

117TH CONGRESS
2D SESSION

S. 5136

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2022

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 2022”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 (A) to threaten, penalize, fail or refuse to
2 hire, or to discharge any individual, or other-
3 wise to discriminate against any individual with
4 respect to the individual's compensation, ad-
5 vancement, terms, conditions, scheduling or
6 work hours, or privileges of employment;

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

13 (C) to make a communication regarding
14 immigration status, as described in section
15 4(a)(3); or

16 (D) any other act or practice that is con-
17 sidered an adverse action under title VII of the
18 1964 Civil Rights Act (42 U.S.C. 2000e et
19 seq.).

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

23 (3) COMMISSION.—The term “Commission”
24 means the Equal Employment Opportunity Commis-
25 sion.

1 (4) EMPLOYEE.—The term “employee”
2 means—

3 (A) an employee, as defined in section 3 of
4 the Fair Labor Standards Act of 1938 (29
5 U.S.C. 203), who in any workweek is engaged
6 in commerce or in the production of goods for
7 commerce, or is employed in an enterprise en-
8 gaged in commerce or in the production of
9 goods for commerce; or

10 (B) an individual who is engaged by—

11 (i) an employer; or

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

21 (5) EMPLOYER; ENTERPRISE ENGAGED IN COM-
22 MERCE OR IN THE PRODUCTION OF GOODS FOR
23 COMMERCE.—The terms “employer” and “enterprise
24 engaged in commerce or in the production of goods
25 for commerce” have the meanings given such terms

1 in section 3 of the Fair Labor Standards Act of
2 1938 (29 U.S.C. 203).

3 (6) FAMILY CAREGIVER RESPONSIBILITIES.—

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

11 (7) FAMILY MEMBER.—

12 (A) IN GENERAL.—The term “family
13 member” means, with respect to an indi-
14 vidual—

15 (i) a spouse (including a domestic
16 partner in a civil union or other registered
17 domestic partnership recognized by a
18 State) and a spouse’s parent;

19 (ii) a child and a child’s spouse;

20 (iii) a parent and a parent’s spouse;

21 (iv) a sibling and a sibling’s spouse;

22 (v) a grandparent, a grandchild, or a
23 spouse of a grandparent or grandchild; and

24 (vi) any other individual who is re-
25 lated by blood or affinity and whose asso-

1 ciation with the individual involved is
2 equivalent of a family relationship.

3 (B) RELATIONSHIP.—A relationship de-
4 scribed in clauses (i) through (vi) of subpara-
5 graph (A) may be acquired through adoption,
6 marriage, or a dependent or custodial relation-
7 ship.

8 **SEC. 3. PROHIBITION ON DISCRIMINATION.**

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

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

15 (2) take adverse action against an employee of
16 such employer or such individual or entity, or other-
17 wise discriminate against such an employee, includ-
18 ing by harassing the employee, with respect to the
19 compensation, advancement, terms, conditions,
20 scheduling or work hours, or privileges, of employ-
21 ment or engagement of the employee because of the
22 family caregiver responsibilities of the employee.

23 **SEC. 4. PROHIBITION ON RETALIATION.**

24 (a) INTERFERENCE WITH RIGHTS.—

1 (1) EXERCISE OF RIGHTS.—It shall be unlawful
2 for any employer or an individual or entity described
3 in section 2(4)(B)(ii) to retaliate against, interfere
4 with, restrain, or deny the exercise of or the attempt
5 to exercise, any right provided under this section.

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

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

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

3 (1) inform the employee’s employer, union, or
4 similar organization, or the applicant or employee’s
5 legal counsel or any other person about an alleged
6 violation of this Act;

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

11 (3) cooperate in investigations under or relating
12 to this Act, including by giving or preparing to give
13 information in connection with any inquiry or pro-
14 ceeding under or related to this Act;

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

17 (5) refuse to participate in, or otherwise oppose,
18 any policy, practice, or act that is unlawful under
19 this Act.

20 (c) PRESUMPTION OF RETALIATION.—There shall be
21 a rebuttable presumption that retaliation has occurred in
22 violation of this section if an employer or an individual
23 or entity described in section 2(4)(B)(ii) takes an adverse
24 action against an employee or applicant during the period
25 that is 2 years after the date on which that employee or

1 applicant exercised rights protected under this section. In
 2 the case of seasonal work, the presumption also applies
 3 if the employer or individual or entity described in section
 4 2(4)(B)(ii) fails to rehire a former employee at the next
 5 opportunity for work in the same position. The employer
 6 or individual or entity described in section 2(4)(B)(ii) may
 7 rebut the presumption with clear and convincing evidence
 8 that the adverse action was taken for a permissible pur-
 9 pose.

