otherwise discriminate against, a franchisee for pursuing indemnification under this subsection.

“(B) REMEDY AND CIVIL PENALTY.—Any franchisor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

(1) IN GENERAL.—Section 6501b of title 41, United States Code, as amended by section 202(a)(8), is further amended by adding at the end the following:

“(c) FRANCHISORS AND FRANCHISEES.—A franchisor shall also be responsible for the rights and protections of this chapter with regard to an individual employed under a contract to which this chapter applies, in any case where a franchisee of the franchisor is responsible for the rights and protections of this chapter for the individual.”.
(2) INDEMNIFICATION.—Section 6506b of title 41, United States Code, as amended by section 202(c)(8), is further amended by adding at the end the following:

“(f) FRANCHISEES AND FRANCHISORS.—

“(1) INDEMNIFICATION BY FRANCHISOR.—A contractor, subcontractor, or other entity that is found to be in violation of this chapter and is a franchisee shall have the right to indemnification as described in paragraph (2) from the franchisor, in any case where the violation was—

“(A) at the behest of the franchisor;

“(B) at the direction of the franchisor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or

“(D) due to other direct or indirect control or pressure from the franchisor.

“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—

“(A) may be sought by a franchisee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s
fees, or other amounts required to be paid by
the franchisee as a result of the violation of this
chapter.

“(3) Prohibition on waiver.—

“(A) In general.—A franchisor shall not
require or otherwise request a franchisee to
waive the franchisee’s right to indemnification
under this subsection.

“(B) Remedy and civil penalty.—If a
franchisor violates subparagraph (A)—

“(i) any indemnification waiver ob-
tained shall be null and void; and

“(ii) the franchisor shall be subject to
a civil penalty of $100,000.

“(4) Prohibition on retaliation.—

“(A) In general.—A franchisor shall not
end a franchise agreement with, take adverse
action in relation to, or otherwise discriminate
against, a franchisee for pursuing indemnifica-
tion under this subsection.

“(B) Remedy and civil penalty.—Any
franchisor who violates subparagraph (A) shall
be subject to a civil penalty of $100,000.”.

(i) Family and Medical Leave Act of 1993.—
(1) IN GENERAL.—Section 101(4) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611(4)), as amended by section 202(a)(9), is further amended by adding at the end the following:

“(F) FRANCHISORS AND FRANCHISEES.—
A franchisor shall also be responsible for the rights and protections of this Act with regard to an employee, in any case where a franchisee of the franchisor is responsible for the rights and protections of this Act for the employee.”.

(2) INDEMNIFICATION.—Section 107 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2617), as amended by section 202(c)(9), is further amended by inserting after subsection (f) the following:

“(g) FRANCHISEES AND FRANCHISORS.—

“(1) INDEMNIFICATION BY FRANCHISOR.—An employer or other entity that is found to be in violation of this Act and is a franchisee shall have the right to indemnification as described in paragraph (2) from the franchisor, in any case where the violation was—

“(A) at the behest of the franchisor;

“(B) at the direction of the franchisor;
“(C) pursuant to any policies, agreements, or contractual obligations emanating from the franchisor; or

“(D) due to other direct or indirect control or pressure from the franchisor.

“(2) Process for and Type of Indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a franchisee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the franchisor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the franchisee as a result of the violation of this Act.

“(3) Prohibition on Waiver.—

“(A) In General.—A franchisor shall not require or otherwise request a franchisee to waive the franchisee’s right to indemnification under this subsection.

“(B) Remedy and Civil Penalty.—If a franchisor violates subparagraph (A)—

“(i) any indemnification waiver obtained shall be null and void; and
“(ii) the franchisor shall be subject to a civil penalty of $100,000.

“(4) Prohibition on retaliation.—

“(A) In general.—A franchisor shall not end a franchise agreement with, take adverse action in relation to, or otherwise discriminate against, a franchisee for pursuing indemnification under this subsection.

“(B) Remedy and civil penalty.—Any franchisor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(j) Federal Unemployment Tax Act (FUTA).—

(1) In general.—Section 3306(w) of the Internal Revenue Code of 1986, as amended by section 202(a)(10), is amended by adding at the end the following new paragraphs:

“(5) Paragraph (7) of section 3(d) of such Act.

“(6) Subsection (i) of section 16 of such Act.”.

(2) Effective date.—The amendment made by paragraph (1) shall apply to services rendered on or after January 1, 2022

SEC. 204. TEMPORARY STAFFING COMPANIES.

(a) Responsibilities of Employers Utilizing Employees of Staffing Companies and Other Covered Employees.—
(1) **Fair Labor Standards Act of 1938.**—

Section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)), as amended by section 203(a)(1), is further amended by adding at the end the following:

“(8) **Employers of Employees of Staffing Companies and Other Covered Employees.**—An employer shall also be responsible for the rights and protections of this Act with regard to one or more covered employees (as defined in section 6(c)(1)) provided by another employer to perform labor for the employer.”

(2) **National Labor Relations Act.**—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)), as amended by section 203(b)(1), is further amended by adding at the end the following:

“(F) **Employers of Employees of Staffing Companies and Other Covered Employees.**—An employer shall also be responsible for the rights and protections of this Act with regard to one or more covered employees (as defined in section 6(c)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(c)(1))) provided by another employer to perform labor for the employer.”
(3) OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)), as amended by section 203(c), is further amended by adding at the end the following:

“(G) EMPLOYERS OF EMPLOYEES OF STAFFING COMPANIES AND OTHER COVERED EMPLOYEES.—An employer shall also be responsible for the rights and protections of this Act with regard to one or more covered employees (as defined in section 6(c)(1) of the Fair Labor Standards Act (29 U.S.C. 206(c)(1)) provided by another employer to perform labor for the employer.”.

(4) FEDERAL MINE SAFETY AND HEALTH ACT OF 1977.—Section 4B of the Federal Mine Safety and Health Act of 1977, as amended by section 203(d)(1), is further amended by adding at the end the following:

“(d) EMPLOYERS OF EMPLOYEES OF STAFFING COMPANIES AND OTHER COVERED EMPLOYEES.—An operator of a coal or other mine shall also be responsible for the rights and protections of this Act with regard to one or more covered employees (as defined in section 6(c)(1) of the Fair Labor Standards Act (29 U.S.C.
206(c)(1)) provided by another employer to perform labor as miners for the operator.”.

(5) **MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.**—Section 5(c) of the Migrant and Seasonal Agricultural Worker Protection Act, as amended by section 203(e), is further amended by adding at the end the following:

“(5) **EMPLOYERS OF EMPLOYEES OF STAFFING COMPANIES AND OTHER COVERED EMPLOYEES.**—A farm labor contractor, agricultural employer, or agricultural association shall also be responsible for the rights and protections of this Act with regard to one or more migrant agricultural workers or seasonal agricultural workers who—

“(A) are covered employees (as defined in section 6(c)(1) of the Fair Labor Standards Act of 1938); and

“(B) are provided by another employer to perform labor for the farm labor contractor, agricultural employer, or agricultural association.”.

(6) **DAVIS-BACON ACT.**—Section 3144b of title 40, United States Code, as amended by section 203(f)(1), is further amended by adding at the end the following:
“(d) Employers of Employees of Staffing Companies and Other Covered Employees.—A contractor or any subcontractor shall also be responsible for the rights and protections of this subchapter with regard to one or more laborers or mechanics who are covered employees (as defined in section 6(c)(1) of the Fair Labor Standards Act (29 U.S.C. 206(c)(1)) provided by another employer to perform labor for the contractor or subcontractor under a contract to which this subchapter applies.”.

(7) McNamara-O’Hara Service Contract Act.—Section 6701a of title 41, United States Code, as amended by section 203(g), is further amended by adding at the end the following:

“(d) Employers of Employees of Staffing Companies and Other Covered Employees.—A contractor shall also be responsible for the rights and protections of this chapter with regard to one or more service employees who are covered employees (as defined in section 6(c)(1) of the Fair Labor Standards Act (29 U.S.C. 206(c)(1)) provided by another employer to perform labor for the contractor under a contract to which this chapter applies.”.

(8) Walsh-Healey Public Contracts Act.—

Section 6501b of title 41, United States Code, as
amended by section 203(h), is further amended by adding at the end the following:
“(d) Employers of Employees of Staffing Companies and Other Covered Employees.—A con-
tractor shall also be responsible for the rights and protec-
tions of this chapter with regard to one or more individ-
uals who are covered employees (as defined in section
6(c)(1) of the Fair Labor Standards Act (29 U.S.C.
206(c)(1)) provided by another employer to perform labor
in the manufacture or furnishing of materials, supplies,
articles, or equipment for the contractor under a contract
to which this chapter applies.”.

(9) Family and Medical Leave Act of
1993.—Section 101(4) of the Family and Medical
Leave Act of 1993 (29 U.S.C. 2611(4)), as amended
by section 203(i), is further amended by adding at
the end the following:
“(G) Employers of employees of
Staffing Companies and Other Covered
Employees.—An employer shall also be re-
sponsible for the rights and protections of this
Act with regard to one or more covered employ-
ees (as defined in section 6(c)(1) of the Fair
206(c)(1))) provided by another employer to perform labor for the employer.”.

(10) **FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—**

(A) **IN GENERAL.**—Section 3306(w) of the Internal Revenue Code of 1986, as amended by section 203(j), is amended by adding at the end of the following new paragraph:

“(7) Paragraph (8) of section 3(d) of such Act.”.

(B) **EFFECTIVE DATE.**—The amendment made by subparagraph (A) shall apply to services rendered on or after January 1, 2022.

(b) **EQUITABLE TREATMENT FOR EMPLOYEES OF STAFFING COMPANIES AND OTHER COVERED EMPLOYEES.**—

(1) **IN GENERAL.**—Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) is amended by inserting after subsection (b) the following:

“(c) **EMPLOYEES OF STAFFING COMPANIES AND OTHER COVERED EMPLOYEES.**—

“(1) **DEFINITION OF COVERED EMPLOYEE.**—In this subsection, the term ‘covered employee’ means an employee provided by another employer to per-
form labor for the employer, including a temporary
or short-term contract employee.

“(2) WAGES FOR COVERED EMPLOYEES.—

“(A) IN GENERAL.—No employer shall pay
wages to a covered employee provided by an-
other employer to perform labor for the em-
ployer, or allow a covered employee provided by
another employer to perform labor for the em-
ployer at wages, at a rate less than the pre-
vailing rate at which the employer for whom the
labor is performed pays wages to direct employ-
ees for similar work on jobs the performance of
which requires similar skill, effort, and respon-
sibility, and which are performed under similar
working conditions, except as provided in sub-
paragraph (B).

“(B) EXCEPTIONS.—An employer may pay
a covered employee a wage at a rate less than
the wage rate required under subparagraph (A)
if—

“(i) such payment is made pursuant
to—

“(I) a seniority system;
“(II) a merit system;
“(III) a system that measures rate of pay by quantity or quality of production; or

“(IV) a differential based on any lawful factor other than employment status; and

“(ii) the rate is not less than 80 percent of the prevailing rate at which the employer for whom the labor is performed pays wages to direct employees for similar work on jobs the performance of which requires similar skill, effort, and responsibility, and which are performed under similar working conditions.

“(3) INCREASED WAGES FOR COVERED EMPLOYEES.—

“(A) IN GENERAL.—In the case of a covered employee who is not provided with the same benefits as the employer for whom the labor is being performed provides to its direct employees, the employer for whom the labor is being performed shall pay the covered employee, or require the employer providing the covered employee to pay the covered employee, a wage
rate that, subject to subparagraph (B), is not less than the sum of—

“(i) the wage rate required under paragraph (2); and

“(ii) the lesser of—

“(I) an amount equal to 25 percent of the wage rate required under paragraph (2); or

“(II) the amount the employee would have to pay to secure equivalent benefits without an employer’s assistance.

