



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 13, 2020
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 1230 — Protecting Older Workers Against Discrimination Act

(Rep. Scott, D-VA, and 91 cosponsors)

The Administration opposes H.R. 1230, the misleadingly named Protecting Older Workers Against Discrimination Act. The Administration believes discrimination is never acceptable but is concerned with the potential harmful unintended consequences this legislation which would undo what works well in current law. Instead of protecting older workers, the bill would enrich trial lawyers and make it harder to identify and address genuine discrimination.

First, H.R. 1230 reduces the burden of proof for claims under the Age Discrimination in Employment Act, retaliation claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Rehabilitation Act. Under current law, plaintiffs in these cases generally must show that an employer would not have taken an employment action “but for” a protected characteristic. H.R. 1230 would allow plaintiffs to prevail and obtain limited forms of relief if the protected characteristic was a “motivating factor” in the employment action, even if the employer can demonstrate they would have taken the action, for example, because of poor performance, regardless of age.

Second, H.R. 1230 would nullify decades of judicial precedent on which courts, employees, and employers have relied with few offsetting benefits. In fact, the committee hearings revealed there is little evidence that this change would increase the number of meritorious claims brought. Reducing the standard of causation from “but for” to “motivating factor” would, however, allow more claims to proceed to trial. “Motivating factor” liability may be imposed when an employer considered an impermissible factor, but the employer took the same adverse action it would have taken absent that consideration. This change appears more likely to open the floodgates to weak or frivolous claims and makes it more difficult to resolve such claims at an early stage, diverting executive branch and judicial resources away from addressing actual discrimination. This would create additional work and income for trial lawyers but provide little benefit to discrimination victims.

Finally, H.R. 1230 would make resolving retaliation claims more difficult. As the Supreme Court has observed, reducing the standard of causation in such cases would incentivize employees to file frivolous claims to shield themselves from being removed for valid reasons, including poor performance. The current “but for” standard appropriately allows employees to contest genuine discrimination while screening out frivolous charges. H.R. 1230 would upset this balance and make it much more difficult for employers to address workplace performance.

If H.R. 1230 were presented to the President in its current form, his senior advisors would recommend that he veto the bill.

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