

118TH CONGRESS
1ST SESSION

H. R. 6581

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

DECEMBER 4, 2023

Mr. SCOTT of Virginia (for himself, Mr. GROTHMAN, Ms. BONAMICI, Mr. FITZPATRICK, Ms. ADAMS, and Mr. VAN DREW) introduced the following bill; which was referred to the Committee on Education and the Workforce

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
5 Workers Against Discrimination Act of 2023”.

1 **SEC. 2. STANDARDS OF PROOF.**

2 (a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF
3 1967.—

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

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

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

17 (A) in subsection (b)—

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

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

22 “(2) Amounts”;

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

25 “(4) Before”; and

1 (iv) by inserting before paragraph (4),
2 as designated by clause (iii) of this sub-
3 paragraph, the following:

4 “(3) On a claim in which an individual proves
5 a violation under subsection (g) of section 623 of
6 this title, and a respondent demonstrates that the
7 respondent would have taken the same action in the
8 absence of the impermissible motivating factor, the
9 court—

10 “(A) may grant declaratory relief, injunc-
11 tive relief (except as provided in subparagraph
12 (B)), and attorney’s fees and costs dem-
13 onstrated to be directly attributable only to the
14 pursuit of a claim under subsection 4(g) of sec-
15 tion 623 of this title; and

16 “(B) shall not award damages or issue an
17 order requiring any admission, reinstatement,
18 hiring, promotion, or payment.”; and

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

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

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

4 “(h) The provisions of 623(g) and 626(b)(3) of this
5 title shall apply to claims brought under the provisions of
6 this section.”.

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

8 (1) CLARIFYING PROHIBITION AGAINST IMPER-
9 MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-
10 GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT
11 PRACTICES.—Section 703 of the Civil Rights Act of
12 1964 (42 U.S.C. 2000e–2) is amended by striking
13 subsection (m) and inserting the following:

14 “(m) Except as otherwise provided in this title, an
15 unlawful practice is established when the complaining
16 party demonstrates that race, color, religion, sex, national
17 origin, or an activity protected by section 2000e–(3)a of
18 this title was a motivating factor for any practice, even
19 though other factors also motivated the practice.”.

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

23 “(g) Sections 2000e–2(m) and 2000e–5(g)(2)(B) of
24 this title shall apply to claims brought under the provi-
25 sions of this section.”.

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

2 (1) DEFINITIONS.—Section 101 of the Ameri-
3 cans with Disabilities Act of 1990 (42 U.S.C.
4 12111) is amended by adding at the end the fol-
5 lowing:

6 “(11) DEMONSTRATES.—The term ‘dem-
7 onstrates’ means meets the burdens of production
8 and persuasion.”.

9 (2) CLARIFYING PROHIBITION AGAINST IMPER-
10 MISSIBLE CONSIDERATION OF DISABILITY IN EM-
11 PLOYMENT PRACTICES.—Section 102 of such Act
12 (42 U.S.C. 12112) is amended by adding at the end
13 the following:

14 “(e) PROOF.—

15 “(1) ESTABLISHMENT.—Except as otherwise
16 provided in this chapter, a discriminatory practice is
17 established under this chapter when the complaining
18 party demonstrates that disability or an activity pro-
19 tected by subsection (a) or (b) of section 12203 of
20 this title was a motivating factor for any practice,
21 even though other factors also motivated the prac-
22 tice.”.

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

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

3 “(1) IN GENERAL.—Except as provided in para-
4 graph (2), the remedies”; and (B) by adding at the
5 end the following:

6 “(2) CERTAIN ANTI-RETALIATION CLAIMS.—
7 Section 12117(e) shall apply to claims under section
8 12112(e)(1) with respect to title I.”.

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

12 “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a
13 claim in which an individual proves a violation under sec-
14 tion 12112(e)(1) of this title, and a respondent dem-
15 onstrates that the respondent would have taken the same
16 action in the absence of the impermissible motivating fac-
17 tor, the court—

18 “(1) may grant declaratory relief, injunctive re-
19 lief (except as provided in paragraph (2)), and attor-
20 ney’s fees and costs demonstrated to be directly at-
21 tributable only to the pursuit of a claim under sec-
22 tion 12112(e)(1); and

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

1 (d) REHABILITATION ACT OF 1973.—

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

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

15 **SEC. 3. APPLICATION.**

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

19 **SEC. 4. SEVERABILITY.**

20 If any provision of this Act, an amendment made by
21 this Act, or the application of such provision or amend-
22 ment to any person or circumstance is held to be unconsti-
23 tutional, the remainder of this Act, the amendments made
24 by this Act, and the application of the provisions of such

1 to any person or circumstance shall not be affected there-
2 by

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