“(B) MINIMUM.—In no case shall the minimum wage rate required under subparagraph (A) be less than 125 percent of the minimum wage rate required under subsection (a)(1).”.

(2) LIMITING EXEMPTIONS.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended—

(A) in the matter preceding paragraph (1) of subsection (a), by inserting “ and section 6(c)” after “this subsection”;

(B) in subsection (d), by inserting “(except for subsection (c) of such section)” after “sections 6”; and
(C) in subsection (f), by inserting “(except for subsection (e) of such section)” after “sections 6”.

(c) NEW PROTECTIONS FOR EMPLOYEES OF STAFFING COMPANIES AND OTHER COVERED EMPLOYEES.—

(1) IN GENERAL.—Section 9 of the Fair Labor Standards Act of 1938, as added by section 102(a)(6)(C)(i), is further amended by adding at the end the following:

“(b) PROTECTIONS FOR EMPLOYEES OF STAFFING COMPANIES AND OTHER COVERED EMPLOYEES.—

“(1) DEFINITION OF COVERED EMPLOYEE.—In this subsection, the term ‘covered employee’ has the meaning given the term in section 6(c)(1).

“(2) REGISTRATION OF PROVIDING EMPLOYERS.—

“(A) IN GENERAL.—Each employer that provides covered employees to perform labor for another employer shall register with the Secretary each year, in accordance with this subsection and regulations of the Secretary. Each such providing employer shall include with the registration—
“(i) proof of an employer account number for the purposes of the payment of unemployment insurance contributions;

“(ii) proof of valid workers’ compensation insurance in effect at the time of registration and covering all covered employees performing labor for the employer; and

“(iii) a report containing the information described in paragraph (7)(A)(ix), in the aggregate for all covered employees of the providing employer that performed labor for another employer in the preceding calendar year and disaggregated by branch office.

“(B) REGISTRATION FEE.—The Secretary shall assess each employer that registers under subparagraph (A) a nonrefundable registration fee equal to the sum of—

“(i) $1,000 per year; and

“(ii) an additional $250 for each branch office of the employer.

“(C) IMMEDIATE REPORTING OF WORKERS’ COMPENSATION LAPSE.—In any case where the workers’ compensation insurance of
an employer required to register under subparagraph (A) lapses—

“(i) the employer shall report the lapse to the Secretary; and

“(ii) the Secretary shall suspend the employer’s registration until the employer’s workers’ compensation insurance is reinstated.

“(D) Authority to deny, suspend, or revoke registration.—

“(i) In general.—The Secretary shall have the authority to deny, suspend, or revoke the registration of an employer under subparagraph (A) if warranted by violations of this subsection or of any other Federal, State, or local worker protection law.

“(ii) Duty to notify.—An employer whose registration under subparagraph (A) is denied, suspended, or revoked shall notify, both by telephone and in writing, each of its covered employees and each of the employers for whom its covered employees perform labor within 24 hours of any de-
nial, suspension, or revocation of its reg-
istration.

“(E) INELIGIBILITY.—An employer re-
questing to register with the Secretary under
subsection (A) is ineligible if, within the 5
years immediately preceding the date of the em-
ployer’s registration request, the employer or
any of its officers, directors, partners, or man-
gers, or any owner of 25 percent or greater
beneficial interest, has been involved, as officer,
director, partner, manager, or owner, in an-
other employer whose registration under such
subsection was revoked or suspended with-
out being reinstated.

“(F) WEBSITE.—The Secretary shall cre-
ate and maintain a public website that in-
cludes—

“(i) a list of all employers whose reg-
istration under subsection (A) is in
good standing;

“(ii) a list of all employers whose reg-
istration under subsection (A) has been
suspended, including the reason for the
suspension, the date the suspension was
initiated, and, if known, the date the sus-
pension is to be lifted; and

“(iii) a list of all employers whose reg-
istration under subparagraph (A) has been
revoked, including the reason for the rev-
ocation and the date the registration was
revoked.

“(3) Employers for whom employees per-
form labor.—

“(A) In general.—No employer for
whom a covered employee is provided by an-
other employer to perform labor may enter into
a contract or any other agreement for such
labor with any employer not registered under
paragraph (2)(A).

“(B) Verification.—

“(i) Requirements for receiving
employers.—An employer for whom a
covered employee is provided by another
employer to perform labor shall verify the
providing employer’s status with the Sec-
retary of Labor before entering into a con-
tract or other agreement with the pro-
viding employer, and at annual intervals
thereafter.
“(ii) Requirements for Providing Employers.—An employer that provides a covered employee to another employer to perform labor shall provide any employer for whom its covered employee performs labor with proof of valid registration under paragraph (2)(A) before entering into any contract or other agreement with the receiving employer.

“(C) List of Registered Employers.—

Upon request, the Secretary shall provide to any requesting party a list of employers registered under paragraph (2)(A) and an employer may rely in good faith on the information on such list provided by the Secretary.

“(4) No Work Restrictions.—No employer that provides a covered employee to perform labor for another employer shall—

“(A) restrict the right of a covered employee to accept direct employment with an employer for whom the covered employee has performed labor;

“(B) restrict the right of an employer for whom the covered employee has performed labor to offer such direct employment; or
“(C) charge any fee, either to the covered employee or an employer for whom the covered employee has performed labor, for the covered employee converting to direct employment with such employer.

“(5) Prohibition on permatemp workers.—

“(A) Conversion of temporary workers to direct employees.—After a covered employee performs labor for an employer for 1,040 total hours during any 12-month period, such employer shall convert the covered employee to a direct employee of such employer.

“(B) Prohibitions on evasion.—

“(i) No multiple contracts.—An employer shall not terminate or end the agreement under which a covered employee is providing labor to the employer and then reengage such covered employee at a later date in order to evade the requirements of this subsection.

“(ii) No replacement employees.—An employer shall not terminate or end the agreement under which a covered employee is providing labor to the employer
and then engage a different covered employee in order to evade the requirements of this subsection.

“(6) Employment notices.—

“(A) In general.—Whenever an employer agrees to provide 1 or more covered employees to perform labor for another employer, the providing employer shall provide to each covered employee and to the other employer, at the time of dispatch, a statement containing the following information on a form approved by the Secretary:

“(i) The name of the covered employee.

“(ii) The name, address, and phone number of the providing employer that has agreed to the dispatch.

“(iii) The name, address, and phone number of the employer for whom the covered employee will perform labor.

“(iv) The name, address, and phone number of the providing employer’s workers’ compensation insurance carrier.
“(v) The address and phone number of the nearest regional office of the Department of Labor.

“(vi) The name of the position, the nature of the work to be performed, and the types of equipment, clothing, and training that are required for the task.

“(vii) The wages offered, including the hourly rate of pay and the hourly rate of overtime pay, should overtime hours be performed.

“(viii) The designated pay day.

“(ix) The anticipated daily start times and daily end times.

“(x) The anticipated duration of the dispatch.

“(xi) The terms of transportation.

“(xii) Whether meals or equipment, or both, are provided and the cost of the meal and equipment to the covered employee, if any.

“(B) DURATION.—If a covered employee who is provided by an employer to perform labor for another employer is assigned to the same employer for more than 1 day, the pro-
viding employer is required to provide the em-
ployment information described in subpara-
graph (A) only on—

“(i) the first day of the assignment;

and

“(ii) if any of the terms described in
subparagraph (A) are changed, the first
day of such change.

“(C) CONFIRMATION OF WORK SOUGHT.—
If an employer that provides covered employees
to other employers to perform labor does not
place a covered employee with an employer for
whom to perform labor for a particular day, the
providing employer shall, upon request, provide
the covered employee with a written and signed
confirmation that the covered employee sought
work, which shall include the name of the pro-
viding employer, the name and address of the
covered employee, and the date and time that
the covered employee received the confirmation.

“(D) NO COVERED EMPLOYEES DURING
LABOR DISPUTES.—No employer may provide a
covered employee to perform labor at any work-
place where a strike, lockout, or other labor dis-
pute exists.
“(7) RECORDKEEPING.—

“(A) PROVIDING EMPLOYER.—Whenever an employer provides covered employees to perform labor for another employer, the providing employer shall keep the following records with respect to the covered employees:

“(i) The name, address, and telephone number for each employer to whom covered employees were sent to perform labor, including each worksite to which covered employees were sent, and the date of the transaction effectuating the agreement between employers.

“(ii) For each covered employee, the name, address, and specific location of the worksite, the type of labor performed, the number of hours worked, and the hourly rate of pay.

“(iii) The name and title of all individuals responsible for the transaction on behalf of the employer for whom the covered employee is performing labor.

“(iv) Any specific qualifications or attributes of an employee that are requested
by the employer for whom the covered em-
ployee performs labor.

“(v) Copies of all contracts (if any) or
other agreements with, and all invoices
from, the employer for whom the covered
employee performs labor.

“(vi) Copies of all employment notices
provided in accordance with paragraph
(6)(A).

“(vii) Deductions to be made from the
covered employee’s compensation, made by
either the providing employer or the em-
ployer for whom the covered employee per-
forms labor, for the covered employee’s
transportation, food, equipment, withheld
income tax, withheld social security pay-
ments, and any other deduction.

“(viii) Documentation verifying the
actual cost of any equipment or meal
charged to a covered employee.

“(ix) The race and gender of each
covered employee performing labor.

“(x) Any additional information as
shall be required by regulation of the Sec-
retary.
“(B) Transmission requirements.—

“(i) In general.—The employer for whom the covered employee is performing labor shall transmit all information required under subparagraph (A)(ii) to the employer who has provided such covered employee not later than 7 days following the last day of the work week worked for which the covered employee performed work for the employer.

“(ii) Interaction with other requirements.—The failure of an employer for whom a covered employee is performing labor to transmit the information required under this subparagraph shall not exempt the covered employee’s providing employer from any other recordkeeping requirements of this subsection.

“(8) Meals.—If a covered employee is provided with a meal, the covered employee shall not be charged more than the actual cost of the meal. A covered employee shall not be charged for any meal not consumed by the covered employee. Purchase of a meal by a covered employee shall not be a condition of employment or performance of labor.
“(9) TRANSPORTATION.—

“(A) IN GENERAL.—A covered employee may not be charged any fee for transport to or from a designated worksite by either the employer who is providing the covered employee for the performance of labor or the employer for whom the covered employee is performing labor.

“(B) RESPONSIBILITY.—The employer who is providing a covered employee to perform labor for another employer is responsible for the conduct and performance of any person whom the employer secures to transport the covered employee to or from a designated worksite and for the safety of the vehicle used for such transport, unless the transporter is a part of public mass transportation or a common carrier.

“(C) REFERRAL LIMITATIONS.—The employer who is providing a covered employee to perform labor for another employer may not refer the covered employee to any person for transportation to or from a worksite unless that person is—

“(i) part of public mass transportation; or
“(ii) providing the transportation for no fee.

“(D) Vehicle Requirements.—Any motor vehicle owned or operated by an employer who is providing a covered employee to another employer that is used for the covered employee’s transportation to or from a worksite must have a seat and safety belt for each passenger and must be operated by a driver with a valid license to operate such motor vehicle.

“(E) Round-Trip Transportation.—If a covered employee is provided with transportation to a worksite by either the covered employee’s providing employer or the employer for whom the covered employee is performing labor, then the covered employee shall be provided with transportation back to the point of origin unless the covered employee agrees prior to leaving for the worksite that the covered employee already has secured or will secure alternative transportation at the end of the covered employee’s shift.

