

Calendar No. 141

117TH CONGRESS
1ST SESSION

S. 1486

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

APRIL 29, 2021

Mr. CASEY (for himself, Mr. CASSIDY, Mrs. SHAHEEN, Mrs. CAPITO, Ms. SMITH, Ms. MURKOWSKI, Mr. KAINE, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

SEPTEMBER 30, 2021

Reported by Mrs. MURRAY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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,*

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

employee described in section 5(3)(A) except as provided in paragraphs (2) and (3) of this subsection.

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

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be the powers, remedies, and procedures this Act provides to the Commission, the Attorney General, or any person alleging such practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(b) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of such Act (2 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 ceedures 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 ~~(c) 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

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

(ii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) and section 411(e) of title 3, United States Code;

(iii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16(a)); and

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

(3) the term “employee” means—

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

(B) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

(C) a covered employee (including an applicant), as defined in section 411(e) of title 3, 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-16(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.

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

2 Nothing in this Act shall be construed to invalidate
3 or limit the powers, remedies, and procedures under any
4 Federal law or law of any State or political subdivision
5 of any State or jurisdiction that provides greater or equal
6 protection for individuals affected by pregnancy, child-
7 birth, or related medical conditions.

8 **SEC. 8. SEVERABILITY.**

9 If any provision of this Act or the application of that
10 provision to particular persons or circumstances is held
11 invalid or found to be unconstitutional, the remainder of
12 this Act and the application of that provision to other per-
13 sons or circumstances shall not be affected.

14 **SECTION 1. SHORT TITLE.**

15 *This Act may be cited as the “Pregnant Workers Fair-*
16 *ness Act”.*

17 **SEC. 2. NONDISCRIMINATION WITH REGARD TO REASON-**
18 **ABLE ACCOMMODATIONS RELATED TO PREG-**
19 **NANCY.**

20 *It shall be an unlawful employment practice for a cov-*
21 *ered entity to—*

22 *(1) not make reasonable accommodations to the*
23 *known limitations related to the pregnancy, child-*
24 *birth, or related medical conditions of a qualified em-*
25 *ployee, unless such covered entity can demonstrate*
26 *that the accommodation would impose an undue*

1 *hardship on the operation of the business of such cov-*
2 *ered entity;*

3 (2) *require a qualified employee affected by preg-*
4 *nancy, childbirth, or related medical conditions to ac-*
5 *cept an accommodation other than any reasonable ac-*
6 *commodation arrived at through the interactive proc-*
7 *ess referred to in section 5(7);*

8 (3) *deny employment opportunities to a quali-*
9 *fied employee if such denial is based on the need of*
10 *the covered entity to make reasonable accommodations*
11 *to the known limitations related to the pregnancy,*
12 *childbirth, or related medical conditions of a qualified*
13 *employee;*

14 (4) *require a qualified employee to take leave,*
15 *whether paid or unpaid, if another reasonable accom-*
16 *modation can be provided to the known limitations*
17 *related to the pregnancy, childbirth, or related med-*
18 *ical conditions of a qualified employee; or*

19 (5) *take adverse action in terms, conditions, or*
20 *privileges of employment against a qualified employee*
21 *on account of the employee requesting or using a rea-*
22 *sonable accommodation to the known limitations re-*
23 *lated to the pregnancy, childbirth, or related medical*
24 *conditions of the employee.*

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

2 (a) *EMPLOYEES COVERED BY TITLE VII OF THE CIVIL*
 3 *RIGHTS ACT OF 1964.*—

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

16 (2) *COSTS AND FEES.*—*The powers, remedies,*
 17 *and procedures provided in subsections (b) and (c) of*
 18 *section 722 of the Revised Statutes (42 U.S.C. 1988)*
 19 *shall be the powers, remedies, and procedures this Act*
 20 *provides to the Commission, the Attorney General, or*
 21 *any person alleging such practice.*

22 (3) *DAMAGES.*—*The powers, remedies, and pro-*
 23 *cedures provided in section 1977A of the Revised*
 24 *Statutes (42 U.S.C. 1981a), including the limitations*
 25 *contained in subsection (b)(3) of such section 1977A,*
 26 *shall be the powers, remedies, and procedures this Act*

1 provides to the Commission, the Attorney General, or
 2 any person alleging such practice (not an employ-
 3 ment practice specifically excluded from coverage
 4 under section 1977A(a)(1) of the Revised Statutes).

