

Protecting Older Workers Against Discrimination Act of 2023

Section 1. Short Title

This section specifies that the title of the bill may be cited as the “Protecting Older Workers Against Discrimination Act of 2023.”

Section 2. Standards of Proof

In General

This bill amends the Age Discrimination in Employment Act of 1967 (ADEA), Section 703 of the Civil Rights Act of 1964, the Americans With Disabilities Act of 1990 (ADA), and the Rehabilitation Act of 1973 to clarify that a complaining party establishes an unlawful employment practice when the complaining party demonstrates that age or any of the other protected characteristics or protected activity was a motivating factor for any unlawful employment practice. The changes made by the bill apply to claims brought by employees in the private, public, and not-for-profit sectors in the same manner and to the same extent as they are covered under current law.

Section 2(a). Age Discrimination in Employment Act of 1967

Section 2(a) amends the ADEA to reinstate the availability of the “mixed-motive” test that allows the complaining party to establish their claim by demonstrating that the party’s age or participation in investigations, proceedings, or litigation under the ADEA was a motivating factor for any alleged unlawful employment practice. This section also clarifies that federal employees may also bring their claims using a mixed motive framework.

Under the mixed-motive framework, once a complaining party establishes a prohibited motivation, the employer is permitted to prove it would have taken the same action in the absence of the impermissible factor.

If the employer proves that it would have taken the same action in the absence of the impermissible factor, remedies are limited to declaratory relief, injunctive relief, and attorney’s fees and costs directly related to pursuit of the mixed motive claim. Damages and orders requiring admission, reinstatement, hiring, promotion, or payment are not available in this situation. If the employer is unable to prove that it would have taken the same action in absence of the impermissible factor, the employee is entitled to back pay, front pay or reinstatement, liquidated damages if the violation was willful, and injunctive relief.

Section 2(b). Section 703 of the Civil Rights Act of 1964

Section 2(b) of H.R. 1230 amends Section 703 of the Civil Rights Act of 1964 to add “an activity protected by 704(a)” to the list of unlawful employment practices that may be proven using a motivating factor framework,

thereby reinstating the availability of the “mixed-motive” test for charges of retaliation under Title VII of the Civil Rights Act of 1964. This is applicable when an employee opposed an unlawful employment practice, or made a charge, testified, assisted or participated in any investigations, proceedings or hearings regarding an unlawful employment practice. Additionally, the Act amends Section 717 of the Civil Rights Act of 1964 regarding federal employees by adding the inclusion of “mixed motive” cases.

Section 2(c). Americans with Disabilities Act of 1990

Section 2(c) of H.R. 1230 amends the ADA to codify the availability of the “mixed-motive” test that allows the complaining party to establish a claim by demonstrating that disability or participation in investigations, proceedings, or litigation under subsection (a) or (b) of Section 503 of the ADA was a motivating factor for any alleged unlawful practice.

Under the mixed-motive framework, once a complaining party establishes a prohibited motivation, the employer is allowed an opportunity to mitigate damages by proving he would have taken the same action in the absence of the impermissible factor.

If the employer proves that it would have taken the same action in the absence of the impermissible factor, remedies are limited to declaratory relief, injunctive relief, and attorney’s fees and costs directly related to pursuit of the mixed motive claim. Damages and orders requiring admission, reinstatement, hiring, promotion, or payment are not available in this situation.

Section 2(d). Rehabilitation Act of 1973

Section 2(d) of the Rehabilitation Act of 1973 is amended to incorporate by reference the changes made to the ADA in Section 2(c) of the bill.

Section 3. Application

This section states that the Act applies to all claims pending on or after the date of its enactment.

Section 4. Severability

This adds a standard severability provision so that if any provision, portion of provision, amendment, or their application is held invalid or found to be unconstitutional, the remainder of this Act shall not be affected.