

**AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 8
OFFERED BY MR. DESAULNIER OF CALIFORNIA**

At the end of the bill, add the following new title:

1 **TITLE VII—OFFSHORE OIL AND**
2 **GAS WORKER WHISTLE-**
3 **BLOWER PROTECTION**

4 **SEC. 7001. SHORT TITLE.**

5 This title may be cited as the “Offshore Oil and Gas
6 Worker Whistleblower Protection Act of 2015”.

7 **SEC. 7002. WHISTLEBLOWER PROTECTIONS; EMPLOYEE**
8 **PROTECTION FROM OTHER RETALIATION.**

9 (a) PROHIBITION AGAINST RETALIATION.—

10 (1) IN GENERAL.—No employer may discharge
11 or otherwise discriminate against a covered employee
12 because the covered employee, whether at the cov-
13 ered employee’s initiative or in the ordinary course
14 of the covered employee’s duties—

15 (A) provided, caused to be provided, or is
16 about to provide or cause to be provided to the
17 employer or to a Federal or State Government
18 official, information relating to any violation of,
19 or any act or omission the covered employee

1 reasonably believes to be a violation of, any pro-
2 vision of the Outer Continental Shelf Lands Act
3 (43 U.S.C. 1301 et seq.), or any order, rule,
4 regulation, standard, or prohibition under that
5 Act, or exercised any rights provided to employ-
6 ees under that Act;

7 (B) testified or is about to testify in a pro-
8 ceeding concerning such violation;

9 (C) assisted or participated or is about to
10 assist or participate in such a proceeding;

11 (D) testified or is about to testify before
12 Congress on any matter covered by such Act;

13 (E) objected to, or refused to participate in
14 any activity, policy, practice, or assigned task
15 that the covered employee reasonably believed
16 to be in violation of any provision of such Act,
17 or any order, rule, regulation, standard, or ban
18 under such Act;

19 (F) reported to the employer or a State or
20 Federal Government official any of the fol-
21 lowing related to the employer's activities de-
22 scribed in section 7003(1): an illness, injury,
23 unsafe condition, or information regarding the
24 adequacy of any oil spill response plan required
25 by law; or

1 (G) refused to perform the covered employ-
2 ee’s duties, or exercised stop work authority, re-
3 lated to the employer’s activities described in
4 section 7003(1) if the covered employee had a
5 good faith belief that performing such duties
6 could result in injury to or impairment of the
7 health of the covered employee or other employ-
8 ees, or cause an oil spill to the environment.

9 (2) GOOD FAITH BELIEF.—For purposes of
10 paragraph (1)(E), the circumstances causing the
11 covered employee’s good faith belief that performing
12 such duties would pose a health and safety hazard
13 shall be of such a nature that a reasonable person
14 under circumstances confronting the covered em-
15 ployee would conclude there is such a hazard.

16 (b) PROCESS.—

17 (1) IN GENERAL.—A covered employee who be-
18 lieves that he or she has been discharged or other-
19 wise discriminated against (hereafter referred to as
20 the “complainant”) by any employer in violation of
21 subsection (a)(1) may, not later than 180 days after
22 the date on which such alleged violation occurs or
23 the date on which the covered employee knows or
24 should reasonably have known that such alleged vio-
25 lation occurred, file (or have any person file on his

1 or her behalf) a complaint with the Secretary of
2 Labor (referred to in this section as the “Sec-
3 retary”) alleging such discharge or discrimination
4 and identifying employer or employers responsible
5 for such act. Upon receipt of such a complaint, the
6 Secretary shall notify, in writing, the employer or
7 employers named in the complaint of the filing of
8 the complaint, of the allegations contained in the
9 complaint, of the substance of evidence supporting
10 the complaint, and of the opportunities that will be
11 afforded to such person under paragraph (2).

12 (2) INVESTIGATION.—

13 (A) IN GENERAL.—Not later than 90 days
14 after the date of receipt of a complaint filed
15 under paragraph (1) the Secretary shall initiate
16 an investigation and determine whether there is
17 reasonable cause to believe that the complaint
18 has merit and notify, in writing, the complain-
19 ant and the employer or employers alleged to
20 have committed a violation of subsection (a)(1)
21 of the Secretary’s findings. The Secretary shall,
22 during such investigation afford the complain-
23 ant and the employer or employers named in
24 the complaint an opportunity to submit to the
25 Secretary a written response to the complaint

1 and an opportunity to meet with a representa-
2 tive of the Secretary to present statements from
3 witnesses. The complainant shall be provided
4 with an opportunity to review the information
5 and evidence provided by employer or employers
6 to the Secretary, and to review any response or
7 rebuttal by such the complaint, as part of such
8 investigation.

