



**NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
IAMAW, AFL-CIO**



**NFFE-IAM: Rescind the VA Whistleblower and Accountability Act, and
Support the VA Employee Fairness Act (H.R. 1133)**

Position: **The VA Whistleblower and Accountability Act of 2017 (“Act”) has failed the Department of Veterans Affairs (VA) and more importantly, failed America’s veterans. The Senate initiated an investigation regarding the true impact that the Act has had within the VA. The Act improperly provided the VA with unaccountable authority to review its own actions. The unintended consequence of the Act was to deliver disturbing blows to civil service system transparency and management accountability. The Act does not promote accountability; rather, it allows the concealment of mismanagement and wrongdoing by scapegoating workers and suppressing whistleblowers and critics.**

H.R. 1133, the VA Employee Fairness Act introduced by House Veterans Affairs’ Committee Chairman Mark Takano (D-CA), will restore equal rights to front-line clinicians, including physicians, registered nurses, dentists, physician assistants, podiatrists, optometrists, chiropractors and expanded-function dental auxiliaries. These rights include the right to grieve, arbitrate and negotiate over routine matters including overtime pay, scheduling and reassignments. When used in conjunction with official time, these rights serve as an imperative system of checks and balances against political overreach and mismanagement that compromise veterans’ care.

Why the VA Whistleblower and Accountability Act of 2017 is failing:

- This Act lowered the burden of proof for misconduct to from “preponderance of the evidence” to “substantial evidence,” which under existing case law can be essentially nothing (i.e. the evidence shows there is less than 1% chance you did what you were disciplined for, and it could still be upheld). This invites retaliation and targeting, using misconduct charges for virtually anything without proper justification.
- It erodes collective bargaining rights by shortening the timelines for grievances and shortening the timelines for appeals to the Merit Systems Protection Board (MSPB).
- It eliminates the ability of an MSPB judge to mitigate a penalty proposed by the agency. This is a new restriction of MSPB administrative judges to properly adjudicate.
- It created an internal review board of disciplinary action headed by a political appointee; this appointee need not have any adjudication experience and the office is under IG investigation.
- It effectively suppressed whistleblowers and critics of management officials.
- Even worse, the Act allows for the forfeiture of an employee’s pension under certain circumstances with little proof. This is legally prohibited in the private sector.

How the VA Employee Fairness Act (H.R. 1133) will help:

- It restores systematic protections (not ‘individual employee rights’) against corruption.
- It holds managers and political appointees who oversee the department accountable.
- It helps to prevent retaliation, discrimination, and false disciplinary claims against medical staff.
- It restores collective bargaining, official time, and impartial appeals processes.
- It improves the overall fairness, effectiveness and efficiency of VA care for veterans.

Join Senators Baldwin, Blumenthal, Brown, Hirono, Murray, and Tester in questioning this failed law, and immediately support the VA Employee Fairness Act (H.R. 1133) to start fixing what was broke in the VA.