

106TH CONGRESS
1ST SESSION

S. 1907

To prohibit employment discrimination against parents and those with
parental responsibilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Mr. DODD (by request) (for himself and Mr. KENNEDY) introduced the fol-
lowing bill; which was read twice and referred to the Committee on
Health, Education, Labor, and Pensions

A BILL

To prohibit employment discrimination against parents and
those with parental responsibilities, 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 “Ending Discrimination
5 Against Parents Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 (a) In 1998, thirty-eight percent of all United States
8 workers had children under 18.

9 (b) The vast majority of Americans with children
10 under 18 are employed.

1 (c) Federal law protects working parents from em-
2 ployment discrimination in a number of important areas.
3 For instance, title VII of the Civil Rights Act of 1964
4 prohibits discrimination against workers on the basis of
5 sex; the Americans with Disabilities Act of 1990 prohibits
6 discrimination against workers on the basis of disability;
7 and the Pregnancy Discrimination Act of 1978 prohibits
8 discrimination against workers on the basis of pregnancy.
9 Also, the Family and Medical Leave Act of 1993 provides
10 covered workers with job protection when they take time
11 off for certain family responsibilities.

12 (d) However, no existing Federal statute protects all
13 workers from employment discrimination on the basis of
14 their status as parents.

15 (e) Such discrimination against parents occurs where,
16 for example, employers refuse to hire or promote both men
17 and women who are parents based on unwarranted stereo-
18 types or overbroad assumptions about their level of com-
19 mitment to the workforce.

20 (f) Such discrimination has occurred in the workplace
21 and has been largely unremedied.

22 (g) Such discrimination occurs in both the private
23 and the public sectors.

24 (h) Such discrimination—

1 (1) reduces the income earned by families who
2 rely on the wages of working parents to make ends
3 meet;

4 (2) prevents the best use of available labor re-
5 sources;

6 (3) has been spread and perpetuated, through
7 commerce and the channels and instrumentalities of
8 commerce, among the workers of several States;

9 (4) burdens commerce and the free flow of
10 goods in commerce;

11 (5) constitutes an unfair method of competition
12 in commerce; and

13 (6) leads to labor disputes burdening and ob-
14 structing commerce and the free flow of goods in
15 commerce.

16 (i) Elimination of such discrimination would have
17 positive effects, including—

18 (1) solving problems in the economy created by
19 unfair discrimination against parents;

20 (2) promoting stable families by enabling work-
21 ing parents to work free from discrimination against
22 parents; and

23 (3) remedying the effects of past discrimination
24 against parents.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (a) to prohibit employers, employment agencies, and
4 labor organizations from discriminating against parents
5 and persons with parental responsibilities based on the as-
6 sumption that they cannot satisfy the requirements of a
7 particular position; and

8 (b) to provide meaningful and effective remedies for
9 employment discrimination against parents and persons
10 with parental responsibilities.

11 **SEC. 4. DEFINITIONS.**

12 In this Act:

13 (a) “Commission” means the Equal Employment Op-
14 portunity Commission.

15 (b) “Complaining party” means the Commission, the
16 Attorney General, or any other person who may bring an
17 action or proceeding under this Act.

18 (c) “Covered entity” means an employer, employment
19 agency, labor organization, or joint labor-management
20 committee.

21 (d) “Demonstrates” means meets the burdens of pro-
22 duction and persuasion.

23 (e)(1) the term “employee” means:

24 (A) an individual to whom section 701(f) of the
25 Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) ap-
26 plies;

1 (B) an individual to whom section 717(a) of the
2 Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a))
3 applies;

4 (C) an individual to whom section 302(a)(1) of
5 the Government Employee Rights Act of 1991 (2
6 U.S.C. 1202(a)(1)) applies;

7 (D) a covered employee as defined in section
8 101(3) of the Congressional Accountability Act of
9 1995 (2 U.S.C. 1301(3)); and

10 (E) a covered employee as defined in section
11 411(c)(1) of title 3, United States Code.

