H. R. 2062

[Report No. 117–63]

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

MARCH 18, 2021

Mr. SCOTT of Virginia (for himself, Mr. RODNEY DAVIS of Illinois, Ms. BOXAMICI, Mr. FITZPATRICK, Ms. ADAMS, Mr. KATKO, Mrs. AXNE, Miss GONZÁLEZ-COLÓN, Ms. NEWMAN, Mr. VAN DREW, Mr. LOWENTHAL, Mr. GROTHMAN, Ms. WILD, and Mr. HOLLINGSWORTH) introduced the following bill; which was referred to the Committee on Education and Labor

JUNE 17, 2021

Additional sponsors: Ms. NORTON, Mr. MORELLE, Ms. GARCIA of Texas, Mrs. DINGELL, Mr. COHEN, Mrs. HAYES, Ms. SCHAKowsky, Ms. PINGREE, Mr. CICILLINE, Mr. TURNER, Mr. YOUNG, Ms. SALAZAR, Mr. DOGGERT, Mr. DESAULNIER, Ms. WILSON of Florida, Mr. THOMPSON of Mississippi, Mr. TAKANO, Mr. MFUME, Mr. KHANNA, Ms. OMAR, Mr. JONES, Ms. MANNING, Mr. LEVIN of Michigan, Mr. NORCROSS, Mr. KAHELE, Mr. SABLAN, Mr. COURTNEY, Ms. JAYAPAL, Ms. SHERRILL, Mr. POCAN, Ms. STEVENS, Mr. ESPAILLAT, Mrs. MCBATH, Mr. BACON, Mr. CASTRO of Texas, Mr. UPTON, Ms. LEGER FERNANDEZ, Mr. REED, Mr. SMITH of New Jersey, Mr. SUOZZI, Mr. YARMUTH, Mrs. TRAHAN, Ms. MATSUI, Mr. GARCIA of Illinois, Ms. BUSH, Ms. MCCollum, Ms. BLUNT Rischer, Mr. CARSON, Mr. KILMER, Ms. JACobs of California, Mr. RUPPERSBERGER, Ms. DELAuro, Mr. TORRES of New York, Ms. PRESSLEY, Mr. MALINOWSKI, Mr. BISHOP of Georgia, Ms. TITUS, Mrs. CAROLYN B. MALONEY of New York, Ms. KUSTER, Mr. CONNOLLY, Mr. GREEN of Texas, Mr. MOULTON, Ms. UNDERWOOD, Ms. WILLIAMS of Georgia, Mr. GRIJALVA, Mr. MEeks, Ms. SPEIER, Mr. NEAL, Mrs. LAWRENCE, Mr. SEAN PATRICK MALONEY of New York, Ms. LEE of California, Ms. BASS, Ms. SEwell, Mrs. BEATTY, Mr. MRVAN, Mr. RUSH, Mr. WELCH, Mr. GALLEGO, Mr. JOHNSON of Georgia, Mr. BROWN, Mr. SIRES,
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 of 2021”.

SEC. 2. STANDARDS OF PROOF.

(a) Age Discrimination in Employment Act of
1967.—

(1) Clarifying prohibition against imper-
missible consideration of age in employment
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, 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:
“(e) PROOF.—
“(1) ESTABLISHMENT.—Except as otherwise pro-
vided in this Act, a discriminatory practice is estab-
lished under this Act when the complaining party
demonstrates that disability or an activity protected
by subsection (a) or (b) of section 503 was a moti-
vating factor for any employment practice, even
though other factors also motivated the practice.
“(2) DEMONSTRATION.—In establishing a dis-
criminatory practice under paragraph (1) or by any
other method of proof, a complaining party—
“(A) may rely on any type or form of ad-
missible 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 sub-
section (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:

“(e) **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 attributable 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) of the Rehabilitation Act of 1973 (29 U.S.C. 791(f)) shall be construed to apply to all employees covered by section 501 of that Act (29 U.S.C. 791).

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 of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitu-
tional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.
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.

JUNE 17, 2021

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