

113TH CONGRESS
2D SESSION

S. 1972

To prohibit discrimination in employment on the basis of an individual's status or history of unemployment.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2014

Mr. BLUMENTHAL (for himself, Mr. MARKEY, Mrs. GILLIBRAND, Mrs. SHAHEEN, Mr. SANDERS, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit discrimination in employment on the basis of an individual's status or history of unemployment.

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 “Fair Employment Op-
5 portunity Act of 2014”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that denial of em-
8 ployment opportunities to individuals because they are or

1 have been unemployed is discriminatory and burdens com-
2 merce by—

3 (1) reducing personal consumption and under-
4 mining economic stability and growth;

5 (2) squandering human capital essential to the
6 Nation's economic vibrancy and growth;

7 (3) increasing demands for Federal and State
8 unemployment insurance benefits, reducing trust
9 fund assets, and leading to higher payroll taxes for
10 employers, cuts in benefits for jobless workers, or
11 both;

12 (4) imposing additional burdens on publicly
13 funded health and welfare programs; and

14 (5) depressing income, property, and other tax
15 revenues that the Federal Government, States, and
16 localities rely on to support operations and institu-
17 tions essential to commerce.

18 (b) PURPOSES.—The purposes of this Act are—

19 (1) to prohibit consideration of an individual's
20 status as unemployed in considering applicants for,
21 screening for, or hiring for positions, except where
22 a requirement related to employment status is a
23 bona fide occupational qualification reasonably nec-
24 essary to successful performance in the job; and

1 (2) to eliminate the burdens imposed on com-
2 merce due to the exclusion of such individuals from
3 employment.

4 **TITLE I—FAIR EMPLOYMENT**
5 **FOR NON-FEDERAL EMPLOYEES**

6 **SEC. 101. DEFINITIONS.**

7 As used in this Act—

8 (1) the term “affected individual” means any
9 person who was not considered for employment, or
10 was not hired by an employer, as an employee, be-
11 cause of the person’s current employment status
12 (current as of the date of the decision concerning
13 consideration or hiring), or any person who was not
14 considered, screened, or referred for an employment
15 opportunity, as an employee, by an employment
16 agency because of the person’s current employment
17 status (current as of the date of the decision con-
18 cerning consideration, screening, or referral);

19 (2) the term “employee” has the meaning given
20 the term in section 3 of the Fair Labor Standards
21 Act of 1938 (29 U.S.C. 203), but shall not include
22 an employee covered under subchapter V of chapter
23 63 of title 5, United States Code;

24 (3) the term “employer”—

1 (A) means any person engaged in com-
2 merce or any industry or activity affecting com-
3 merce who has 15 or more employees for each
4 working day in each of 20 or more calendar
5 weeks in the current or preceding calendar
6 year;

7 (B) includes—

8 (i) any person who acts, directly or in-
9 directly, in the interest of an employer de-
10 scribed in subparagraph (A) with respect
11 to employing individuals to work for the
12 employer; and

13 (ii) any successor in interest of an em-
14 ployer described in subparagraph (A);

15 (C) includes any public agency, as defined
16 in section 3 of the Fair Labor Standards Act
17 of 1938 (29 U.S.C. 203), but shall not include
18 an employing agency covered under subchapter
19 V of chapter 63 of title 5, United States Code;
20 and

21 (D) includes the Government Printing Of-
22 fice and the Library of Congress;

23 (4) the term “employment agency” means any
24 person regularly undertaking with or without com-
25 pensation to procure employees for an employer or

1 to procure for individuals opportunities to work as
2 employees for an employer and includes an agent of
3 such a person, and includes any person who main-
4 tains an Internet website that publishes advertise-
5 ments or announcements of openings in jobs for em-
6 ployees;

7 (5) the term “Secretary” means the Secretary
8 of Labor; and

9 (6) the term “status as unemployed”, used with
10 respect to an individual, means the individual’s
11 present or past unemployment, regardless of the
12 length of time such individual was unemployed.

13 **SEC. 102. PROHIBITED ACTS.**

14 (a) EMPLOYERS.—It shall be an unlawful practice for
15 an employer to—

16 (1) fail or refuse to consider for employment, or
17 fail or refuse to hire, an individual as an employee,
18 because of the individual’s status as unemployed;

19 (2) publish in print, on the Internet, or in any
20 other medium, an advertisement or announcement
21 for an employee for any job that includes—

22 (A) any provision stating or indicating that
23 an individual’s status as unemployed disquali-
24 fies the individual for a job; and

1 (B) any provision stating or indicating that
2 an employer will not consider or hire an indi-
3 vidual for employment based on that individ-
4 ual's status as unemployed; and

5 (3) direct or request that an employment agen-
6 cy take an individual's status as unemployed into ac-
7 count in considering, screening, or referring appli-
8 cants for employment as an employee.

