

117TH CONGRESS
1ST SESSION

H. R. 2062

To amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2021

Mr. SCOTT of Virginia (for himself, Mr. RODNEY DAVIS of Illinois, Ms. BONAMICI, Mr. FITZPATRICK, Ms. ADAMS, Mr. KATKO, Mrs. AXNE, Miss GONZÁLEZ-COLÓN, Ms. NEWMAN, Mr. VAN DREW, Mr. LOWENTHAL, Mr. GROTHMAN, Ms. WILD, and Mr. HOLLINGSWORTH) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Older
5 Workers Against Discrimination Act”.

1 **SEC. 2. STANDARDS OF PROOF.**

2 (a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF
3 1967.—

4 (1) CLARIFYING PROHIBITION AGAINST IMPER-
5 MISSIBLE CONSIDERATION OF AGE IN EMPLOYMENT
6 PRACTICES.—Section 4 of the Age Discrimination in
7 Employment Act of 1967 (29 U.S.C. 623) is amend-
8 ed by inserting after subsection (f) the following:

9 “(g)(1) Except as otherwise provided in this Act, an
10 unlawful practice is established under this Act when the
11 complaining party demonstrates that age or an activity
12 protected by subsection (d) was a motivating factor for
13 any practice, even though other factors also motivated the
14 practice.

15 “(2) In establishing an unlawful practice under this
16 Act, including under paragraph (1) or by any other meth-
17 od of proof, a complaining party—

18 “(A) may rely on any type or form of admis-
19 sible evidence and need only produce evidence suffi-
20 cient for a reasonable trier of fact to find that an
21 unlawful practice occurred under this Act; and

22 “(B) shall not be required to demonstrate that
23 age or an activity protected by subsection (d) was
24 the sole cause of a practice.”.

25 (2) REMEDIES.—Section 7 of such Act (29
26 U.S.C. 626) is amended—

1 (A) in subsection (b)—
2 (i) in the first sentence, by striking
3 “The” and inserting “(1) The”;
4 (ii) in the third sentence, by striking
5 “Amounts” and inserting the following:
6 “(2) Amounts”;
7 (iii) in the fifth sentence, by striking
8 “Before” and inserting the following:
9 “(4) Before”; and
10 (iv) by inserting before paragraph (4),
11 as designated by clause (iii) of this sub-
12 paragraph, the following:
13 “(3) On a claim in which an individual demonstrates
14 that age was a motivating factor for any employment prac-
15 tice under section 4(g)(1), and a respondent demonstrates
16 that the respondent would have taken the same action in
17 the absence of the impermissible motivating factor, the
18 court—
19 “(A) may grant declaratory relief, injunctive re-
20 lief (except as provided in subparagraph (B)), and
21 attorney’s fees and costs demonstrated to be directly
22 attributable only to the pursuit of a claim under sec-
23 tion 4(g)(1); and

1 “(B) shall not award damages or issue an order
2 requiring any admission, reinstatement, hiring, pro-
3 motion, or payment.”; and

4 (B) in subsection (e)(1), by striking “Any”
5 and inserting “Subject to subsection (b)(3),
6 any”.

7 (3) DEFINITIONS.—Section 11 of such Act (29
8 U.S.C. 630) is amended by adding at the end the
9 following:

10 “(m) The term ‘demonstrates’ means meets the bur-
11 dens of production and persuasion.”.

12 (4) FEDERAL EMPLOYEES.—Section 15 of such
13 Act (29 U.S.C. 633a) is amended by adding at the
14 end the following:

15 “(h) Sections 4(g) and 7(b)(3) shall apply to mixed
16 motive claims (involving practices described in section
17 4(g)(1)) under this section.”.

18 (b) TITLE VII OF THE CIVIL RIGHTS ACT OF
19 1964.—

20 (1) CLARIFYING PROHIBITION AGAINST IMPER-
21 MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-
22 GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT
23 PRACTICES.—Section 703 of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e–2) is amended by striking
25 subsection (m) and inserting the following:

1 “(m) Except as otherwise provided in this title, an
2 unlawful employment practice is established when the
3 complaining party demonstrates that race, color, religion,
4 sex, national origin, or an activity protected by section
5 704(a) was a motivating factor for any employment prac-
6 tice, even though other factors also motivated the prac-
7 tice.”.

8 (2) FEDERAL EMPLOYEES.—Section 717 of
9 such Act (42 U.S.C. 2000e–16) is amended by add-
10 ing at the end the following:

11 “(g) Sections 703(m) and 706(g)(2)(B) shall apply
12 to mixed motive cases (involving practices described in sec-
13 tion 703(m)) under this section.”.