“(F) Reimbursement and Minimum Compensation.—In any case where an employer providing a covered employee to perform
labor for another employer dispatches a covered employee to a job that does not exist, the providing employer shall—

“(i) refund the covered employee’s reasonable transportation costs; and

“(ii) pay the covered employee compensation equivalent to 2 hours of work.

“(10) EQUIPMENT.—For any safety equipment, specialized clothing, accessories, or any other items required by the nature of the work, either by law, custom, or the employer for whom a covered employee is performing labor, the covered employee—

“(A) shall not be charged for the items provided by the providing employer or the employer for whom the covered employee is performing labor, unless the covered employee negligently damages or destroys such items; and

“(B) if the covered employee is required to purchase any such items, the employer for whom the covered employee is performing labor shall refund the cost of such items, including any related shipping or handling, to the covered employee.

“(11) OTHER CHARGES.—No covered employee shall be charged by the employer who is providing
the covered employee to perform labor, or the em-
ployer for whom the covered employee is performing 
work, for any of the following:

“(A) Registering with the covered employ-
ee’s providing employer.

“(B) Obtaining work assignments.

“(C) Drug tests.

“(D) Background checks.

“(E) Debit cards used for payment of 
wages or any other method of wage payment.”.

(2) Penalties.—

(A) Prohibited Acts.—Section 15(a) of the 
Fair Labor Standards Act of 1938 (29 
U.S.C. 215(a)), as amended by section 
102(a)(3)(B), is further amended by adding at 
the end the following:

“(8) to violate any of the provisions of section 
9(b).”.

(B) Penalties.—Section 16(e) of the 
216(e)), as amended by section 102(a)(7)(B), is 
further amended by adding at the end the fol-
lowing:

“(9) Fines and Penalties Regarding Tem-
porary and Other Covered Employees.—
“(A) IN GENERAL.—The Secretary may, after notice and an opportunity for a hearing, assess a civil penalty not to exceed $6,000 against any employer that violates any of the provisions of section 9(b) (except for paragraph (2)(A) or (3) of such section). Each violation of such section 9(b) for each day of the violation and for each covered employee shall constitute a separate and distinct violation of such section 9(b).

“(B) REGISTRATION VIOLATIONS.—The Secretary may, after notice and an opportunity for a hearing, assess a civil penalty against any employer that fails to register with the Secretary of Labor in accordance with section 9(b)(2)(A), including any rules issued under such section, of $500 per violation. Each day during which an employer operates without registering shall be a separate and distinct violation of such section.

“(C) CIVIL PENALTY.—Any employer for whom a covered employee performs labor that violates section 9(b)(3) shall be subject to a civil penalty of $500. Each day during which such employer contracts with a covered employee’s employer who is not registered with the Secretary of Labor under section
9(b)(2)(A) shall constitute a separate and distinct offense.

“(D) REVOCATION.—The Secretary may revoke the registration of an employer under section 9(b)(2)(A) in any case where an employer willfully, as determined by the Department, commits a violation of this section within 3 years of an earlier violation of such section.”.

SEC. 205. LICENSORS.

(a) FAIR LABOR STANDARDS ACT OF 1938.—

(1) IN GENERAL.—Section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)), as amended by section 204(a)(1), is further amended by adding at the end the following:

“(9) LICENSORS.—An entity licensing its brand, name, or other likeness to an employer, or other entity responsible for the rights and protections of this Act with regard to the employees of such employer, for consideration shall also be responsible for the rights and protections of this Act with regard to the employees of such employer.”.

(2) INDEMNIFICATION.—Section 16 of the Fair Labor Standards Act of 1938, as amended by section 203(a)(2), is further amended by adding at the end the following:
“(j) Licensees and licensors.—

“(1) Indemnification by licensor.—An employer or other entity that is found to be in violation of this Act shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the employer or other entity, in any case where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or

“(D) due to other direct or indirect control or pressure from the licensor.

“(2) Process for and type of indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a licensee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the licensee as a result of the violation of this Act.

“(3) Prohibition on waiver.—
“(A) IN GENERAL.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.

“(B) PENALTY.—If a licensor violates subparagraph (A)—

“(i) any indemnification waiver shall be null and void; and

“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate against, a licensee for pursuing indemnification under this subsection.

“(B) PENALTY.—A licensor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(b) NATIONAL LABOR RELATIONS ACT.—

(1) IN GENERAL.—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)), as amended by section 204(a)(2), is further amended by adding at the end the following:
“(G) LICENSORS.—An entity licensing its brand, name, or other likeness to an employer, or other entity responsible for the rights and protections of this Act with regard to the employees of such employer, for consideration shall also be responsible for the rights and protections of this Act with regard to the employees of such employer.”

(2) INDEMNIFICATION.—Section 12 of the National Labor Relations Act (29 U.S.C. 162), as amended by section 203(b)(2), is further amended by adding at the end the following:

“(h) LICENSEES AND LICENSORS.—

“(1) INDEMNIFICATION BY LICENSOR.—An employer or other entity that is found to be in violation of this Act shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the employer or other entity, in any case where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or

“(D) due to other direct or indirect control or pressure from the licensor.
“(2) Process for and type of indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a licensee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the licensee as a result of the violation of this Act.

“(3) Prohibition on waiver.—

“(A) In general.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.

“(B) Penalty.—If a licensor violates subparagraph (A)—

“(i) any indemnification waiver shall be null and void; and

“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) Prohibition on retaliation.—

“(A) In general.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate
against, a licensee for pursuing indemnification
under this subsection.

“(B) PENALTY.—A licensor who violates
subparagraph (A) shall be subject to a civil
penalty of $100,000.”.

(c) OCCUPATIONAL SAFETY AND HEALTH ACT OF
1970.—

(1) IN GENERAL.—Section 3(5) of the Occupa-
tional Safety and Health Act of 1970 (29 U.S.C.
652(5)), as amended by section 204(a)(3), is further
amended by adding at the end the following:

“(H) LICENSORS.—An entity licensing its
brand, name, or other likeness to an employer,
or other entity responsible for the rights and
protections of this Act with regard to the em-
ployees of an employer, or other entity respon-
sible for the rights and protections of this Act
with regard to the employees of such employer,
for consideration shall also be responsible for
the rights and protections of this Act with re-
gard to the employees of such employer.”.

(2) INDEMNIFICATION.—Section 17 of the Oc-
cupational Safety and Health Act of 1970 (29
U.S.C. 666), as amended by section 203(c)(2), is
further amended by adding at the end the following:
“(p) LICENSEES AND LICENSORS.—

“(1) INDEMNIFICATION BY LICENSOR.—An employer or other entity that is found to be in violation of this Act shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the employer or other entity, in any case where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or

“(D) due to other direct or indirect control or pressure from the licensor.

“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—

“(A) may be sought by a licensee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the licensee as a result of the violation of this Act.

“(3) PROHIBITION ON WAIVER.—
“(A) IN GENERAL.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.

“(B) PENALTY.—If a licensor violates subparagraph (A)—

“(i) any indemnification waiver shall be null and void; and

“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate against, a licensee for pursuing indemnification under this subsection.

“(B) PENALTY.—A licensor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(d) FEDERAL MINE SAFETY AND HEALTH ACT OF 1977.—

(1) IN GENERAL.—Section 4B of the Federal Mine Safety and Health Act of 1977, as amended by section 204(a)(4), is further amended by adding at the end the following:
“(e) LICENSORS.—An entity licensing its brand, name, or other likeness to an operator of a coal or other mine, or other entity responsible for the rights and protections of this Act with regard to the miners employed by such operator, for consideration shall also be responsible for the rights and protections of this Act with regard to the miners employed by such operator.”.

(2) INDEMNIFICATION.—Section 118 of the Federal Mine Safety and Health Act of 1977, as amended by section 203(d)(2), is further amended by adding at the end the following:

“(d) LICENSEES AND LICENSORS.—

“(1) INDEMNIFICATION BY LICENSOR.—An operator or other entity that is found to be in violation of this Act shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the operator or other entity, in any case where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or

“(D) due to other direct or indirect control or pressure from the licensor.
“(2) Process for and Type of Indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a licensee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the licensee as a result of the violation of this Act.

“(3) Prohibition on Waiver.—

“(A) In general.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.

“(B) Penalty.—If a licensor violates subparagraph (A)—

“(i) any indemnification waiver shall be null and void; and

“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) Prohibition on Retaliation.—

“(A) In general.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate
against, a licensee for pursuing indemnification under this subsection.

“(B) Penalty.—A licensor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(e) Migrant and Seasonal Agricultural Worker Protection Act.—

(1) In general.—Section 5(e) of the Migrant and Seasonal Agricultural Worker Protection Act, as amended by section 204(a)(5), is further amended by adding at the end the following:

“(6) Licensors.—An entity licensing its brand, name, or other likeness to a farm labor contractor, agricultural employer, or agricultural association, or other entity responsible for the rights and protections of this Act with regard to the migrant agricultural workers or seasonal agricultural workers of the farm labor contractor, agricultural employer, or agricultural association, for consideration shall also be responsible for the rights and protections of this Act with regard to such migrant agricultural workers and seasonal agricultural workers.”.

(2) Indemnification.—Section 505 of the Migrant and Seasonal Agricultural Worker Protection
Act, as amended by section 203(e)(2), is further amended by adding at the end the following:

“(d) Licensees and licensors.—

“(1) Indemnification by licensor.—A farm labor contractor, agricultural employer, agricultural association, or other entity that is found to be in violation of this Act shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the farm labor contractor, agricultural employer, agricultural association, or other entity, in any case where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or

“(D) due to other direct or indirect control or pressure from the licensor.

“(2) Process for and type of indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a licensee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the licensor of all compensatory and punitive dam-
ages, civil monetary penalties, attorney’s fees, 
or other amounts required to be paid by the li-
censee as a result of the violation of this Act. 
“(3) PROHIBITION ON WAIVER.—

“(A) IN GENERAL.—A licensor shall not 
require or otherwise request a licensee to waive 
the licensee’s right to indemnification under 
this subsection.

“(B) PENALTY.—If a licensor violates sub-
paragraph (A)—

“(i) any indemnification waiver shall 
be null and void; and 

“(ii) the licensor shall be subject to a 
civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A licensor shall not 
end the license agreement with, take adverse 
action in relation to, or otherwise discriminate 
against, a licensee for pursuing indemnification 
under this subsection.

“(B) PENALTY.—A licensor who violates 
subparagraph (A) shall be subject to a civil 
penalty of $100,000.”.

(f) DAVIS-BACON ACT.—
(1) **IN GENERAL.**—Section 3144b of title 40, United States Code, as amended by section 204(a)(6), is further amended by adding at the end the following:

“(e) LICENSORS.—An entity licensing its brand, name, or other likeness to a contractor or subcontractor, or other entity responsible for the rights and protections of this subchapter with regard to the laborers or mechanics of such contractor or subcontractor, for consideration shall also be responsible for the rights and protections of this subchapter with regard to such laborers or mechanics.”.

(2) **INDEMNIFICATION.**—Section 3144c of title 40, United States Code, as amended by section 203(f)(2), is further amended by adding at the end the following:

“(g) LICENSEES AND LICENSORS.—

“(1) INDEMNIFICATION BY LICENSOR.—A contractor, subcontractor, or other entity that is found to be in violation of this subchapter shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the employer or other entity, in any case where the violation was—

“(A) at the behest of the licensor;
“(B) at the direction of the licensor;
“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or
“(D) due to other direct or indirect control or pressure from the licensor.
“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—
“(A) may be sought by a licensee in any court of competent jurisdiction; and
“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the licensee as a result of the violation of this subchapter.
“(3) PROHIBITION ON WAIVER.—
“(A) IN GENERAL.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.
“(B) PENALTY.—If a licensor violates subparagraph (A)—
“(i) any indemnification waiver shall be null and void; and
“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate against, a licensee for pursuing indemnification under this subsection.