9 (b) EMPLOYMENT AGENCIES.—It shall be an unlaw-
10 ful practice for an employment agency to—

11 (1) fail or refuse to consider, screen, or refer an
12 individual for employment as an employee based on
13 the individual's status as unemployed;

14 (2) limit, segregate, or classify individuals in
15 any manner that may limit their access to informa-
16 tion about jobs, or consideration, screening, or refer-
17 ral for jobs, as employees, because of their status as
18 unemployed; or

19 (3) publish, in print or on the Internet or in
20 any other medium, an advertisement or announce-
21 ment for any vacancy in a job, as an employee, that
22 includes—

23 (A) any provision stating or indicating that
24 an individual's status as unemployed disquali-
25 fies the individual for a job; and

1 (B) any provision stating or indicating that
2 an employer will not consider or hire an indi-
3 vidual for employment based on that individ-
4 ual's status as unemployed.

5 (c) INTERFERENCE WITH RIGHTS, PROCEEDINGS OR
6 INQUIRIES.—It shall be unlawful for any employer or em-
7 ployment agency to—

8 (1) interfere with, restrain, or deny the exercise
9 of or the attempt to exercise, any right provided
10 under this Act; or

11 (2) fail or refuse to hire, to discharge, or in any
12 other manner to discriminate against any individual,
13 as an employee, because such individual—

14 (A) opposed any practice made unlawful by
15 this Act;

16 (B) has filed any charge, or has instituted
17 or caused to be instituted any proceeding,
18 under or related to this Act;

19 (C) has given, or is about to give, any in-
20 formation in connection with any inquiry or
21 proceeding relating to any right provided under
22 this Act; or

23 (D) has testified, or is about to testify, in
24 any inquiry or proceeding relating to any right
25 provided under this Act.

1 (d) BONA FIDE OCCUPATIONAL QUALIFICATION.—
 2 Notwithstanding any other provision of this Act, consider-
 3 ation by an employer or employment agency of an individ-
 4 ual's status as unemployed shall not be an unlawful em-
 5 ployment practice under this Act if an individual's employ-
 6 ment in a similar or related job for a period of time rea-
 7 sonably proximate to the hiring of such individual is a
 8 bona fide occupational qualification reasonably necessary
 9 to successful performance in the job that is being filled.

10 **SEC. 103. ENFORCEMENT.**

11 (a) CIVIL ACTION BY INDIVIDUAL.—

12 (1) LIABILITY FOR EMPLOYERS AND EMPLOY-
 13 MENT AGENCIES.—Any employer or employment
 14 agency that violates subsection (a) or (b) of section
 15 4 shall be liable to any affected individual—

16 (A) for actual damages equal to—

17 (i) the amount of—

18 (I) any wages, salary, employ-
 19 ment benefits, or other compensation
 20 denied or lost to such individual by
 21 reason of the violation; or

22 (II) in a case in which wages,
 23 salary, employment benefits, or other
 24 compensation have not been denied or
 25 lost to the individual, any actual mon-

1 etary losses sustained by the indi-
2 vidual as a direct result of the viola-
3 tion or an amount of \$1000 per viola-
4 tion per day, whichever is greater;

5 (ii) the interest on the amount de-
6 scribed in clause (i) calculated at the pre-
7 vailing rate; and

8 (iii) an additional amount as liq-
9 uidated damages equal to the sum of the
10 amount described in clause (i) and the in-
11 terest described in clause (ii), and any pu-
12 nitive damages, except that if an employer
13 or employment agency that has violated
14 section 4 proves to the satisfaction of the
15 court that the act or omission that violated
16 section 4 was in good faith and that the
17 employer had reasonable grounds for be-
18 lieving that the act or omission was not a
19 violation of section 4, such court may, in
20 its discretion, reduce the amount of the li-
21 ability to the amount and interest deter-
22 mined under clauses (i) and (ii), respec-
23 tively; and

24 (B) for such equitable relief as may be ap-
25 propriate, including employment.

1 (2) RIGHT OF ACTION.—An action to recover
2 the damages or equitable relief prescribed in para-
3 graph (1) may be maintained against any employer
4 or employment agency in any Federal or State court
5 of competent jurisdiction by any 1 or more persons
6 for and on behalf of—

7 (A) the affected individual; or

8 (B) the affected individual and other indi-
9 viduals similarly situated.

10 (3) FEES AND COSTS.—The court in such an
11 action shall, in addition to any judgment awarded to
12 the plaintiff, allow a reasonable attorney's fee, rea-
13 sonable expert witness fees, and other costs of the
14 action to be paid by the defendant.

