

112TH CONGRESS
2D SESSION

S. 3565

To eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Mr. CASEY (for himself, Mrs. SHAHEEN, Mr. LAUTENBERG, Mr. HARKIN, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.

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 “Pregnant Workers
5 Fairness Act”.

1 **SEC. 2. NONDISCRIMINATION WITH REGARD TO REASON-**
2 **ABLE ACCOMMODATIONS RELATED TO PREG-**
3 **NANCY.**

4 It shall be an unlawful employment practice for a cov-
5 ered entity to—

6 (1) not make reasonable accommodations to the
7 known limitations related to the pregnancy, child-
8 birth, or related medical conditions of a job appli-
9 cant or employee, unless such covered entity can
10 demonstrate that the accommodation would impose
11 an undue hardship on the operation of the business
12 of such covered entity;

13 (2) deny employment opportunities to a job ap-
14 plicant or employee, if such denial is based on the
15 need of the covered entity to make reasonable ac-
16 commodated to the known limitations related to
17 the pregnancy, childbirth, or related medical condi-
18 tions of an employee or applicant;

19 (3) require a job applicant or employee affected
20 by pregnancy, childbirth, or related medical condi-
21 tions to accept an accommodation that such appli-
22 cant or employee chooses not to accept; or

23 (4) require an employee to take leave under any
24 leave law or policy of the covered entity if another
25 reasonable accommodation can be provided to the

1 known limitations related to the pregnancy, child-
2 birth, or related medical conditions of an employee.

3 **SEC. 3. REMEDIES AND ENFORCEMENT.**

4 (a) EMPLOYEES COVERED BY TITLE VII OF THE
5 CIVIL RIGHTS ACT OF 1964.—

6 (1) IN GENERAL.—The powers, procedures, and
7 remedies provided in sections 705, 706, 707, 709,
8 710, and 711 of the Civil Rights Act of 1964 (42
9 U.S.C. 2000e–4 et seq.) to the Commission, the At-
10 torney General, or any person, alleging a violation of
11 title VII of that Act (42 U.S.C. 2000e et seq.) shall
12 be the powers, procedures, and remedies this title
13 provides to the Commission, the Attorney General,
14 or any person, respectively, alleging an unlawful em-
15 ployment practice in violation of this title against an
16 employee described in section 5(2)(A), except as pro-
17 vided in paragraphs (2) and (3).

18 (2) COSTS AND FEES.—The powers, remedies,
19 and procedures provided in subsections (b) and (c)
20 of section 722 of the Revised Statutes of the United
21 States (42 U.S.C. 1988), shall be the powers, rem-
22 edies, and procedures this title provides to the Com-
23 mission, the Attorney General, or any person, alleg-
24 ing such a practice.

1 (3) DAMAGES.—The powers, remedies, and pro-
 2 cedures provided in section 1977A of the Revised
 3 Statutes of the United States (42 U.S.C. 1981a), in-
 4 cluding the limitations contained in subsection (b)(3)
 5 of such section 1977A, shall be the powers, rem-
 6 edies, and procedures this title provides to the Com-
 7 mission, the Attorney General, or any person, alleg-
 8 ing such a practice (not an employment practice spe-
 9 cifically excluded from coverage under section
 10 1977A(a)(1) of the Revised Statutes of the United
 11 States).

12 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
 13 COUNTABILITY ACT OF 1995.—

14 (1) IN GENERAL.—The powers, remedies, and
 15 procedures provided in the Congressional Account-
 16 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
 17 Board (as defined in section 101 of that Act (2
 18 U.S.C. 1301)), or any person, alleging a violation of
 19 section 201(a)(1) of that Act (2 U.S.C. 1311(a)(1))
 20 shall be the powers, remedies, and procedures this
 21 title provides to that Board, or any person, alleging
 22 an unlawful employment practice in violation of this
 23 title against an employee described in section
 24 5(2)(B), except as provided in paragraphs (2) and
 25 (3).

1 (2) COSTS AND FEES.—The powers, remedies,
2 and procedures provided in subsections (b) and (c)
3 of section 722 of the Revised Statutes of the United
4 States (42 U.S.C. 1988), shall be the powers, rem-
5 edies, and procedures this title provides to that
6 Board, or any person, alleging such a practice.

7 (3) DAMAGES.—The powers, remedies, and pro-
8 cedures provided in section 1977A of the Revised
9 Statutes of the United States (42 U.S.C. 1981a), in-
10 cluding the limitations contained in subsection (b)(3)
11 of such section 1977A, shall be the powers, rem-
12 edies, and procedures this title provides to that
13 Board, or any person, alleging such a practice (not
14 an employment practice specifically excluded from
15 coverage under section 1977A(a)(1) of the Revised
16 Statutes of the United States).