12 (2) The term “employee” includes applicants for em-
13 ployment and former employees.

14 (f)(1) The term “employer” means:

15 (A) a person engaged in an industry affecting
16 commerce (as defined in section 701(h) of the Civil
17 Rights Act of 1964 (42 U.S.C. 2000e(h))) who has
18 fifteen or more employees (as defined in section
19 701(f) of such Act (42 U.S.C. 2000e(f))) for each
20 working day in each of twenty or more calendar
21 weeks in the current or preceding calendar year, and
22 any agent of such a person;

23 (B) an entity to which section 717(a) of the
24 Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a))
25 applies;

1 (C) an employing authority to which section
2 302(a)(1) of the Government Employee Rights Act
3 of 1991 (2 U.S.C. 1202(a)(1)) applies;

4 (D) an employing office, as defined in section
5 101(9) of the Congressional Accountability Act of
6 1995 (2 U.S.C. 1301(9)); and

7 (E) an employing office as defined in section
8 411(c)(2) of title 3, United States Code.

9 (2) The term “employer” does not include a bona fide
10 private membership club (other than a labor organization)
11 that is exempt from taxation under section 501(c) of title
12 26, United States Code.

13 (g) “Employment agency” has the meaning given
14 that term in section 701(c) of the Civil Rights Act of 1964
15 (42 U.S.C. 2000e(c)).

16 (h) “Incapable of self-care” means that the individual
17 needs active assistance or supervision to provide daily self-
18 care in three or more of the “activities of daily living”
19 or “instrumental activities of daily living.” Activities of
20 daily living include adaptive activities such as caring ap-
21 propriately for one’s grooming and hygiene, bathing,
22 dressing, and eating. Instrumental activities of daily living
23 include cooking, cleaning, shopping, taking public trans-
24 portation, paying bills, maintaining a residence, using tele-

1 phones and directories, using a post office, and similar ac-
 2 tivities.

3 (i) “Labor organization” has the meaning given that
 4 term in sections 701(d) and (e) of the Civil Rights Act
 5 of 1964 (42 U.S.C. 2000e(d), (e)).

6 (j) “Office of Compliance” has the meaning given
 7 that term in the Congressional Accountability Act of 1995
 8 (2 U.S.C. 1301 et seq.).

9 (k) “Parent” means a person who, with regard to an
 10 individual who is under the age of 18, or who is 18 or
 11 older but is incapable of self-care because of a physical
 12 or mental disability—

13 (1) has the status of—

14 (A) a biological parent;

15 (B) an adoptive parent;

16 (C) a foster parent;

17 (D) a stepparent; or

18 (E) a custodian of a legal ward;

19 (2) is actively seeking legal custody or adoption;

20 or

21 (3) stands in loco parentis to such an indi-
 22 vidual.

23 (l) “Person” has the meaning given that term in sec-
 24 tion 701(a) of the Civil Rights Act of 1964 (42 U.S.C.
 25 2000e(a)).

1 (m) “Physical or mental disability” means a physical
 2 or mental impairment that substantially limits one or
 3 more of the major life activities of an individual.

4 (n) “State” has the meaning given that term in sec-
 5 tion 701(i) of the Civil Rights Act of 1964 (42 U.S.C.
 6 2000e(i)).

7 **SEC. 5. DISCRIMINATION PROHIBITED.**

8 (a) EMPLOYER PRACTICES.—It shall be an unlawful
 9 employment practice for an employer—

10 (1) to fail or refuse to hire, or to discharge, any
 11 individual, or otherwise to discriminate against any
 12 individual with regard to the compensation, terms,
 13 conditions, or privileges of employment of the indi-
 14 vidual, because such individual is a parent; or

15 (2) to limit, segregate, or classify employees in
 16 any way that would deprive, or tend to deprive, any
 17 individual of employment opportunities or otherwise
 18 adversely affect the status of the individual as an
 19 employee, because such individual is a parent.

