

105TH CONGRESS
1ST SESSION

S. 801

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 1997

Mr. GRAHAM (for himself, Mr. FAIRCLOTH, and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs, 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 “Department of Veter-
5 ans Affairs Employment Discrimination Prevention Act”.

1 **SEC. 2. DEPARTMENT OF VETERANS AFFAIRS EMPLOY-**
 2 **MENT DISCRIMINATION RESOLUTION PROCE-**
 3 **DURES.**

4 (a) IN GENERAL.—Title 38, United States Code, is
 5 amended by inserting after chapter 7 the following new
 6 chapter:

7 **“CHAPTER 8—EMPLOYMENT**
 8 **DISCRIMINATION**

“Sec.

“801. Scope of chapter.

“802. Office of Employment Discrimination Complaints Resolution.

“803. Informal complaint resolution.

“804. Investigation of complaints.

“805. Final agency decision; hearings.

“806. Review of final agency decisions.

“807. Unlawful employment discrimination defined.

9 **“§ 801. Scope of chapter**

10 “(a) The procedures established in this chapter shall
 11 be implemented in a manner consistent with procedures
 12 applicable under regulations prescribed by the Equal Em-
 13 ployment Opportunity Commission.

14 “(b) In the case of an employee of the Department
 15 who alleges that the employee has been subjected to un-
 16 lawful employment discrimination (as defined in section
 17 807), the allegation shall be considered under the proce-
 18 dures applicable to the Merit Systems Protection Board
 19 under title 5 (rather than under the procedures set forth
 20 in this chapter) if the action (or failure to act) of which
 21 the employee complains is an employment action or prac-

1 tice that is otherwise appealable to the Merit Systems Pro-
 2 tection Board.

3 “(c) Nothing in this chapter supersedes—

4 “(1) the rights and remedies available to em-
 5 ployees under title VII of the Civil Rights Act of
 6 1964 (42 U.S.C. 2000e et seq.), including the rights
 7 and remedies provided in section 1977A of the Re-
 8 vised Statutes (42 U.S.C. 1981a); or

9 “(2) any right or obligation of an employee to
 10 elect (in lieu of using procedures under this chapter)
 11 to raise an allegation of unlawful employment dis-
 12 crimination under grievance procedures established
 13 under a collective bargaining agreement.

14 **“§ 802. Office of Employment Discrimination Com-
 15 plaints Resolution**

16 “(a)(1) There shall be in the Department an Office
 17 of Employment Discrimination Complaints Resolution (re-
 18 ferred to in this chapter as the ‘Office’), which shall be
 19 headed by a Director. The Director shall report only to
 20 the Secretary and Deputy Secretary.

21 “(2) Subject to the direction of the Secretary and the
 22 Deputy Secretary, the Director shall have sole responsibil-
 23 ity within the Department for administering the proce-
 24 dures under this chapter for resolving complaints of un-

1 lawful employment discrimination arising within the De-
2 partment.

3 “(3) In addition to the functions of the Director de-
4 scribed in paragraph (2), the Director shall perform such
5 other functions as the Secretary may prescribe consistent
6 with the functions of the Director described in paragraph
7 (2).

8 “(b) The Secretary shall employ within the Office for
9 the purposes of this chapter administrative law judges ap-
10 pointed in accordance with section 3105 of title 5 and such
11 other personnel as the Office may require. In appointing
12 administrative law judges, the Secretary shall consider the
13 composition of the persons appointed, taken as a group,
14 in terms of race, sex, and veterans status, compared with
15 the composition of the total Department workforce in
16 terms of race, sex, and veterans status.

17 “(c) The Secretary shall ensure that the Director is
18 furnished sufficient resources to enable the Director to
19 carry out the functions of the Office under this chapter
20 in a timely manner.

21 “(d) The Secretary shall include in the documents
22 submitted to Congress by the Secretary in support of the
23 President’s budget for each fiscal year—

24 “(1) detailed information on the budget for the
25 Office;

1 “(2) the Secretary’s opinion as to whether the
2 resources (including the number of employees) pro-
3 posed in the budget for that fiscal year are adequate
4 to enable the Secretary to comply with statutory and
5 regulatory deadlines for the administration of the
6 procedures under this chapter and other provisions
7 of law relating to the resolution of complaints of un-
8 lawful employment discrimination involving the De-
9 partment; and

10 “(3) a report on the activities of the Office dur-
11 ing the preceding fiscal year, including—

12 “(A) a statement of the number and na-
13 ture of complaints of unlawful employment dis-
14 crimination received and the number and na-
15 ture of complaints resolved, and the results of
16 any appellate review of proceedings involving
17 the complaints, during the year;

18 “(B) a description of the timeliness of the
19 resolution of the complaints during the year;
20 and

21 “(C) a statement of significant decisions
22 and trends affecting the work of the Office.

