

Calendar No. 425117TH CONGRESS
2^D SESSION**S. 4431**

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

JUNE 16, 2022

Mr. CASEY (for himself, Mr. CASSIDY, Mrs. MURRAY, and Mr. BURR)
introduced the following bill; which was read the first time

JUNE 21, 2022

Read the second time and placed on the calendar

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. DEFINITIONS.**

5 As used in this Act—

6 (1) the term “Commission” means the Equal
7 Employment Opportunity Commission;

8 (2) the term “covered entity”—

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

12 (B) includes—

13 (i) an employer, which means a per-
14 son engaged in industry affecting com-
15 merce who has 15 or more employees as
16 defined in section 701(b) of title VII of the
17 Civil Rights Act of 1964 (42 U.S.C.
18 2000e(b));

19 (ii) an employing office, as defined in
20 section 101 of the Congressional Account-
21 ability Act of 1995 (2 U.S.C. 1301) and
22 section 411(c) of title 3, United States
23 Code;

24 (iii) an entity employing a State em-
25 ployee described in section 304(a) of the

1 Government Employee Rights Act of 1991
2 (42 U.S.C. 2000e–16c(a)); and

3 (iv) an entity to which section 717(a)
4 of the Civil Rights Act of 1964 (42 U.S.C.
5 2000e–16(a)) applies;

6 (3) the term “employee” means—

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

10 (B) a covered employee (including an ap-
11 plicant), as defined in section 101 of the Con-
12 gressional Accountability Act of 1995 (2 U.S.C.
13 1301), and an individual described in section
14 201(d) of that Act (2 U.S.C. 1311(d));

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

18 (D) a State employee (including an appli-
19 cant) described in section 304(a) of the Govern-
20 ment Employee Rights Act of 1991 (42 U.S.C.
21 2000e–16c(a)); or

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

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

4 (5) the term “known limitation” means physical
5 or mental condition related to, affected by, or arising
6 out of pregnancy, childbirth, or related medical con-
7 ditions that the employee or employee’s representa-
8 tive has communicated to the employer whether or
9 not such condition meets the definition of disability
10 specified in section 3 of the Americans with Disabil-
11 ities Act of 1990 (42 U.S.C. 12102);

12 (6) the term “qualified employee” means an
13 employee or applicant who, with or without reason-
14 able accommodation, can perform the essential func-
15 tions of the employment position, except that an em-
16 ployee or applicant shall be considered qualified if—

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

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

21 (C) the inability to perform the essential
22 function can be reasonably accommodated; and

23 (7) the terms “reasonable accommodation” and
24 “undue hardship” have the meanings given such
25 terms in section 101 of the Americans with Disabil-

1 ities Act of 1990 (42 U.S.C. 12111) and shall be
2 construed as such terms are construed under such
3 Act and as set forth in the regulations required by
4 this Act, including with regard to the interactive
5 process that will typically be used to determine an
6 appropriate reasonable accommodation.

7 **SEC. 3. NONDISCRIMINATION WITH REGARD TO REASON-**
8 **ABLE ACCOMMODATIONS RELATED TO PREG-**
9 **NANCY.**

10 It shall be an unlawful employment practice for a cov-
11 ered entity to—

12 (1) not make reasonable accommodations to the
13 known limitations related to the pregnancy, child-
14 birth, or related medical conditions of a qualified
15 employee, unless such covered entity can dem-
16 onstrate that the accommodation would impose an
17 undue hardship on the operation of the business of
18 such covered entity;

19 (2) require a qualified employee affected by
20 pregnancy, childbirth, or related medical conditions
21 to accept an accommodation other than any reason-
22 able accommodation arrived at through the inter-
23 active process referred to in section 2(7);

24 (3) deny employment opportunities to a quali-
25 fied employee if such denial is based on the need of

1 the covered entity to make reasonable accommoda-
2 tions to the known limitations related to the preg-
3 nancy, childbirth, or related medical conditions of
4 the qualified employee;

5 (4) require a qualified employee to take leave,
6 whether paid or unpaid, if another reasonable ac-
7 commodation can be provided to the known limita-
8 tions related to the pregnancy, childbirth, or related
9 medical conditions of the qualified employee; or

10 (5) take adverse action in terms, conditions, or
11 privileges of employment against a qualified em-
12 ployee on account of the employee requesting or
13 using a reasonable accommodation to the known lim-
14 itations related to the pregnancy, childbirth, or re-
15 lated medical conditions of the employee.

16 **SEC. 4. REMEDIES AND ENFORCEMENT.**

17 (a) EMPLOYEES COVERED BY TITLE VII OF THE
18 CIVIL RIGHTS ACT OF 1964.—

19 (1) IN GENERAL.—The powers, remedies, and
20 procedures provided in sections 705, 706, 707, 709,
21 710, and 711 of the Civil Rights Act of 1964 (42
22 U.S.C. 2000e–4 et seq.) to the Commission, the At-
23 torney General, or any person alleging a violation of
24 title VII of such Act (42 U.S.C. 2000e et seq.) shall
25 be the powers, remedies, and procedures this Act

1 provides to the Commission, the Attorney General,
2 or any person, respectively, alleging an unlawful em-
3 ployment practice in violation of this Act against an
4 employee described in section 2(3)(A) except as pro-
5 vided in paragraphs (2) and (3) of this subsection.