15 (4) LIMITATIONS.—The right provided by para-
16 graph (2) to bring an action by or on behalf of any
17 affected individual shall terminate—

18 (A) on the filing of a complaint by the Sec-
19 retary in an action under subsection (d) in
20 which restraint is sought of any violation of sec-
21 tion 4; or

22 (B) on the filing of a complaint by the Sec-
23 retary in an action under subsection (b) in
24 which a recovery is sought of the damages de-
25 scribed in paragraph (1)(A) owing to an af-

1 fected individual by an employer or employment
2 agency liable under paragraph (1),
3 unless the action described in subparagraph (A) or
4 (B) is dismissed without prejudice on motion of the
5 Secretary.

6 (b) ACTION BY THE SECRETARY.—

7 (1) ADMINISTRATIVE ACTION.—The Secretary
8 shall receive, investigate, and attempt to resolve
9 complaints of violations of section 4 in the same
10 manner that the Secretary receives, investigates, and
11 attempts to resolve complaints of violations of sec-
12 tions 6 and 7 of the Fair Labor Standards Act of
13 1938 (29 U.S.C. 206 and 207).

14 (2) CIVIL ACTION.—The Secretary may bring
15 an action in any court of competent jurisdiction—

16 (A) to enjoin violations of this title and
17 seek other relief necessary to prevent future vio-
18 lations; and

19 (B) to recover—

20 (i) the damages described in sub-
21 section (a)(1)(A);

22 (ii) in the case of a violation of section
23 4(c), a civil penalty of not less than \$250
24 per violation (in addition to any other re-
25 lief available under this subparagraph); or

1 (iii) such other equitable relief as the
2 court determines to be appropriate.

3 (3) SUMS RECOVERED.—Any sums recovered by
4 the Secretary pursuant to paragraph (2)(B)(i) shall
5 be held in a special deposit account and shall be
6 paid, on order of the Secretary, directly to each af-
7 fected individual. Any such sums recovered pursuant
8 to paragraph (2)(B)(i) that are not paid to an af-
9 fected individual because of inability to do so within
10 a period of 3 years and any sums recovered pursu-
11 ant to paragraph (2)(B)(ii) shall be deposited into
12 the Treasury of the United States as miscellaneous
13 receipts.

14 (c) LIMITATION.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), an action under subsection (a) may be
17 brought not later than 2 years after the date of the
18 last event constituting the alleged violation for which
19 the action is brought, except that the limitation pe-
20 riod for filing an action by an individual shall be
21 tolled during the period during which the Secretary
22 is considering a complaint against any defendant
23 named in a complaint filed with the Secretary under
24 subsection (b)(1).

1 (2) WILLFUL VIOLATION.—In the case of such
2 action brought for a willful violation of section 4,
3 such action may be brought not later than 3 years
4 after the date of the last event constituting the al-
5 leged violation for which such action is brought, ex-
6 cept that the limitation period for filing an action by
7 an individual shall be tolled during the period during
8 which the Secretary is considering a complaint,
9 against the defendant involved, that is filed with the
10 Secretary under subsection (b)(1).

11 (3) COMMENCEMENT.—In determining when an
12 action is commenced by the Secretary under this
13 section for the purposes of this subsection, it shall
14 be considered to be commenced on the date when the
15 Secretary files a complaint in a court of competent
16 jurisdiction.

17 (d) ACTION FOR INJUNCTION BY SECRETARY.—The
18 district courts of the United States shall have jurisdiction,
19 for cause shown, in an action brought by the Secretary—

20 (1) to restrain violations of section 4;

21 (2) to award such other equitable relief as may
22 be appropriate, including employment; and

23 (3) to award monetary damages.

1 (e) SOLICITOR OF LABOR.—The Solicitor of Labor
 2 may appear for and represent the Secretary on any litiga-
 3 tion brought under this section.

4 (f) GOVERNMENT PRINTING OFFICE AND LIBRARY
 5 OF CONGRESS.—With respect to the Government Printing
 6 Office (acting as an employer or employment agency), and
 7 with respect to the Library of Congress (acting as an em-
 8 ployer or employment agency), the authority of the Sec-
 9 retary of Labor under this title shall be exercised respec-
 10 tively by the Public Printer and the Librarian of Congress.

