

116TH CONGRESS  
2D SESSION

# H. R. 1230

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IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2020

Received; read twice and referred to the Committee on Health, Education,  
Labor, and Pensions

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protecting Older  
3 Workers Against Discrimination Act”.

4 **SEC. 2. STANDARDS OF PROOF.**

5 (a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF  
6 1967.—

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

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

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

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

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

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

6                   (A) in subsection (b)—

7                           (i) in the first sentence, by striking  
8                           “The” and inserting “(1) The”;

9                           (ii) in the third sentence, by striking  
10                          “Amounts” and inserting the following:

11                          “(2) Amounts”;

12                           (iii) in the fifth sentence, by striking  
13                          “Before” and inserting the following:

14                          “(4) Before”; and

15                           (iv) by inserting before paragraph (4),  
16                          as designated by clause (iii) of this sub-  
17                          paragraph, the following:

18           “(3) On a claim in which an individual demonstrates  
19           that age was a motivating factor for any employment prac-  
20           tice, under section 4(g)(1), and a respondent demonstrates  
21           that the respondent would have taken the same action in  
22           the absence of the impermissible motivating factor, the  
23           court—

24                          “(A) may grant declaratory relief, injunctive re-  
25                          lief (except as provided in subparagraph (B)), and

1 attorney's fees and costs demonstrated to be directly  
2 attributable only to the pursuit of a claim under sec-  
3 tion 4(g)(1); and

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

7 (B) in subsection (e)(1), by striking “Any”  
8 and inserting “Subject to subsection (b)(3),  
9 any”.

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

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

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

18 “(h) Sections 4(g) and 7(b)(3) shall apply to mixed  
19 motive claims (involving practices described in section  
20 4(g)(1)) under this section.”.

21 (b) TITLE VII OF THE CIVIL RIGHTS ACT OF  
22 1964.—

23 (1) CLARIFYING PROHIBITION AGAINST IMPER-  
24 MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-  
25 GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT

1 PRACTICES.—Section 703 of the Civil Rights Act of  
2 1964 (42 U.S.C. 2000e–2) is amended by striking  
3 subsection (m) and inserting the following:

4 “(m) Except as otherwise provided in this title, an  
5 unlawful employment practice is established when the  
6 complaining party demonstrates that race, color, religion,  
7 sex, or national origin or an activity protected by section  
8 704(a) was a motivating factor for any employment prac-  
9 tice, even though other factors also motivated the prac-  
10 tice.”.

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

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

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

18 (1) DEFINITIONS.—Section 101 of the Ameri-  
19 cans with Disabilities Act of 1990 (42 U.S.C.  
20 12111) is amended by adding at the end the fol-  
21 lowing:

22 “(11) DEMONSTRATES.—The term ‘dem-  
23 onstrates’ means meets the burdens of production  
24 and persuasion.”.

1           (2) CLARIFYING PROHIBITION AGAINST IMPER-  
2           MISSIBLE CONSIDERATION OF DISABILITY IN EM-  
3           PLOYMENT PRACTICES.—Section 102 of such Act  
4           (42 U.S.C. 12112) is amended by adding at the end  
5           the following:

6           “(e) PROOF.—

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

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

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

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

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

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

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

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

9                   “(2) CERTAIN ANTI-RETALIATION CLAIMS.—  
10          Section 107(e) shall apply to claims under section  
11          102(e)(1) with respect to title I.”.

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

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

22                   “(1) may grant declaratory relief, injunctive re-  
23          lief (except as provided in paragraph (2)), and attor-  
24          ney’s fees and costs demonstrated to be directly at-

1       tributable only to the pursuit of a claim under sec-  
2       tion 102(e)(1); and

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

6       (d) REHABILITATION ACT OF 1973.—

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

15              (2) FEDERAL EMPLOYEES.—The amendment  
16      made by paragraph (1) to section 501(f) shall be  
17      construed to apply to all employees covered by sec-  
18      tion 501.

19   **SEC. 3. APPLICATION.**

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

23   **SEC. 4. SEVERABILITY.**

24       If any provision or portion of a provision of this Act,  
25      an amendment or portion of an amendment made by this



1 Act, or the application of any provision or portion thereof  
2 or amendment or portion thereof to particular persons or  
3 circumstances is held invalid or found to be unconstitu-  
4 tional, the remainder of this Act, the amendments made  
5 by this Act, or the application of that provision or portion  
6 thereof or amendment or portion thereof to other persons  
7 or circumstances shall not be affected.

8 **SEC. 5. REPORT BY GOVERNMENT ACCOUNTABILITY OF-**  
9 **FICE.**

10 Not later than 2 years after the date of the enact-  
11 ment of this Act, the Government Accountability Office  
12 shall submit to the Congress a report analyzing how the  
13 Equal Employment Opportunity Commission investigates  
14 mixed motive age discrimination claims arising under the  
15 Acts amended by this Act, focusing on—

16 (1) the ability of the Commission to meet the  
17 demands of its workload under such Acts;

18 (2) the plans of the Commission for inves-  
19 tigating systemic age discrimination in violation of  
20 such Acts;

21 (3) the plans of the Commission for litigation  
22 under such Acts; and

23 (4) the options for improving the ability of the  
24 Commission to respond to allegations of age dis-  
25 crimination in violation of such Acts.

1 **SEC. 6. STUDY AND REPORT TO CONGRESS.**

2 Not later than 1 year after the date of the enactment  
3 of this Act, the Secretary of Labor and the Equal Oppor-  
4 tunity Employment Commission shall jointly conduct a  
5 study to determine the number of claims pending or filed,  
6 in addition to cases closed, by women who may have been  
7 adversely impacted by age discrimination as a motivating  
8 factor in workplace discrimination or employment termi-  
9 nation. The Secretary of Labor and Chairman of the Com-  
10 mission shall jointly submit to the Congress, and make  
11 available to the public, a report that contains the results  
12 of the study, including recommendations for best practices  
13 to prevent and to combat gender and age discrimination  
14 as it relates to women in the workplace.

15 **SEC. 7. REPORTS.**

16 For the 5-year period beginning on the date of the  
17 enactment of this Act, the Chairman of Equal Employ-  
18 ment Opportunity Commission shall submit to the Com-  
19 mittee on Education and Labor of the House of Rep-  
20 resentatives and the Committee on Health, Education,  
21 Labor, and Pensions of the Senate a report at 1-year in-  
22 tervals on the number of age discrimination in employ-  
23 ment claims brought under this Act with the Equal Em-  
24 ployment Opportunity Commission in the period for which  
25 such report is submitted.

1 **SEC. 8. REPORT BY THE UNITED STATES COMMISSION ON**  
2 **CIVIL RIGHTS.**

3 (a) REPORT.—With funds appropriated in advance to  
4 carry out this section, and consistent with the operational  
5 and procedural requirements of the United States Com-  
6 mission on Civil Rights, the Commission shall submit to  
7 the appropriate committees of the Congress a report con-  
8 taining an analysis of the status of Federal mixed motive  
9 age discrimination in employment claims made against  
10 Federal agencies, including—

11 (1) the number of such claims, specified by the  
12 Federal agency against which such claims are made;  
13 and

14 (2) other related information the Commission  
15 determines to be appropriate.

16 (b) SUBMISSION OF REPORT.—The report required  
17 by subsection (a) shall be submitted not later than 5 years  
18 after the date of the enactment of this Act.

Passed the House of Representatives January 15,  
2020.

Attest: CHERYL L. JOHNSON,  
*Clerk.*