“(B) PENALTY.—A licensor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(g) McNAMARA-O’HARA SERVICE CONTRACT ACT.—

(1) IN GENERAL.—Section 6701a of title 41, United States Code, as amended by section 204(a)(7), is further amended by adding at the end the following:

“(e) LICENSORS.—An entity licensing its brand, name, or other likeness to a contractor, or other entity responsible for the rights and protections of this chapter with regard to the service employees of such contractor, for consideration shall also be responsible for the rights and protections of this chapter with regard to such service employees.”.

(2) INDEMNIFICATION.—Section 6707 of title 41, United States Code, as amended by section
203(g)(2), is further amended by adding at the end the following:

“(d) LICENSEES AND LICENSORS.—

“(1) INDEMNIFICATION BY LICENSOR.—A contractor, subcontractor, or other entity that is found to be in violation of this chapter shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the employer or other entity, in any case where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or

“(D) due to other direct or indirect control or pressure from the licensor.

“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—

“(A) may be sought by a licensee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the li-
licensee as a result of the violation of this chapter.

“(3) PROHIBITION ON WAIVER.—

“(A) IN GENERAL.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.

“(B) PENALTY.—If a licensor violates subparagraph (A)—

“(i) any indemnification waiver shall be null and void; and

“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate against, a licensee for pursuing indemnification under this subsection.

“(B) PENALTY.—A licensor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

(1) IN GENERAL.—Section 6501b of title 41, United States Code, as amended by section
204(a)(8), is further amended by adding at the end
the following:

“(e) LICENSORS.—An entity licensing its brand,
name, or other likeness to a contractor, or other entity
responsible for the rights and protections of this chapter
with regard to individuals employed in the manufacture
or furnishing of materials, supplies, articles, or equipment
under a contract to which this chapter applies by such
contractor, for consideration shall also be responsible for
the rights and protections of this chapter with regard to
such individuals.”.

(2) INDEMNIFICATION.—Section 6506b of title
41, United States Code, as amended by section
203(h)(2), is further amended by adding at the end
the following:

“(g) LICENSEES AND LICENSORS.—

“(1) INDEMNIFICATION BY LICENSOR.—A con-
tractor, subcontractor, or other entity that is found
to be in violation of this chapter shall have the right
to indemnification as described in paragraph (2)
from an entity licensing its brand, name, or other
likeness to the employer or other entity, in any case
where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;
“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or
“(D) due to other direct or indirect control or pressure from the licensor.
“(2) PROCESS FOR AND TYPE OF INDEMNIFICATION.—Indemnification under paragraph (1)—
“(A) may be sought by a licensee in any court of competent jurisdiction; and
“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the licensee as a result of the violation of this chapter.
“(3) PROHIBITION ON WAIVER.—
“(A) IN GENERAL.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.
“(B) PENALTY.—If a licensor violates sub-paragraph (A)—
“(i) any indemnification waiver shall be null and void; and
“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate against, a licensee for pursuing indemnification under this subsection.

“(B) PENALTY.—A licensor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

(1) IN GENERAL.—Section 101(4) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611), as amended by section 204(a)(9), is further amended by adding at the end the following:

“(H) LICENSORS.—An entity licensing its brand, name, or other likeness to an employer for consideration shall also be responsible for the rights and protections of this Act with regard to the employees of such employer.”.

(2) INDEMNIFICATION.—Section 107 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2617), as amended by section 203(i)(2), by inserting after subsection (g) the following:
“(h) Licensees and licensors.—

“(1) Indemnification by licensor.—An employer or other entity that is found to be in violation of this Act shall have the right to indemnification as described in paragraph (2) from an entity licensing its brand, name, or other likeness to the employer or other entity, in any case where the violation was—

“(A) at the behest of the licensor;

“(B) at the direction of the licensor;

“(C) pursuant to any policies, agreements, or contractual obligations emanating from the licensor; or

“(D) due to other direct or indirect control or pressure from the licensor.

“(2) Process for and type of indemnification.—Indemnification under paragraph (1)—

“(A) may be sought by a licensee in any court of competent jurisdiction; and

“(B) shall include a full recovery from the licensor of all compensatory and punitive damages, civil monetary penalties, attorney’s fees, or other amounts required to be paid by the licensee as a result of the violation of this Act.

“(3) Prohibition on waiver.—
“(A) IN GENERAL.—A licensor shall not require or otherwise request a licensee to waive the licensee’s right to indemnification under this subsection.

“(B) PENALTY.—If a licensor violates subparagraph (A)—

“(i) any indemnification waiver shall be null and void; and

“(ii) the licensor shall be subject to a civil penalty of $100,000.

“(4) PROHIBITION ON RETALIATION.—

“(A) IN GENERAL.—A licensor shall not end the license agreement with, take adverse action in relation to, or otherwise discriminate against, a licensee for pursuing indemnification under this subsection.

“(B) PENALTY.—A licensor who violates subparagraph (A) shall be subject to a civil penalty of $100,000.”.

(j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

(1) IN GENERAL.—Section 3306(w) of the Internal Revenue Code of 1986, as amended by section 204(a)(10), is amended by adding at the end the following new paragraphs:

“(8) Paragraph (9) of section 3(d) of such Act.
“(9) Subsection (j) of section 16 of such Act.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services rendered on or after January 1, 2022.

SEC. 206. LABOR CONTRACTORS.

(a) FAIR LABOR STANDARDS ACT OF 1938.—Section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)), as amended by section 205(a)(1), is further amended by adding at the end the following:

“(10) LABOR CONTRACTORS.—An employer shall also be responsible for the rights and protections of this Act with regard to an employee of a labor contractor, or any labor subcontractors under a labor contractor, in any case where such labor contractor or labor subcontractor is responsible for the rights and protections of this Act with respect to the employee.”.

(b) NATIONAL LABOR RELATIONS ACT.—

(1) IN GENERAL.—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)), as amended by section 205(b), is further amended by adding at the end the following:

“(H) LABOR CONTRACTORS.—An employer shall also be responsible for the rights and protections of this Act with regard to an employee of a
labor contractor, or any labor subcontractors under
a labor contractor, in any case where such labor con-
tractor or labor subcontractor is responsible for the
rights and protections of this Act with respect to the
employee.”.

(2) UNFAIR LABOR PRACTICE.—Section 8(a) of
the National Labor Relations Act (29 U.S.C.
158(a)), as amended by section 102(b)(3)(B), is fur-
ther amended by adding at the end the following:
“(8) to reject contractors in whole or in part
because the contractors have workforces represented
by labor organizations, including—

“(A) when the employer initially solicits
bids for a contract for an as-yet-unchosen con-
tractor to provide a good or service to the em-
ployer, by rejecting any contractor in whole or
in part because the contractor’s workforce is
represented by a labor organization; or

“(B) when an employer has an existing
contract with a contractor and the contractor’s
employees are considering to organize or have
chosen to organize in accordance with the rights
provided under section 7, by—

“(i) ending the employer’s existing
contract with the contractor;
“(ii) not renewing the employer’s existing contract with the contractor if the contract is set to expire; or

“(iii) threatening to end or not renew the employer’s existing contract with the contractor,

in whole or in part because of the labor organization consideration or representation described in the matter preceding clause (i).”.

(c) Occupational Safety and Health Act of 1970.—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)), as amended by section 205(c)(1), is further amended by adding at the end the following:

“(I) Labor Contractors.—An employer shall also be responsible for the rights and protections of this Act with regard to an employee of a labor contractor, or any labor subcontractors under a labor contractor, in any case where such labor contractor or labor subcontractor is responsible for the rights and protections of this Act with respect to the employee.”.

(d) Federal Mine Safety and Health Act of 1977.—Section 4B of the Federal Mine Safety and Health
Act of 1977, as amended by section 205(d), is further amended by adding at the end the following:

“(f) LABOR CONTRACTORS.—An employer shall also be responsible for the rights and protections of this Act with regard to a miner of a coal or other mine employed by a labor contractor, or any labor subcontractors under a labor contractor, in any case where such labor contractor or labor subcontractor is responsible for the rights and protections of this Act with respect to the miner.”.

(e) MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—Section 4(e) of the Migrant and Seasonal Agricultural Worker Protection Act, as amended by section 205(e)(1), is further amended by adding at the end the following:

“(7) LABOR CONTRACTORS.—A farm labor contractor, agricultural employer, or agricultural association shall also be responsible for the rights and protections of this Act with regard to a migrant agricultural worker or seasonal agricultural worker of a labor contractor, or any labor subcontractors under a labor contractor, in any case where such labor contractor or labor subcontractor is responsible for the rights and protections of this Act with respect to the migrant agricultural worker or seasonal agricultural worker.”.
(f) **Davis-Bacon Act.**—Section 3144b of title 40, United States Code, as amended by section 205(f)(1), is further amended by adding at the end the following:

“(f) **Contractors’ Liability for Labor Subcontractors.**—An employer who is a contractor subject to the requirements of this subchapter shall also be responsible for the rights and protections of this subchapter with regard to an employee of any labor subcontractor of the contractor, or any labor subcontractors under a labor subcontractor, in any case where—

“(1) the employee is performing work under a contract to which this subchapter applies; and

“(2) such labor subcontractor, or labor subcontractor of a labor subcontractor, is responsible for the rights and protections of this subchapter with respect to a laborer or mechanic.”.

(g) **McNamara-O'Hara Service Contract Act.**—

Section 6701a of title 41, United States Code, as amended by section 205(g), is further amended by adding at the end the following:

“(f) **Contractors’ Liability for Labor Subcontractors.**—An employer who is a contractor subject to the requirements of this chapter shall also be responsible for the rights and protections of this chapter with regard to an employee of any labor subcontractor of the
contractor, or any labor subcontractors under a labor sub-
contractor, in any case where—

“(1) the employee is performing work under a
contract to which this chapter applies; and

“(2) such labor subcontractor, or labor subcon-
tractor of a labor subcontractor, is responsible for
the rights and protections of this chapter with re-
spect to a service employee.”.

(h) Walsh-Healey Public Contracts Act.—Sec-
tion 6501b of title 41, United States Code, as amended
by section 205(h), is further amended by adding at the
end the following:

“(f) Contractors’ Liability for Labor Sub-
contractors.—An employer who is a contractor subject
to the requirements of this chapter shall also be respon-
sible for the rights and protections of this chapter with
regard to an employee of any labor subcontractor of the
contractor, or any labor subcontractors under a labor sub-
contractor, in any case where—

“(1) the employee is employed in the manufac-
ture or furnishing of materials, supplies, articles, or
equipment under a contract to which this chapter
applies; and

“(2) such labor subcontractor, or labor subcon-
tractor of a labor subcontractor, is responsible for
the rights and protections of this chapter with re-
spect to the employee.’’.

(i) Family and Medical Leave Act of 1993.—
Section 101(4) of the Family and Medical Leave Act of
1993 (29 U.S.C. 2611), as amended by section 205(i), is
further amended by adding at the end the following:

“(I) Labor contractors.—An employer
shall also be responsible for the rights and pro-
tections of this Act with regard to an employee
of a labor contractor, or any labor subcontrac-
tors under a labor contractor, in any case where
such labor contractor or labor subcontractor is
responsible for the rights and protections of
this Act with respect to the employee.”.