20 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
 21 an unlawful employment practice for an employment agen-
 22 cy to fail or refuse to refer for employment, or otherwise
 23 to discriminate against, any individual because such indi-
 24 vidual is a parent or to classify or refer for employment
 25 any individual because such individual is a parent.

1 (c) LABOR ORGANIZATION PRACTICES.—It shall be
2 an unlawful employment practice for a labor
3 organization—

4 (1) to exclude or expel from its membership, or
5 otherwise to discriminate against, any individual be-
6 cause such individual is a parent;

7 (2) to limit, segregate, or classify its member-
8 ship or applicants for membership, or to classify or
9 fail or refuse for employment any individual, in any
10 way that would deprive or tend to deprive any indi-
11 vidual of employment opportunities, or would limit
12 such employment opportunities or otherwise ad-
13 versely affect the status of the individual as an em-
14 ployee, because such individual is a parent; or

15 (3) to cause or attempt to cause an employer to
16 discriminate against an individual in violation of this
17 Act.

18 (d) TRAINING PROGRAMS.—It shall be an unlawful
19 employment practice for any employer, labor organization,
20 or joint labor-management committee controlling appren-
21 ticeship or other training or retraining, including on-the-
22 job training programs, to discriminate against any indi-
23 vidual because such individual is a parent in admission
24 to, or employment in, any program established to provide
25 apprenticeship or other training.

1 **SEC. 6. RETALIATION AND COERCION PROHIBITED.**

2 (a) RETALIATION.—A covered entity shall not dis-
3 criminate against an employee because the employee has
4 opposed any act or practice prohibited by this Act or be-
5 cause the employee made a charge, testified, assisted, or
6 participated in any manner in an investigation, pro-
7 ceeding, or hearing under this Act.

8 (b) INTERFERENCE, COERCION, OR INTIMIDATION.—
9 A covered entity shall not coerce, intimidate, threaten, or
10 interfere with any employee in the exercise or enjoyment
11 of, or on account of the employee's having exercised or
12 enjoyed, or on account of the employee's having aided or
13 encouraged any other individual in the exercise or enjoy-
14 ment of, any right granted or protected by this Act.

15 **SEC. 7. OTHER PROHIBITIONS.**

16 (a) COLLECTION OF STATISTICS.—Notwithstanding
17 any other provision of this Act, the Commission shall not
18 collect statistics from covered entities on their employment
19 of parents, or compel the collection of such statistics by
20 covered entities, unless such statistics are to be used in
21 investigation, litigation, or resolution of a claim of dis-
22 crimination under this Act.

23 (b) QUOTAS.—A covered entity shall not adopt or im-
24 plement a quota with respect to its employment of parents.

1 **SEC. 8. MIXED MOTIVE DISCRIMINATION.**

2 (a) An unlawful employment practice is established
3 under this Act when the complaining party demonstrates
4 that—

5 (1) an individual's status as a parent; or

6 (2) retaliation, coercion, or threats against, in-
7 timidation of, or interference with an individual as
8 described in section 6 of this Act;

9 was a motivating factor for any employment practice, even
10 though other factors also motivated the practice.

11 (b) When an individual proves a violation under this
12 section, and a respondent demonstrates that the respond-
13 ent would have taken the same action in the absence of
14 the prohibited motivating factor, a court or any other enti-
15 ty authorized in section 11(a) of this Act to award relief—

16 (1) may grant declaratory relief, injunctive re-
17 lief (except as provided in clause (2) below), and at-
18 torney's fees and costs demonstrated to be directly
19 attributable only to the pursuit of a claim under this
20 section; and

21 (2) shall not award damages or issue an order
22 requiring any admission, reinstatement, hiring, pro-
23 motion, or payment.

