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:

TITLE VII—OFFSHORE OIL AND GAS WORKER WHISTLEBLOWER PROTECTION

SEC. 7001. SHORT TITLE.

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

SEC. 7002. WHISTLEBLOWER PROTECTIONS; EMPLOYEE PROTECTION FROM OTHER RETALIATION.

(a) Prohibition Against Retaliation.—

(1) In general.—No employer may discharge or otherwise discriminate against a covered employee because the covered employee, whether at the covered employee’s initiative or in the ordinary course of the covered employee’s duties—

(A) provided, caused to be provided, or is about to provide or cause to be provided to the employer or to a Federal or State Government official, information relating to any violation of, or any act or omission the covered employee
reasonably believes to be a violation of, any provision of the Outer Continental Shelf Lands Act (43 U.S.C. 1301 et seq.), or any order, rule, regulation, standard, or prohibition under that Act, or exercised any rights provided to employees under that Act;

(B) testified or is about to testify in a proceeding concerning such violation;

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

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

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

(F) reported to the employer or a State or Federal Government official any of the following related to the employer’s activities described in section 7003(1): an illness, injury, unsafe condition, or information regarding the adequacy of any oil spill response plan required by law; or
(G) refused to perform the covered employee’s duties, or exercised stop work authority, related to the employer’s activities described in section 7003(1) if the covered employee had a good faith belief that performing such duties could result in injury to or impairment of the health of the covered employee or other employees, or cause an oil spill to the environment.

(2) Good Faith Belief.—For purposes of paragraph (1)(E), the circumstances causing the covered employee’s good faith belief that performing such duties would pose a health and safety hazard shall be of such a nature that a reasonable person under circumstances confronting the covered employee would conclude there is such a hazard.

(b) Process.—

(1) In General.—A covered employee who believes that he or she has been discharged or otherwise discriminated against (hereafter referred to as the “complainant”) by any employer in violation of subsection (a)(1) may, not later than 180 days after the date on which such alleged violation occurs or the date on which the covered employee knows or should reasonably have known that such alleged violation occurred, file (or have any person file on his
or her behalf) a complaint with the Secretary of Labor (referred to in this section as the “Secretary”) alleging such discharge or discrimination and identifying employer or employers responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the employer or employers named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION.—

(A) IN GENERAL.—Not later than 90 days after the date of receipt of a complaint filed under paragraph (1) the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the employer or employers alleged to have committed a violation of subsection (a)(1) of the Secretary’s findings. The Secretary shall, during such investigation afford the complainant and the employer or employers named in the complaint an opportunity to submit to the Secretary a written response to the complaint.
and an opportunity to meet with a representative of the Secretary to present statements from witnesses. The complainant shall be provided with an opportunity to review the information and evidence provided by employer or employers to the Secretary, and to review any response or rebuttal by such the complaint, as part of such investigation.

(B) Reasonable cause found; preliminary order.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a)(1) has occurred, the Secretary shall accompany the Secretary’s findings with a preliminary order providing the relief prescribed by paragraph (3)(B).

(C) Right of parties to appeal.—Not later than 30 days after the date of notification of findings under this paragraph, the employer or employers alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, including the dismissal of the complaint, in whole or in part, and request a hearing on the record before an administrative law judge of the Department of Labor. Any such hearing shall be
conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order issued under subparagraph (B). The Secretary of Labor is authorized to enforce preliminary reinstatement orders in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia.

(D) DISMISSAL OF COMPLAINT.—

(i) STANDARD FOR COMPLAINANT.—

The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subparagraphs (A) through (G) of subsection (a)(1) was a contributing factor in the adverse action alleged in the complaint.

(ii) STANDARD FOR EMPLOYER.—Notwithstanding a finding by the Secretary
that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same adverse action in the absence of that behavior.

(iii) Violation Standard.—The Secretary may determine that a violation of subsection (a)(1) has occurred only if the complainant demonstrates that any behavior described in subparagraphs (A) through (G) of such subsection was a contributing factor in the adverse action alleged in the complaint.

(iv) Relief Standard.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same adverse action in the absence of that behavior.

(3) Orders.—

(A) In General.—Not later than 90 days after the receipt of a request for a hearing
under subsection (b)(2)(B), the administrative law judge shall issue findings of fact and order the relief provided under this paragraph or deny the complaint. At any time before issuance of an order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation. Such a settlement may not be agreed by such parties if it contains conditions which conflict with rights protected under this title, are contrary to public policy, or include a restriction on a complainant’s right to future employment with employers other than the specific employers named in the complaint.

