

Protecting Older Workers Against Discrimination Act of 2023

Today, Americans are working more and longer than they ever have. Unfortunately, age discrimination continues to hurt older workers and expose them to long-term unemployment and severe financial hardship.

A [2022 AARP survey](#) found that 1 in 5 adults age 50 years and older report they have experienced age discrimination since turning 40 years old, and 2 in 3 adults in the labor force age 50 years and older think older workers face discrimination based on age in the workplace. Moreover, in 2018, the United States missed out on a [potential \\$850 billion in GDP](#) because those age 50 and older who wished to remain in or re-enter the labor force, switch jobs, or be promoted within their existing company were not given that opportunity, according to study from AARP and the Economist Intelligence Unit in 2020.

The Problem: *The Supreme Court has undermined legal protections for older workers seeking relief from age discrimination.*

- Despite older workers' clear need for strong workplace protections from discrimination, the Supreme Court's 2009 decision in *Gross v. FBL Financial Services, Inc.* has weakened protections against age discrimination under the *Age Discrimination in Employment Act (ADEA)*.
- *Gross* overturned past precedent that previously only required plaintiffs seeking to prove age discrimination in employment to demonstrate that age was a *motivating factor* for the employer's adverse action. This is also called the "mixed motive" standard.
- However, this 5-4 Supreme Court decision now requires plaintiffs to prove "but-for" causation, or that age was the determinative reason for the adverse employment action. This heightened evidentiary standard upends decades of precedent that had allowed individuals to prove discrimination by showing that a discriminatory motive was *one of the factors* on which an employer's adverse action was based. Since the 2009 *Gross* decision, courts have applied the "but-for" standard to other civil rights laws.

The Solution: *The bipartisan Protecting Older Workers Against Discrimination Act (POWADA) of 2023 restores legal protections for older workers so they can hold employers accountable for age discrimination. Moreover, it restores protections to other laws affected by the *Gross* decision's reasoning.*

- POWADA restores longstanding protections under the ADEA which covers workers, aged 40 and over. It does so by replacing the *Gross* "but-for" test with the "mixed motive" test that courts applied prior to 2009. This aligns the burden of proof for age discrimination with the same standards currently in law for proving discrimination based on race and national origin.
- POWADA amends three other civil laws in addition to the ADEA—the anti-retaliation provisions in Title VII of the *Civil Rights Act*, the *Americans with Disabilities Act*, and the *Rehabilitation Act of 1973*—to ensure that charges of discrimination under these three laws will also be adjudicated under the "mixed motive" standard. This will ensure victims are not required to refute every purported nondiscriminatory motive offered by the employer for their discriminatory action.