

117TH CONGRESS
1ST SESSION

S. 880

To amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2021

Mr. CASEY (for himself, Mr. GRASSLEY, Mr. LEAHY, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, 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 Older
5 Workers Against Discrimination Act”.

6 **SEC. 2. STANDARDS OF PROOF.**

7 (a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF
8 1967.—

1 (1) CLARIFYING PROHIBITION AGAINST IMPER-
2 MISSIBLE CONSIDERATION OF AGE IN EMPLOYMENT
3 PRACTICES.—Section 4 of the Age Discrimination in
4 Employment Act of 1967 (29 U.S.C. 623) is amend-
5 ed by inserting after subsection (f) the following:

6 “(g)(1) Except as otherwise provided in this Act, an
7 unlawful practice is established under this Act when the
8 complaining party demonstrates that age or an activity
9 protected by subsection (d) was a motivating factor for
10 any practice, even though other factors also motivated the
11 practice.

12 “(2) In establishing an unlawful practice under this
13 Act, including under paragraph (1) or by any other meth-
14 od of proof, a complaining party—

15 “(A) may rely on any type or form of admis-
16 sible evidence and need only produce evidence suffi-
17 cient for a reasonable trier of fact to find that an
18 unlawful practice occurred under this Act; and

19 “(B) shall not be required to demonstrate that
20 age or an activity protected by subsection (d) was
21 the sole cause of a practice.”.

22 (2) REMEDIES.—Section 7 of such Act (29
23 U.S.C. 626) is amended—

24 (A) in subsection (b)—

1 (i) in the first sentence, by striking
 2 “The” and inserting “(1) The”;

3 (ii) in the third sentence, by striking
 4 “Amounts” and inserting the following:
 5 “(2) Amounts”;

6 (iii) in the fifth sentence, by striking
 7 “Before” and inserting the following:
 8 “(4) Before”; and

9 (iv) by inserting before paragraph (4),
 10 as designated by clause (iii) of this sub-
 11 paragraph, the following:

12 “(3) On a claim in which an individual demonstrates
 13 that age was a motivating factor for any employment prac-
 14 tice under section 4(g)(1), and a respondent demonstrates
 15 that the respondent would have taken the same action in
 16 the absence of the impermissible motivating factor, the
 17 court—

18 “(A) may grant declaratory relief, injunctive re-
 19 lief (except as provided in subparagraph (B)), and
 20 attorney’s fees and costs demonstrated to be directly
 21 attributable only to the pursuit of a claim under sec-
 22 tion 4(g)(1); and

23 “(B) shall not award damages or issue an order
 24 requiring any admission, reinstatement, hiring, pro-
 25 motion, or payment.”; and

1 (B) in subsection (c)(1), by striking “Any”
 2 and inserting “Subject to subsection (b)(3),
 3 any”.

4 (3) DEFINITIONS.—Section 11 of such Act (29
 5 U.S.C. 630) is amended by adding at the end the
 6 following:

7 “(m) The term ‘demonstrates’ means meets the bur-
 8 dens of production and persuasion.”.

9 (4) FEDERAL EMPLOYEES.—Section 15 of such
 10 Act (29 U.S.C. 633a) is amended by adding at the
 11 end the following:

12 “(h) Sections 4(g) and 7(b)(3) shall apply to mixed
 13 motive claims (involving practices described in section
 14 4(g)(1)) under this section.”.

15 (b) TITLE VII OF THE CIVIL RIGHTS ACT OF
 16 1964.—

17 (1) CLARIFYING PROHIBITION AGAINST IMPER-
 18 MISSIBLE CONSIDERATION OF RACE, COLOR, RELI-
 19 GION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT
 20 PRACTICES.—Section 703 of the Civil Rights Act of
 21 1964 (42 U.S.C. 2000e–2) is amended by striking
 22 subsection (m) and inserting the following:

23 “(m) Except as otherwise provided in this title, an
 24 unlawful employment practice is established when the
 25 complaining party demonstrates that race, color, religion,

1 sex, national origin, or an activity protected by section
 2 704(a) was a motivating factor for any employment prac-
 3 tice, even though other factors also motivated the prac-
 4 tice.”.

5 (2) FEDERAL EMPLOYEES.—Section 717 of
 6 such Act (42 U.S.C. 2000e–16) is amended by add-
 7 ing at the end the following:

8 “(g) Sections 703(m) and 706(g)(2)(B) shall apply
 9 to mixed motive cases (involving practices described in sec-
 10 tion 703(m)) under this section.”.