(j) Federal Unemployment Tax Act (FUTA).—
(1) In general.—Section 3306(w) of the In-
ternal Revenue Code of 1986, as amended by section
205(j), is amended by adding at the end the fol-
lowing new paragraph:

“(10) Paragraph (10) of section 3(d) of such
Act.”.

(2) Effective date.—The amendment made
by paragraph (1) shall apply to services rendered on
or after January 1, 2022.
SEC. 207. SUPPLY CHAIN RESPONSIBILITY PLAN.

(a) Fair Labor Standards Act of 1938.—

(1) Supply chain responsibility plan.—

Section 11 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211) is amended by adding at the end the following:

“(e) Supply chain responsibility plan.—

“(1) Definitions.—In this subsection:

“(A) Covered employer.—The term ‘covered employer’ means an employer that employs 100 or more employees.

“(B) Covered laws.—The term ‘covered laws’ means all of the following:

“(i) This Act.


“(iii) The Occupational Safety and Health Act of 1970.


“(v) The Migrant and Seasonal Agricultural Worker Protection Act.

“(vi) Subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ‘Davis-Bacon Act’).
“(vii) Chapter 67 of title 41, United States Code (commonly known as the ‘McNamara-O’Hara Service Contract Act’).

“(viii) Chapter 65 of title 41, United States Code (commonly known as the ‘Walsh-Healey Public Contracts Act of 1936’).


“(x) violations of State law required under section 3304 of the Internal Revenue Code of 1986.

“(xi) The applicable labor laws of any country in which an employer that is part of a covered employer’s supply chain operates, with respect to employees employed in such country.

“(2) DEVELOPMENT OF PLAN.—Each covered employer shall develop and carry out a supply chain responsibility plan described in paragraph (3) that describes how the employer will attempt to ensure that the employer’s primary supply chain does not include any employer that regularly violates—

“(A) an individual covered law; or
“(B) the covered laws, when considered as
a whole.

“(3) CONTENTS.—Each supply chain responsi-

   bility plan shall include, at a minimum—

   “(A) an assessment of—

      “(i) the violations under each covered
law by each employer with more than 19
employees in the covered employer’s supply
chain; and

      “(ii) the violations under each covered
law by each employer that provides a large
volume or dollar amount of the covered
employer’s supply chain;

   “(B) a plan for—

      “(i) removing from the covered em-
ployer’s supply chain each employer de-
scribed in subparagraph (A) that regularly
violates—

        “(I) an individual covered law; or

        “(II) the covered laws, when con-
sidered as a whole; or

      “(ii) if clause (i) is not possible with
respect to a particular employer described
in subparagraph (A) due to an extremely
limited number of employers that could
fulfill specific portions of the covered employer’s supply chain, utilizing the leverage that the covered employer has as a purchaser to pressure the particular employer to improve compliance with the covered laws;

“(C) a list of the organizations that the covered employer has identified to assist the covered employer in this process, including workers’ rights advocates; and

“(D) any other information the Secretary determines necessary.

“(4) Submission.—Each covered employer shall annually submit the supply chain responsibility plan to the Secretary and shall post the most recent plan publicly on the covered employer’s website.”.

(2) Penalties.—Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)), as amended by section 204(c)(2)(B), is further amended by adding at the end the following:

“(10) Penalties for violations regarding supply chain responsibility plans.—Any person who violates section 11(e)(3) by not submitting or posting a complete supply chain responsibility
plan each year shall be subject to a civil penalty of $50,000 for each month of noncompliance.”.

(b) National Labor Relations Act.—

(1) Supply Chain Responsibility Plan.—

Section 8 of the National Labor Relations Act (29 U.S.C. 158), as amended by section 102(b)(5), is further amended by adding at the end the following:

“(i) Supply Chain Responsibility Plan.—It shall be an unfair labor practice for an employer who is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)), to fail to annually—

“(1) submit, as part of the covered employer’s supply chain responsibility plan under section 11(e) of such Act, the information required under such Act that relates to this Act; and

“(2) include such information in the plan posted publicly on the covered employer’s website.”.

(2) Penalties.—Section 12 of the National Labor Relations Act (29 U.S.C. 162), as amended by section 102(b)(7)(B), is further amended by inserting after subsection (c) the following:

“(d) Civil Penalty for Failure To Submit A Complete Supply Chain Responsibility Plan.—Any
person who violates section 8(i) shall be subject to a civil penalty of $50,000 for each month of noncompliance.”.

(c) OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.—

(1) SUPPLY CHAIN RESPONSIBILITY PLAN.—
Section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654) is amended by adding at the end the following:

“(e) SUPPLY CHAIN RESPONSIBILITY PLAN.—An employer who is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)), shall annually—

“(1) submit, as part of the employer’s supply chain responsibility plan under section 11(e) of such Act, the information required under such section that relates to this Act; and

“(2) include such information in the plan posted publicly on the employer’s website.”.

(2) PENALTIES.—Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666), as amended by section 205(c)(2), is further amended by inserting after subsection (k) the following:

“(l) PENALTIES FOR VIOLATIONS REGARDING SUPPLY CHAIN RESPONSIBILITY PLANS.—Any person who
violates section 5(c) shall be subject to a civil penalty of $50,000 for each month of noncompliance.”.

(d) FEDERAL MINE SAFETY AND HEALTH ACT OF 1977.—

(1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

Section 109 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 819) is amended—

(A) in the section heading, by inserting “; SUPPLY CHAIN RESPONSIBILITY PLANS” after “DECISIONS”; and

(B) by adding at the end the following:

“(e) SUPPLY CHAIN RESPONSIBILITY PLANS.—Each operator that is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)), shall annually—

“(1) submit, as part of the operator’s supply chain responsibility plan under section 11(e) of such Act, the information required under such section that relates to this Act; and

“(2) include such information in the plan posted publicly on the operator’s website.”.

(2) PENALTIES.—Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820), as amended by section 102(d)(6)(B), is fur-
other amended by inserting after subsection (j) the following:

“(k) CIVIL PENALTY FOR FAILURE TO SUBMIT A SUPPLY CHAIN RESPONSIBILITY PLAN.—Any operator who violates section 109(e) shall be subject to a civil penalty of $50,000 for each month of noncompliance.”.

(e) MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—

(1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

Title IV of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841 et seq.), as amended by section 102(e)(3)), is further amended by adding at the end the following:

“SEC. 406. SUPPLY CHAIN RESPONSIBILITY PLAN.

“(a) DEFINITION OF RESPONSIBLE ENTITY.—In this section, the term ‘responsible entity’ means a farm labor contractor, agricultural employer, or agricultural association, that is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)).

“(b) SUPPLY CHAIN RESPONSIBILITY PLANS.—Each responsible entity shall annually—

“(1) submit, as part of the responsible entity’s supply chain responsibility plan under section 11(e)
of such Act, the information required under such section that relates to this Act; and

“(2) include such information in the plan posted publicly on the responsible entity’s website.”.

(2) PENALTIES.—Section 503(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853(a)), as amended by section 102(c)(6)(B), is further amended by adding at the end the following:

“(5) PENALTIES FOR VIOLATIONS REGARDING SUPPLY CHAIN RESPONSIBILITY PLANS.—Any person who violates section 406(b) shall be subject to a civil penalty of $50,000 for each month of non-compliance.”.

(f) DAVIS-BACON ACT.—

(1) SUPPLY CHAIN RESPONSIBILITY PLAN.—

Subchapter IV of chapter 31 of title 40, United States Code, as amended by this Act, is further amended by inserting after section 3143 the following:

“§3143a. Supply chain responsibility plan

“(a) COVERED CONTRACTOR.—In this section, the term ‘covered contractor’ means a contractor or subcontractor—
“(1) for a contract subject to the requirements of this subchapter; and

“(2) that is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)).

“(b) IN GENERAL.—Each covered contractor shall annually—

“(1) submit, as part of the covered contractor’s supply chain responsibility plan under section 11(e) of such Act, the information required under such section that relates to this subchapter; and

“(2) include such information in the plan posted publicly on the covered contractor’s website.”.

(2) PENALTIES.—Section 3144c of title 40, United States Code, as amended by section 204(f)(2), is further amended by inserting after subsection (b) the following:

“(c) PENALTIES FOR VIOLATIONS REGARDING SUPPLY CHAIN RESPONSIBILITY PLANS.—Any person who violates section 3143a of this title shall be subject to a civil penalty of $50,000 for each month of noncompliance.”.

(g) McNAMARA-O’HARA SERVICE CONTRACT ACT.—
by section 202(b)(7)(A), is further amended by inserting
after section 6704 the following:

§ 6705. Supply chain responsibility plan

“(a) COVERED CONTRACTOR.—In this section, the
term ‘covered contractor’ means a contractor or subcon-
tractor—

“(1) for a contract subject to the requirements
of this chapter; and

“(2) that is a covered employer, as defined in
section 11(e)(1) of the Fair Labor Standards Act of
1938 (29 U.S.C. 211(e)(1)).

“(b) IN GENERAL.—Each covered contractor shall
annually—

“(1) submit, as part of the covered contractor’s
supply chain responsibility plan under section 11(e)
of such Act, the information required under such
section that relates to this chapter; and

“(2) include such information in the plan post-
ed publicly on the covered contractor’s website.

“(c) PENALTIES FOR VIOLATIONS REGARDING SUP-
PLY CHAIN RESPONSIBILITY PLANS.—Any person who
violates subsection (b) of this section shall be subject to
a civil penalty of $50,000 for each month of noncompli-
ance.”.
(h) Walsh-Healey Public Contracts Act of 1936.—

(1) Supply chain responsibility plan.—

Chapter 65 of title 41, United States Code, is further amended by inserting after section 6502 the following:

“§6502a. Supply chain responsibility plan

“(a) Covered Contractor.—In this section, the term ‘covered contractor’ means a contractor or subcontractor—

“(1) for a contract subject to the requirements of this chapter; and

“(2) that is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)).

“(b) In general.—Each covered contractor shall annually—

“(1) submit, as part of the covered contractor’s supply chain responsibility plan under section 11(e) of such Act, the information required under such section that relates to this chapter; and

“(2) include such information in the plan posted publicly on the covered contractor’s website.”.

(2) Penalties.—Section 6506a of title 41, United States Code, as amended by section
202(c)(8), is further amended by inserting after subsection (b) the following:

“(c) PENALTIES FOR VIOLATIONS REGARDING SUPPLY CHAIN RESPONSIBILITY PLANS.—Any person who violates section 6502a shall be subject to a civil penalty of $50,000 for each month of noncompliance.”.

(i) FAMILY AND MEDICAL LEAVE ACT OF 1993.—

Section 109 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2619) is amended—

(1) in the section heading, by inserting “; SUPPLY CHAIN RESPONSIBILITY PLAN” after “NOTICE”;

(2) by striking “IN GENERAL.—Each” and inserting the following: “NOTICE.—

“(1) IN GENERAL.—Each”;

(3) by redesignating subsection (b) as paragraph (2) of subsection (a), and aligning the margins of such paragraph with the margins of paragraph (1);

(4) in paragraph (2) (as so redesignated), by striking “this section” and inserting “this subsection”; and

(5) by adding at the end the following:

“(b) SUPPLY CHAIN RESPONSIBILITY PLAN.—
“(1) IN GENERAL.—Each employer that is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)), shall annually—

“(A) submit, as part of the employer’s supply chain responsibility plan under section 11(e) of such Act, the information required under such section that relates to this Act; and

“(B) include such information in the plan posted publicly on the employer’s website.

“(2) PENALTY.—Any person who violates paragraph (1) shall be subject to a civil penalty of $50,000 for each month of noncompliance.”.

