

117TH CONGRESS
1ST SESSION

H. R. 2062

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

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

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 of 2021”.

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

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

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

3 (A) in subsection (b)—

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

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

8 “(2) Amounts”;

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

11 “(4) Before”; and

12 (iv) by inserting before paragraph (4),
13 as designated by clause (iii) of this sub-
14 paragraph, the following:

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

21 “(A) may grant declaratory relief, injunctive re-
22 lief (except as provided in subparagraph (B)), and
23 attorney’s fees and costs demonstrated to be directly
24 attributable only to the pursuit of a claim under sec-
25 tion 4(g)(1); and

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

4 (B) in subsection (e)(1), by striking “Any”
5 and inserting “Subject to subsection (b)(3),
6 any”.

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

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

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

15 “(h) Sections 4(g) and 7(b)(3) shall apply to mixed
16 motive claims (involving practices described in section
17 4(g)(1)) under this section.”.

18 (b) TITLE VII OF THE CIVIL RIGHTS ACT OF
19 1964.—

20 (1) CLARIFYING PROHIBITION AGAINST IMPER-
21 MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-
22 GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT
23 PRACTICES.—Section 703 of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e–2) is amended by striking
25 subsection (m) and inserting the following:

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

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

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

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

15 (1) DEFINITIONS.—Section 101 of the Ameri-
16 cans with Disabilities Act of 1990 (42 U.S.C.
17 12111) is amended by adding at the end the fol-
18 lowing:

19 “(11) DEMONSTRATES.—The term ‘demon-
20 strates’ means meets the burdens of production and
21 persuasion.”.

22 (2) CLARIFYING PROHIBITION AGAINST IMPER-
23 MISSIBLE CONSIDERATION OF DISABILITY IN EM-
24 PLOYMENT PRACTICES.—Section 102 of such Act

1 (42 U.S.C. 12112) is amended by adding at the end
2 the following:

3 “(e) PROOF.—

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

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

14 “(A) may rely on any type or form of ad-
15 missible evidence; and

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

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

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

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

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

4 “(2) CERTAIN ANTI-RETALIATION CLAIMS.—
5 Section 107(e) shall apply to claims under section
6 102(e)(1) with respect to title I.”.

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

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

17 “(1) may grant declaratory relief, injunctive re-
18 lief (except as provided in paragraph (2)), and attor-
19 ney’s fees and costs demonstrated to be directly at-
20 tributable only to the pursuit of a claim under sec-
21 tion 102(e)(1); and

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

25 (d) REHABILITATION ACT OF 1973.—

1 (1) IN GENERAL.—Sections 501(f), 503(d), and
2 504(d) of the Rehabilitation Act of 1973 (29 U.S.C.
3 791(f), 793(d), and 794(d)), are each amended by
4 adding after “title I of the Americans with Disabil-
5 ities Act of 1990 (42 U.S.C. 12111 et seq.)” the fol-
6 lowing: “, including the standards of causation or
7 methods of proof applied under section 102(e) of
8 that Act (42 U.S.C. 12112(e)),”.

9 (2) FEDERAL EMPLOYEES.—The amendment
10 made by paragraph (1) to section 501(f) of the Re-
11 habilitation Act of 1973 (29 U.S.C. 791(f)) shall be
12 construed to apply to all employees covered by sec-
13 tion 501 of that Act (29 U.S.C. 791).

14 **SEC. 3. APPLICATION.**

15 This Act, and the amendments made by this Act,
16 shall apply to all claims pending on or after the date of
17 enactment of this Act.

18 **SEC. 4. SEVERABILITY.**

19 If any provision of this Act, an amendment made by
20 this Act, or the application of such provision or amend-
21 ment to any person or circumstance is held to be unconsti-
22 tutional, the remainder of this Act, the amendments made
23 by this Act, and the application of the provisions of such
24 to any person or circumstance shall not be affected there-
25 by.

1 **SEC. 5. 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 Employ-
4 ment Opportunity 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. 6. REPORTS.**

16 The Chairman of Equal Employment Opportunity
17 Commission shall submit to the Committee on Education
18 and Labor of the House of Representatives and the Com-
19 mittee on Health, Education, Labor, and Pensions of the
20 Senate a report at 1-year intervals on the number of age
21 discrimination in employment claims brought under this
22 Act with the Equal Employment Opportunity Commission
23 in the period for which such report is submitted.

24 **SEC. 7. REPORT.**

25 (a) REPORT.—Not later than 2 years after the date
26 of enactment of this Act, the Equal Employment Oppor-

1 tunity Employment Commission shall submit to the Con-
2 gress, and make available to the public, a report that con-
3 tains analysis of any disparities that covered individuals,
4 as defined in subsection (b), face in pursuing relief from
5 discrimination in employment under the mixed motive evi-
6 dentiary standard.

7 (b) COVERED INDIVIDUALS DEFINED.—The term
8 “covered individuals” means individuals who face discrimi-
9 nation in employment based on characteristics protected
10 under the Age Discrimination in Employment Act of 1967
11 combined with one or more intersectional characteristics
12 protected under title VII of the Civil Rights Act of 1964,
13 the Americans with Disabilities Act of 1990, or the Reha-
14 bilitation Act of 1973.

Passed the House of Representatives June 23, 2021.

Attest: CHERYL L. JOHNSON,
Clerk.