

116TH CONGRESS
2D SESSION

S. 3878

To protect employees from discrimination based on family caregiver responsibilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2020

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect employees from discrimination based on family caregiver 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 “Protecting Family
5 Caregivers from Discrimination Act of 2020”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ADVERSE ACTION.**—The term “adverse ac-
9 tion” means—

1 (A) to fail or refuse to hire or to discharge
2 any individual, or otherwise to discriminate
3 against any individual with respect to the indi-
4 vidual's compensation, terms, conditions, sched-
5 uling, or privileges of employment;

6 (B) to limit, segregate, or classify employ-
7 ees or applicants for employment in any way
8 which would deprive or tend to deprive any in-
9 dividual of employment opportunities or other-
10 wise adversely affect an individual's status as
11 an employee; or

12 (C) any other act or practice that is con-
13 sidered an adverse action under title VII of the
14 1964 Civil Rights Act (42 U.S.C. 2000e et
15 seq.).

16 (2) COMMERCE.—The term “commerce” has
17 the meaning given such term in section 3 of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 203).

19 (3) COMMISSION.—The term “Commission”
20 means the Equal Employment Opportunity Commis-
21 sion.

22 (4) EMPLOYEE.—The term “employee”
23 means—

24 (A) an employee, as defined in section 3 of
25 the Fair Labor Standards Act of 1938 (29

1 U.S.C. 203), who in any workweek is engaged
2 in commerce or in the production of goods for
3 commerce, or is employed in an enterprise en-
4 gaged in commerce or in the production of
5 goods for commerce; or

6 (B) an individual who is engaged, for a
7 majority of the individual's work time, by—

8 (i) an employer; or

9 (ii) an individual or entity that is not
10 acting as an employer and engages the
11 services of a worker to perform services or
12 work as an independent contractor (re-
13 gardless of the label or classification as-
14 signed or used by the employer or an indi-
15 vidual or entity that is not acting as an
16 employer and engages the services of a
17 worker).

18 (5) EMPLOYER; ENTERPRISE ENGAGED IN COM-
19 MERCE OR IN THE PRODUCTION OF GOODS FOR
20 COMMERCE.—The terms “employer” and “enterprise
21 engaged in commerce or in the production of goods
22 for commerce” have the meanings given such terms
23 in section 3 of the Fair Labor Standards Act of
24 1938 (29 U.S.C. 203).

1 (6) FAMILY CAREGIVER RESPONSIBILITIES.—

2 The term “family caregiver responsibilities”, with re-
 3 spect to an individual having such responsibilities,
 4 means the responsibilities of the individual as being
 5 responsible, or being regarded as being responsible,
 6 as a contributor to the support or care of one or
 7 more family members of the individual, regardless of
 8 the age of the family member.

9 (7) FAMILY MEMBER.—

10 (A) IN GENERAL.—The term “family
 11 member”, with respect to an individual, in-
 12 cludes—

13 (i) the spouse or domestic partner of
 14 the individual;

15 (ii) the parent, grandparent, or sibling
 16 of the individual, including if such parent,
 17 grandparent, or sibling is an in-law of the
 18 individual;

19 (iii) any child, grandchild, niece, or
 20 nephew of the individual;

21 (iv) any aunt, uncle, or cousin of the
 22 individual; and

23 (v) any other individual related to the
 24 employee by blood or affinity whose close
 25 association to the employee is the equiva-

1 lent of the family relationships described in
2 clauses (i) through (iv).

3 (B) RELATIONSHIP.—A relationship de-
4 scribed in subparagraph (A) may be acquired
5 through adoption, marriage, or a dependent or
6 custodial relationship.

7 **SEC. 3. PROHIBITION ON DISCRIMINATION.**

8 It shall be unlawful for an employer or an individual
9 or entity described in section 2(4)(B)(ii) to—

10 (1) fail or refuse to hire an applicant as an em-
11 ployee of such employer, or such individual or entity,
12 because of the family caregiver responsibilities of the
13 applicant; or

14 (2) take adverse action against an employee of
15 such employer or such individual or entity, or other-
16 wise discriminate against such an employee, with re-
17 spect to the compensation, terms, conditions, or
18 privileges of employment of the employee because of
19 the family caregiver responsibilities of the employee.

20 **SEC. 4. PROHIBITION ON RETALIATION.**

21 (a) INTERFERENCE WITH RIGHTS.—

22 (1) EXERCISE OF RIGHTS.—It shall be unlawful
23 for any employer or an individual or entity described
24 in section 2(4)(B)(ii) to retaliate against, interfere

1 with, restrain, or deny the exercise of or the attempt
2 to exercise, any right provided under this section.