(j) FEDERAL UNEMPLOYMENT TAX ACT (FUTA).—

(1) STATE LAW REQUIREMENT.—Section 3304 of the Internal Revenue Code of 1986 (relating to approval of State unemployment compensation laws) is amended—

(A) in subsection (a)—

(i) in paragraph (18), by striking “and” at the end;

(ii) by redesignating paragraph (19) as paragraph (20); and

(iii) by inserting after paragraph (18) the following new paragraph:
“(19) each employer that is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)) is required to comply with subsection (h); and

(iv) by adding at the end the following:

“(h) SUPPLY CHAIN RESPONSIBILITY PLANS.—Each employer that is a covered employer, as defined in section 11(e)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(e)(1)), shall annually—

“(1) submit, as part of the employer’s supply chain responsibility plan under section 11(e) of such Act, the information required under such section that relates to this Act; and

“(2) include such information in the plan posted publicly on the operator’s website.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to weeks of unemployment beginning on or after the earlier of—

(A) the date the State changes its statutes, regulations, or policies in order to comply with such amendments; or

(B) January 1, 2022.
SEC. 208. CONFORMING AMENDMENTS.

(a) DAVIS-BACON ACT.—The table of sections of sub-
chapter IV of chapter 31 of title 40, United States Code,
as amended by section 102(f)(7), is further amended—

(1) by inserting after the item relating to sec-
tion 3413 the following:

“Sec. 3143a. Supply chain responsibility plan.”;

and

(2) by inserting after the item relating to sec-
tion 3144a the following:

“Sec. 3144b. Applicability to multiple employers and related entities.”.

(b) McNAMARA-O’HARA SERVICE CONTRACT ACT.—

Chapter 67 of title 41, United States Code, is amended—

(1) in the table of sections—

(A) by redesignating the items relating to
sections 6705, 6706, and 6707 as the items re-
lating to sections 6706, 6708, and 6709, re-
spectively;

(B) by inserting after the item relating to
section 6701 the following:

“Sec. 6701a. Applicability to multiple employers and related entities.”;

(C) by inserting after the item relating to
section 6704 the following:

“Sec. 6705. Supply chain responsibility plan.”;

and
(D) by inserting after the item relating to section 6706 the following:

“Sec. 6707. Civil penalties assessed against directors, officers, and large shareholders.”;

(2) in section 6704(b), by striking “sections 6705 to 6707(d)” and inserting “sections 6706 to 6709(d)”;

and

(3) in section 6705(d), by striking “section 6707(a)–(d)” and inserting “section 6709(a)–(d)”.

(c) WALSH-HEALEY PUBLIC CONTRACTS ACT.—The table of sections for chapter 65 of title 41, United States Code, as amended by section 102(g)(7), is further amended—

(1) by inserting after the item relating to section 6501a the following:

“Sec. 6501b. Applicability to multiple employers and related entities.”;

and

(2) by inserting after the item relating to section 6502 the following:

“Sec. 6502a. Supply chain responsibility plan.”.
TITLE III—PUBLIC TRANSPARENCY ON WORKERS’ RIGHTS VIOLATIONS

SEC. 301. CONSUMER RIGHT TO KNOW ABOUT COMPLIANCE WITH WORKERS’ RIGHTS.

(a) In General.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by inserting after section 18C (29 U.S.C. 218e) the following:

“SEC. 18D. COMPLIANCE RATINGS.

“(a) Requirement for Posting Notice.—An employer shall post a notice, provided each calendar year by the Secretary under subsection (b), of the compliance of the employer with the covered labor laws during the 3 calendar years preceding the calendar year for which the notice applies (referred to in this section as the ‘applicable 3-year period’). Such notice shall be posted—

“(1) in each location of the employer—

“(A) in a window that is located not less than 5 feet from the main entry way of such location; or

“(B) if such a location does not have a window located within 5 feet of the main entry way, otherwise within 5 feet of the main entry way;
“(2) on the official website of the employer, if
the employer has such a website; and

“(3) until the notice is replaced by a revised no-
tice under this section or a notice for a subsequent
calendar year.

“(b) RATING PROCESS.—

“(1) IN GENERAL.—The Secretary shall estab-

lish—

“(A) in accordance with paragraph (2), a
process for annually—

“(i) reviewing the compliance of each
employer with the covered labor laws dur-
ing the applicable 3-year period; and

“(ii) providing a rating to each em-
ployer indicating the level of such compli-
ance; and

“(B) a notice for each employer to post in
accordance with subsection (a), which shall—

“(i) be easy for the public to under-
stand;

“(ii) indicate the rating under this
subsection of the employer for the calendar
year; and

“(iii) otherwise be consistent across
all employers.
“(2) RATING.—

“(A) IN GENERAL.—The notice required under subsection (a) shall provide a rating of the employer’s compliance with the covered labor laws during the applicable 3-year period in the form of one of 4 ratings described in subparagraph (B), including—

“(i) a concise summary, in English, of the compliance of the employer with the covered labor laws during the applicable 3-year period;

“(ii) an emoji face or cartoon face that reflects such summary; and

“(iii) a color that reflects such summary.

“(B) REGULATIONS.—The Secretary shall prescribe through regulations the number, degree, and extent of violations of the covered labor laws by an employer during the applicable 3-year period that would qualify for each of the following 4 ratings:

“(i) A rating of ‘Excellent’—

“(I) meaning the employer has had no or few violations of the covered labor laws during such period; and
“(II) which shall be paired with a
very open-mouthed smiling face and a
deep-green background color.
“(ii) A rating of ‘Good’—
“(I) meaning the employer has
had some violations of the covered
labor laws during such period, but no
major or extensive violations; and
“(II) which shall be paired with a
wide-smiling face and a light-green
background color.
“(iii) A rating of ‘Okay’—
“(I) meaning the employer has
had, during such period—
“(aa) multiple violations of
the covered labor laws; or
“(bb) very few major or ex-
tensive violations of the covered
labor laws; and
“(II) which shall be paired with a
flat-mouthed and unenthusiastic face
and a yellow background color.
“(iv) A rating of ‘Needs Improve-
ment’—
“(I) meaning the employer has had, during such period—

“(aa) several violations of the covered labor laws;

“(bb) more than a few major or extensive violations of the covered labor laws; or

“(cc) willful or repeated violations of the covered labor laws (as defined by the Secretary with respect to the covered labor laws); and

“(II) which shall be paired with a frowning sad face and a gray background color.

“(3) REVIEW PROCESS.—For each review under this section of the compliance of an employer with the covered labor laws, including any additional review under subsection (c) or (d), the Secretary shall review—

“(A) any information the employer provides to the Secretary with respect to the compliance of the employer with the covered labor laws for the applicable 3-year period;
“(B) any information provided by any other individual or organization with respect to such compliance; and

“(C) any other information the Secretary determines appropriate for the review.

“(c) ADDITIONAL REVIEW UPON CLAIM OF INACCURACY.—

“(1) REQUEST.—If an employer claims that the rating provided for the employer under this section is inaccurate, the employer may, not later than 10 days after receiving the notice under this section, request an additional review by the Secretary of the employer’s compliance with the covered labor laws during the applicable 3-year period and a revised rating and notice.

“(2) DETERMINATION.—

“(A) IN GENERAL.—For each request made under paragraph (1), the Secretary shall conduct an additional review described in such paragraph and make a determination of whether to provide a revised rating and notice.

“(B) REVISED RATING GRANTED.—If the Secretary determines that an alteration of the rating is warranted, the Secretary may provide the employer a revised rating and notice under
this section. The employer shall, in accordance
with subsection (a), post any such revised no-
tice not later than 5 days after receiving such
revised notice.

“(C) Revised rating denied.—If the
Secretary determines that no alteration of the
rating is warranted—

“(i) the Secretary shall notify the em-
ployer of such determination; and

“(ii) the employer shall, in accordance
with subsection (a), post the notice for
which such review was conducted not later
than 5 days after receiving the notification
described in clause (i).

“(D) Posting of notice during re-
view.—If an employer claims that a rating
under this section for a calendar year is inac-
curate and submits a request under paragraph
(1) for an additional review of such rating, the
employer may refrain from posting the notice
under this section for such calendar year during
the period of such additional review. If an em-
ployer so refrains from posting such notice, the
employer shall keep the notice the employer re-
ceived under this section for the previous cal-
end year (if the employer received such a notice) posted in accordance with subsection (a) during the period of such additional review.

“(E) LIMITATION.—An employer may not request an additional review of a rating for a calendar year under this subsection if the employer has previously requested such an additional review for the rating for such calendar year.

“(d) ADDITIONAL REVIEW UPON REMEDY OF VIOLATIONS.—

“(1) REQUEST.—If, after receiving a notice under this section for a calendar year, an employer claims that the employer has, not later than the end of such calendar year, fully remedied a violation that affected the rating of the employer under this section for that year and has reformed the practices of the employer to ensure future compliance with the covered labor laws, the employer may request an additional review of the employer’s compliance with the covered labor laws, during the period beginning on the first day of the applicable 3-year period and ending on the date on which the employer submits the request, and a revised rating and notice under this section for the year.
“(2) Determination.—

“(A) In general.—For each request made under paragraph (1), the Secretary shall conduct a review described in such paragraph and make a determination as to whether to provide a revised rating and notice.

“(B) Revised rating granted.—If the Secretary determines that the employer has, during the period beginning on the first day of the applicable 3-year period and ending on the date on which the employer submits the request under paragraph (1), fully remedied the violation with respect to which the employer submitted the request and has reformed its practices to ensure future compliance with the covered labor laws—

“(i) the Secretary may provide the employer with a revised rating and notice under this section; and

“(ii) if the Secretary provides a revised rating and notice under clause (i), the employer shall, in accordance with subsection (a), post such revised notice not later than 5 days after receiving such revised notice.
“(C) Revised rating denied.—If the Secretary decides not to grant a revised rating and notice under this subsection, the Secretary shall notify the employer of such decision.

“(D) Posting of notice during review.—An employer shall keep the notice for which a review under this subsection applies posted in accordance with subsection (a) until the Secretary, if applicable, provides a revised rating and notice under subparagraph (B)(i).

“(e) Final Review.—Except for the reviews described in subsections (c) and (d), there shall be no other reviews, including judicial review, of the determinations of the Secretary regarding the rating of an employer under this section.

“(f) Posting in local newspaper.—If an employer violates a provision of this section for more than one month, the employer shall, in addition to the penalties under section 16(e)(11), publish the notice provided under this section in the most prominent local newspaper, as determined by the Secretary.

“(g) Public website.—

“(1) In general.—The Secretary shall establish and maintain a public website that includes—
“(A) the most recent rating, and all previous ratings, under this section for each employer, which shall be accessible through a simple search feature—

“(i) by employer name, city, or zip code; and

“(ii) by location on a digital map; and

“(B) an accounting of every violation by each employer during the 3-year period of the most recent rating under this section.

“(2) RANKINGS.—The Secretary may use the website under this subsection to provide rankings of employers, including by comparing employers to other employers in the same industry.

“(h) DEFINITION OF COVERED LABOR LAWS.—For purposes of this section, the term ‘covered labor laws’ means, to the extent applicable to the employer, each of the following:

“(1) This Act.

“(2) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).


“(4) The Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

“(6) Subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ‘Davis-Bacon Act’).

“(7) Chapter 67 of title 41, United States Code (commonly known as the ‘McNamara-O’Hara Service Contract Act’).


“(10) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).