24 **SEC. 9. DISPARATE IMPACT.**

25 Notwithstanding any other provision of this Act, the
26 fact that an employment practice has a disparate impact

1 on parents, as the term “disparate impact” is used in sec-
2 tion 703(k) of the Civil Rights Act of 1964 (42 U.S.C.
3 2000e-2(k)), shall not establish a violation of this Act.

4 **SEC. 10. DEFENSES WHERE ACTIONS TAKEN IN A FOREIGN**
5 **COUNTRY.**

6 (a) It shall not be unlawful under this Act for a cov-
7 ered entity to take any action otherwise prohibited under
8 this Act with respect to an employee in a workplace in
9 a foreign country if compliance with this Act would cause
10 such entity to violate the law of the foreign country in
11 which such workplace is located.

12 (b)(1) If a covered entity controls a corporation
13 whose place of incorporation is a foreign country, any
14 practice prohibited by this Act engaged in by such cor-
15 poration shall be presumed to be engaged in by such cov-
16 ered entity.

17 (2) This Act shall not apply with respect to the for-
18 eign operations of a corporation that is a foreign person
19 not controlled by an American covered entity.

20 (3) For purposes of this subsection, the determina-
21 tion of whether a covered entity controls a corporation
22 shall be based on the factors set forth in section 702(c)(3)
23 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(c)(3)).

24 (c) This Act shall not apply to a covered entity with
25 respect to the employment of aliens outside any State.

1 **SEC. 11. ENFORCEMENT AND REMEDIES.**

2 (a) INCORPORATION OF POWERS, REMEDIES, AND
 3 PROCEDURES IN OTHER CIVIL RIGHTS STATUTES.—With
 4 respect to the administration and enforcement of this Act
 5 in the case of a claim alleged by an individual for a viola-
 6 tion of this Act, the following statutory provisions are
 7 hereby incorporated, and shall, along with the provisions
 8 in subsection 11(b), establish the powers, remedies, proce-
 9 dures, and jurisdiction that this Act provides to the Equal
 10 Employment Opportunity Commission, the Attorney Gen-
 11 eral, the Librarian of Congress, the Office of Compliance
 12 and its Board of Directors, the Merit Systems Protection
 13 Board, the President, the courts of the United States, and/
 14 or any other person alleging a violation of any provision
 15 of this Act—

16 (1) for individuals who are covered under title
 17 VII of the Civil Rights Act of 1964, as amended (42
 18 U.S.C. 2000e et seq.), sections 705, 706, 707, 709,
 19 710, 711, and 717 of that Act (42 U.S.C. 2000e–
 20 4, 2000e–5, 2000e–6, 2000e–8, 2000e–9 2000e–10,
 21 and 2000e–16), and sections 7121, 7701, 7702, and
 22 7703 of title 5, United States Code, as applicable;

23 (2) for individuals who are covered under sec-
 24 tion 302(a) of the Government Employee Rights Act
 25 of 1991 (2 U.S.C. 1202(a)), sections 302(b)(1) and

1 304(b)–(e) of that Act (2 U.S.C. 1202(b)(1),
2 1220(b)–(e));

3 (3) for individuals who are covered under sec-
4 tion 101(3) of the Congressional Accountability Act
5 of 1995 (2 U.S.C. 1301(3)), sections 201(b)(1),
6 225, and 401–416 of that Act (2 U.S.C. 1311(b)(1),
7 1361, 1401–1416); and

8 (4) for individuals who are covered under sec-
9 tion 411(c)(1) of title 3, United States Code, sec-
10 tions 411(b)(1), 435, and 451–456 of that title.

11 (b) ADDITIONAL REMEDIES.—

12 (1) Notwithstanding any express or implied lim-
13 itation on the remedies incorporated by reference in
14 subsection 11(a), and except as provided in sub-
15 section (b)(2) of this section, section 8, or section 12
16 of this Act, any covered entity that violates this Act
17 shall be liable for such compensatory damages as
18 may be appropriate and for punitive damages if the
19 covered entity engaged in a discriminatory practice
20 of practices with malice or with reckless indifference
21 to the federally protected rights of an aggrieved indi-
22 vidual.