(B) CONTENT OF ORDER.—If, in response to a complaint filed under paragraph (1), the administrative law judge determines that a violation of subsection (a)(1) has occurred, the administrative law judge shall order the employer or employers who committed such violation to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with com-
pensation (including back pay and prejudgment interest) and restore the terms, conditions, and privileges associated with his or her employment;

(iii) expunge of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmit a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information; and

(iv) provide compensatory and consequential damages, and, as appropriate, exemplary damages to the complainant.

(C) ATTORNEY FEES.—If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the employer or employers a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert witness fees) reasonably incurred by the complainant
for, or in connection with, the bringing of the complaint upon which the order was issued at the conclusion of any stage of the proceeding.

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

(E) ADMINISTRATIVE APPEAL.—Not later than 30 days after the receipt of findings of fact or an order under subparagraph (B), the employer or employers alleged to have committed the violation or the complainant may file, with objections, an administrative appeal with the Secretary, who may designate such appeal to a review board. In reviewing a decision and order of the administrative law judge, the Secretary shall affirm the decision and order if it is determined that the factual findings set forth therein are supported by substantial evidence and the decision and order are made in accordance with applicable law. The Secretary shall issue a final decision and order affirming, or reversing, in whole or in part, the decision
under review within 90 days after receipt of the
administrative appeal under this subparagraph.
If it is determined that a violation of subsection
(a)(1) has occurred, the Secretary shall order
relief provided under subparagraphs (B) and
(C). Such decision shall constitute a final agen-
cy action with respect to the matter appealed.

(4) ACTION IN COURT.—

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

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

(i) reinstatement with the same se-
niority status that the covered employee
would have had, but for the discharge or discrimination;

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

(iii) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the complainant reasonably believes may have received such unfavorable information;

(iv) exemplary damages, as appropriate; and

(v) litigation costs, including reasonable attorney fees and expert witness fees.

(5) REVIEW.—

(A) IN GENERAL.—Any person aggrieved by a final order issued under paragraph (3) or a judgment or order under paragraph (4) may obtain review of the order in the appropriate
United States Court of Appeals. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall be in accordance with chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) No other judicial review.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any other proceeding.

(6) Failure to comply with order.—Whenever any employer has failed to comply with an order issued under paragraph (3), the Secretary may obtain in a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7) Civil action to require compliance.—

(A) In general.—Whenever an employer has failed to comply with an order issued under
paragraph (3), the complainant on whose behalf
the order was issued may obtain in a civil ac-
tion in an appropriate United States district
court against the employer to whom the order
was issued, all appropriate relief.

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

(c) CONSTRUCTION.—

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

(2) RIGHTS OF EMPLOYEES.—Nothing in this
section shall be construed to diminish the rights,
privileges, or remedies of any employee under any
Federal or State law or under any collective bar-
gaining agreement. The rights and remedies in this
section may not be waived by any agreement, policy,
form, or condition of employment.
(d) **ENFORCEMENT OF NONDISCRETIONARY DUTIES.**—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(e) **POSTING OF NOTICE AND TRAINING.**—All employers shall post a notice which has been approved as to form and content by the Secretary of Labor in a conspicuous location in the place of employment where covered employees frequent which explains employee rights and remedies under this section. Each employer shall provide training to covered employees of their rights under this section within 30 days of employment, and at not less than once every 12 months thereafter, and provide covered employees with a card which contains a toll free telephone number at the Department of Labor which covered employees can call to get information or file a complaint under this section.

(f) **DESIGNATION BY THE SECRETARY.**—The Secretary of Labor shall, within 30 days of the date of enactment of this Act, designate by order the appropriate agency officials to receive, investigate, and adjudicate complaints of violations of subsection (a)(1).

**SEC. 7003. DEFINITIONS.**

As used in this title, the following definitions apply:

(1) The term “covered employee”—
(A) means an individual performing services on behalf of an employer that is engaged in activities on or in waters above the Outer Continental Shelf related to—

(i) supporting, or carrying out exploration, development, production, processing, or transportation of oil or gas; or

(ii) oil spill cleanup, emergency response, environmental surveillance, protection, or restoration, or other oil spill activities related to occupational safety and health; and

(B) includes an applicant for such employment.

(2) The term “employer” means one or more individuals, partnerships, associations, corporations, trusts, unincorporated organizations, nongovernmental organizations, or trustees, and includes any agent, contractor, subcontractor, grantee or consultant of such employer.

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