5 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
 6 COUNTABILITY ACT OF 1995.—

7 (1) IN GENERAL.—The powers, remedies, and
 8 procedures provided in the Congressional Account-
 9 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
 10 Board (as defined in section 101 of such Act (2
 11 U.S.C. 1301)) or any person alleging a violation of
 12 section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1))
 13 shall be the powers, remedies, and procedures this Act
 14 provides to the Board or any person, respectively, al-
 15 leging an unlawful employment practice in violation
 16 of this Act against an employee described in section
 17 5(3)(B), except as provided in paragraphs (2) and (3)
 18 of this subsection.

19 (2) COSTS AND FEES.—The powers, remedies,
 20 and procedures provided in subsections (b) and (c) of
 21 section 722 of the Revised Statutes (42 U.S.C. 1988)
 22 shall be the powers, remedies, and procedures this Act
 23 provides to the Board or any person alleging such
 24 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 limitations*
 4 *contained in subsection (b)(3) of such section 1977A,*
 5 *shall be the powers, remedies, and procedures this Act*
 6 *provides to the Board or any person alleging such*
 7 *practice (not an employment practice specifically ex-*
 8 *cluded from coverage under section 1977A(a)(1) of the*
 9 *Revised Statutes).*

10 (4) *OTHER APPLICABLE PROVISIONS.*—*With re-*
 11 *spect to a claim alleging a practice described in para-*
 12 *graph (1), title III of the Congressional Account-*
 13 *ability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply*
 14 *in the same manner as such title applies with respect*
 15 *to a claim alleging a violation of section 201(a)(1) of*
 16 *such Act (2 U.S.C. 1311(a)(1)).*

17 (c) *EMPLOYEES COVERED BY CHAPTER 5 OF TITLE*
 18 *3, UNITED STATES CODE.*—

19 (1) *IN GENERAL.*—*The powers, remedies, and*
 20 *procedures provided in chapter 5 of title 3, United*
 21 *States Code, to the President, the Commission, the*
 22 *Merit Systems Protection Board, or any person alleg-*
 23 *ing a violation of section 411(a)(1) of such title shall*
 24 *be the powers, remedies, and procedures this Act pro-*
 25 *vides to the President, the Commission, the Board, or*

1 *any person, respectively, alleging an unlawful em-*
 2 *ployment practice in violation of this Act against an*
 3 *employee described in section 5(3)(C), 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) of*
 7 *section 722 of the Revised Statutes (42 U.S.C. 1988)*
 8 *shall be the powers, remedies, and procedures this Act*
 9 *provides to the President, the Commission, the Board,*
 10 *or any person alleging such practice.*

11 (3) *DAMAGES.—The powers, remedies, and pro-*
 12 *cedures provided in section 1977A of the Revised*
 13 *Statutes (42 U.S.C. 1981a), including the limitations*
 14 *contained in subsection (b)(3) of such section 1977A,*
 15 *shall be the powers, remedies, and procedures this Act*
 16 *provides to the President, the Commission, the Board,*
 17 *or any person alleging such practice (not an employ-*
 18 *ment practice specifically excluded from coverage*
 19 *under section 1977A(a)(1) of the Revised Statutes).*

20 (d) *EMPLOYEES COVERED BY GOVERNMENT EM-*
 21 *PLOYEE RIGHTS ACT OF 1991.—*

22 (1) *IN GENERAL.—The powers, remedies, and*
 23 *procedures provided in sections 302 and 304 of the*
 24 *Government Employee Rights Act of 1991 (42 U.S.C.*
 25 *2000e–16b; 2000e–16c) to the Commission or any per-*

son alleging a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this Act provides to the Commission or any person, respectively, alleging an unlawful employment practice in violation of this Act against an employee described in section 5(3)(D), except as provided in paragraphs (2) and (3) of this subsection.

