

115TH CONGRESS
1ST SESSION

S. 1101

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

MAY 11, 2017

Mr. CASEY (for himself, Mr. HELLER, and Mrs. SHAHEEN) 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, if such ac-
23 commodated is unnecessary to enable the applicant
24 or employee to perform her job;

25 (4) require an employee to take leave, whether
26 paid or unpaid, if another reasonable accommodation

1 can be provided to the known limitations related to
2 the pregnancy, childbirth, or related medical condi-
3 tions of an employee; or

4 (5) take adverse action in terms, conditions, or
5 privileges of employment against an employee on ac-
6 count of the employee requesting or using a reason-
7 able accommodation to the known limitations related
8 to the pregnancy, childbirth, or related medical con-
9 ditions of the employee.

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

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

13 (1) IN GENERAL.—The powers, procedures, and
14 remedies provided in sections 705, 706, 707, 709,
15 710, and 711 of the Civil Rights Act of 1964 (42
16 U.S.C. 2000e–4 et seq.) to the Commission, the At-
17 torney General, or any person, alleging a violation of
18 title VII of that Act (42 U.S.C. 2000e et seq.) shall
19 be the powers, procedures, and remedies this Act
20 provides to the Commission, the Attorney General,
21 or any person, respectively, alleging an unlawful em-
22 ployment practice in violation of this Act against an
23 employee described in section 5(3)(A), except as pro-
24 vided 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 Act provides to the Com-
 6 mission, the Attorney General, or any person, alleg-
 7 ing 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 Act provides to the Com-
 14 mission, the Attorney General, or any person, alleg-
 15 ing such a practice (not an employment practice spe-
 16 cifically excluded from coverage under section
 17 1977A(a)(1) of the Revised Statutes of the United
 18 States).

19 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
 20 COUNTABILITY ACT OF 1995.—

21 (1) IN GENERAL.—The powers, remedies, and
 22 procedures provided in the Congressional Account-
 23 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
 24 Board (as defined in section 101 of that Act (2
 25 U.S.C. 1301)), or any person, alleging a violation of

1 section 201(a)(1) of that Act (2 U.S.C. 1311(a)(1))
2 shall be the powers, remedies, and procedures this
3 Act provides to that Board, or any person, alleging
4 an unlawful employment practice in violation of this
5 Act against an employee described in section
6 5(3)(B), except as provided in paragraphs (2) and
7 (3).

8 (2) COSTS AND FEES.—The powers, remedies,
9 and procedures provided in subsections (b) and (c)
10 of section 722 of the Revised Statutes of the United
11 States (42 U.S.C. 1988), shall be the powers, rem-
12 edies, and procedures this Act provides to that
13 Board, or any person, alleging such a practice.

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

24 (4) OTHER APPLICABLE PROVISIONS.—With re-
25 spect to a claim alleging a practice described in

1 paragraph (1), title III of the Congressional Ac-
2 countability Act of 1995 (2 U.S.C. 1381 et seq.)
3 shall apply in the same manner as such title applies
4 with respect to a claim alleging a violation of section
5 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

6 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
7 3, UNITED STATES CODE.—

8 (1) IN GENERAL.—The powers, remedies, and
9 procedures provided in chapter 5 of title 3, United
10 States Code, to the President, the Commission, the
11 Merit Systems Protection Board, or any person, al-
12 leging a violation of section 411(a)(1) of that title,
13 shall be the powers, remedies, and procedures this
14 Act provides to the President, the Commission, such
15 Board, or any person, respectively, alleging an un-
16 lawful employment practice in violation of this Act
17 against an employee described in section 5(3)(C), ex-
18 cept as provided in 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 Act provides to the Presi-
24 dent, the Commission, such Board, or any person,
25 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 Act provides to the Presi-
 7 dent, the Commission, such Board, or any person,
 8 alleging such a practice (not an employment practice
 9 specifically excluded from coverage under section
 10 1977A(a)(1) of the Revised Statutes of the United
 11 States).

