

107TH CONGRESS
1ST SESSION

H. R. 820

To amend title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Vocational Rehabilitation Act of 1973, and the Civil Rights Act of 1991 to require the Equal Employment Opportunity Commission to mediate employee claims arising under such Acts; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2001

Mrs. CLAYTON introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Vocational Rehabilitation Act of 1973, and the Civil Rights Act of 1991 to require the Equal Employment Opportunity Commission to mediate employee claims arising under such Acts; 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 “National Employment
3 Dispute Resolution Act of 2001 (NEDRA)”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) The prohibitive costs and emotional toll of
7 litigation as well as the growing backlog of employ-
8 ment civil rights claims and lawsuits has impeded
9 the protection and enforcement of workplace civil
10 rights.

11 (2) Mediation is an economical, participatory,
12 and expeditious alternative to traditional, less coop-
13 erative methods of resolving employment disputes.

14 (3) Mediation enables disputants to craft cre-
15 ative solutions and settlements, surpassing the reach
16 of traditional remedies, thereby possibly protecting
17 the continuity of the employment relationship.

18 (4) As we enter the new millennium, a national
19 program of directed or required participation in me-
20 diation where any settlement is voluntary mandated
21 mediation for certain employment and contract dis-
22 putes, will help fulfill the goal of equal opportunity
23 in work and business places of the United States.

24 (5) Overt and subtle discrimination still exists
25 in our society and in the workplace.

1 (6) Overt and subtle forms of discrimination
2 cause substantial measurable economic and non-
3 economic costs to employers and the American work-
4 force, create a barrier to fully realizing equal oppor-
5 tunity in the workplace, and are contrary to public
6 policy promoting equal opportunity in the workplace.

7 (b) PURPOSES.—The purposes of this Act are—

8 (1) to establish a fair and effective alternative
9 means by which employees and covered employers
10 may have an increased likelihood of resolving both
11 alleged overt and subtle forms or acts of discrimina-
12 tion without the necessity of the employee taking
13 some form of legal action against the employer,

14 (2) in accordance with the various public poli-
15 cies encouraging the use of mediation, to make me-
16 diation available at an early stage of an employment
17 dispute, thus—

18 (A) possibly reducing economic and non-
19 economic costs,

20 (B) preserving the employment relationship
21 and decreasing acrimony, and

22 (C) decreasing the filing of a number of
23 formal discrimination complaints, charges, and
24 lawsuits and further burdening our public jus-
25 tice system, and

1 (3) to provide that the participation in medi-
 2 ation shall not preclude either the employee-dispu-
 3 tant or covered employer-disputant from having ac-
 4 cess to the public justice system.

5 **SEC. 3. AMENDMENTS TO TITLE VII OF THE CIVIL RIGHTS**
 6 **ACT OF 1964.**

7 (a) **FEDERAL EMPLOYEES.**—Title VII of the Civil
 8 Rights Act of 1964 (42 U.S.C. 2000e et seq.) is
 9 amended—

10 (1) in section 706(a) by inserting after the 7th
 11 sentence the following:

12 “Regardless of whether the Commission makes an inves-
 13 tigation under this subsection, the Commission shall pro-
 14 vide counseling services regarding, and endeavor to re-
 15 sponsibly address and resolve, claims of unlawful discrimi-
 16 nation using certified contract mediators.”, and

17 (2) in section 711(a) by adding at the end the
 18 following:

19 “Every employer, employment agency, and labor organiza-
 20 tion shall provide to each employee and each member, indi-
 21 vidually, a copy of the materials required by this section
 22 to be so posted.”.

23 (b) **OFFICE OF FEDERAL CONTRACT COMPLIANCE.**—
 24 Section 718 of the Civil Rights Act of 1964 (42 U.S.C.
 25 2000e–17) is amended—

1 (1) by inserting “(a)” after “SEC. 718”, and

2 (2) by adding at the end the following:

3 “(b) The Office of Federal Contract Compliance shall
4 endeavor to responsibly address and resolve any alleged
5 discrimination using mediation with respect to which this
6 section applies.