“(14) Any State law that the Secretary determines is equivalent to a law described in any of paragraphs (1) through (13).”.
(b) Penalties.—Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)), as amended by section 207(a)(2), is further amended by adding at the end the following:

“(11) Penalties for Violations of Compliance Rating Provisions.—Any person who violates section 18D shall be subject to a civil penalty of not more than $1,000 for each employee of the employer working at the location where the violation occurred and for each day of the violation.”.

TITLE IV—CREATING BROAD AND INCREASING WORKER PROTECTIONS

SEC. 401. GENERAL STANDARDS FOR APPLYING AND INTERPRETING WORKERS' RIGHTS.

(a) Fair Labor Standards Act of 1938.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by adding at the end the following:

“SEC. 20. GENERAL STANDARDS FOR APPLYING AND INTERPRETING WORKERS' RIGHTS.

“(a) Interpretation of Protections and Exemptions.—

“(1) Protections.—All protections afforded employees under this Act, including as applied through the definitions under section 3, shall be in-
interpreted expansively in favor of the employee or individual claiming classification as an employee.

“(2) Exemptions and Exclusions.—

“(A) In General.—All exemptions and exclusions under this Act, including as applied through the definitions under section 3, shall be interpreted narrowly against the employer, or person alleged to be an employer, and limited in application to those persons or circumstances plainly and unmistakably within the language and spirit of the exemption or exclusion.

“(B) Clear and Convincing Evidence.—Any person asserting the applicability of an exemption or exclusion under this Act shall prove such applicability by clear and convincing evidence.

“(b) No-less-protection Rule.—

“(1) In General.—The Secretary shall not take any action to reduce a protection afforded an employee under this Act through any regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation from the protection provided to the employee through a prior regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation in effect.
on the day before the date of such action, unless such reduction is explicitly and specifically mandated by an Act of Congress.

“(2) Request for Congressional Action.—The Secretary may submit a proposal to Congress for a reduction described in paragraph (1), but shall not take any action described in such paragraph without an explicit and specific mandate by an Act of Congress.

“(3) Standard of deference.—Notwithstanding chapter 7 of title 5, United States Code, in any action for judicial review of an agency action under such chapter, a reviewing court shall defer to a regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation issued by the agency that increases or otherwise strengthens a protection afforded to an employee under this Act unless such regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation is plainly erroneous or inconsistent with this Act.”

(b) National Labor Relations Act.—The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following:
“SEC. 20. GENERAL STANDARDS FOR APPLYING AND INTERPRETING WORKERS’ RIGHTS.

“(a) INTERPRETATION OF PROTECTIONS AND EXEMPTIONS.—

“(1) PROTECTIONS.—All protections afforded employees under this Act, including as applied through the definitions under section 2, shall be interpreted expansively in favor of the employee or individual claiming classification as an employee.

“(2) EXEMPTIONS AND EXCLUSIONS.—

“(A) IN GENERAL.—All exemptions and exclusions under this Act, including as applied through the definitions under section 2, shall be interpreted narrowly against the employer, or person alleged to be an employer, and limited in application to those persons or circumstances plainly and unmistakably within the language and spirit of the exemption or exclusion.

“(B) CLEAR AND CONVINCING EVIDENCE.—Any person asserting the applicability of an exemption or exclusion under this Act shall prove such applicability by clear and convincing evidence.

“(b) NO-LESS-PROTECTION RULE.—

“(1) IN GENERAL.—The Board, the General Counsel, and any regional director shall not take any
action to reduce a protection afforded an employee under this Act through any regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation from the protection provided to the employee through a prior regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation in effect on the day before the date of such action, unless such reduction is explicitly and specifically mandated by an Act of Congress.

“(2) Request for Congressional Action.—

The Board may submit a proposal to Congress for a reduction described in paragraph (1), but the Board, the General Counsel, or any regional director shall not take any action described in such paragraph without an explicit and specific mandate by an Act of Congress.

“(3) Standard of Deference.—Notwithstanding chapter 7 of title 5, United States Code, in any action for judicial review of an agency action under such chapter, a reviewing court shall defer to a regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation issued by the agency that increases or otherwise strengthens a protection afforded to an employee
under this Act unless such regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation is plainly erroneous or inconsistent with this Act.”.

(c) **Occupational Safety and Health Act of 1970.**—The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended by inserting after section 32 (29 U.S.C. 677) the following:

“**SEC. 32A. GENERAL STANDARDS FOR APPLYING AND INTERPRETING WORKERS’ RIGHTS.**

“(a) Interpretation of Protections and Exemptions.—

“(1) Protections.—All protections afforded employees under this Act, including as applied through the definitions under section 3, shall be interpreted expansively in favor of the employee or individual claiming classification as an employee.

“(2) Exemptions and Exclusions.—

“(A) In general.—All exemptions and exclusions under this Act, including as applied through the definitions under section 3, shall be interpreted narrowly against the employer, or person alleged to be an employer, and limited in application to those persons or circumstances
plainly and unmistakably within the language
and spirit of the exemption or exclusion.

“(B) CLEAR AND CONVINCING EVIDENCE.—Any person asserting the applicability
of an exemption or exclusion under this Act
shall prove such applicability by clear and con-
vincing evidence.

“(b) NO-LESS-PROTECTION RULE.—

“(1) IN GENERAL.—The Secretary shall not
take any action to reduce a protection afforded an
employee under this Act through any regulation,
guidance, opinion, ruling, standard, order, adjudica-
tive decision, or other interpretation from the protec-
tion provided to the employee through a prior regu-
lation, guidance, opinion, ruling, standard, order, ad-
judicative decision, or other interpretation in effect
on the day before the date of such action, unless
such reduction is explicitly and specifically mandated
by an Act of Congress.

“(2) REQUEST FOR CONGRESSIONAL ACTION.—
The Secretary may submit a proposal to Congress
for a reduction described in paragraph (1), but shall
not take any action described in such paragraph
without an explicit and specific mandate by an Act
of Congress.
“(3) **Standard of deference.**—Notwithstanding chapter 7 of title 5, United States Code, in any action for judicial review of an agency action under such chapter, a reviewing court shall defer to a regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation issued by the agency that increases or otherwise strengthens a protection afforded to an employee under this Act unless such regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation is plainly erroneous or inconsistent with this Act.”.

(d) **Federal Mine Safety and Health Act of 1977.**—Title I of the Federal Mine Safety and Health Act (30 U.S.C. 811 et seq.), as amended by section 202(b)(4), is further amended by adding at the end the following:

“**SEC. 119. General standards for applying and interpreting workers’ rights.**

“(a) **Interpretation of protections and exemptions.**—

“(1) **Protections.**—All protections afforded under this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, to employees performing labor in a coal or other mine shall be interpreted ex-
pansively in favor of the employee or individual claiming classification as an employee.

“(2) EXEMPTIONS AND EXCLUSIONS.—

“(A) IN GENERAL.—All exemptions and exclusions under this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, shall be interpreted narrowly against an operator of a coal or other mine employing employees performing labor in the coal or other mine, or person alleged to be such an operator, and limited in application to those persons or circumstances plainly and unmistakably within the language and spirit of the exemption or exclusion.

“(B) CLEAR AND CONVINCING EVIDENCE.—Any person asserting the applicability of an exemption or exclusion under this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, shall prove such applicability by clear and convincing evidence.

“(b) NO-LESS-PROTECTION RULE.—

“(1) IN GENERAL.—The Secretary shall not take any action to reduce a protection afforded
under this Act, including any mandatory health or
safety standard, rule, order, or regulation promul-
gated pursuant to this Act, to an employee per-
forming labor in a coal or other mine through any
regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpretation
from the protection provided to the employee
through a prior regulation, guidance, opinion, ruling,
standard, order, adjudicative decision, or other inter-
pretation in effect on the day before the date of such
action, unless such reduction is explicitly and specifi-
cally mandated by an Act of Congress.

“(2) REQUEST FOR CONGRESSIONAL ACTION.—
The Secretary may submit a proposal to Congress
for a reduction described in paragraph (1), but shall
not take any action described in such paragraph
without an explicit and specific mandate by an Act
of Congress.

“(3) STANDARD OF DEFERENCE.—Notwith-
standing chapter 7 of title 5, United States Code, in
any action for judicial review of an agency action
under such chapter, a reviewing court shall defer to
a regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpretation
issued by the agency that increases or otherwise
strengthens a protection afforded to an employee performing labor in a coal or other mine under this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, unless such regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation is plainly erroneous or inconsistent with this Act, including any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act.”.

(e) **Migrant and Seasonal Agricultural Worker Protection Act.**—Part B of title V of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1861 et seq.) is amended by adding at the end the following:

“**SEC. 514. GENERAL STANDARDS FOR APPLYING AND INTERPRETING WORKERS’ RIGHTS.**

“(a) **Interpretation of Protections and Exemptions.**—

“(1) Protections.—All protections afforded under this Act, including any regulation under this Act, to migrant agricultural workers or seasonal agricultural workers shall be interpreted expansively in favor of the worker or individual claiming classification as such a worker.
“(2) Exemptions and exclusion.—

“(A) In general.—All exemptions and
exclusions under this Act, including any regula-
tion under this Act, shall be interpreted nar-
rowly against an agricultural employer, agricul-
tural association, or farm labor contractor em-
ploying a migrant agricultural worker or sea-
sonal agricultural worker, or person alleged to
be such an employer, association, or contractor,
and limited in application to those persons or
circumstances plainly and unmistakably within
the language and spirit of the exemption or ex-
clusion.

“(B) Clear and convincing evi-
dence.—Any person asserting the applicability
of an exemption or exclusion under this Act, in-
cluding a regulation under this Act, shall prove
such applicability by clear and convincing evi-
dence.

“(b) No-less-protection rule.—

“(1) In general.—The Secretary shall not
take any action to reduce a protection afforded
under this Act, including a regulation under this
Act, to a migrant agricultural worker or a seasonal
agricultural worker through any regulation, guid-
ance, opinion, ruling, standard, order, adjudicative
decision, or other interpretation from the protection
provided to the worker through a prior regulation,
guidance, opinion, ruling, standard, order, adjudicative
decision, or other interpretation in effect on the
day before the date of such action, unless such re-
duction is explicitly and specifically mandated by an
Act of Congress.

“(2) Request for Congressional Action.—
The Secretary may submit a proposal to Congress
for a reduction described in paragraph (1), but shall
not take any action described in such paragraph
without an explicit and specific mandate by an Act
of Congress.

“(3) Standard of deference.—Notwith-
standing chapter 7 of title 5, United States Code, in
any action for judicial review of an agency action
under such chapter, a reviewing court shall defer to
a regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpretation
issued by the agency that increases or otherwise
strengthens a protection afforded under this Act, in-
cluding a regulation under this Act, to a migrant ag-
icultural worker or seasonal agricultural worker un-
less such regulation, guidance, opinion, ruling,
standard, order, adjudicative decision, or other interpretation is plainly erroneous or inconsistent with this Act, including a regulation under this Act.”.

(f) **Davis-Bacon Act.**—

(1) **In general.**—Subchapter IV of chapter 31, United States Code, is amended by adding at the end the following:

“SEC. 3149. GENERAL STANDARDS FOR APPLYING AND INTERPRETING WORKERS’ RIGHTS.

“(a) **Interpretation of Protections and Exemptions.**—

“(1) **Protections.**—All protections afforded under this subchapter to laborers and mechanics who are employees performing labor under a contract or subcontract to which this subchapter applies shall be interpreted expansively in favor of such laborer or mechanic or individual claiming classification as such a laborer or mechanic.