23 (2) Notwithstanding subsection 11(b)(1),

24 (A) absent its consent to a monetary rem-
25 edy, a State may be liable for monetary relief

1 only in an action brought by the Attorney Gen-
2 eral in a court of the United States; and

3 (B) a State shall not be liable for punitive
4 damages.

5 (3) Notwithstanding any express or implied lim-
6 itation on the remedies incorporated by reference in
7 subsection 11(a) or included in subsection 11(b)(2)
8 above,

9 (A) an individual may bring an action in a
10 district court of the United States for declara-
11 tory or injunctive relief against any appropriate
12 State official for a violation of this Act; and

13 (B) the Attorney General may bring an ac-
14 tion in a district court of the United States for
15 declaratory or injunctive relief against any ap-
16 propriate State official or State for a violation
17 of this Act.

18 **SEC. 12. FEDERAL IMMUNITY.**

19 Notwithstanding any other provision of this Act, in
20 an action or administrative proceeding against the United
21 States for a violation of this Act, remedies (including rem-
22 edies at law and in equity, and interest) are available for
23 a violation to the same extent as the remedies are available
24 against a private entity, except that punitive damages are
25 not available.

1 **SEC. 13. POSTING NOTICES.**

2 A covered entity shall post notices for individuals to
3 whom this Act applies that describe the applicable provi-
4 sions of this Act in the manner prescribed by, and subject
5 to the penalty provided under, section 711 of the Civil
6 Rights Act of 1964 (42 U.S.C. 2000e–10).

7 **SEC. 14. REGULATIONS.**

8 (a) IN GENERAL.—Except as provided in subsections
9 14(b), (c), (d), and (e) below, the Commission shall have
10 authority to issue regulations to carry out this Act.

11 (b) LIBRARIAN OF CONGRESS.—The Librarian of
12 Congress shall have authority to issue regulations to carry
13 out this Act with respect to employees of the Library of
14 Congress.

15 (c) BOARD.—The Board of the Office of Compliance
16 shall have authority to issue regulations to carry out this
17 Act, in accordance with sections 303 and 304 of the Con-
18 gressional Accountability Act of 1995 (2 U.S.C. 1383,
19 1384), with respect to covered employees as defined in sec-
20 tion 101(3) of such Act (2 U.S.C. 1301(3)).

21 (d) PRESIDENT.—The President shall have authority
22 to issue regulations to carry out this Act with respect to
23 covered employees as defined in section 411(c)(1) of title
24 3, United States Code.

25 (e) COMMISSION AND MERIT SYSTEM PROTECTION
26 BOARD.—The Commission and the Merit System Protec-

1 tion Board shall each have authority to issue regulations
2 to carry out this Act with respect to individuals covered
3 by sections 7121, 7701, 7702, and 7703 of title 5, United
4 States Code.

5 **SEC. 15. RELATIONSHIP TO OTHER LAWS.**

6 Nothing in this Act shall affect the interpretation or
7 application of, and this Act shall not invalidate or limit
8 the rights, remedies, or procedures available to an indi-
9 vidual claiming discrimination prohibited under, any other
10 Federal law or any law of a State or political subdivision
11 of a State.

12 **SEC. 16. SEVERABILITY.**

13 If any provision of this Act, or the application of such
14 provision to any person or circumstances, is held to be
15 invalid, the remainder of this Act and the application of
16 such provisions to other persons and circumstances shall
17 not be affected.

18 **SEC. 17. APPROPRIATIONS.**

19 There are authorized to be appropriated such sums
20 as may be necessary to carry out this Act.

21 **SEC. 18. EFFECTIVE DATE.**

22 This Act shall take effect 180 days after enactment
23 and shall not apply to conduct occurring before the effec-
24 tive date.

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