7 “(c) An employer who establishes, implements an ap-
8 proved internal conflict management program or system
9 providing the use of a certified mediator participates in
10 mediation under this section shall be given preferred sta-
11 tus in contract bidding for additional and for maintaining
12 current Federal Government contracts.

13 “(d) An employer who is a party to a Government
14 contract or the agency of the United States shall assume
15 the costs of mediation under this section, including the
16 fees of the mediator and any travel and lodging expenses
17 of the employee, if such travel exceeds 25 miles, one way.
18 Any settlement shall include, among other things, any ap-
19 propriate and reasonable attorney fees.

20 “(e) Retaliation by an employer who is a party to a
21 Government contract or the agency of the United States,
22 or the destruction of evidence, shall result in the imposi-
23 tion of appropriate civil or criminal sanctions. The partici-
24 pation in mediation shall be at the option of the employee.
25 The participation in mediation shall not preclude the em-

1 ployee’s access to any State, local, or Federal EEO en-
 2 forcement agency or any State or Federal court.

3 “(f) The Office of Federal Contract Compliance shall
 4 have authority over employers who are parties to Govern-
 5 ment contracts that fail to comply with this section. Fail-
 6 ure to comply shall result in the loss of a current Govern-
 7 ment contract and disqualification from consideration for
 8 future Government contracts.

9 “(g) No resolution by the disputants may contravene
 10 the provisions of a valid collective bargaining agreement
 11 between an employer who is a part to a Government con-
 12 tract and a labor union or certified bargaining representa-
 13 tive. Any voluntary settlement outcome and agreement
 14 may not be in conflict with the collective bargaining agree-
 15 ment.”.

16 **SEC. 4. AMENDMENTS TO THE AGE DISCRIMINATION IN EM-**
 17 **PLOYMENT ACT OF 1967.**

18 The Age Discrimination in Employment Act of 1967
 19 (29 U.S.C. 621 et seq.) is amended—

20 (1) in section 7(e) by inserting after the 2d sen-
 21 tence the following:

22 “The Commission shall provide counseling services regard-
 23 ing, and endeavor to responsibly address and resolve,
 24 claims of unlawful discrimination using certified contract
 25 mediators.”, and

1 (2) in section 8 by adding at the end the fol-
2 lowing:

3 “Every employer, employment agency, and labor organiza-
4 tion shall provide to each employee and each member, indi-
5 vidually, a copy of the materials required by this section
6 to be so posted.”.

7 **SEC. 5. AMENDMENT TO AMERICANS WITH DISABILITIES**
8 **ACT OF 1990.**

9 Section 107(a) of the Americans with Disabilities Act
10 of 1990 (42 U.S.C. 12117(a)) is amended by adding at
11 the end the following: “The Commission shall provide
12 counseling services regarding, and endeavor to responsibly
13 address and resolve, claims of unlawful discrimination
14 using certified contract mediators.”.

15 **SEC. 6. MEDIATION.**

16 (a) DEFINITIONS.—For purposes of this section:

17 (1) The term “employer” means any Federal
18 agency (including Federal courts) or business enter-
19 prise receiving Federal funds of \$200,000 or greater
20 or having 20 or more employees.

21 (2) The term “mediator” means any neutral,
22 third-party, including an attorney and a non-
23 attorney, who is trained in the mediation process
24 and has a demonstrable working knowledge in rel-

1 evant EEO and employment law, including a third
2 party who is—

3 (A) appointed or approved by a competent
4 court, the Equal Employment Opportunity
5 Commission, a certified mediation center, or a
6 university, or

7 (B) jointly chosen by the disputants.

8 (3) The term “trained mediation professional”
9 means a person who—

10 (A) has participated in employment medi-
11 ation training of 40 or more hours, or

12 (B) has co-mediated with or been super-
13 vised by another trained certified mediation
14 professional for at least three employment or
15 contract dispute cases of no fewer than 15
16 hours.