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

(3) *DAMAGES.*—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be the powers, remedies, and procedures this Act provides to the Commission or any person alleging such practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

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

1 (1) *IN GENERAL.*—*The powers, remedies, and*
 2 *procedures provided in section 717 of the Civil Rights*
 3 *Act of 1964 (42 U.S.C. 2000e–16) to the Commission,*
 4 *the Attorney General, the Librarian of Congress, or*
 5 *any person alleging a violation of that section shall*
 6 *be the powers, remedies, and procedures this Act pro-*
 7 *vides to the Commission, the Attorney General, the*
 8 *Librarian of Congress, or any person, respectively, al-*
 9 *leging an unlawful employment practice in violation*
 10 *of this Act against an employee described in section*
 11 *5(3)(E), except as provided in paragraphs (2) and (3)*
 12 *of this subsection.*

13 (2) *COSTS AND FEES.*—*The powers, remedies,*
 14 *and procedures provided in subsections (b) and (c) of*
 15 *section 722 of the Revised Statutes (42 U.S.C. 1988)*
 16 *shall be the powers, remedies, and procedures this Act*
 17 *provides to the Commission, the Attorney General, the*
 18 *Librarian of Congress, or any person alleging such*
 19 *practice.*

20 (3) *DAMAGES.*—*The powers, remedies, and pro-*
 21 *cedures provided in section 1977A of the Revised*
 22 *Statutes (42 U.S.C. 1981a), including the limitations*
 23 *contained in subsection (b)(3) of such section 1977A,*
 24 *shall be the powers, remedies, and procedures this Act*
 25 *provides to the Commission, the Attorney General, the*

1 *Librarian of Congress, or any person alleging such*
 2 *practice (not an employment practice specifically ex-*
 3 *cluded from coverage under section 1977A(a)(1) of the*
 4 *Revised Statutes).*

5 (f) *PROHIBITION AGAINST RETALIATION.*—

6 (1) *IN GENERAL.*—*No person shall discriminate*
 7 *against any employee because such employee has op-*
 8 *posed any act or practice made unlawful by this Act*
 9 *or because such employee made a charge, testified, as-*
 10 *sisted, or participated in any manner in an inves-*
 11 *tigation, proceeding, or hearing under this Act.*

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

20 (3) *REMEDY.*—*The remedies and procedures oth-*
 21 *erwise provided for under this section shall be avail-*
 22 *able to aggrieved individuals with respect to viola-*
 23 *tions of this subsection.*

24 (g) *LIMITATION.*—*Notwithstanding subsections (a)(3),*
 25 *(b)(3), (c)(3), (d)(3), and (e)(3), if an unlawful employment*

1 *practice involves the provision of a reasonable accommoda-*
 2 *tion pursuant to this Act or regulations implementing this*
 3 *Act, damages may not be awarded under section 1977A of*
 4 *the Revised Statutes (42 U.S.C. 1981a) if the covered entity*
 5 *demonstrates good faith efforts, in consultation with the em-*
 6 *ployee with known limitations related to pregnancy, child-*
 7 *birth, or related medical conditions who has informed the*
 8 *covered entity that accommodation is needed, to identify*
 9 *and make a reasonable accommodation that would provide*
 10 *such employee with an equally effective opportunity and*
 11 *would not cause an undue hardship on the operation of the*
 12 *covered entity.*

13 **SEC. 4. RULEMAKING.**

14 *Not later than 2 years after the date of enactment of*
 15 *this Act, the Commission shall issue regulations in an acces-*
 16 *sible format in accordance with subchapter II of chapter*
 17 *5 of title 5, United States Code, to carry out this Act. Such*
 18 *regulations shall provide examples of reasonable accom-*
 19 *modations addressing known limitations related to preg-*
 20 *nancy, childbirth, or related medical conditions.*

21 **SEC. 5. DEFINITIONS.**

22 *As used in this Act—*

23 *(1) the term “Commission” means the Equal*
 24 *Employment Opportunity Commission;*