17 (4) OTHER APPLICABLE PROVISIONS.—With re-
18 spect to a claim alleging a practice described in
19 paragraph (1), title III of the Congressional Ac-
20 countability Act of 1995 (2 U.S.C. 1381 et seq.)
21 shall apply in the same manner as such title applies
22 with respect to a claim alleging a violation of section
23 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

24 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
25 3, UNITED STATES CODE.—

1 (1) IN GENERAL.—The powers, remedies, and
2 procedures provided in chapter 5 of title 3, United
3 States Code, to the President, the Commission, the
4 Merit Systems Protection Board, or any person, al-
5 leging a violation of section 411(a)(1) of that title,
6 shall be the powers, remedies, and procedures this
7 title provides to the President, the Commission, such
8 Board, or any person, respectively, alleging an un-
9 lawful employment practice in violation of this title
10 against an employee described in section 5(2)(C), ex-
11 cept as provided in paragraphs (2) and (3).

12 (2) COSTS AND FEES.—The powers, remedies,
13 and procedures provided in subsections (b) and (c)
14 of section 722 of the Revised Statutes of the United
15 States (42 U.S.C. 1988), shall be the powers, rem-
16 edies, and procedures this title provides to the Presi-
17 dent, the Commission, such Board, or any person,
18 alleging such a practice.

19 (3) DAMAGES.—The powers, remedies, and pro-
20 cedures provided in section 1977A of the Revised
21 Statutes of the United States (42 U.S.C. 1981a), in-
22 cluding the limitations contained in subsection (b)(3)
23 of such section 1977A, shall be the powers, rem-
24 edies, and procedures this title provides to the Presi-
25 dent, the Commission, such Board, or any person,

1 alleging such a practice (not an employment practice
2 specifically excluded from coverage under section
3 1977A(a)(1) of the Revised Statutes of the United
4 States).

5 (d) EMPLOYEES COVERED BY GOVERNMENT EM-
6 PLOYEE RIGHTS ACT OF 1991.—

7 (1) IN GENERAL.—The powers, remedies, and
8 procedures provided in sections 302 and 304 of the
9 Government Employee Rights Act of 1991 (42
10 U.S.C. 2000e–16b, 2000e–16c) to the Commission,
11 or any person, alleging a violation of section
12 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1))
13 shall be the powers, remedies, and procedures this
14 title provides to the Commission, or any person, re-
15 spectively, alleging an unlawful employment practice
16 in violation of this title against an employee de-
17 scribed in section 5(2)(D), except as provided in
18 paragraphs (2) and (3).

19 (2) COSTS AND FEES.—The powers, remedies,
20 and procedures provided in subsections (b) and (c)
21 of section 722 of the Revised Statutes of the United
22 States (42 U.S.C. 1988), shall be the powers, rem-
23 edies, and procedures this title provides to the Com-
24 mission, or any person, alleging such a practice.

1 (3) DAMAGES.—The powers, remedies, and pro-
 2 cedures provided in section 1977A of the Revised
 3 Statutes of the United States (42 U.S.C. 1981a), in-
 4 cluding the limitations contained in subsection (b)(3)
 5 of such section 1977A, shall be the powers, rem-
 6 edies, and procedures this title provides to the Com-
 7 mission, or any person, alleging such a practice (not
 8 an employment practice specifically excluded from
 9 coverage under section 1977A(a)(1) of the Revised
 10 Statutes of the United States).

11 (e) EMPLOYEES COVERED BY SECTION 717 OF THE
 12 CIVIL RIGHTS ACT OF 1964.—

13 (1) IN GENERAL.—The powers, remedies, and
 14 procedures provided in section 717 of the Civil
 15 Rights Act of 1964 (42 U.S.C. 2000e–16) to the
 16 Commission, the Attorney General, the Librarian of
 17 Congress, or any person, alleging a violation of that
 18 section shall be the powers, remedies, and proce-
 19 dures this title provides to the Commission, the At-
 20 torney General, the Librarian of Congress, or any
 21 person, respectively, alleging an unlawful employ-
 22 ment practice in violation of this title against an em-
 23 ployee or applicant described in section 2(2)(E), ex-
 24 cept as provided in paragraphs (2) and (3).