11 **TITLE II—FAIR EMPLOYMENT** 12 **FOR FEDERAL EMPLOYEES**

13 **SEC. 201. PROHIBITED ACTS.**

14 Title 5, United States Code, is amended by inserting
 15 after chapter 23 the following:

16 **“CHAPTER 25—PROHIBITION ON DIS-** 17 **CRIMINATION BASED ON EMPLOY-** 18 **MENT STATUS**

19 **“§ 2501. Definitions**

20 “As used in this chapter—

21 “(1) the term ‘affected individual’ means any
 22 person who was not considered for employment, or
 23 was not hired by an employing agency, as an em-
 24 ployee, because of the person’s current employment
 25 status (current as of the date of the decision con-

1 cerning consideration or hiring), or any person who
2 was not considered, screened, or referred for an em-
3 ployment opportunity, as an employee, by an em-
4 ployment agency because of the person's current em-
5 ployment status (current as of the date of the deci-
6 sion concerning consideration, screening, or refer-
7 ral);

8 “(2) the term ‘employee’ means an individual
9 described in section 6381(1)(A);

10 “(3) the term ‘employing agency’ means an
11 agency covered under subchapter V of chapter 63;

12 “(4) the term ‘employment agency’ means any
13 person regularly undertaking with or without com-
14 pensation to procure employees for an employing
15 agency or to procure for individuals opportunities to
16 work as employees for an employing agency and in-
17 cludes an agent of such a person, and includes any
18 person who maintains an Internet website that pub-
19 lishes advertisements or announcements of openings
20 in jobs for employees;

21 “(5) the term ‘Secretary’ means the Secretary
22 of Labor; and

23 “(6) the term ‘status as unemployed’, used with
24 respect to an individual, means the individual's

1 present or past unemployment, regardless of the
2 length of time such individual was unemployed.

3 **“§ 2502. Prohibited acts**

4 “(a) It shall be an unlawful practice for an employing
5 agency to—

6 “(1) fail or refuse to consider for employment,
7 or fail or refuse to hire, an individual as an em-
8 ployee, because of the individual’s status as unem-
9 ployed;

10 “(2) publish in print, on the Internet, or in any
11 other medium, an advertisement or announcement
12 for an employee for any job that includes—

13 “(A) any provision stating or indicating
14 that an individual’s status as unemployed dis-
15 qualifies the individual for a job; and

16 “(B) any provision stating or indicating
17 that an employing agency will not consider or
18 hire an individual for employment based on that
19 individual’s status as unemployed; and

20 “(3) direct or request that an employment
21 agency take an individual’s status as unemployed
22 into account in considering, screening, or referring
23 applicants for employment as an employee.

24 “(b) It shall be an unlawful practice for an employ-
25 ment agency to—

1 “(1) fail or refuse to consider, screen, or refer
2 an individual for employment as an employee based
3 on the individual’s status as unemployed;

4 “(2) limit, segregate, or classify individuals in
5 any manner that may limit their access to informa-
6 tion about jobs, or consideration, screening, or refer-
7 ral for jobs, as employees, because of their status as
8 unemployed; or

9 “(3) publish, in print or on the Internet or in
10 any other medium, an advertisement or announce-
11 ment for any vacancy in a job, as an employee, that
12 includes—

13 “(A) any provision stating or indicating
14 that an individual’s status as unemployed dis-
15 qualifies the individual for a job; and

16 “(B) any provision stating or indicating
17 that an employing agency will not consider or
18 hire an individual for employment based on that
19 individual’s status as unemployed.

20 “(c) It shall be unlawful for any employing agency
21 or employment agency to—

22 “(1) interfere with, restrain, or deny the exer-
23 cise of or the attempt to exercise, any right provided
24 under this chapter; or

1 “(2) fail or refuse to hire, to discharge, or in
2 any other manner to discriminate against any indi-
3 vidual, as an employee, because such individual—

4 “(A) opposed any practice made unlawful
5 by this chapter;

6 “(B) has filed any charge, or has insti-
7 tuted or caused to be instituted any proceeding,
8 under or related to this chapter;

9 “(C) has given, or is about to give, any in-
10 formation in connection with any inquiry or
11 proceeding relating to any right provided under
12 this chapter; or

13 “(D) has testified, or is about to testify, in
14 any inquiry or proceeding relating to any right
15 provided under this chapter.

16 “(d) Notwithstanding any other provision of this
17 chapter, consideration by an employing agency or employ-
18 ment agency of an individual’s status as unemployed shall
19 not be an unlawful employment practice under this chap-
20 ter if an individual’s employment in a similar or related
21 job for a period of time reasonably proximate to the hiring
22 of such individual is a bona fide occupational qualification
23 reasonably necessary to successful performance in the job
24 that is being filled.

1 **“§ 2503. Enforcement**

2 “The Office of Personnel Management shall prescribe
3 regulations necessary for the administration of this chap-
4 ter. The regulations prescribed under this chapter shall,
5 to the extent appropriate, be consistent with the regula-
6 tions prescribed by the Secretary of Labor to carry out
7 title I of the Fair Employment Opportunity Act of 2014.”.

○