9 (B) REASONABLE CAUSE FOUND; PRELIMI-
10 NARY ORDER.—If the Secretary concludes that
11 there is reasonable cause to believe that a viola-
12 tion of subsection (a)(1) has occurred, the Sec-
13 retary shall accompany the Secretary’s findings
14 with a preliminary order providing the relief
15 prescribed by paragraph (3)(B).

16 (C) RIGHT OF PARTIES TO APPEAL.—Not
17 later than 30 days after the date of notification
18 of findings under this paragraph, the employer
19 or employers alleged to have committed the vio-
20 lation or the complainant may file objections to
21 the findings or preliminary order, or both, in-
22 cluding the dismissal of the complaint, in whole
23 or in part, and request a hearing on the record
24 before an administrative law judge of the De-
25 partment of Labor. Any such hearing shall be

1 conducted expeditiously. If a hearing is not re-
2 quested in such 30-day period, the preliminary
3 order shall be deemed a final order that is not
4 subject to judicial review. The filing of such ob-
5 jections shall not operate to stay any reinstate-
6 ment remedy contained in the preliminary order
7 issued under subparagraph (B). The Secretary
8 of Labor is authorized to enforce preliminary
9 reinstatement orders in the United States dis-
10 trict court for the district in which the violation
11 was found to occur, or in the United States dis-
12 trict court for the District of Columbia.

13 (D) DISMISSAL OF COMPLAINT.—

14 (i) STANDARD FOR COMPLAINANT.—

15 The Secretary shall dismiss a complaint
16 filed under this subsection and shall not
17 conduct an investigation otherwise required
18 under subparagraph (A) unless the com-
19 plainant makes a prima facie showing that
20 any behavior described in subparagraphs
21 (A) through (G) of subsection (a)(1) was a
22 contributing factor in the adverse action
23 alleged in the complaint.

24 (ii) STANDARD FOR EMPLOYER.—Not-
25 withstanding a finding by the Secretary

1 that the complainant has made the show-
2 ing required under clause (i), no investiga-
3 tion otherwise required under subpara-
4 graph (A) shall be conducted if the em-
5 ployer demonstrates, by clear and con-
6 vincing evidence, that the employer would
7 have taken the same adverse action in the
8 absence of that behavior.

9 (iii) VIOLATION STANDARD.—The
10 Secretary may determine that a violation
11 of subsection (a)(1) has occurred only if
12 the complainant demonstrates that any be-
13 havior described in subparagraphs (A)
14 through (G) of such subsection was a con-
15 tributing factor in the adverse action al-
16 leged in the complaint.

17 (iv) RELIEF STANDARD.—Relief may
18 not be ordered under subparagraph (A) if
19 the employer demonstrates by clear and
20 convincing evidence that the employer
21 would have taken the same adverse action
22 in the absence of that behavior.

23 (3) ORDERS.—

24 (A) IN GENERAL.—Not later than 90 days
25 after the receipt of a request for a hearing

1 under subsection (b)(2)(B), the administrative
2 law judge shall issue findings of fact and order
3 the relief provided under this paragraph or
4 deny the complaint. At any time before issuance
5 of an order, a proceeding under this subsection
6 may be terminated on the basis of a settlement
7 agreement entered into by the Secretary, the
8 complainant, and the person alleged to have
9 committed the violation. Such a settlement may
10 not be agreed by such parties if it contains con-
11 ditions which conflict with rights protected
12 under this title, are contrary to public policy, or
13 include a restriction on a complainant's right to
14 future employment with employers other than
15 the specific employers named in the complaint.

