

112TH CONGRESS
1ST SESSION

H. R. 2501

To prohibit discrimination in employment on the basis of an individual's status or history of unemployment.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2011

Ms. DELAURO (for herself, Mr. JOHNSON of Georgia, Mr. DAVIS of Illinois, Mr. CUMMINGS, Mr. THOMPSON of Mississippi, Ms. SCHAKOWSKY, Mr. FILNER, Mrs. MALONEY, Mr. RANGEL, Mr. GEORGE MILLER of California, Mr. McDERMOTT, Mr. GRIJALVA, Mr. FATTAH, Mr. TOWNS, Mr. FRANK of Massachusetts, Mr. JACKSON of Illinois, Ms. HIRONO, Ms. NORTON, Ms. MOORE, Ms. FUDGE, Ms. WILSON of Florida, Ms. WOOLSEY, Mrs. CHRISTENSEN, Mr. FARR, Mr. MORAN, Mr. LEWIS of Georgia, Ms. PINGREE of Maine, Ms. RICHARDSON, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To prohibit discrimination in employment on the basis of an individual's status or history of unemployment.

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 “Fair Employment Op-
5 portunity Act of 2011”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that denial of em-
3 ployment opportunities to individuals because they are or
4 have been unemployed is discriminatory and burdens com-
5 merce by—

6 (1) reducing personal consumption and under-
7 mining economic stability and growth;

8 (2) squandering human capital essential to the
9 Nation's economic vibrancy and growth;

10 (3) increasing demands for State and Federal
11 unemployment insurance benefits, reducing trust
12 fund assets, and leading to higher payroll taxes for
13 employers, cuts in benefits for jobless workers, or
14 both;

15 (4) imposing additional burdens on publicly
16 funded health and welfare programs; and

17 (5) depressing income, property, and other tax
18 revenues that states, localities and the Federal Gov-
19 ernment rely on to support operations and institu-
20 tions essential to commerce.

21 (b) PURPOSE.—The purpose of this Act is to prohibit
22 consideration of an individual's status as unemployed in
23 screening for or filling positions except where a require-
24 ment related to employment status is a bona fide occupa-
25 tional qualification reasonably necessary to successful per-
26 formance in the job and to eliminate the burdens imposed

1 on commerce by excluding such individuals from employ-
2 ment.

3 **SEC. 3. DEFINITIONS.**

4 As used in this Act—

5 (1) the term “employer” means any person en-
6 gaged in commerce or any industry or activity af-
7 fecting commerce who has 15 or more employees for
8 each working day in each of 20 or more calendar
9 weeks in the current or preceding calendar year, and
10 includes—

11 (A) any person who acts, directly or indi-
12 rectly, in the interest of an employer with re-
13 spect to employing individuals to work for the
14 employer; and

15 (B) any successor in interest of an em-
16 ployer.

17 (2) the term “employment agency” means any
18 person regularly undertaking with or without com-
19 pensation to procure employees for an employer or
20 to procure for individuals opportunities to work for
21 an employer and includes an agent of such a person,
22 and includes any person who maintains an Internet
23 website that publishes advertisements or announce-
24 ments of job openings;

1 (3) the term “affected individual” means any
2 person who was refused consideration for employ-
3 ment or was not hired by an employer because of the
4 person’s current employment status, or any person
5 who was not considered, screened, or referred for
6 employment opportunities by an employment agency
7 because of the person’s current employment status;

8 (4) the term “status as unemployed” means an
9 individual’s present or past unemployment regard-
10 less of the length of time such individual was unem-
11 ployed; and

12 (5) the term “Secretary” means the Secretary
13 of Labor.

14 **SEC. 4. PROHIBITED ACTS.**

15 (a) EMPLOYERS.—It shall be an unlawful practice for
16 an employer to—

17 (1) refuse to consider for employment or refuse
18 to offer employment to an individual because of the
19 individual’s status as unemployed;

20 (2) publish in print, on the Internet, or in any
21 other medium, an advertisement or announcement
22 for any job that includes—

23 (A) any provision stating or indicating that
24 an individual’s status as unemployed disquali-
25 fies the individual for a job; and

1 (B) any provision stating or indicating that
2 an employer will not consider an applicant for
3 employment based on that individual's status as
4 unemployed; and

5 (3) direct or request that an employment agen-
6 cy take an individual's status as unemployed into ac-
7 count in screening or referring applicants for em-
8 ployment.

