

110TH CONGRESS  
1ST SESSION

# S. 1244

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 26, 2007

Mr. KENNEDY (for himself, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mrs. MURRAY, Mrs. CLINTON, Mr. OBAMA, Mr. SANDERS, Mr. BROWN, Mr. INOUE, Mr. BIDEN, Mr. ROCKEFELLER, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Mr. LAUTENBERG, Mr. MENENDEZ, Mr. CASEY, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting America’s  
5 Workers Act”.

1 **TITLE II—INCREASING PROTEC-**  
2 **TIONS FOR WHISTLE-**  
3 **BLOWERS**

4 **SEC. 201. EMPLOYEE ACTIONS.**

5 Section 11(c)(1) (29 U.S.C. 660(e)(1)) is amended  
6 by inserting before the period at the end the following:  
7 “, including reporting any injury, illness, or unsafe condi-  
8 tion to the employer, agent of the employer, safety and  
9 health committee involved, or employee safety and health  
10 representative involved”.

11 **SEC. 202. PROHIBITION OF DISCRIMINATION.**

12 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-  
13 ing paragraph (2) and inserting the following:

14 “(2) No person shall discharge or in any manner dis-  
15 criminate against an employee for refusing to perform the  
16 employee’s duties if the employee has a reasonable appre-  
17 hension that performing such duties would result in seri-  
18 ous injury to, or serious impairment of the health of, the  
19 employee or other employees. The circumstances causing  
20 the employee’s apprehension of serious injury or serious  
21 impairment of health shall be of such a nature that a rea-  
22 sonable person, under the circumstances confronting the  
23 employee, would conclude that there is a bona fide danger  
24 of a serious injury, or serious impairment of health, result-  
25 ing from the circumstances. In order to qualify for protec-

1 tion under this paragraph, the employee, when practicable,  
2 shall have sought from the employee's employer, and have  
3 been unable to obtain, a correction of the circumstances  
4 causing the refusal to perform the employee's duties.".

5 **SEC. 203. PROCEDURE.**

6 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-  
7 ing paragraph (3) and inserting the following:

8 "(3) Any employee who believes that the employee  
9 has been discharged, disciplined, or otherwise discrimi-  
10 nated against by any person in violation of paragraph (1)  
11 or (2) may, within 180 days after such alleged violation  
12 occurs, file (or have filed by any person on the employee's  
13 behalf) a complaint with the Secretary alleging that such  
14 discharge or discrimination violates paragraph (1) or (2).  
15 Upon receipt of such a complaint, the Secretary shall no-  
16 tify the person named in the complaint (referred to in this  
17 subsection as the 'respondent') of the filing of the com-  
18 plaint.

19 "(4)(A)(i) Not later than 60 days after the receipt  
20 of a complaint filed under paragraph (3), the Secretary  
21 shall conduct an investigation and determine whether  
22 there is reasonable cause to believe that the complaint has  
23 merit. During the investigation, the Secretary shall notify  
24 the respondent of the charges made in the complaint, and  
25 shall provide such person with an opportunity to meet with

1 the inspector conducting the investigation, to submit a re-  
2 sponse to such charges, and to present witnesses to rebut  
3 such charges. The Secretary shall also consider the result  
4 of any grievance proceeding provided for in a collective  
5 bargaining agreement, that may have been held with re-  
6 spect to such charges. Upon completion of the investiga-  
7 tion, the Secretary shall issue findings and notify the com-  
8 plainant and the respondent of the Secretary's findings.  
9 If the Secretary has concluded that there is reasonable  
10 cause to believe that a violation has occurred, the Sec-  
11 retary's findings shall be accompanied by a preliminary  
12 order providing the relief prescribed by subparagraph (B).

13       “(ii)(I) Not later than 30 days after the Secretary  
14 has issued findings under clause (i), either the respondent  
15 or the complainant may file objections to the findings or  
16 preliminary order, and request a hearing on the record,  
17 except that the filing of such objections shall not operate  
18 to stay any reinstatement remedy contained in the prelimi-  
19 nary order.