“(2) **Exemptions and Exclusions.**—

“(A) **In general.**—All exemptions and exclusions under this subchapter shall be interpreted narrowly against a contractor or subcontractor of a contract to which this subchapter applies, or person alleged to be such a contractor or subcontractor, and limited in applica-
tion to those persons or circumstances plainly and unmistakably within the language and spirit of the exemption or exclusion.

“(B) CLEAR AND CONVINCING EVIDENCE.—Any person asserting the applicability of an exemption or exclusion under this subchapter shall prove such applicability by clear and convincing evidence.

“(b) NO-LESS-PROTECTION RULE.—

“(1) IN GENERAL.—The Secretary shall not take any action to reduce a protection afforded under this subchapter to a laborer or mechanic who is an employee performing labor under a contract or subcontract to which this subchapter applies through any regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation from the protection provided to such laborer or mechanic through a prior regulation, guidance, opinion, ruling, standard, order, adjudicative decision, or other interpretation in effect on the day before the date of such action, unless such reduction is explicitly and specifically mandated by an Act of Congress.

“(2) REQUEST FOR CONGRESSIONAL ACTION.—

The Secretary may submit a proposal to Congress
for a reduction described in paragraph (1), but shall
not take any action described in such paragraph
without an explicit and specific mandate by an Act
of Congress.

“(3) Standard of deference.—Notwith-
standing chapter 7 of title 5, United States Code, in
any action for judicial review of an agency action
under such chapter, a reviewing court shall defer to
a regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpretation
issued by the agency that increases or otherwise
strengthens a protection afforded under this sub-
chapter to a laborer or mechanic who is an employee
performing labor under a contract or subcontract to
which this subchapter applies unless such regulation,
guidance, opinion, ruling, standard, order, adjudica-
tive decision, or other interpretation is plainly erro-
neous or inconsistent with this subchapter.”.

(2) Table of sections.—The table of sections
for subchapter IV of chapter 31 of title 40, United
States Code, is amended by adding at the end the
following:

Sec. 3149. General standards for applying and interpreting workers’ rights.

(g) McNamara-O’Hara Service Contract Act.—

Section 6709 of title 41, United States Code, as amended
by section 202(b)(7)(A), is further amended by adding at the end the following:

“(g) General Standards for Applying and Interpreting Workers’ Rights.—

“(1) Interpretation of protections and exemptions.—

“(A) Protections.—All protections afforded service employees under this chapter shall be interpreted expansively in favor of the service employee or individual claiming classification as a service employee.

“(B) Exemptions and exclusions.—

“(i) In general.—All exemptions and exclusions under this chapter shall be interpreted narrowly against the contractor or subcontractor to which this chapter applies, or person alleged to be such a contractor or subcontractor, and limited in application to those persons or circumstances plainly and unmistakably within the language and spirit of the exemption or exclusion.

“(ii) Clear and convincing evidence.—Any person asserting the applicability of an exemption or exclusion under
this chapter shall prove such applicability
by clear and convincing evidence.

“(2) NO-LESS-PROTECTION RULE.—

“(A) IN GENERAL.—The Secretary shall
not take any action to reduce a protection af-
forded under this chapter to a service employee
through any regulation, guidance, opinion, rul-
ing, standard, order, adjudicative decision, or
other interpretation from the protection pro-
vided to the service employee through a prior
regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpreta-
tion in effect on the day before the date of such
action, unless such reduction is explicitly and
specifically mandated by an Act of Congress.

“(B) REQUEST FOR CONGRESSIONAL AC-
tion.—The Secretary may submit a proposal to
Congress for a reduction described in subpara-
graph (A), but shall not take any action de-
scribed in such subparagraph without an ex-
plicit and specific mandate by an Act of Con-
gress.

“(C) STANDARD OF DEFERENCE.—Not-
withstanding chapter 7 of title 5, United States
Code, in any action for judicial review of an
agency action under such chapter, a reviewing
court shall defer to a regulation, guidance,
opinion, ruling, standard, order, adjudicative
decision, or other interpretation issued by the
agency that increases or otherwise strengthens
a protection afforded to a service employee
under this chapter unless such regulation, guid-
ance, opinion, ruling, standard, order, adjudica-
tive decision, or other interpretation is plainly
erroneous or inconsistent with this chapter.”.

(h) WALSH-HEALEY PUBLIC CONTRACTS ACT.—

(1) IN GENERAL.—Chapter 65 of title 41,
United States Code, is amended by adding at the
end the following:

“SEC. 6512. GENERAL STANDARDS FOR APPLYING AND IN-
TERPRETING WORKERS’ RIGHTS.

“(a) INTERPRETATION OF PROTECTIONS AND EX-
EMPTIONS.—

“(1) PROTECTIONS.—All protections afforded
under this chapter to individuals performing any
labor, with respect to the manufacture or furnishing
of materials, supplies, articles, or equipment under
a contract to which this chapter applies, who is an
employee of the contractor of such contract, shall be
interpreted expansively in favor of such individual or
an individual claiming classification as such an individual.

“(2) Exemptions and Exclusions.—

“(A) In general.—All exemptions and exclusions under this chapter shall be interpreted narrowly against the contractor of a contract to which this chapter applies, or person alleged to be such a contractor, and limited in application to those persons or circumstances plainly and unmistakably within the language and spirit of the exemption or exclusion.

“(B) Clear and convincing evidence.—Any person asserting the applicability of an exemption or exclusion under this chapter shall prove such applicability by clear and convincing evidence.

“(b) No-less-protection rule.—

“(1) In general.—The Secretary shall not take any action to reduce a protection afforded under this chapter to an individual performing any labor, with respect to the manufacture or furnishing of materials, supplies, articles, or equipment under a contract to which this chapter applies, who is an employee of the contractor of such contract, through any regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpretation
from the protection provided to such individual
through a prior regulation, guidance, opinion, ruling,
standard, order, adjudicative decision, or other inter-
pretation in effect on the day before the date of such
action, unless such reduction is explicitly and specifi-
cally mandated by an Act of Congress.

“(2) Request for congressional action.—
The Secretary may submit a proposal to Congress
for a reduction described in paragraph (1), but shall
not take any action described in such paragraph
without an explicit and specific mandate by an Act
of Congress.

“(3) Standard of deference.—Notwith-
standing chapter 7 of title 5, United States Code, in
any action for judicial review of an agency action
under such chapter, a reviewing court shall defer to
a regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpretation
issued by the agency that increases or otherwise
strengthens a protection afforded under this chapter
to an individual performing any labor, with respect
to the manufacture or furnishing of materials, sup-
plies, articles, or equipment under a contract to
which this chapter applies, who is an employee of
the contractor of such contract, unless such regula-
tion, guidance, opinion, ruling, standard, order, ad-
judicative decision, or other interpretation is plainly
erroneous or inconsistent with this chapter.”.

(2) Table of Sections.—The table of sections
for chapter 65 of title 41, United States Code, is
amended by adding at the end the following:

Sec. 6512. General standards for applying and interpreting workers’ rights.

(i) Family and Medical Leave Act of 1993.—

(1) In general.—Title I of the Family and
Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.)
is amended by adding at the end the following:

“Sec. 110. General Standards for Applying and Interpreting Workers’ Rights.

“(a) Interpretation of Protections and Ex-
emptions.—

“(1) Protections.—All protections afforded
eligible employees under this title, including as ap-
plied through the definitions under section 3, shall
be interpreted expansively in favor of the eligible em-
ployee or individual claiming classification as an eli-
gible employee.

“(2) Exemptions and Exclusions.—

“(A) In general.—All exemptions and
exclusions under this title, including as applied
through the definitions under section 3, shall be
interpreted narrowly against the employer, or
person alleged to be an employer, and limited in
application to those persons or circumstances
plainly and unmistakably within the language
and spirit of the exemption or exclusion.

“(B) Clear and convincing evidence.—Any person asserting the applicability
of an exemption or exclusion under this title
shall prove such applicability by clear and con-
vincing evidence.

“(b) No-less-protection rule.—

“(1) In general.—The Secretary shall not
take any action to reduce a protection afforded an
eligible employee under this title through any regu-
ation, guidance, opinion, ruling, standard, order, ad-
judicative decision, or other interpretation from the
protection provided to the eligible employee through
a prior regulation, guidance, opinion, ruling, stand-
ard, order, adjudicative decision, or other interpreta-
tion in effect on the day before the date of such ac-
tion, unless such reduction is explicitly and specifi-
cally mandated by an Act of Congress.

“(2) Request for congressional action.—
The Secretary may submit a proposal to Congress
for a reduction described in paragraph (1), but shall
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not take any action described in such paragraph
without an explicit and specific mandate by an Act
of Congress.

“(3) Standard of deference.—Notwith-
standing chapter 7 of title 5, United States Code, in
any action for judicial review of an agency action
under such chapter, a reviewing court shall defer to
a regulation, guidance, opinion, ruling, standard,
order, adjudicative decision, or other interpretation
issued by the agency that increases or otherwise
strengthens a protection afforded to an eligible em-
ployee under this title unless such regulation, guid-
ance, opinion, ruling, standard, order, adjudicative
decision, or other interpretation is plainly erroneous
or inconsistent with this title.”.

(2) Table of contents.—The table of con-
tents in section 1(b) of the Family and Medical
Leave Act of 1993 is amended by inserting after the
item relating to section 109 the following:

“Sec. 110. General standards for applying and interpreting workers’ rights.”.

(j) Federal Unemployment Tax Act (FUTA).—

(1) In general.—Section 3306(w) of the In-
ternal Revenue Code of 1986, as amended by section
206(j), is amended by adding at the end the fol-
lowing new paragraph:

“(8) Section 20 of such Act.”.
(2) **Effective Date.**—The amendment made by paragraph (1) shall apply to services rendered on or after January 1, 2022.

**SEC. 402. STATUTES OF LIMITATION.**

(a) **FLSA; Walsh-Healey Public Contracts Act; Davis-Bacon Act.**—Section 6 of the Portal-to-Portal Act of 1947 (29 U.S.C. 255) is amended—

(1) in the matter preceding subsection (a), by striking “for unpaid minimum wages, unpaid overtime compensation, or liquidated damages,”; and

(2) in subsection (a)—

(A) by striking “two years” each place it appears and inserting “4 years”;

(B) by inserting “or repeated” after “willful”; and

(C) by striking “three years” and inserting “6 years”.

(b) **National Labor Relations Act.**—Section 10(b) of the National Labor Relations Act (29 U.S.C. 160(b)) is amended—

(1) by striking “six months prior to the filing of the charge with the Board” and inserting “4 years prior to the filing of the charge with the Board, or 6 years prior to such filing in the case of
an alleged willful or repeated unfair labor practice,”; and

(2) by striking “six-month period” and inserting “4-year period, or 6-year period, as applicable,”.

(c) Occupational Safety and Health Act of 1970.—Section 9(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 658(c)) is amended by striking “expiration of six months following the occurrence of any violation” and inserting “expiration of—

“(1) except as provided in paragraph (2), 4 years following the occurrence of any violation described in subsection (a); or

“(2) in the case of a violation described in subsection (a) that is willful or repeated, 6 years following the occurrence of the violation.”.

(d) Family and Medical Leave Act of 1993.—Section 107(c) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2617(c)) is amended—

(1) in paragraph (1), by striking “2 years” and inserting “4 years”; and

(2) in paragraph (2), by striking “3 years” and inserting “6 years”.

1 TITLE V—GENERAL PROVISIONS
2 SEC. 501. SEVERABILITY.
3 If any provision of this Act or the application of such
4 provision to any person, entity, government, or cir-
5 cumstance, is held to be unconstitutional, the remainder
6 of this Act, or the application of such provision to all other
7 persons, entities, governments, or circumstances, shall not
8 be affected thereby.