25 *(2) the term “covered entity”—*

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

4 (B) includes—

5 (i) an employer, which means a person
 6 engaged in industry affecting commerce who
 7 has 15 or more employees as defined in sec-
 8 tion 701(b) of title VII of the Civil Rights
 9 Act of 1964 (42 U.S.C. 2000e(b));

10 (ii) an employing office, as defined in
 11 section 101 of the Congressional Account-
 12 ability Act of 1995 (2 U.S.C. 1301) and sec-
 13 tion 411(c) of title 3, United States Code;

14 (iii) an entity employing a State em-
 15 ployee described in section 304(a) of the
 16 Government Employee Rights Act of 1991
 17 (42 U.S.C. 2000e–16c(a)); and

18 (iv) an entity to which section 717(a)
 19 of the Civil Rights Act of 1964 (42 U.S.C.
 20 2000e–16(a)) applies;

21 (3) the term “employee” means—

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

1 (B) a covered employee (including an appli-
2 cant), as defined in section 101 of the Congres-
3 sional Accountability Act of 1995 (2 U.S.C.
4 1301);

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

8 (D) a State employee (including an appli-
9 cant) described in section 304(a) of the Govern-
10 ment Employee Rights Act of 1991 (42 U.S.C.
11 2000e–16c(a)); or

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

15 (4) the term “person” has the meaning given
16 such term in section 701(a) of the Civil Rights Act of
17 1964 (42 U.S.C. 2000e(a));

18 (5) the term “known limitation” means physical
19 or mental condition related to, affected by, or arising
20 out of pregnancy, childbirth, or related medical condi-
21 tions that the employee or employee’s representative
22 has communicated to the employer whether or not
23 such condition meets the definition of disability speci-
24 fied in section 3 of the Americans with Disabilities
25 Act of 1990 (42 U.S.C. 12102);

1 (6) the term “qualified employee” means an em-
 2 ployee or applicant who, with or without reasonable
 3 accommodation, can perform the essential functions of
 4 the employment position, except that an employee or
 5 applicant shall be considered qualified if—

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

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

10 (C) the inability to perform the essential
 11 function can be reasonably accommodated; and

12 (7) the terms “reasonable accommodation” and
 13 “undue hardship” have the meanings given such
 14 terms in section 101 of the Americans with Disabil-
 15 ities Act of 1990 (42 U.S.C. 12111) and shall be con-
 16 strued as such terms are construed under such Act
 17 and as set forth in the regulations required by this
 18 Act, including with regard to the interactive process
 19 that will typically be used to determine an appro-
 20 priate reasonable accommodation.

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

22 A State shall not be immune under the 11th Amend-
 23 ment to the Constitution from an action in a Federal or
 24 State court of competent jurisdiction for a violation of this
 25 Act. In any action against a State for a violation of this

1 *Act, remedies (including remedies both at law and in eq-*
 2 *uity) are available for such a violation to the same extent*
 3 *as such remedies are available for such a violation in an*
 4 *action against any public or private entity other than a*
 5 *State.*

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

7 *Nothing in this Act shall be construed—*

8 *(1) to invalidate or limit the powers, remedies,*
 9 *and procedures under any Federal law or law of any*
 10 *State or political subdivision of any State or jurisdic-*
 11 *tion that provides greater or equal protection for indi-*
 12 *viduals affected by pregnancy, childbirth, or related*
 13 *medical conditions; or*

14 *(2) by regulation or otherwise, to require an em-*
 15 *ployer-sponsored health plan to pay for or cover any*
 16 *particular item, procedure, or treatment or to affect*
 17 *any right or remedy available under any other Fed-*
 18 *eral, State, or local law with respect to any such pay-*
 19 *ment or coverage requirement.*

20 **SEC. 8. SEVERABILITY.**

21 *If any provision of this Act or the application of that*
 22 *provision to particular persons or circumstances is held in-*
 23 *valid or found to be unconstitutional, the remainder of this*
 24 *Act and the application of that provision to other persons*
 25 *or circumstances shall not be affected.*

Calendar No. 141

117TH CONGRESS
1ST Session

S. 1486

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.

SEPTEMBER 30, 2021

Reported with an amendment