3 (2) ADVERSE ACTION.—It shall be unlawful for
4 any employer or an individual or entity described in
5 section 2(4)(B)(ii) to take any adverse action
6 against any employee or applicant because the em-
7 ployee or applicant has exercised in good faith the
8 rights protected under this section.

9 (3) IMMIGRATION STATUS.—It shall be unlawful
10 for any employer or an individual or entity described
11 in section 2(4)(B)(ii) to communicate to an em-
12 ployee or applicant exercising rights protected under
13 this section, directly or indirectly, the willingness to
14 inform a government employee that the employee or
15 applicant is not lawfully in the United States, or to
16 report, or to make an implied or express assertion
17 of a willingness to report, suspected citizenship or
18 immigration status of an employee or applicant or
19 family member of the employee or applicant to a
20 Federal, State, or local agency because the employee
21 has exercised a right under this section.

22 (b) RIGHTS OF EMPLOYEES.—The rights of an em-
23 ployee or applicant shall include the right to—

24 (1) inform the employee’s employer, union, or
25 similar organization, or the employee’s legal counsel

1 or any other person about an alleged violation of this
2 Act;

3 (2) file any charge, or institute or cause to be
4 instituted any proceeding, under or related to this
5 Act, or otherwise take action in accordance with sec-
6 tion 6 relating to the enforcement of this Act;

7 (3) cooperate in investigations under or relating
8 to this Act, including by giving or preparing to give
9 information in connection with any inquiry or pro-
10 ceeding under or related to this Act;

11 (4) testify in any inquiry or proceeding under
12 or related to this Act; and

13 (5) refuse to participate in, or otherwise oppose,
14 any policy, practice, or act that is unlawful under
15 this Act.

16 (c) PRESUMPTION OF RETALIATION.—There shall be
17 a rebuttable presumption that retaliation has occurred in
18 violation of this section if an employer or an individual
19 or entity described in section 2(4)(B)(ii) takes an adverse
20 action against an employee or applicant during the period
21 that is 2 years after the date on which that employee or
22 applicant exercised rights protected under this section. In
23 the case of seasonal work, the presumption also applies
24 if the employer or individual or entity described in section
25 2(4)(B)(ii) fails to rehire a former employee at the next

1 opportunity for work in the same position. The employer
 2 or individual or entity described in section 2(4)(B)(ii) may
 3 rebut the presumption with clear and convincing evidence
 4 that the adverse action was taken for a permissible pur-
 5 pose.

6 (d) PROTECTIONS FOR GOOD FAITH ALLEGA-
 7 TIONS.—The protections afforded under this section shall
 8 apply to any individual who mistakenly but in good faith
 9 alleges a violation of this section or section 3.

10 (e) EXPLICIT REFERENCE NOT REQUIRED.—A com-
 11 plaint or other communication by an employee or any ap-
 12 plicant may be an action described in subsection (b) that
 13 gives rise to the protections described in this section re-
 14 gardless of whether the complaint or communication is in
 15 writing or makes explicit reference to this Act.

16 **SEC. 5. POSTING OF NOTICES.**

17 (a) IN GENERAL.—Each employer shall, not later
 18 than 180 days after the date of enactment of this Act,
 19 post, and keep posted, in a conspicuous place upon the
 20 premises of the employer a notice, to be prepared or ap-
 21 proved by the Commission, setting forth information as
 22 the Commission determines appropriate to effectuate the
 23 purposes of this Act, including the pertinent provisions of
 24 this Act and information pertinent to the filing of a charge
 25 with the Commission.

1 (b) PENALTY.—A willful violation of this section shall
 2 be punishable by a fine of not more than \$100 for each
 3 separate offense.

4 **SEC. 6. ENFORCEMENT.**

5 (a) IN GENERAL.—Subject to subsection (c), sections
 6 3 and 4 of this Act shall be enforced by the Commission
 7 in the same manner and by the same means, including
 8 with the same jurisdiction, as the enforcement of a viola-
 9 tion of title VII of the Civil Rights Act of 1964 (42 U.S.C.
 10 2000e et seq.). Violations of this Act may be established
 11 through proof of disparate treatment or disparate impact.

12 (b) ACTION BY THE COMMISSION.—Except as other-
 13 wise specified in this Act, the Commission shall receive,
 14 investigate, attempt to resolve, and otherwise enforce a
 15 charge of a violation of section 3 or 4 of this Act in the
 16 same manner that the Commission receives, investigates,
 17 attempts to resolve, and enforces a charge of a violation
 18 of title VII of the Civil Rights Act of 1964.