17 (4) The term “certified mediation center” in-
18 cludes any private or public entity that is qualified
19 to facilitate the employment or contract mediation
20 process and provide training on employment and
21 contract dispute resolution, including, but not lim-
22 ited to, the American Arbitration Association, the
23 American Bar Association, the Center for Employ-
24 ment Dispute Resolution, CPR Conflict Institute,
25 JAMS/Endispute, United States Arbitration and

1 Mediation, Inc., Institute on Conflict Resolution at
2 Cornell University, and the Society of Professionals
3 in Dispute Resolution.

4 (b) REQUIREMENTS.—(1) All employers shall—

5 (A) establish an internal dispute resolution pro-
6 gram or system that provides, as a voluntary option,
7 employee-disputant access to external third-party
8 certified mediators,

9 (B) participate in mediation if the employee has
10 exhausted the internal dispute resolution program or
11 system and has formally requested mediation with-
12 out the filing of a charge or lawsuit, and

13 (C) participate in mediation if the claimant has
14 filed a charge or lawsuit and the claimant formally
15 requests mediation.

16 (2) While the mediation settlement outcome would be
17 voluntary, the employer shall participate in mediation
18 where the employee-disputant has expressed a desire to
19 mediate.

20 (3) Under all circumstances, the employee-disputant
21 is entitled to legal representation.

22 (4) Employers shall inform employee-disputants of
23 the mediation alternative and their respective rights there-
24 of, and the employee-disputant would have 30 days in
25 which to decide whether to participate in mediation.

1 (5) When an employee-disputant voluntarily agrees to
2 participate in the mediation process, any applicable stat-
3 ute of limitations shall be tolled, and the private tolling
4 agreement shall be enforceable in any court of competent
5 jurisdiction.

6 (6) The employee and employer disputants shall not
7 have more than 90 days within which to resolve the dis-
8 pute.

9 (7) Should mediation prove unsuccessful, the em-
10 ployer shall again inform the employee-disputant of their
11 rights, in writing including the right to pursue the matter
12 under any applicable State, county, local ordinance, or
13 Federal statutes.

14 (8) Consistent with section 705 of the Civil Rights
15 Act of 1964, the Equal Employment Opportunity Commis-
16 sion, and any State or local authority involved in pro-
17 ceedings described in section 706, shall offer technical as-
18 sistance to any unrepresented or self-represented party,
19 provided that a formal complaint has been filed with the
20 Commission or such authority. Such assistance shall in-
21 clude, but not be limited to—

22 (A) pre-mediation counseling,

23 (B) assistance in understanding the status of
24 relevant case law,

1 (C) assistance in what would be the appropriate
2 remedy if the instant claim were to be found to have
3 merit, and

4 (D) assistance in drafting any post-mediation
5 settlement agreement or resolution.

6 (9) Submission of a claim for mediation shall not pre-
7 clude either the claimant or respondent from seeking other
8 appropriate relief on that claim, except that neither party
9 shall seek other relief until the mediation process has con-
10 cluded.

11 (10) Any settlement as a result of the mediation proc-
12 ess shall be strictly voluntary and remain confidential ex-
13 cept for research and evaluation purposes.

14 (11) In every case, the privacy, privilege, and con-
15 fidentiality of all parties to the dispute shall be preserved,
16 including complaint intake personnel and mediation con-
17 sultations.

18 (c) ATTORNEY’S OBLIGATION TO ADVISE CLIENTS
19 OF MEDIATION.—For the purposes of this Act and all of
20 the other related statutes, attorneys and consultants are
21 legally obliged to advise their clients of the existence of
22 the mediation alternative and their obligations under the
23 Act to participate in mediation in “good faith”.

24 (d) JUDICIAL ENFORCEMENT.—Either party to a
25 mediation agreement to bring an action of enforcement in

1 a Federal district court of competent jurisdiction, however
2 any matter discussed or material presented during medi-
3 ation shall not be used in any subsequent local, State, or
4 Federal administrative or court proceeding. The confiden-
5 tial provisions of any internal conflict management pro-
6 gram or system or agreement to mediations shall be im-
7 mune from attack by any third party.