16 (B) CONTENT OF ORDER.—If, in response
17 to a complaint filed under paragraph (1), the
18 administrative law judge determines that a vio-
19 lation of subsection (a)(1) has occurred, the ad-
20 ministrative law judge shall order the employer
21 or employers who committed such violation to—

22 (i) take affirmative action to abate the
23 violation;

24 (ii) reinstate the complainant to his or
25 her former position together with com-

1 pensation (including back pay and prejudg-
2 ment interest) and restore the terms, con-
3 ditions, and privileges associated with his
4 or her employment;

5 (iii) expunge of all warnings, rep-
6 rimands, or derogatory references that
7 have been placed in paper or electronic
8 records or databases of any type relating
9 to the actions by the complainant that
10 gave rise to the unfavorable personnel ac-
11 tion, and, at the complainant's direction,
12 transmit a copy of the decision on the com-
13 plaint to any person whom the complainant
14 reasonably believes may have received such
15 unfavorable information; and

16 (iv) provide compensatory and con-
17 sequential damages, and, as appropriate,
18 exemplary damages to the complainant.

19 (C) ATTORNEY FEES.—If such an order is
20 issued under this paragraph, the Secretary, at
21 the request of the complainant, shall assess
22 against the employer or employers a sum equal
23 to the aggregate amount of all costs and ex-
24 penses (including attorneys' and expert witness
25 fees) reasonably incurred by the complainant

1 for, or in connection with, the bringing of the
2 complaint upon which the order was issued at
3 the conclusion of any stage of the proceeding.

4 (D) BAD FAITH CLAIM.—If the Secretary
5 finds that a complaint under paragraph (1) is
6 frivolous or has been brought in bad faith, the
7 Secretary may award to the prevailing employer
8 reasonable attorneys' fees, not exceeding
9 \$1,000, to be paid by the complainant.

10 (E) ADMINISTRATIVE APPEAL.—Not later
11 than 30 days after the receipt of findings of
12 fact or an order under subparagraph (B), the
13 employer or employers alleged to have com-
14 mitted the violation or the complainant may
15 file, with objections, an administrative appeal
16 with the Secretary, who may designate such ap-
17 peal to a review board. In reviewing a decision
18 and order of the administrative law judge, the
19 Secretary shall affirm the decision and order if
20 it is determined that the factual findings set
21 forth therein are supported by substantial evi-
22 dence and the decision and order are made in
23 accordance with applicable law. The Secretary
24 shall issue a final decision and order affirming,
25 or reversing, in whole or in part, the decision

1 under review within 90 days after receipt of the
2 administrative appeal under this subparagraph.
3 If it is determined that a violation of subsection
4 (a)(1) has occurred, the Secretary shall order
5 relief provided under subparagraphs (B) and
6 (C). Such decision shall constitute a final agen-
7 cy action with respect to the matter appealed.

8 (4) ACTION IN COURT.—

9 (A) IN GENERAL.—If the Secretary has
10 not issued a final decision within 330 days after
11 the filing of the complaint, the complainant
12 may bring an action at law or equity for de
13 novo review in the appropriate district court of
14 the United States, which action shall, at the re-
15 quest of either party to such action, be tried by
16 the court with a jury. The proceedings shall be
17 governed by the same legal burdens of proof
18 specified in paragraph (2)(C).

19 (B) RELIEF.—The court may award all
20 appropriate relief including injunctive relief,
21 compensatory and consequential damages, in-
22 cluding—

23 (i) reinstatement with the same se-
24 niority status that the covered employee

1 would have had, but for the discharge or
2 discrimination;

3 (ii) the amount of back pay sufficient
4 to make the covered employee whole, with
5 prejudgment interest;

6 (iii) expungement of all warnings, rep-
7 rimands, or derogatory references that
8 have been placed in paper or electronic
9 records or databases of any type relating
10 to the actions by the complainant that
11 gave rise to the unfavorable personnel ac-
12 tion, and, at the complainant's direction,
13 transmission of a copy of the decision on
14 the complaint to any person whom the
15 complainant reasonably believes may have
16 received such unfavorable information;

17 (iv) exemplary damages, as appro-
18 priate; and

19 (v) litigation costs, including reason-
20 able attorney fees and expert witness fees.

21 (5) REVIEW.—

22 (A) IN GENERAL.—Any person aggrieved
23 by a final order issued under paragraph (3) or
24 a judgment or order under paragraph (4) may
25 obtain review of the order in the appropriate

1 United States Court of Appeals. The petition
2 for review must be filed not later than 60 days
3 after the date of the issuance of the final order
4 of the Secretary. Review shall be in accordance
5 with chapter 7 of title 5, United States Code.
6 The commencement of proceedings under this
7 subparagraph shall not, unless ordered by the
8 court, operate as a stay of the order.

