



OPENING STATEMENT

House Committee on Education and Labor

Chairman Robert C. "Bobby" Scott

House Committee on Education and Labor Full Committee Markup

H.R. 3110, *PUMP for Nursing Mothers Act*

H.R. 2062, *Protecting Older Workers Against Discrimination Act*

Wednesday, May 26, 2021 | 12:00 p.m.

Today, the Committee is marking up two bipartisan bills that would help secure basic protections for our nation's workers. These bills are H.R. 3110, the *Providing Urgent Maternal Protections for Nursing Mothers Act*, or *PUMP Act*, and H.R. 2062, the *Protecting Older Workers Against Discrimination Act*.

The first bill, the *PUMP for Nursing Mothers Act*, expands critical workplace protections that guarantee nursing workers the time and privacy they need to express breastmilk.

More than ten years ago, Congress passed legislation that required employers to provide eligible nursing workers with a clean, private space and time to pump, which does not need to be paid time. Unfortunately, gaps in that law exclude millions of workers and also limit how protected workers can recover for harms in court when their rights are violated.

In a national survey of women who gave birth in 2011 and 2012, more than 1 in 3 reported that employment posed a challenge to breastfeeding.

For nursing mothers, access to these protections has always been critical for balancing work and the health of both themselves and their infants. But it is particularly essential now as women return to work after disproportionately suffering from employment losses during the pandemic.

The bipartisan, bicameral *PUMP for Nursing Mothers Act* would expand access to existing protections for nursing mothers to the nearly 9 million employees who are currently left out. It would also ensure that nursing workers have access to appropriate remedies when their employers fail to provide break time and appropriate pumping space. Finally, the bill would clarify that, if an employee is not completely relieved of their duties during a break, that time is considered hours worked for the purposes of minimum wage and overtime requirements.

This legislation is a simple improvement to existing law that would strengthen our economy and meaningfully support nursing mothers across the country.

I am pleased to report that, after intensive discussions, the final proposal that will be introduced as an amendment in the nature of a substitute is supported by worker advocates, civil rights and public health groups, and the United States Chamber of Commerce.

The second bill we will consider is the *Protecting Older Workers Against Discrimination Act*, which would provide older workers with urgently needed protections against age-based workplace discrimination.

In 1967, Congress recognized the need to protect older workers, specifically those over 40 years of age, from discrimination by enacting the *Age Discrimination in Employment Act*. Unfortunately, in 2009, the Supreme Court severely eroded these critical protections in the case of *Gross v. FBL Financial Services, Inc.* In its decision, the court imposed a higher evidentiary burden than courts had previously required. Now, workers must prove that age discrimination was the decisive motivating cause of an employer's action, rather than one of the motivating factors.

This standard is a needless barrier to workplace fairness for older workers who have long been vulnerable to workplace discrimination. In fact, more than half of older workers are pushed out of longtime jobs before they choose to retire.

Age discrimination also holds back our economy. Research by the AARP and the Economist Intelligence Unit found that, absent age discrimination, older workers would have contributed \$850 billion more in 2018 to the Gross Domestic Product.

It is clear that our labor market and economy cannot fully recover if we fail to include and protect our nation's older workers.

The *Protecting Older Workers Against Discrimination Act* is a bipartisan legislative fix that would restore the pre-2009 evidentiary standard for age discrimination claims. This would effectively realign the burden of proof for age discrimination claims with the same standards for proving discrimination based on sex, race, religion, and national origin.

The legislation also reinstates this standard for disability discrimination claims, and those involving retaliation for rights protected under those civil rights laws, which have all been implicated by the Supreme Court's holding in *Gross*.

In 2019, 227 House Democrats and 34 House Republicans came together to pass this bill. This Congress, we must reaffirm our bipartisan support for older workers by, again, passing the *Protecting Older Workers Against Discrimination Act*.

As our economy continues to recover from the pandemic, both the *PUMP for Nursing Mothers Act* and the *Protecting Older Workers Against Discrimination Act* would help ensure that nursing workers and older workers can work free from the fear of discrimination.