Union Calendar No. 295

116TH CONGRESS
2D Session

H. R. 1230

[Report No. 116–372]

To amend the Age Discrimination in Employment Act of 1967 and other
laws to clarify appropriate standards for Federal employment discrimina-
tion and retaliation claims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2019

Mr. Scott of Virginia (for himself, Mr. Sensenbrenner, Ms. Bonamici,
Mr. Katko, Mr. Hurd of Texas, Ms. Adams, Mr. Takano, and Mr.
Grothman) introduced the following bill; which was referred to the Com-
mittee on Education and Labor

JANUARY 9, 2020

Additional sponsors: Mr. Phillips, Mr. Levin of Michigan, Mr. Stauder,
Ms. Norton, Ms. Bass, Mr. Cicilline, Mr. Raskin, Mr. Van Drew,
Mr. DeSaulnier, Ms. Stefanik, Mr. Fitzpatrick, Ms. Stevens, Mr.
Rodney Davis of Illinois, Ms. Meng, Miss González-Colón of Puerto
Rico, Ms. Wild, Ms. Underwood, Ms. Omar, Mr. Sablan, Mr. Hard-
er of California, Mrs. Lee of Nevada, Ms. Jayapal, Ms. Lofgren, Mr.
Kihanna, Mr. Rouda, Ms. Castor of Florida, Ms. Haaland, Mr. Smith
of New Jersey, Mr. Suozzi, Mrs. Trahan, Mr. Payne, Mr. Cuellar,
Mr. Danny K. Davis of Illinois, Ms. Clarke of New York, Mr. Higgin-
s of New York, Mr. Gonzalez of Texas, Ms. Lee of California, Ms.
Spanberger, Ms. Kaptur, Ms. McCollum, Ms. Eshoo, Mr. Kildee,
Mr. Neal, Mr. Sheres, Mr. Malinowski, Mrs. Axne, Ms. Ocasio-Cortez,
Mr. Lipinski, Mr. Nadler, Mr. Grijalva, Mr. Blumenauer,
Mrs. Dingell, Ms. Jackson Lee, Mr. Richmond, Mr. Lowenthal,
Ms. Pressley, Ms. Lthank, Ms. Pingree, Mrs. McBath, Mr. Castro
of Texas, Mr. Lynch, Mrs. Hayes, Ms. Shalala, Mr. Rose of New
York, Ms. Poenix, Ms. Garcia of Texas, Ms. Schrier, Mr. Nor-
cross, Mr. Courtney, Mr. Larson of Connecticut, Mrs. Davis of Cali-
ifornia, Mr. Cicenros, Mr. Pocan, Mr. Johnson of Georgia, Mr.
Morelle, Mr. Foster, Ms. Johnson of Texas, Mr. Cleaver, Mr.
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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Older Work-
ers Against Discrimination Act”.

SEC. 2. STANDARDS OF PROOF.

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

(1) CLARIFYING PROHIBITION AGAINST IMPER-
MISSIBLE CONSIDERATION OF AGE IN EMPLOY-
MENT PRACTICES.—Section 4 of the Age Discrimination in
by inserting after subsection (f) the following:

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

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

“(A) may rely on any type or form of admissible
evidence and need only produce evidence sufficient for
a reasonable trier of fact to find that an unlawful
practice occurred under this Act; and

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

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

(A) in subsection (b)—

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

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

“(2) Amounts”;

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

“(4) Before”; and

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

“(3) On a claim in which an individual demonstrates
that age was a motivating factor for any employment prac-
tice, under section 4(g)(1), and a respondent demonstrates
that the respondent would have taken the same action in
the absence of the impermissible motivating factor, the
court—
“(A) may grant declaratory relief, injunctive relief (except as provided in subparagraph (B)), and attorney’s fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 4(g)(1); and

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

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

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

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

(4) Federal Employees.—Section 15 of such Act (29 U.S.C. 633a) is amended by adding at the end the following:

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

(b) Title VII of the Civil Rights Act of 1964.—

(1) Clarifying prohibition against impermissible consideration of race, color, reli-
GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT
PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by striking subsection (m) and inserting the following:

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

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

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

(c) AMERICANS WITH DISABILITIES ACT OF 1990.—

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

“(11) DEMONSTRATES.—The term ‘demonstrates’ means meets the burdens of production and persuasion.”.

(2) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF DISABILITY IN EMPLOY-
MENT PRACTICES.—Section 102 of such Act (42 U.S.C. 12112) is amended by adding at the end the following:

“(c) PROOF.—

“(1) ESTABLISHMENT.—Except as otherwise provided in this Act, a discriminatory practice is established under this Act when the complaining party demonstrates that disability or an activity protected by subsection (a) or (b) of section 503 was a motivating factor for any employment practice, even though other factors also motivated the practice.

“(2) DEMONSTRATION.—In establishing a discriminatory practice under paragraph (1) or by any other method of proof, a complaining party—

“(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to find that a discriminatory practice occurred under this Act; and

“(B) shall not be required to demonstrate that disability or an activity protected by subsection (a) or (b) of section 503 was the sole cause of an employment practice.”.
(3) **CERTAIN ANTI-RETALIATION CLAIMS.**—Section 503(c) of such Act (42 U.S.C. 12203(c)) is amended—

(A) by striking “The remedies” and inserting the following:

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the remedies”; and

(B) by adding at the end the following:

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

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

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

“(1) may grant declaratory relief, injunctive relief (except as provided in paragraph (2)), and attorney’s fees and costs demonstrated to be directly attrib-
utable only to the pursuit of a claim under section 102(e)(1); and

“(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.”.

(d) REHABILITATION ACT OF 1973.—

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

(2) FEDERAL EMPLOYEES.—The amendment made by paragraph (1) to section 501(f) shall be construed to apply to all employees covered by section 501.

SEC. 3. APPLICATION.

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

SEC. 4. SEVERABILITY.

If any provision or portion of a provision of this Act, an amendment or portion of an amendment made by this
Act, or the application of any provision or portion thereof or amendment or portion thereof to particular persons or circumstances is held invalid or found to be unconstitutional, the remainder of this Act, the amendments made by this Act, or the application of that provision or portion thereof or amendment or portion thereof to other persons or circumstances shall not be affected.
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.

JANUARY 9, 2020

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