



# Opening Statement

COMMITTEE ON EDUCATION & LABOR

EDLABOR.HOUSE.GOV

The Hon. Robert C. "Bobby" Scott • Chairman

**Opening Statement of Chairman Robert C. "Bobby" Scott (VA-03)**  
Full Committee Hearing in the House Committee on Education and Labor  
*Eliminating Barriers to Employment: Opening Doors to Opportunity*  
2175 Rayburn House Office Building  
Tuesday, May 21, 2019 at 10:15 a.m.

Today's legislative hearing will examine barriers keeping Americans out of the workforce and also identify legislative solutions to expand opportunity.

Despite the overall strength of the economy, too many still face a range of obstacles to employment, including discrimination, that undermines opportunities to take part in the benefits of work. For example, older workers, workers with disabilities, disconnected youth, and returning citizens are often left behind in today's economy.

Our witnesses here today will help us understand the challenges facing each of these groups and how Congress can help solve those problems.

For older Americans, age discrimination is a significant barrier to opportunities. And when older workers lose their jobs, they are far more likely than other workers to join the ranks of the long-term unemployed.

In 1967, Congress enacted the Age Discrimination in Employment Act, or the ADEA, to prohibit age discrimination in the workplace. The ADEA was an integral part of civil rights legislation enacted during the 1960s to ensure equal opportunity in the workplace, along with the *Equal Pay Act of 1963*, and Title VII of the *Civil Rights Act of 1964*. When Congress passed the ADEA, it recognized that age discrimination was caused primarily by the unfounded assumption that age impacted ability.

Unfortunately, protections for older workers were undercut by the Supreme Court's decision in *Gross v. FBL Financial Services, Inc.*, which imposed a higher burden of proof for age discrimination. This 5-4 decision overturned precedent by requiring individuals to prove that age discrimination was *the sole* motivating cause for the employer's adverse action, rather than just a *motivating factor* in the employer's adverse action. The plaintiff in that case, Mr. Gross, is in the audience today. Welcome, Mr. Gross.

The *Protecting Older Americans Against Discrimination Act* (POWADA), is legislative fix that would restore the pre-2009 evidentiary threshold applied in age discrimination claims. Reinstating the *mixed-motive test* aligns the burden of proof for age discrimination with the same standards for proving discrimination based on sex, race, religion, and national origin. I want to thank the lead co-sponsor of this important legislation, the gentleman from Wisconsin, Mr. Sensenbrenner, for his continued commitment to fighting age discrimination.

Individuals with disabilities have also long-suffered from barriers to competitive integrated employment. Today, an 80-year-old provision in the Fair Labor Standards Act, known as Section 14(c), empowers employers to obtain a certificate, which allows them to pay workers with disabilities a subminimum wage. More than 130,000 employees with disabilities are employed under 14(c) certificates. While intended as transitional employment, at

least 95 percent of individuals with disabilities who enter subminimum wage jobs never obtain competitive employment even though, with appropriate support, most could make the minimum wage.

We have a responsibility to eliminate Section 14(c), written in 1938 under the belief that individuals with disabilities were necessarily and significantly less productive than individuals without disabilities and presumably unable to earn the minimum wage.

H.R. 873, the *Transformation to Competitive Employment Act*, is a bipartisan proposal that reflects this responsibility and phases out the 14(c) subminimum wage nationwide over a six-year period. The bill provides \$300 million for the Department of Labor to award grants to states and 14(c) certificate holders to help workers with disabilities transition into competitive integrated employment. It includes a grant to subsidize wages for the few who cannot, in fact, make at least the minimum wage, but still desire to work to the best of their abilities. It also incentivizes states and businesses to work in good faith toward fully implementing competitive integrated employment for all workers with disabilities.

One of today's witnesses, Shayne Roos, will show how his organization proactively transitioned their employees into competitive integrated employment settings. Their success demonstrated that it is both feasible and socially beneficial to remove most of these individuals from segregated settings.

Finally, today's hearing is an opportunity to explore the benefits of investing in the millions of Americans of young Americans who are disconnected from school or the workforce.

Research indicates that approximately 11 percent of young people aged 16 to 24—about 4.5 million people—are neither employed nor in school. Studies show that disconnection can cost youth nearly \$400,000 in earnings over their lifetimes and cost our communities more than \$25 billion in health care programs, public assistance, and incarceration costs every year.

Once again, this is a missed opportunity for individuals and our economy, which is partly why we refer to these specific young people as “opportunity youth.” The Workforce Innovation and Opportunity Act of 2014 increased opportunities for youth with significant barriers to employment by requiring 75 percent of funding for “Youth Activities” be spent on out-of-school youth.

As this Committee considers reauthorizing this key workforce development law, we must prioritize strengthening evidence-based programs, such as summer jobs programs, that help underserved youth remain connected or reconnect to education and employment. According to at least one study, a summer jobs program in Chicago actually saved more money by reducing crime and other social pathology, saved more than it cost.

Similarly, we must ensure that returning citizens have the support needed to re-enter the workforce. Today, roughly one in three Americans has a criminal record. More than 600,000 Americans return to communities from incarceration each year. They face a majority of employers who are unwilling to hire them. That barrier is particularly challenging for men of color, who are disproportionately incarcerated.

A 2013 National Institute of Health report found that, as incarceration rates increase, African Americans face greater obstacles to employment compared to White Americans, creating—and I quote from the study—a *new form of institutional racism with wide-reaching economic effects*.

The EEOC even responded to this discrimination a few years ago, issuing guidance that a blanket policy of denying employment for persons with any criminal record without an individualized consideration, such as seriousness of the crime, the relevance to the job, and the time since the conviction, could result in a finding of illegal employment discrimination.

If we follow the evidence, we will find that supporting employment for returning citizens yields widespread benefits, including increased earnings for individuals, higher taxpayer revenues, cost savings through reduced recidivism, and strengthened public safety,

Today's hearing is an opportunity for us to consider the barriers to employment that impact a wide range of communities as well as our responsibility to use our legislative mandate to remove these barriers.

I look forward to the testimony of our witnesses who can help to inform this Committee on eliminating barriers to employment. Doing so will mean that America's workers will be better off, our economy will be stronger, and our communities are healthier.

Thank you to the witnesses for joining us today. I now yield to the Ranking Member, Dr. Foxx, for the purpose of making an opening statement.