11 (c) AMERICANS WITH DISABILITIES ACT OF 1990.—

12 (1) DEFINITIONS.—Section 101 of the Ameri-
 13 cans with Disabilities Act of 1990 (42 U.S.C.
 14 12111) is amended by adding at the end the fol-
 15 lowing:

16 “(11) DEMONSTRATES.—The term ‘dem-
 17 onstrates’ means meets the burdens of production
 18 and persuasion.”.

19 (2) CLARIFYING PROHIBITION AGAINST IMPER-
 20 MISSIBLE CONSIDERATION OF DISABILITY IN EM-
 21 PLOYMENT PRACTICES.—Section 102 of such Act
 22 (42 U.S.C. 12112) is amended by adding at the end
 23 the following:

24 “(e) PROOF.—

1 “(1) ESTABLISHMENT.—Except as otherwise
 2 provided in this Act, a discriminatory practice is es-
 3 tablished under this Act when the complaining party
 4 demonstrates that disability or an activity protected
 5 by subsection (a) or (b) of section 503 was a moti-
 6 vating factor for any employment practice, even
 7 though other factors also motivated the practice.

8 “(2) DEMONSTRATION.—In establishing a dis-
 9 criminatory practice under paragraph (1) or by any
 10 other method of proof, a complaining party—

11 “(A) may rely on any type or form of ad-
 12 missible evidence and need only produce evi-
 13 dence sufficient for a reasonable trier of fact to
 14 find that a discriminatory practice occurred
 15 under this Act; and

16 “(B) shall not be required to demonstrate
 17 that disability or an activity protected by sub-
 18 section (a) or (b) of section 503 was the sole
 19 cause of an employment practice.”.

20 (3) CERTAIN ANTI-RETALIATION CLAIMS.—Sec-
 21 tion 503(c) of such Act (42 U.S.C. 12203(c)) is
 22 amended—

23 (A) by striking “The remedies” and insert-
 24 ing the following:

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the remedies”; and

3 (B) by adding at the end the following:

4 “(2) CERTAIN ANTI-RETALIATION CLAIMS.—
5 Section 107(c) shall apply to claims under section
6 102(e)(1) with respect to title I.”.

7 (4) REMEDIES.—Section 107 of such Act (42
8 U.S.C. 12117) is amended by adding at the end the
9 following:

10 “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a
11 claim in which an individual demonstrates that disability
12 was a motivating factor for any employment practice
13 under section 102(e)(1), and a respondent demonstrates
14 that the respondent would have taken the same action in
15 the absence of the impermissible motivating factor, the
16 court—

17 “(1) may grant declaratory relief, injunctive re-
18 lief (except as provided in paragraph (2)), and attor-
19 ney’s fees and costs demonstrated to be directly at-
20 tributable only to the pursuit of a claim under sec-
21 tion 102(e)(1); and

22 “(2) shall not award damages or issue an order
23 requiring any admission, reinstatement, hiring, pro-
24 motion, or payment.”.

25 (d) REHABILITATION ACT OF 1973.—

1 (1) IN GENERAL.—Sections 501(f), 503(d), and
2 504(d) of the Rehabilitation Act of 1973 (29 U.S.C.
3 791(f), 793(d), and 794(d)), are each amended by
4 adding after “title I of the Americans with Disabil-
5 ities Act of 1990 (42 U.S.C. 12111 et seq.)” the fol-
6 lowing: “, including the standards of causation or
7 methods of proof applied under section 102(e) of
8 that Act (42 U.S.C. 12112(e)),”.

9 (2) FEDERAL EMPLOYEES.—The amendment
10 made by paragraph (1) to section 501(f) of the Re-
11 habilitation Act of 1973 (29 U.S.C. 791(f)) shall be
12 construed to apply to all employees covered by sec-
13 tion 501 of that Act (29 U.S.C. 791).

14 **SEC. 3. APPLICATION.**

15 This Act, and the amendments made by this Act,
16 shall apply to all claims pending on or after the date of
17 enactment of this Act.

18 **SEC. 4. SEVERABILITY.**

19 If any provision of this Act, an amendment made by
20 this Act, or the application of such provision or amend-
21 ment to any person or circumstance is held to be unconsti-
22 tutional, the remainder of this Act, the amendments made
23 by this Act, and the application of the provisions of such

1 to any person or circumstance shall not be affected there-
2 by.

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