

Union Calendar No.

117TH CONGRESS
1ST SESSION

H. R. 2062

[Report No. 117-]

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2021

Mr. SCOTT of Virginia (for himself, Mr. RODNEY DAVIS of Illinois, Ms. BONAMICI, Mr. FITZPATRICK, Ms. ADAMS, Mr. KATKO, Mrs. AXNE, Miss GONZÁLEZ-COLÓN, Ms. NEWMAN, Mr. VAN DREW, Mr. LOWENTHAL, Mr. GROTHMAN, Ms. WILD, and Mr. HOLLINGSWORTH) introduced the following bill; which was referred to the Committee on Education and Labor

JUNE --, 2021

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 18, 2021]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Protecting Older Work-*
5 *ers Against Discrimination Act of 2021”.*

6 **SEC. 2. STANDARDS OF PROOF.**

7 *(a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF*
8 *1967.—*

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

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

20 *“(2) In establishing an unlawful practice under this*
21 *Act, including under paragraph (1) or by any other method*
22 *of proof, a complaining party—*

23 *“(A) may rely on any type or form of admissible*
24 *evidence and need only produce evidence sufficient for*

1 *a reasonable trier of fact to find that an unlawful*
2 *practice occurred under this Act; and*

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

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

8 *(A) in subsection (b)—*

9 *(i) in the first sentence, by striking*
10 *“The” and inserting “(1) The”;*

11 *(ii) in the third sentence, by striking*
12 *“Amounts” and inserting the following:*

13 *“(2) Amounts”;*

14 *(iii) in the fifth sentence, by striking*
15 *“Before” and inserting the following:*

16 *“(4) Before”;* and

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

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

1 “(A) may grant declaratory relief, injunctive re-
2 *lief (except as provided in subparagraph (B)), and at-*
3 *torney’s fees and costs demonstrated to be directly at-*
4 *tributable only to the pursuit of a claim under section*
5 *4(g)(1); and*

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

9 (B) in subsection (c)(1), by striking “Any”
10 and inserting “Subject to subsection (b)(3),
11 any”.

12 (3) *DEFINITIONS.*—Section 11 of such Act (29
13 U.S.C. 630) is amended by adding at the end the fol-
14 *lowing:*

15 “(m) The term ‘demonstrates’ means meets the burdens
16 *of production and persuasion.”.*

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

20 “(h) Sections 4(g) and 7(b)(3) shall apply to mixed
21 *motive claims (involving practices described in section*
22 *4(g)(1)) under this section.”.*

23 (b) *TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.*—

24 (1) *CLARIFYING PROHIBITION AGAINST IMPER-*
25 *MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-*

1 *SION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT*
2 *PRACTICES.—Section 703 of the Civil Rights Act of*
3 *1964 (42 U.S.C. 2000e–2) is amended by striking*
4 *subsection (m) and inserting the following:*

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

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

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

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

18 *(1) DEFINITIONS.—Section 101 of the Americans*
19 *with Disabilities Act of 1990 (42 U.S.C. 12111) is*
20 *amended by adding at the end the following:*

21 *“(11) DEMONSTRATES.—The term ‘demonstrates’*
22 *means meets the burdens of production and persua-*
23 *sion.”.*

24 *(2) CLARIFYING PROHIBITION AGAINST IMPER-*
25 *MISSIBLE CONSIDERATION OF DISABILITY IN EMPLOY-*

1 *MENT PRACTICES.—Section 102 of such Act (42*
2 *U.S.C. 12112) is amended by adding at the end the*
3 *following:*

4 *“(e) PROOF.—*

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

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

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

20 *“(B) shall not be required to demonstrate*
21 *that disability or an activity protected by sub-*
22 *section (a) or (b) of section 503 was the sole*
23 *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.*—*Sec-*
10 *tion 107(c) 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 under*
18 *section 102(e)(1), and a respondent demonstrates that the*
19 *respondent would have taken the same action in the absence*
20 *of the impermissible motivating factor, the court—*

21 “(1) *may grant declaratory relief, injunctive re-*
22 *lief (except as provided in paragraph (2)), and attor-*
23 *ney’s fees and costs demonstrated to be directly attrib-*
24 *utable only to the pursuit of a claim under section*
25 *102(e)(1); and*

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

4 (d) *REHABILITATION ACT OF 1973.*—

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

13 (2) *FEDERAL EMPLOYEES.*—The amendment
14 made by paragraph (1) to section 501(f) of the Reha-
15 bilitation Act of 1973 (29 U.S.C. 791(f)) shall be con-
16 strued to apply to all employees covered by section
17 501 of that Act (29 U.S.C. 791).

18 **SEC. 3. APPLICATION.**

19 This Act, and the amendments made by this Act, shall
20 apply to all claims pending on or after the date of enact-
21 ment of this Act.

22 **SEC. 4. SEVERABILITY.**

23 If any provision of this Act, an amendment made by
24 this Act, or the application of such provision or amendment
25 to any person or circumstance is held to be unconstitu-

1 *tional, the remainder of this Act, the amendments made by*
2 *this Act, and the application of the provisions of such to*
3 *any person or circumstance shall not be affected thereby.*