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

14 (1) IN GENERAL.—The powers, remedies, and
 15 procedures provided in sections 302 and 304 of the
 16 Government Employee Rights Act of 1991 (42
 17 U.S.C. 2000e–16b; 2000e–16c) to the Commission,
 18 or any person, alleging a violation of section
 19 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1))
 20 shall be the powers, remedies, and procedures this
 21 Act provides to the Commission, or any person, re-
 22 spectively, alleging an unlawful employment practice
 23 in violation of this Act against an employee de-
 24 scribed in section 5(3)(D), except as provided in
 25 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 Act provides to the Com-
6 mission, 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 Act provides to the Com-
13 mission, 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 (e) EMPLOYEES COVERED BY SECTION 717 OF THE
18 CIVIL RIGHTS ACT OF 1964.—

19 (1) IN GENERAL.—The powers, remedies, and
20 procedures provided in section 717 of the Civil
21 Rights Act of 1964 (42 U.S.C. 2000e–16) to the
22 Commission, the Attorney General, the Librarian of
23 Congress, or any person, alleging a violation of that
24 section shall be the powers, remedies, and proce-
25 dures this Act provides to the Commission, the At-

1 torney General, the Librarian of Congress, or any
 2 person, respectively, alleging an unlawful employ-
 3 ment practice in violation of this Act against an em-
 4 ployee or applicant described in section 5(3)(E), ex-
 5 cept as provided in paragraphs (2) and (3).

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

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

24 (f) PROHIBITION AGAINST RETALIATION.—

1 (1) IN GENERAL.—No person shall discriminate
2 against any individual because such individual has
3 opposed any act or practice made unlawful by this
4 Act or because such individual made a charge, testi-
5 fied, assisted, or participated in any manner in an
6 investigation, proceeding, or hearing under this Act.

7 (2) PROHIBITION AGAINST COERCION.—It shall
8 be unlawful to coerce, intimidate, threaten, or inter-
9 fere with any individual in the exercise or enjoyment
10 of, or on account of such individual having exercised
11 or enjoyed, or on account of such individual having
12 aided or encouraged any other individual in the exer-
13 cise or enjoyment of, any right granted or protected
14 by this Act.

15 (3) REMEDY.—The remedies and procedures
16 otherwise provided for under this section shall be
17 available to aggrieved individuals with respect to vio-
18 lations of this subsection.

19 **SEC. 4. RULEMAKING.**

20 Not later than 2 years after the date of enactment
21 of this Act, the Commission shall issue regulations in an
22 accessible format in accordance with subchapter II of
23 chapter 5 of title 5, United States Code, to carry out this
24 Act. Such regulations shall provide examples of reasonable
25 accommodations addressing known limitations related to

1 pregnancy, childbirth, or related medical conditions that
 2 shall be provided to a job applicant or employee affected
 3 by such known limitations unless the covered entity can
 4 demonstrate that doing so would impose an undue hard-
 5 ship.

6 **SEC. 5. DEFINITIONS.**

7 As used in this Act—

8 (1) the term “Commission” means the Equal
 9 Employment Opportunity Commission;

10 (2) the term “covered entity”—

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

14 (B) includes—

15 (i) an employing office, as defined in
 16 section 101 of the Congressional Account-
 17 ability Act of 1995 (2 U.S.C. 1301) and
 18 section 411(c) of title 3, United States
 19 Code;

20 (ii) an entity employing a State em-
 21 ployee described in section 304(a) of the
 22 Government Employee Rights Act of 1991
 23 (42 U.S.C. 2000e–16c(a)); and

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

4 (3) the term “employee” means—

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

8 (B) a covered employee (including an ap-
9 plicant), as defined in section 101 of the Con-
10 gressional Accountability Act of 1995 (2 U.S.C.
11 1301);

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

15 (D) a State employee (including an appli-
16 cant) described in section 304(a) of the Govern-
17 ment Employee Rights Act of 1991 (42 U.S.C.
18 2000e–16c(a)); or

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

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

1 (5) the terms “reasonable accommodation” and
2 “undue hardship” have the meanings given such
3 terms in section 101 of the Americans with Disabil-
4 ities Act of 1990 (42 U.S.C. 12111) and shall be
5 construed as such terms have been construed under
6 such Act and as set forth in the regulations required
7 by this Act, including with regard to the interactive
8 process that will typically be used to determine an
9 appropriate reasonable accommodation.

10 **SEC. 6. WAIVER OF STATE IMMUNITY.**

11 A State shall not be immune under the 11th Amend-
12 ment to the Constitution of the United States from an
13 action in a Federal or State court of competent jurisdic-
14 tion for a violation of this Act. In any action against a
15 State for a violation of the requirements of this Act, rem-
16 edies are available for such a violation to the same extent
17 as such remedies are available for such a violation in an
18 action against any public or private entity other than a
19 State.

20 **SEC. 7. RELATIONSHIP TO OTHER LAWS.**

21 Nothing in this Act shall be construed to invalidate
22 or limit the remedies, rights, and procedures of any Fed-
23 eral law or law of any State or political subdivision of any
24 State or jurisdiction that provides greater or equal protec-

- 1 tion for workers affected by pregnancy, childbirth, or re-
- 2 lated medical conditions.