9 (b) EMPLOYMENT AGENCIES.—It shall be an unlaw-
10 ful practice for an employment agency to—

11 (1) refuse to consider or refer an individual for
12 employment based on the individual's status as un-
13 employed;

14 (2) limit, segregate, or classify individuals in
15 any manner that may limit their access to informa-
16 tion about jobs or referral for consideration of jobs
17 because of their status as unemployed; or

18 (3) publish, in print or on the Internet or in
19 any other medium, an advertisement or announce-
20 ment for any job vacancy that includes—

21 (A) any provision stating or indicating that
22 an individual's status as unemployed disquali-
23 fies the individual for a job; and

24 (B) any provision stating or indicating that
25 an employer will not consider individuals for

1 employment based on that individual's status as
2 unemployed.

3 (c) INTERFERENCE WITH RIGHTS, PROCEEDINGS OR
4 INQUIRIES.—It shall be unlawful for any employer or em-
5 ployment agency to—

6 (1) interfere with, restrain, or deny the exercise
7 of or the attempt to exercise, any right provided
8 under this Act; or

9 (2) refuse to hire, to discharge, or in any other
10 manner to discriminate against any individual be-
11 cause such individual—

12 (A) opposed any practice made unlawful by
13 this Act;

14 (B) has filed any charge, or has instituted
15 or caused to be instituted any proceeding,
16 under or related to this Act;

17 (C) has given, or is about to give, any in-
18 formation in connection with any inquiry or
19 proceeding relating to any right provided under
20 this Act; or

21 (D) has testified, or is about to testify, in
22 any inquiry or proceeding relating to any right
23 provided under this Act.

24 (d) BONA FIDE OCCUPATIONAL QUALIFICATION.—
25 Notwithstanding any other provision of this Act, consider-

1 ation by an employer or employment agency of an individ-
2 ual's status as unemployed shall not be an unlawful em-
3 ployment practice where an individual's employment in a
4 similar or related job for a period of time reasonably proxi-
5 mate to the hiring of such individual is a bona fide occupa-
6 tional qualification reasonably necessary to successful per-
7 formance of the job that is being filled.

8 **SEC. 5. ENFORCEMENT.**

9 (a) CIVIL ACTION BY INDIVIDUAL.—

10 (1) LIABILITY FOR EMPLOYERS AND EMPLOY-
11 MENT AGENCIES.—Any employer or employment
12 agency that violates section 4(a) and (b) shall be lia-
13 ble to any affected individual—

14 (A) for actual damages equal to—

15 (i) the amount of—

16 (I) any wages, salary, employ-
17 ment benefits, or other compensation
18 denied or lost to such individual by
19 reason of the violation; or

20 (II) in a case in which wages,
21 salary, employment benefits, or other
22 compensation have not been denied or
23 lost to the individual, any actual mon-
24 etary losses sustained by the indi-
25 vidual as a direct result of the viola-

1 tion or a civil penalty of \$1,000 per
2 violation per day, whichever is great-
3 er;

4 (ii) the interest on the amount de-
5 scribed in clause (i) calculated at the pre-
6 vailing rate; and

7 (iii) an additional amount as liq-
8 uidated damages equal to the sum of the
9 amount described in clause (i) and the in-
10 terest described in clause (ii), except that
11 if an employer or employment agency that
12 has violated section 4 proves to the satis-
13 faction of the court that the act or omis-
14 sion that violated section 4 was in good
15 faith and that the employer had reasonable
16 grounds for believing that the act or omis-
17 sion was not a violation of section 4, such
18 court may, in its discretion, reduce the
19 amount of the liability to the amount and
20 interest determined under clauses (i) and
21 (ii), respectively; and

22 (B) for such equitable relief as may be ap-
23 propriate, including employment and compen-
24 satory and punitive damages.