9 (B) NO OTHER JUDICIAL REVIEW.—An
10 order of the Secretary with respect to which re-
11 view could have been obtained under subpara-
12 graph (A) shall not be subject to judicial review
13 in any other proceeding.

14 (6) FAILURE TO COMPLY WITH ORDER.—When-
15 ever any employer has failed to comply with an order
16 issued under paragraph (3), the Secretary may ob-
17 tain in a civil action in the United States district
18 court for the district in which the violation was
19 found to occur, or in the United States district court
20 for the District of Columbia, all appropriate relief
21 including, but not limited to, injunctive relief and
22 compensatory damages.

23 (7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

24 (A) IN GENERAL.—Whenever an employer
25 has failed to comply with an order issued under

1 paragraph (3), the complainant on whose behalf
2 the order was issued may obtain in a civil ac-
3 tion in an appropriate United States district
4 court against the employer to whom the order
5 was issued, all appropriate relief.

6 (B) AWARD.—The court, in issuing any
7 final order under this paragraph, may award
8 costs of litigation (including reasonable attor-
9 neys' and expert witness fees) to any party
10 whenever the court determines such award is
11 appropriate.

12 (c) CONSTRUCTION.—

13 (1) EFFECT ON OTHER LAWS.—Nothing in this
14 section preempts or diminishes any other safeguards
15 against discrimination, demotion, discharge, suspen-
16 sion, threats, harassment, reprimand, retaliation, or
17 any other manner of discrimination provided by Fed-
18 eral or State law.

19 (2) RIGHTS OF EMPLOYEES.—Nothing in this
20 section shall be construed to diminish the rights,
21 privileges, or remedies of any employee under any
22 Federal or State law or under any collective bar-
23 gaining agreement. The rights and remedies in this
24 section may not be waived by any agreement, policy,
25 form, or condition of employment.

1 (d) ENFORCEMENT OF NONDISCRETIONARY DU-
2 TIES.—Any nondiscretionary duty imposed by this section
3 shall be enforceable in a mandamus proceeding brought
4 under section 1361 of title 28, United States Code.

5 (e) POSTING OF NOTICE AND TRAINING.—All em-
6 ployers shall post a notice which has been approved as to
7 form and content by the Secretary of Labor in a con-
8 spicuous location in the place of employment where cov-
9 ered employees frequent which explains employee rights
10 and remedies under this section. Each employer shall pro-
11 vide training to covered employees of their rights under
12 this section within 30 days of employment, and at not less
13 than once every 12 months thereafter, and provide covered
14 employees with a card which contains a toll free telephone
15 number at the Department of Labor which covered em-
16 ployees can call to get information or file a complaint
17 under this section.

18 (f) DESIGNATION BY THE SECRETARY.—The Sec-
19 retary of Labor shall, within 30 days of the date of enact-
20 ment of this Act, designate by order the appropriate agen-
21 cy officials to receive, investigate, and adjudicate com-
22 plaints of violations of subsection (a)(1).

23 **SEC. 7003. DEFINITIONS.**

24 As used in this title, the following definitions apply:

25 (1) The term “covered employee”—

1 (A) means an individual performing serv-
2 ices on behalf of an employer that is engaged
3 in activities on or in waters above the Outer
4 Continental Shelf related to—

5 (i) supporting, or carrying out explo-
6 ration, development, production, proc-
7 essing, or transportation of oil or gas; or

8 (ii) oil spill cleanup, emergency re-
9 sponse, environmental surveillance, protec-
10 tion, or restoration, or other oil spill activi-
11 ties related to occupational safety and
12 health; and

13 (B) includes an applicant for such employ-
14 ment.

15 (2) The term “employer” means one or more
16 individuals, partnerships, associations, corporations,
17 trusts, unincorporated organizations, nongovern-
18 mental organizations, or trustees, and includes any
19 agent, contractor, subcontractor, grantee or consult-
20 ant of such employer.

21 (3) The term “Outer Continental Shelf” has
22 the meaning that the term “outer Continental Shelf”
23 has in the Outer Continental Shelf Lands Act (43
24 U.S.C. 1331 et seq.).