23 “(e)(1) The Director shall prescribe—

1 “(A) standards of timeliness for the expeditious
2 resolution of complaints of unlawful employment dis-
3 crimination under this chapter;

4 “(B) qualifications and training requirements
5 for employees of the Office;

6 “(C) requirements for recordkeeping pertaining
7 to counseling and investigations by employees of the
8 Office; and

9 “(D) standards for the conduct of investigations
10 under section 804.

11 “(2) Regulations prescribed under paragraph (1)
12 shall be consistent with regulations prescribed by the
13 Equal Employment Opportunity Commission, except that,
14 in the interest of the expeditious resolution of complaints,
15 the Director may prescribe shorter time periods than the
16 periods specified in such regulations with respect to any
17 deadline or administrative period that is applicable only
18 to the time within which the Government may (or is re-
19 quired to) act.

20 **“§ 803. Informal complaint resolution**

21 “Employees of the Office shall counsel employees of
22 the Department, and applicants for employment with the
23 Department, who file a complaint with the Department
24 stating that the employees of the Department and appli-
25 cants have been subject to unlawful employment discrimi-

1 nation by an officer or employee of the Department. The
2 Office shall seek to resolve such complaints in an expedi-
3 tious and impartial manner through informal investigation
4 and conciliation using procedures prescribed by the Direc-
5 tor.

6 **“§ 804. Investigation of complaints**

7 “(a) If a complaint of unlawful employment discrimi-
8 nation is filed with the Department under section 803 and
9 the complaint is not resolved through the informal resolu-
10 tion process under section 803, the Director shall assign
11 the complaint to an administrative law judge, who shall
12 determine whether the complaint shall be accepted for in-
13 vestigation.

14 “(b)(1) The administrative law judge assigned to a
15 complaint shall make the determination in accordance
16 with regulations of the Equal Employment Opportunity
17 Commission, except that if the administrative law judge
18 determines that the complaint is without merit, the admin-
19 istrative law judge may determine that the complaint is
20 not to be accepted for investigation.

21 “(2) A decision that a complaint is not to be accepted
22 for investigation is a final agency decision of the matter.

23 “(c)(1) If the administrative law judge determines
24 that the complaint is to be accepted, the Director shall
25 promptly provide for an investigation of the complaint,

1 which shall be carried out by employees of the Office (or
 2 by contract personnel acquired by the Director). The em-
 3 ployee (or contractor) conducting the investigation shall
 4 submit to the Director a complete written report of the
 5 results of the investigation.

6 “(2) If a portion of a complaint is accepted for inves-
 7 tigation and a portion is not accepted, the individual filing
 8 the complaint or the Department may request the admin-
 9 istrative law judge to direct the suspension of the inves-
 10 tigation of the portion of the complaint accepted for inves-
 11 tigation pending the results of any review of the decision
 12 not to accept the other portion.

13 “(3) The Director shall furnish a copy of the inves-
 14 tigative report (including a copy of the investigative file
 15 involved) to the administrative law judge, the individual
 16 who filed the complaint, and the Secretary. The adminis-
 17 trative law judge may direct that an additional investiga-
 18 tion be made if the administrative law judge determines
 19 that an additional investigation is warranted.

20 **“§ 805. Final agency decision; hearings**

21 “(a) The final agency decision on a complaint of un-
 22 lawful employment discrimination filed under section 803,
 23 in a case not resolved through informal procedures under
 24 section 803 of this title, shall be made by an administra-
 25 tive law judge.

1 “(b) The individual filing the complaint may request
 2 a hearing on the matter involved. Any such request shall
 3 be made in such time and manner as may be prescribed
 4 by the Director. The administrative law judge shall grant
 5 the request for a hearing unless, after giving appropriate
 6 notice and allowing an opportunity to respond to such no-
 7 tice, the administrative law judge determines that there
 8 is no genuine dispute as to a material fact.

9 “(c) If the administrative law judge grants a request
 10 of the individual filing the complaint for a hearing, the
 11 administrative law judge—

12 “(1) may conduct the hearing on the matter; or

13 “(2) may refer the matter for a hearing by a
 14 hearing examiner.