1 (2) RIGHT OF ACTION.—An action to recover
2 the damages or equitable relief prescribed in para-
3 graph (1) of this subsection may be maintained
4 against any employer or employment agency in any
5 Federal or State court of competent jurisdiction by
6 any one or more persons for and in behalf of—

7 (A) the affected individual; or

8 (B) the affected individual and other indi-
9 viduals similarly situated.

10 (3) FEES AND COSTS.—The court in such an
11 action shall, in addition to any judgment awarded to
12 the plaintiff, allow a reasonable attorney’s fee, rea-
13 sonable expert witness fees, and other costs of the
14 action to be paid by the defendant.

15 (4) LIMITATIONS.—The right provided by para-
16 graph (2) of this subsection to bring an action by or
17 on behalf of any affected individual shall termi-
18 nate—

19 (A) on the filing of a complaint by the Sec-
20 retary in an action under subsection (d) in
21 which restraint is sought of any violation of sec-
22 tion 4; or

23 (B) on the filing of a complaint by the Sec-
24 retary in an action under subsection (b) in
25 which a recovery is sought of the damages de-

1 scribed in paragraph (1)(A) owing to an af-
2 fected individual by an employer or employment
3 agency liable under paragraph (1), unless the
4 action described in subparagraph (A) or (B) is
5 dismissed without prejudice on motion of the
6 Secretary.

7 (b) ACTION BY THE SECRETARY.—

8 (1) ADMINISTRATIVE ACTION.—The Secretary
9 shall receive, investigate, and attempt to resolve
10 complaints of violations of section 4 in the same
11 manner that the Secretary receives, investigates, and
12 attempts to resolve complaints of violations of sec-
13 tions 6 and 7 of the Fair Labor Standards Act of
14 1938 (29 U.S.C. 206 and 207).

15 (2) CIVIL ACTION.—The Secretary may bring
16 an action in any court of competent jurisdiction—

17 (A) to enjoin violations of this title and
18 seek other relief going forward necessary to pre-
19 vent future violations;

20 (B) to recover—

21 (i) the damages described in sub-
22 section (a)(1)(A);

23 (ii) in the case of a violation of section
24 4(c), a civil penalty of not less than \$250
25 per violation; or

1 (iii) such other equitable relief the
2 Court deems appropriate.

3 (3) SUMS RECOVERED.—Any sums recovered by
4 the Secretary pursuant to paragraph (2)(A) shall be
5 held in a special deposit account and shall be paid,
6 on order of the Secretary, directly to each affected
7 individual. Any such sums recovered pursuant to
8 paragraph (2)(A) that are not paid to an affected in-
9 dividual because of inability to do so within a period
10 of 3 years and any sums recovered pursuant to para-
11 graph (2)(B) shall be deposited into the Treasury of
12 the United States as miscellaneous receipts.

13 (c) LIMITATION.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), an action under subsection (a) may be
16 brought not later than 2 years after the date of the
17 last event constituting the alleged violation for which
18 the action is brought, provided that the limitations
19 for filing an action shall be tolled during the period
20 that the Secretary is considering a complaint against
21 any defendant named in a complaint filed with the
22 Secretary under subsection (b)(1) above.

23 (2) WILLFUL VIOLATION.—In the case of such
24 action brought for a willful violation of section 4,
25 such action may be brought within 3 years of the

1 date of the last event constituting the alleged viola-
2 tion for which such action is brought, provided that
3 the limitations for filing an action by an individual
4 shall be tolled during the period that the Secretary
5 is considering a complaint pursuant to subsection
6 (b)(1).

7 (3) COMMENCEMENT.—In determining when an
8 action is commenced by the Secretary under this
9 section for the purposes of this subsection, it shall
10 be considered to be commenced on the date when the
11 Secretary files a complaint in a court of competent
12 jurisdiction.

13 (d) ACTION FOR INJUNCTION BY SECRETARY.—The
14 district courts of the United States shall have jurisdiction,
15 for cause shown, in an action brought by the Secretary—

16 (1) to restrain violations of section 4; and

17 (2) to award such other equitable relief as may
18 be appropriate, including employment and monetary
19 damages.

20 (e) SOLICITOR OF LABOR.—The Solicitor of Labor
21 may appear for and represent the Secretary on any litiga-
22 tion brought under this section.

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