1 (2) COSTS AND FEES.—The powers, remedies,
2 and procedures provided in subsections (b) and (c)
3 of section 722 of the Revised Statutes of the United
4 States (42 U.S.C. 1988), shall be the powers, rem-
5 edies, and procedures this title provides to the Com-
6 mission, the Attorney General, the Librarian of Con-
7 gress, or any person, alleging such a practice.

8 (3) DAMAGES.—The powers, remedies, and pro-
9 cedures provided in section 1977A of the Revised
10 Statutes of the United States (42 U.S.C. 1981a), in-
11 cluding the limitations contained in subsection (b)(3)
12 of such section 1977A, shall be the powers, rem-
13 edies, and procedures this title provides to the Com-
14 mission, the Attorney General, the Librarian of Con-
15 gress, or any person, alleging such a practice (not an
16 employment practice specifically excluded from cov-
17 erage under section 1977A(a)(1) of the Revised
18 Statutes of the United States).

19 (f) PROHIBITION AGAINST RETALIATION.—No per-
20 son shall discriminate against any individual because such
21 individual has opposed any act or practice made unlawful
22 by this title or because such individual made a charge,
23 testified, assisted, or participated in any manner in an in-
24 vestigation, proceeding, or hearing under this title. The
25 remedies and procedures otherwise provided for under this

1 section shall be available to aggrieved individuals with re-
2 spect to violations of this subsection.

3 **SEC. 4. RULEMAKING.**

4 Not later than 2 years after the date of enactment
5 of this Act, the Commission shall issue regulations in an
6 accessible format in accordance with subchapter II of
7 chapter 5 of title 5, United States Code, to carry out this
8 Act. Such regulations shall identify some reasonable ac-
9 commodations addressing known limitations related to
10 pregnancy, childbirth, or related medical conditions that
11 shall be provided to a job applicant or employee affected
12 by such known limitations unless the covered entity can
13 demonstrate that doing so would impose an undue hard-
14 ship.

15 **SEC. 5. DEFINITIONS.**

16 As used in this Act—

17 (1) the term “Commission” means the Equal
18 Employment Opportunity Commission;

19 (2) the term “covered entity”—

20 (A) has the meaning given the term “re-
21 spondent” in section 701(n) of the Civil Rights
22 Act of 1964 (42 U.S.C. 2000e(n)); and

23 (B) includes—

24 (i) an employing office, as defined in
25 section 101 of the Congressional Account-

1 ability Act of 1995 (2 U.S.C. 1301) and
2 section 411(c) of title 3, United States
3 Code;

4 (ii) an entity employing a State em-
5 ployee described in section 304(a) of the
6 Government Employee Rights Act of 1991
7 (12 U.S.C. 1220(a)); and

8 (iii) an entity to which section 717(a)
9 of the Civil Rights Act of 1964 (42 U.S.C.
10 2000e–16(a)) applies;

11 (3) the term “employee” means—

12 (A) an employee (including an applicant),
13 as defined in section 701(f) of the Civil Rights
14 Act of 1964 (42 U.S.C. 2000e(f));

15 (B) a covered employee (including an ap-
16 plicant), as defined in section 101 of the Con-
17 gressional Accountability Act of 1995 (2 U.S.C.
18 1301);

19 (C) a covered employee (including an appli-
20 cant), as defined in section 411(c) of title 3,
21 United States Code;

22 (D) a State employee (including an appli-
23 cant) described in section 304(a) of the Govern-
24 ment Employee Rights Act of 1991 (12 U.S.C.
25 1220(a)); or

1 (E) an employee (including an applicant)
2 to which section 717(a) of the Civil Rights Act
3 of 1964 (42 U.S.C. 2000e–16(a)) applies;

4 (4) the term “person” has the meaning given
5 such term in section 701(a) of the Civil Rights Act
6 of 1964 (42 U.S.C. 2000e(a)); and

7 (5) the terms “reasonable accommodation” and
8 “undue hardship” have the meanings given such
9 terms in section 101 of the Americans with Disabil-
10 ities Act of 1990 (42 U.S.C. 12111) and shall be
11 construed as such terms have been construed under
12 such Act and as set forth in the regulations required
13 by this Act.

14 **SEC. 6. RELATIONSHIP TO OTHER LAWS.**

15 Nothing in this Act shall be construed to invalidate
16 or limit the remedies, rights, and procedures of any Fed-
17 eral law or law of any State or political subdivision of any
18 State or jurisdiction that provides greater or equal protec-
19 tion for workers affected by pregnancy, childbirth, or re-
20 lated medical conditions.

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