19 (c) PRIVATE RIGHT OF ACTION.—Notwithstanding
 20 subsection (a) and section 706 of the Civil Rights Act of
 21 1964 (42 U.S.C. 2000e–5), a private right of action shall
 22 also be available to an applicant or individual who alleges
 23 a violation of section 3 or 4 of this Act. Such applicant
 24 or individual shall not be required to file a charge with

1 the Commission or pursue or exhaust any administrative
2 remedies before instituting a civil action.

3 (d) PENALTIES.—

4 (1) IN GENERAL.—In addition to sums that
5 may otherwise be collected by an aggrieved indi-
6 vidual or collected by the Commission and paid to an
7 aggrieved individual, any person who willfully vio-
8 lates sections 3 or 4 shall upon conviction thereof be
9 subject to a penalty of an amount not to exceed—

10 (A) \$10,000 for each violation of section 3;

11 and

12 (B) \$5,000 for each violation of section 4.

13 (2) TRANSFER OF FUNDS.—Any penalties col-
14 lected by the Commission under this subsection shall
15 be transferred to the Family Caregiver Antidiscrimi-
16 nation Fund.

17 (e) FAMILY CAREGIVER ANTIDISCRIMINATION
18 FUND.—

19 (1) IN GENERAL.—There is established in the
20 Treasury of the United States a revolving fund, to
21 be known as the “Family Caregiver Antidiscrimina-
22 tion Fund” (referred to in this Act as the “Fund”),
23 consisting of the amount of penalties transferred to
24 the Fund under subsection (d)(2).

1 (2) USE OF FUNDS.—Amounts in the Fund
2 shall be available for the purpose of awarding grants
3 under section 7.

4 **SEC. 7. GRANTS.**

5 (a) IN GENERAL.—

6 (1) GRANT PROGRAM ESTABLISHED.—The
7 Commission, shall award grants, on a competitive
8 basis, to eligible entities to enable those eligible enti-
9 ties to assist in preventing and combating discrimi-
10 nation against applicants and employees who have
11 family caregiver responsibilities.

12 (2) DURATION.—A grant awarded under this
13 section shall be for a period of 3 years.

14 (b) ELIGIBLE ENTITY.—In this section, the term “el-
15 igible entity” means—

16 (1) a nonprofit organization with expertise in
17 family caregiver discrimination;

18 (2) an institution of higher education or re-
19 search center that employs faculty with relevant ex-
20 pertise and has expertise in family caregiver dis-
21 crimination; or

22 (3) a consortium of entities described in para-
23 graphs (1) and (2) that submit a single application
24 to carry out activities under the grant jointly.

1 (c) APPLICATION.—An eligible entity desiring a grant
2 under this section shall submit an application to the Com-
3 mission at such time, in such manner, and containing such
4 information as the Commission may require.

5 (d) USE OF FUNDS.—An eligible entity receiving a
6 grant under this section shall use grant funds to carry
7 out one or more of the following activities:

8 (1) Educate employees about the prohibited ac-
9 tions under section 3, caregiver rights, and the
10 rights provided under this Act.

11 (2) Conduct educational training for employers
12 regarding caregiver discrimination.

13 (3) Provide support to applicants and employ-
14 ees facing discrimination based on family caregiver
15 responsibilities.

16 (4) Produce and disseminate outreach and
17 training materials relating to the prohibited actions
18 under section 3, caregiver rights, and the rights pro-
19 vided under this Act.

20 (5) Recruit and hire staff and volunteers to
21 carry out the activities described in this subsection.

22 (6) Any other activities that the Commission
23 determines are reasonable.

24 (e) REPORT.—Not later than 12 months after the
25 completion of the programs and activities funded under

1 grants awarded under this section, the Commission shall
2 submit to Congress, and all appropriate agencies, a report
3 concerning an evaluation of the results of such programs
4 and activities, including best practices, and lessons derived
5 from the experiences of grantees.

6 (f) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as are nec-
8 essary to carry out this section.

9 **SEC. 8. RULE OF CONSTRUCTION.**

10 Nothing in this Act shall be construed to supersede
11 any other provision of Federal, State, or local law that
12 provides greater protection against employment discrimi-
13 nation or greater remedies to employees than the protec-
14 tion or remedies provided to employees under this Act, in-
15 cluding any such provision in the Family and Medical
16 Leave Act of 1993 (29 U.S.C. 2601 et seq.), the Ameri-
17 cans with Disabilities Act of 1990 (42 U.S.C. 12101 et
18 seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C.
19 2000e et seq.), or section 6(d) of the Fair Labor Stand-
20 ards Act of 1938 (29 U.S.C. 206(d)).

