



## Lobby Day Talking Points: The EMPOWER Act

**The Bill:** The Ending the Monopoly of Power Over Workplace Harassment through Education and Reporting (EMPOWER) Act, a bill that is soon to be introduced, will end employer practices that interfere with the enforcement of workplace harassment laws. The bill will also correct inequities in the tax law. The version to be introduced is not identical to the bill introduced in the 116<sup>th</sup> Congress ([S. 575/H.R. 1521](#)), but is substantially similar.

**The EMPOWER Act has bipartisan support in Congress and has been endorsed by both civil rights/worker organizations and business.** Several of the tax provisions included in this bill have been introduced in another bill that has received bipartisan support each time it was introduced. Senators and Representatives on both sides of the aisle, including chairs and ranking members of the Senate Finance and House Ways and Means Committees, have cosponsored the tax changes in this bill. Organizations including NELA, the Association of Corporate Counsel, the American Bar Association, and the American Association for Justice have supported these changes.

**The EMPOWER Act would end employers' practice of using nondisclosure agreements (NDAs) to silence workers** who witness or complain about illegal harassment on the job.

**The EMPOWER Act would prohibit employers from imposing one-sided nondisclosure agreements** as a condition of settling claims of discrimination or harassment.

**Nondisclosure Agreements are hiding workplace harassment and must be prohibited.**

- **NDAs prevent workers from opposing harassment at work.** No one should be forced to sign up to keep silent about racial or sexual harassment or any other type of discrimination as a condition of starting a new job or keeping one.
- **Harassment and discrimination persist because under current law, employers can require workers to keep silent about harassment and discrimination** based on sex, race, ethnicity, national origin, age, religion, gender identity, and disability. To end workplace discrimination and harassment, workers should be encouraged to speak up when they witness or complain about harassment and discrimination. The EMPOWER Act will encourage them to speak up about inappropriate conduct at work.
- **NDAs discourage workers from filing claims to hold employers accountable** for workplace harassment because NDAs interfere with their coworkers' ability to speak up to help them.

**The EMPOWER Act promotes tax fairness by correcting inequities in the tax treatment of settlements and awards in employment and civil rights cases.**

**Fair tax treatment should not reward workplace harassment and discrimination.**

- **Current tax law is unfair, arbitrary, and irrational.** There is no rational justification for taxing non-economic damages received by a worker who was subjected to years of workplace harassment or discrimination and suffered severe emotional distress and physical illness, but not taxing non-economic damages in slip and fall cases. The late Representative John Lewis

said of this inequity, “To single out civil rights violations in this way sends a message that their impact is somehow less demeaning, less debilitating, less damaging.”

- The bill would exclude from gross income non-economic damage awards received by plaintiffs in discrimination cases and personal injury cases alike.
- The bill would also tax lump sum recoveries for front or back pay as if they had been received in the year(s) they would have been earned. It would provide an exemption from the alternative minimum tax (AMT).
- These provisions would restore Congress’ intent that workers should be “made whole” when their rights are violated.

**The EMPOWER Act encourages fair and prompt settlements, reduces costly litigation, and preserves judicial resources.**

- Under current law, employers receive a tax deduction for expenses and attorneys’ fees they pay as part of a judgment or arbitration award in litigation related to workplace harassment or discrimination. The EMPOWER Act would eliminate that deduction, encouraging early settlement and preserving judicial resources. Under current law, employers who want to resolve workplace claims are penalized because they often have to increase/ “gross up” their settlement offers to compensate workers for the additional taxes the worker will be required to pay on their recoveries. Judges, in some cases, have also “grossed up” jury awards to make up for the tax consequences.
- The inability to settle claims results in more cases going to trial and expending scarce judicial resources. The EMPOWER Act would remedy these problems, benefiting workers, employers, and the justice system.