

116TH CONGRESS
2D SESSION

H. R. 2694

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2020

Received; read twice and referred to the Committee on Health, Education,
Labor, and Pensions

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pregnant Workers
3 Fairness Act”.

4 **SEC. 2. NONDISCRIMINATION WITH REGARD TO REASON-**
5 **ABLE ACCOMMODATIONS RELATED TO PREG-**
6 **NANCY.**

7 It shall be an unlawful employment practice for a cov-
8 ered entity to—

9 (1) not make reasonable accommodations to the
10 known limitations related to the pregnancy, child-
11 birth, or related medical conditions of a qualified
12 employee, unless such covered entity can dem-
13 onstrate that the accommodation would impose an
14 undue hardship on the operation of the business of
15 such covered entity;

16 (2) require a qualified employee affected by
17 pregnancy, childbirth, or related medical conditions
18 to accept an accommodation other than any reason-
19 able accommodation arrived at through the inter-
20 active process referred to in section 5(7);

21 (3) deny employment opportunities to a quali-
22 fied employee if such denial is based on the need of
23 the covered entity to make reasonable accommoda-
24 tions to the known limitations related to the preg-
25 nancy, childbirth, or related medical conditions of a
26 qualified employee;

1 (4) require a qualified employee to take leave,
2 whether paid or unpaid, if another reasonable ac-
3 commodation can be provided to the known limita-
4 tions related to the pregnancy, childbirth, or related
5 medical conditions of a qualified employee; or

6 (5) take adverse action in terms, conditions, or
7 privileges of employment against a qualified em-
8 ployee on account of the employee requesting or
9 using a reasonable accommodation to the known lim-
10 itations related to the pregnancy, childbirth, or re-
11 lated medical conditions of the employee.

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

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

15 (1) IN GENERAL.—The powers, remedies, and
16 procedures provided in sections 705, 706, 707, 709,
17 710, and 711 of the Civil Rights Act of 1964 (42
18 U.S.C. 2000e–4 et seq.) to the Commission, the At-
19 torney General, or any person alleging a violation of
20 title VII of such Act (42 U.S.C. 2000e et seq.) shall
21 be the powers, remedies, and procedures this Act
22 provides to the Commission, the Attorney General,
23 or any person, respectively, alleging an unlawful em-
24 ployment practice in violation of this Act against an

1 employee described in section 5(3)(A) except as pro-
2 vided in paragraphs (2) and (3) of this subsection.

3 (2) COSTS AND FEES.—The powers, remedies,
4 and procedures provided in subsections (b) and (c)
5 of section 722 of the Revised Statutes (42 U.S.C.
6 1988) shall be the powers, remedies, and procedures
7 this Act provides to the Commission, the Attorney
8 General, or any person alleging such practice.

9 (3) DAMAGES.—The powers, remedies, and pro-
10 cedures provided in section 1977A of the Revised
11 Statutes (42 U.S.C. 1981a), including the limita-
12 tions contained in subsection (b)(3) of such section
13 1977A, shall be the powers, remedies, and proce-
14 dures this Act provides to the Commission, the At-
15 torney General, or any person alleging such practice
16 (not an employment practice specifically excluded
17 from coverage under section 1977A(a)(1) of the Re-
18 vised Statutes).

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 such Act (2
25 U.S.C. 1301)) or any person alleging a violation of

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

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 (42 U.S.C.
11 1988) shall be the powers, remedies, and procedures
12 this Act provides to the Board or any person alleg-
13 ing such practice.

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

23 (4) OTHER APPLICABLE PROVISIONS.—With re-
24 spect to a claim alleging a practice described in
25 paragraph (1), title III of the Congressional Ac-

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

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

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

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 (42 U.S.C.
22 1988) shall be the powers, remedies, and procedures
23 this Act provides to the President, the Commission,
24 the Board, or any person alleging such practice.

1 (3) DAMAGES.—The powers, remedies, and pro-
2 cedures provided in section 1977A of the Revised
3 Statutes (42 U.S.C. 1981a), including the limita-
4 tions contained in subsection (b)(3) of such section
5 1977A, shall be the powers, remedies, and proce-
6 dures this Act provides to the President, the Com-
7 mission, the Board, or any person alleging such
8 practice (not an employment practice specifically ex-
9 cluded from coverage under section 1977A(a)(1) of
10 the Revised Statutes).

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

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

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 (42 U.S.C.
4 1988) shall be the powers, remedies, and procedures
5 this Act provides to the Commission or any person
6 alleging such practice.

7 (3) DAMAGES.—The powers, remedies, and pro-
8 cedures provided in section 1977A of the Revised
9 Statutes (42 U.S.C. 1981a), including the limita-
10 tions contained in subsection (b)(3) of such section
11 1977A, shall be the powers, remedies, and proce-
12 dures this Act provides to the Commission or any
13 person alleging such practice (not an employment
14 practice specifically excluded from coverage under
15 section 1977A(a)(1) of the Revised Statutes).

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

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

1 person, respectively, alleging an unlawful employ-
2 ment practice in violation of this Act against an em-
3 ployee described in section 5(3)(E), except as pro-
4 vided in paragraphs (2) and (3) of this subsection.