20       “(II) If a hearing described in subclause (I) is not  
21 requested in the 30-day period described in such subclause  
22 with respect to a preliminary order, the order shall be  
23 deemed to be a final order and not subject to judicial re-  
24 view.

1       “(iii) If the Secretary does not issue findings under  
2 clause (i) with respect to a complaint within 90 days after  
3 the receipt of the complaint, the complainant may request  
4 a hearing on the record on the complaint.

5       “(iv) The Secretary shall expeditiously conduct a  
6 hearing requested under clause (ii) or (iii). Upon the con-  
7 clusion of such hearing, the Secretary shall issue a final  
8 order within 120 days. Until the issuance of a final order,  
9 such hearing may be terminated at any time on the basis  
10 of a settlement agreement entered into by the Secretary,  
11 the complainant, and the respondent.

12       “(B)(i) If, in response to a complaint filed under  
13 paragraph (3), the Secretary determines that a violation  
14 of paragraph (1) or (2) has occurred, in issuing an order  
15 under subparagraph (A)(iv), the Secretary shall require—

16               “(I) the person who committed such violation to  
17 correct the violation;

18               “(II) such person to reinstate the complainant  
19 to the complainant’s former position together with  
20 the compensation (including backpay), terms, condi-  
21 tions, and privileges of the complainant’s employ-  
22 ment; and

23               “(III) such person to pay compensatory dam-  
24 ages.

1       “(ii) On issuing an order requiring a remedy de-  
2 scribed in clause (i), the Secretary, at the request of the  
3 complainant, may assess against the person against whom  
4 the order is issued a sum equal to the aggregate amount  
5 of all costs and expenses (including attorney’s fees) rea-  
6 sonably incurred, as determined by the Secretary, by the  
7 complainant for, or in connection with a complaint upon  
8 which the order was issued.

9       “(5)(A) Any person adversely affected or aggrieved  
10 by an order issued after a hearing conducted under para-  
11 graph (4)(A) may obtain review of the order in the United  
12 States Court of Appeals for the circuit in which the viola-  
13 tion, with respect to which the order was issued, allegedly  
14 occurred, or the circuit in which such person resided on  
15 the date of such violation. The petition for review shall  
16 be filed within 60 days after the issuance of the Sec-  
17 retary’s order. Such review shall be conducted in accord-  
18 ance with the provisions of chapter 7 of title 5, United  
19 States Code. The court shall conduct the review and issue  
20 a decision expeditiously.

21       “(B) If a person fails to comply with an order issued  
22 under paragraph (4)(A), the Secretary shall file a civil ac-  
23 tion in the United States district court for the district in  
24 which the violation was found to occur in order to enforce  
25 such order. In actions brought under this subparagraph,

1 the district court shall have jurisdiction to grant all appro-  
 2 priate relief, including injunctive relief, reinstatement, and  
 3 compensatory damages.

4 “(6) The legal burdens of proof set forth in section  
 5 1221(e) of title 5, United States Code, shall govern adju-  
 6 dication of violations under this subsection.”.

7 **SEC. 204. RELATION TO ENFORCEMENT.**

8 Section 17(j) (29 U.S.C. 666(j)) is amended by in-  
 9 serting before the period the following: “, including the  
 10 history of violations, under section 11(c)”.

11 **TITLE III—INCREASING**  
 12 **PENALTIES FOR VIOLATORS**

13 **SEC. 301. POSTING OF EMPLOYEE RIGHTS.**

14 Section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended by  
 15 adding at the end the following new sentence: “Such regu-  
 16 lations shall include provisions requiring employers to post  
 17 for employees information on the protections afforded  
 18 under section 11(e).”.

19 **SEC. 302. INVESTIGATIONS OF FATALITIES AND SERIOUS**  
 20 **INCIDENTS.**

21 Section 8 (29 U.S.C. 657) is amended by adding at  
 22 the end the following new subsection:

23 “(i)(1) The Secretary shall investigate any incident  
 24 resulting in death or serious incident, that occurs in a  
 25 place of employment covered by this Act.