

# Union Calendar No. 295

116<sup>TH</sup> 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 discrimination and retaliation claims, and for other purposes.

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## 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 Committee on Education and Labor

JANUARY 9, 2020

Additional sponsors: Mr. PHILLIPS, Mr. LEVIN of Michigan, Mr. STAUBER, 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. HARDER of California, Mrs. LEE of Nevada, Ms. JAYAPAL, Ms. LOFGREN, Mr. KHANNA, 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. HIGGINS of New York, Mr. GONZALEZ of Texas, Ms. LEE of California, Ms. SPANBERGER, Ms. KAPTUR, Ms. MCCOLLUM, Ms. ESHOO, Mr. KILDEE, Mr. NEAL, Mr. SIRES, 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. TLAIB, Ms. PINGREE, Mrs. MCBATH, Mr. CASTRO of Texas, Mr. LYNCH, Mrs. HAYES, Ms. SHALALA, Mr. ROSE of New York, Ms. FINKENAUER, Ms. GARCIA of Texas, Ms. SCHRIER, Mr. NORCROSS, Mr. COURTNEY, Mr. LARSON of Connecticut, Mrs. DAVIS of California, Mr. CISNEROS, Mr. POCAN, Mr. JOHNSON of Georgia, Mr. MORELLE, Mr. FOSTER, Ms. JOHNSON of Texas, Mr. CLEAVER, Mr.

COHEN, Mr. CARBAJAL, Mr. TRONE, Ms. WATERS, Ms. WILSON of Florida, and Mr. CASTEN of Illinois

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

[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 February 14, 2019]

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## **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”.*

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        *GION, 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        *or 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       *crimination 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.—Section*  
 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.—Section*  
 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,*  
 18                    *under section 102(e)(1), and a respondent demonstrates*  
 19                    *that the respondent would have taken the same action in*  
 20                    *the absence of the impermissible motivating factor, the*  
 21                    *court—*

22                    *“(1) may grant declaratory relief, injunctive re-*  
 23                    *lief (except as provided in paragraph (2)), and attor-*  
 24                    *ney’s fees and costs demonstrated to be directly attrib-*



1        *utable only to the pursuit of a claim under section*  
 2        *102(e)(1); and*

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

6        *(d) REHABILITATION ACT OF 1973.—*

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

15                *(2) FEDERAL EMPLOYEES.—The amendment*  
 16        *made by paragraph (1) to section 501(f) shall be con-*  
 17        *strued to apply to all employees covered by section*  
 18        *501.*

19        **SEC. 3. APPLICATION.**

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

23        **SEC. 4. SEVERABILITY.**

24        *If any provision or portion of a provision of this Act,*  
 25        *an amendment or portion of an amendment made by this*

1 *Act, or the application of any provision or portion thereof*  
2 *or amendment or portion thereof to particular persons or*  
3 *circumstances is held invalid or found to be unconstitu-*  
4 *tional, the remainder of this Act, the amendments made by*  
5 *this Act, or the application of that provision or portion*  
6 *thereof or amendment or portion thereof to other persons*  
7 *or circumstances shall not be affected.*



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