5 (2) COSTS AND FEES.—The powers, remedies,
6 and procedures provided in subsections (b) and (c)
7 of section 722 of the Revised Statutes (42 U.S.C.
8 1988) shall be the powers, remedies, and procedures
9 this Act provides to the Commission, the Attorney
10 General, the Librarian of Congress, or any person
11 alleging such practice.

12 (3) DAMAGES.—The powers, remedies, and pro-
13 cedures provided in section 1977A of the Revised
14 Statutes (42 U.S.C. 1981a), including the limita-
15 tions contained in subsection (b)(3) of such section
16 1977A, shall be the powers, remedies, and proce-
17 dures this Act provides to the Commission, the At-
18 torney General, the Librarian of Congress, or any
19 person alleging such practice (not an employment
20 practice specifically excluded from coverage under
21 section 1977A(a)(1) of the Revised Statutes).

22 (f) PROHIBITION AGAINST RETALIATION.—

23 (1) IN GENERAL.—No person shall discriminate
24 against any employee because such employee has op-
25 posed any act or practice made unlawful by this Act

1 or because such employee made a charge, testified,
2 assisted, or participated in any manner in an inves-
3 tigation, proceeding, or hearing under this Act.

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

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

16 (g) LIMITATION.—Notwithstanding subsections
17 (a)(3), (b)(3), (c)(3), (d)(3), and (e)(3), if an unlawful em-
18 ployment practice involves the provision of a reasonable
19 accommodation pursuant to this Act or regulations imple-
20 menting this Act, damages may not be awarded under sec-
21 tion 1977A of the Revised Statutes (42 U.S.C. 1981a) if
22 the covered entity demonstrates good faith efforts, in con-
23 sultation with the employee with known limitations related
24 to pregnancy, childbirth, or related medical conditions who
25 has informed the covered entity that accommodation is

1 needed, to identify and make a reasonable accommodation
2 that would provide such employee with an equally effective
3 opportunity and would not cause an undue hardship on
4 the operation of the covered entity.

5 **SEC. 4. RULEMAKING.**

6 Not later than 2 years after the date of enactment
7 of this Act, the Commission shall issue regulations in an
8 accessible format in accordance with subchapter II of
9 chapter 5 of title 5, United States Code, to carry out this
10 Act. Such regulations shall provide examples of reasonable
11 accommodations addressing known limitations related to
12 pregnancy, childbirth, or related medical conditions.

13 **SEC. 5. DEFINITIONS.**

14 As used in this Act—

15 (1) the term “Commission” means the Equal
16 Employment Opportunity Commission;

17 (2) the term “covered entity”—

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

21 (B) includes—

22 (i) an employer, which means a per-
23 son engaged in industry affecting com-
24 merce who has 15 or more employees as
25 defined in section 701(b) of title VII of the

1 Civil Rights Act of 1964 (42 U.S.C.
2 2000e(b));

3 (ii) an employing office, as defined in
4 section 101 of the Congressional Account-
5 ability Act of 1995 (2 U.S.C. 1301) and
6 section 411(c) of title 3, United States
7 Code;

8 (iii) an entity employing a State em-
9 ployee described in section 304(a) of the
10 Government Employee Rights Act of 1991
11 (42 U.S.C. 2000e–16c(a)); and

12 (iv) an entity to which section 717(a)
13 of the Civil Rights Act of 1964 (42 U.S.C.
14 2000e–16(a)) applies;

15 (3) the term “employee” means—

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

19 (B) a covered employee (including an ap-
20 plicant), as defined in section 101 of the Con-
21 gressional Accountability Act of 1995 (2 U.S.C.
22 1301);

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

1 (D) a State employee (including an appli-
2 cant) described in section 304(a) of the Govern-
3 ment Employee Rights Act of 1991 (42 U.S.C.
4 2000e–16c(a)); or

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

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

11 (5) the term “known limitation” means physical
12 or mental condition related to, affected by, or arising
13 out of pregnancy, childbirth, or related medical con-
14 ditions that the employee or employee’s representa-
15 tive has communicated to the employer whether or
16 not such condition meets the definition of disability
17 specified in section 3 of the Americans with Disabil-
18 ities Act of 1990 (42 U.S.C. 12102);

19 (6) the term “qualified employee” means an
20 employee or applicant who, with or without reason-
21 able accommodation, can perform the essential func-
22 tions of the employment position, except that an em-
23 ployee or applicant shall be considered qualified if—

24 (A) any inability to perform an essential
25 function is for a temporary period;

1 (B) the essential function could be per-
2 formed in the near future; and

3 (C) the inability to perform the essential
4 function can be reasonably accommodated; and

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

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

15 A State shall not be immune under the 11th Amend-
16 ment to the Constitution from an action in a Federal or
17 State court of competent jurisdiction for a violation of this
18 Act. In any action against a State for a violation of this
19 Act, remedies (including remedies both at law and in eq-
20 uity) are available for such a violation to the same extent
21 as such remedies are available for such a violation in an
22 action against any public or private entity other than a
23 State.

8 SEC. 8. SEVERABILITY.

Passed the House of Representatives September 17,
2020.

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