14 (c) AMERICANS WITH DISABILITIES ACT OF 1990.—

15 (1) DEFINITIONS.—Section 101 of the Ameri-
16 cans with Disabilities Act of 1990 (42 U.S.C.
17 12111) is amended by adding at the end the fol-
18 lowing:

19 “(11) DEMONSTRATES.—The term ‘demon-
20 strates’ means meets the burdens of production and
21 persuasion.”.

22 (2) CLARIFYING PROHIBITION AGAINST IMPER-
23 MISSIBLE CONSIDERATION OF DISABILITY IN EM-
24 PLOYMENT PRACTICES.—Section 102 of such Act

1 (42 U.S.C. 12112) is amended by adding at the end
2 the following:

3 “(e) PROOF.—

4 “(1) ESTABLISHMENT.—Except as otherwise
5 provided in this Act, a discriminatory practice is es-
6 tablished under this Act when the complaining party
7 demonstrates that disability or an activity protected
8 by subsection (a) or (b) of section 503 was a moti-
9 vating factor for any employment practice, even
10 though other factors also motivated the practice.

11 “(2) DEMONSTRATION.—In establishing a dis-
12 criminatory practice under paragraph (1) or by any
13 other method of proof, a complaining party—

14 “(A) may rely on any type or form of ad-
15 missible evidence and need only produce evi-
16 dence sufficient for a reasonable trier of fact to
17 find that a discriminatory practice occurred
18 under this Act; and

19 “(B) shall not be required to demonstrate
20 that disability or an activity protected by sub-
21 section (a) or (b) of section 503 was the sole
22 cause of an employment practice.”.

23 (3) CERTAIN ANTI-RETALIATION CLAIMS.—Sec-
24 tion 503(c) of such Act (42 U.S.C. 12203(c)) is
25 amended—

1 (A) by striking “The remedies” and insert-
2 ing the following:

3 “(1) IN GENERAL.—Except as provided in para-
4 graph (2), the remedies”; and

5 (B) by adding at the end the following:

6 “(2) CERTAIN ANTI-RETALIATION CLAIMS.—
7 Section 107(e) shall apply to claims under section
8 102(e)(1) with respect to title I.”.

9 (4) REMEDIES.—Section 107 of such Act (42
10 U.S.C. 12117) is amended by adding at the end the
11 following:

12 “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a
13 claim in which an individual demonstrates that disability
14 was a motivating factor for any employment practice
15 under section 102(e)(1), and a respondent demonstrates
16 that the respondent would have taken the same action in
17 the absence of the impermissible motivating factor, the
18 court—

19 “(1) may grant declaratory relief, injunctive re-
20 lief (except as provided in paragraph (2)), and attor-
21 ney’s fees and costs demonstrated to be directly at-
22 tributable only to the pursuit of a claim under sec-
23 tion 102(e)(1); and

1 “(2) shall not award damages or issue an order
2 requiring any admission, reinstatement, hiring, pro-
3 motion, or payment.”.

4 (d) REHABILITATION ACT OF 1973.—

5 (1) IN GENERAL.—Sections 501(f), 503(d), and
6 504(d) of the Rehabilitation Act of 1973 (29 U.S.C.
7 791(f), 793(d), and 794(d)), are each amended by
8 adding after “title I of the Americans with Disabil-
9 ities Act of 1990 (42 U.S.C. 12111 et seq.)” the fol-
10 lowing: “, including the standards of causation or
11 methods of proof applied under section 102(e) of
12 that Act (42 U.S.C. 12112(e)),”.

13 (2) FEDERAL EMPLOYEES.—The amendment
14 made by paragraph (1) to section 501(f) of the Re-
15 habilitation Act of 1973 (29 U.S.C. 791(f)) shall be
16 construed to apply to all employees covered by sec-
17 tion 501 of that Act (29 U.S.C. 791).

18 **SEC. 3. APPLICATION.**

19 This Act, and the amendments made by this Act,
20 shall apply to all claims pending on or after the date of
21 enactment of this Act.

22 **SEC. 4. SEVERABILITY.**

23 If any provision of this Act, an amendment made by
24 this Act, or the application of such provision or amend-
25 ment to any person or circumstance is held to be unconsti-

1 tutional, the remainder of this Act, the amendments made
2 by this Act, and the application of the provisions of such
3 to any person or circumstance shall not be affected there-
4 by.

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