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

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

20 **SEC. 5. POSTING OF NOTICES.**

21 (a) IN GENERAL.—Each employer shall, not later
 22 than 180 days after the date of enactment of this Act,
 23 post, and keep posted, in a conspicuous place upon the
 24 premises of the employer a notice, to be prepared or ap-
 25 proved by the Commission, setting forth information as

1 the Commission determines appropriate to effectuate the
2 purposes of this Act, including the pertinent provisions of
3 this Act and information pertinent to the filing of a charge
4 with the Commission.

5 (b) PENALTY.—A willful violation of this section shall
6 be punishable by a fine of not more than \$100 for each
7 day on which the violation continues.

8 **SEC. 6. ENFORCEMENT.**

9 (a) IN GENERAL.—Subject to subsection (c), sections
10 3 and 4 of this Act shall be enforced by the Commission
11 in the same manner and by the same means, including
12 with the same jurisdiction, as the enforcement of a viola-
13 tion of title VII of the Civil Rights Act of 1964 (42 U.S.C.
14 2000e et seq.). Violations of this Act may be established
15 through proof of disparate treatment, harassment, or dis-
16 parate impact.

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

24 (c) PRIVATE RIGHT OF ACTION.—Notwithstanding
25 subsection (a) and section 706 of the Civil Rights Act of

1 1964 (42 U.S.C. 2000e–5), a private right of action shall
 2 also be available to an applicant or individual who alleges
 3 a violation of section 3 or 4 of this Act. Such applicant
 4 or individual shall not be required to file a charge with
 5 the Commission or pursue or exhaust any administrative
 6 remedies before instituting a civil action.

7 (d) PENALTIES.—

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

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

15 and

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

17 (2) TRANSFER OF FUNDS.—Any penalties col-
 18 lected by the Commission under this subsection shall
 19 be transferred to the Family Caregiver Antidiscrimi-
 20 nation Fund.

21 (e) FAMILY CAREGIVER ANTIDISCRIMINATION
 22 FUND.—

23 (1) IN GENERAL.—There is established in the
 24 Treasury of the United States a revolving fund, to
 25 be known as the “Family Caregiver Antidiscrimina-

1 tion Fund” (referred to in this Act as the “Fund”),
 2 consisting of the amount of penalties transferred to
 3 the Fund under subsection (d)(2).

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

7 **SEC. 7. GRANTS.**

8 (a) IN GENERAL.—

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

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

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

19 (1) a nonprofit organization with expertise in
 20 family caregiver discrimination;

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

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

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

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

11 (1) Educate employees about the prohibited ac-
12 tions under section 3, caregiver rights, and the
13 rights provided under this Act.

14 (2) Conduct educational training for employers
15 regarding caregiver discrimination.

16 (3) Provide support to applicants and employ-
17 ees who are facing or who have faced discrimination
18 based on family caregiver responsibilities.

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

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

1 (6) Any other activities that the Commission
2 determines are reasonable.

3 (e) REPORT.—Not later than 12 months after the
4 completion of the programs and activities funded under
5 grants awarded under this section, the Commission shall
6 submit to Congress, and all appropriate agencies, a report
7 concerning an evaluation of the results of such programs
8 and activities, including best practices, and lessons derived
9 from the experiences of grantees.

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

13 **SEC. 8. RULE OF CONSTRUCTION.**

14 Nothing in this Act shall be construed to supersede
15 any other provision of Federal, State, or local law that
16 provides greater protection against employment discrimi-
17 nation or greater remedies to employees than the protec-
18 tion or remedies provided to employees under this Act, in-
19 cluding any such provision in the Family and Medical
20 Leave Act of 1993 (29 U.S.C. 2601 et seq.), the Ameri-
21 cans with Disabilities Act of 1990 (42 U.S.C. 12101 et
22 seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C.
23 2000e et seq.), or section 6(d) of the Fair Labor Stand-
24 ards Act of 1938 (29 U.S.C. 206(d)).

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