15 “(d) In any hearing under this section, the adminis-
 16 trative law judge or hearing examiner presiding at the
 17 hearing shall have the authorities set forth in section
 18 556(c) of title 5.

19 **“§ 806. Review of final agency decisions**

20 “(a) If the final agency decision in a case involving
 21 a complaint filed under section 803 of unlawful employ-
 22 ment discrimination by an officer or employee of the De-
 23 partment is adverse to the individual filing the complaint,
 24 the individual may appeal the decision to the Equal Em-
 25 ployment Opportunity Commission or may institute an ac-

1 tion regarding the complaint in the appropriate United
2 States district court, as provided by law.

3 “(b) If the final agency decision in such a case is
4 adverse to the Department, the Secretary may appeal the
5 decision to the Equal Employment Opportunity Commis-
6 sion. Any such appeal shall be made within 30 days after
7 the date of the receipt by the Secretary of the decision.
8 The Equal Employment Opportunity Commission may act
9 on such an appeal in the same manner as in the case of
10 an appeal by a Federal employee or an applicant for Fed-
11 eral employment against a final agency decision regarding
12 unlawful employment discrimination.

13 **“§ 807. Unlawful employment discrimination defined**

14 “For purposes of this chapter, the term ‘unlawful em-
15 ployment discrimination’ means any action, or failure to
16 act, that is a violation of any of the following:

17 “(1) Title VII of the Civil Rights Act of 1964
18 (42 U.S.C. 2000e et seq.).

19 “(2) The Age Discrimination in Employment
20 Act of 1967 (29 U.S.C. 621 et seq.).

21 “(3) Section 6(d) of the Fair Labor Standards
22 Act of 1938 (29 U.S.C. 206(d)).

23 “(4) Section 501 of the Rehabilitation Act of
24 1973 (29 U.S.C. 791).”.

(b) CLERICAL AMENDMENT.—The tables of chapters at the beginning of title 38, United States Code, and at the beginning of part I of such title, are amended by inserting after the item relating to chapter 7 the following new item:

“8. Employment Discrimination 801”.

SEC. 3. TRANSITION.

Chapter 8 of title 38, United States Code, as added by section 2, shall apply with respect to complaints of unlawful employment discrimination that are filed after the end of the 6-month period beginning on the date of enactment of this Act. Any complaint filed before the end of such period shall be resolved in accordance with the procedures in effect on the date of enactment of this Act.

SEC. 4. WHISTLEBLOWER PROTECTION FOR TITLE 38 EMPLOYEES.

(a) IN GENERAL.—

(1) APPLICATION.—Chapter 74 of title 38, United States Code, is amended by inserting at the end of subchapter V the following new section:

“§ 7465. Disclosures of violations of law, gross mismanagement, and certain other matters: protection of employees

(a) Section 2302(b)(8) of title 5 shall apply with respect to an employee, or applicant for employment, in a position covered by this chapter in the same manner as

1 if that position were a ‘covered position’ within the mean-
 2 ing of section 2302(a)(2)(B) of title 5.

3 “(b) Subsection (a) shall apply for purposes of apply-
 4 ing to such an employee or applicant the provisions of sub-
 5 chapters II and III of chapter 12 of title 5 that relate
 6 to any authority to conduct investigations, or to seek or
 7 administer any corrective action, disciplinary action, or
 8 other remedy in connection with a prohibited personnel
 9 practice described in section 2302(b)(8) of such title.”.

10 (2) TABLE OF SECTIONS.—The table of sections
 11 at the beginning of such chapter is amended by in-
 12 serting after the item relating to section 7464 the
 13 following new item:

“7465. Disclosures of violations of law, gross mismanagement, and certain other
 matters: protection of employees.”.

14 (b) EFFECTIVE DATE.—

15 (1) APPLICATION.—Subject to paragraph (2),
 16 section 7465 of title 38, United States Code, as
 17 added by subsection (a), shall apply with respect to
 18 personnel actions occurring before, on, or after the
 19 date of enactment of this Act, if an action for relief
 20 relating to the personnel action is commenced prior
 21 to the applicable deadline.

22 (2) ADMINISTRATIVE PROCEEDINGS.—Such sec-
 23 tion shall not affect any administrative proceeding
 24 pending on the date of enactment of this Act, and

1 orders shall be issued in any such proceeding, and
2 appeals shall be taken from the orders, as if such
3 section had not been enacted.

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