

## ***Protect Older Job Applicants Act of 2021 (H.R. 3992)***

On June 23, 2021, the House passed the [Protecting Older Workers Against Discrimination Act of 2021](#) (POWADA), which reduces the evidentiary burdens for claims of age discrimination under the *Age Discrimination in Employment Act* (ADEA). However, even with the reforms provided under POWADA, the ADEA still does not cover job applicants seeking relief from age discrimination.

Currently, ADEA allows plaintiffs to bring a suit when an employer engages in harmful, statistically discriminate hiring practices based on age. However, two federal Circuit Court of Appeals have interpreted the law to exclude job applicants. To remedy this, an amendment to POWADA was filed in June 2021, but was unexpectedly deemed non-germane by the Parliamentarian. To remedy this gap in protections under ADEA, a stand alone bill is now required.

[Forty-four percent](#) of older applicants report being asked for age-related information when applying for a job, and three-fourths of workers age 45 and older blame age discrimination for their lack of confidence in finding a new job. Derogatory stereotypes about older workers' physical and cognitive health, personal ambition, and time flexibility are [often embedded in hiring decisions](#) made by managers.

**The Problem:** *The 7th and 11th Circuit Court of Appeals adopted an interpretation of the ADEA that prevents older job applicants from pursuing disparate impact claims for age-based discrimination in hiring.*

- In 2016, the 11th Circuit held that the ADEA disparate impact statute only covers employees, but not older applicants who experience age discriminatory employment actions (*Villarreal v. R.J. Reynolds Tobacco Company*).
- In 2019, the 7th Circuit adopted the same interpretation in *Kleber v. CareFusion Corporation*.
- Both decisions rejected decades of Equal Employment Opportunity Commission (EEOC) guidance that job applicants are covered by the ADEA, as well as the Supreme Court's interpretation of parallel statutes covering applicants under Title VII of the *Civil Rights Act of 1964*.

**The Solution:** *The Protect Older Job Applicants Act of 2021 (POJA Act) will amend the ADEA disparate impact statute to ensure that the ADEA protects older job applicants.*

- POJA clarifies that older "applicants for employment" are also protected from age discrimination under federal law.
- POJA will directly restore protections for older job applicants in the 7th and 11th Circuits by reversing *Villarreal* and *Kleber*, as well as prevent other circuits from adopting similar interpretations of the ADEA.
- POJA will strengthen the EEOC's interpretation that the ADEA covers job applicants and aligns ADEA protections for job applicants with Title VII of the *Civil Rights Act of 1964*.
- AARP [testified](#) before the Education and Labor Committee urging Congress to remedy the loophole created by the Court of Appeals' decisions that exclude job applicants under ADEA.