6 (2) COSTS AND FEES.—The powers, remedies,
7 and procedures provided in subsections (b) and (c)
8 of section 722 of the Revised Statutes (42 U.S.C.
9 1988) shall be the powers, remedies, and procedures
10 this Act provides to the Commission, the Attorney
11 General, or any person 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, or any person alleging such practice
19 (not an employment practice specifically excluded
20 from coverage under section 1977A(a)(1) of the Re-
21 vised Statutes (42 U.S.C. 1981a(a)(1))).

22 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
23 COUNTABILITY ACT OF 1995.—

24 (1) IN GENERAL.—The powers, remedies, and
25 procedures provided in the Congressional Account-

1 ability Act of 1995 (2 U.S.C. 1301 et seq.) for the
2 purposes of addressing allegations of violations of
3 section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1))
4 shall be the powers, remedies, and procedures this
5 Act provides to address an allegation of an unlawful
6 employment practice in violation of this Act against
7 an employee described in section 2(3)(B), except as
8 provided in paragraphs (2) and (3) of this sub-
9 section.

10 (2) COSTS AND FEES.—The powers, remedies,
11 and procedures provided in subsections (b) and (c)
12 of section 722 of the Revised Statutes (42 U.S.C.
13 1988) for the purposes of addressing allegations of
14 such a violation shall be the powers, remedies, and
15 procedures this Act provides to address allegations
16 of such practice.

17 (3) DAMAGES.—The powers, remedies, and pro-
18 cedures provided in section 1977A of the Revised
19 Statutes (42 U.S.C. 1981a), including the limita-
20 tions contained in subsection (b)(3) of such section
21 1977A, for purposes of addressing allegations of
22 such a violation, shall be the powers, remedies, and
23 procedures this Act provides to address any allega-
24 tion of such practice (not an employment practice
25 specifically excluded from coverage under section

1 1977A(a)(1) of the Revised Statutes (42 U.S.C.
2 1981a(a)(1))).

3 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
4 3, UNITED STATES CODE.—

5 (1) IN GENERAL.—The powers, remedies, and
6 procedures provided in chapter 5 of title 3, United
7 States Code, to the President, the Commission, the
8 Merit Systems Protection Board, or any person al-
9 leging a violation of section 411(a)(1) of such title
10 shall be the powers, remedies, and procedures this
11 Act provides to the President, the Commission, the
12 Board, or any person, respectively, alleging an un-
13 lawful employment practice in violation of this Act
14 against an employee described in section 2(3)(C), ex-
15 cept as provided in paragraphs (2) and (3) of this
16 subsection.

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

23 (3) DAMAGES.—The powers, remedies, and pro-
24 cedures provided in section 1977A of the Revised
25 Statutes (42 U.S.C. 1981a), including the limita-

1 tions contained in subsection (b)(3) of such section
2 1977A, shall be the powers, remedies, and proce-
3 dures this Act provides to the President, the Com-
4 mission, the Board, or any person alleging such
5 practice (not an employment practice specifically ex-
6 cluded from coverage under section 1977A(a)(1) of
7 the Revised Statutes (42 U.S.C. 1981a(a)(1))).

8 (d) EMPLOYEES COVERED BY GOVERNMENT EM-
9 PLOYEE RIGHTS ACT OF 1991.—

10 (1) IN GENERAL.—The powers, remedies, and
11 procedures provided in sections 302 and 304 of the
12 Government Employee Rights Act of 1991 (42
13 U.S.C. 2000e–16b; 2000e–16c) to the Commission
14 or any person alleging a violation of section
15 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1))
16 shall be the powers, remedies, and procedures this
17 Act provides to the Commission or any person, re-
18 spectively, alleging an unlawful employment practice
19 in violation of this Act against an employee de-
20 scribed in section 2(3)(D), except as provided in
21 paragraphs (2) and (3) of this subsection.

22 (2) COSTS AND FEES.—The powers, remedies,
23 and procedures provided in subsections (b) and (c)
24 of section 722 of the Revised Statutes (42 U.S.C.
25 1988) shall be the powers, remedies, and procedures

1 this Act provides to the Commission or any person
2 alleging such practice.

3 (3) DAMAGES.—The powers, remedies, and pro-
4 cedures provided in section 1977A of the Revised
5 Statutes (42 U.S.C. 1981a), including the limita-
6 tions contained in subsection (b)(3) of such section
7 1977A, shall be the powers, remedies, and proce-
8 dures this Act provides to the Commission or any
9 person alleging such practice (not an employment
10 practice specifically excluded from coverage under
11 section 1977A(a)(1) of the Revised Statutes (42
12 U.S.C. 1981a(a)(1))).

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

15 (1) IN GENERAL.—The powers, remedies, and
16 procedures provided in section 717 of the Civil
17 Rights Act of 1964 (42 U.S.C. 2000e–16) to the
18 Commission, the Attorney General, the Librarian of
19 Congress, or any person alleging a violation of that
20 section shall be the powers, remedies, and proce-
21 dures this Act provides to the Commission, the At-
22 torney General, the Librarian of Congress, or any
23 person, respectively, alleging an unlawful employ-
24 ment practice in violation of this Act against an em-

1 ployee described in section 2(3)(E), except as pro-
2 vided in paragraphs (2) and (3) of this subsection.

3 (2) COSTS AND FEES.—The powers, remedies,
4 and procedures provided in subsections (b) and (c)
5 of section 722 of the Revised Statutes (42 U.S.C.
6 1988) shall be the powers, remedies, and procedures
7 this Act provides to the Commission, the Attorney
8 General, the Librarian of Congress, or any person
9 alleging such practice.

10 (3) DAMAGES.—The powers, remedies, and pro-
11 cedures provided in section 1977A of the Revised
12 Statutes (42 U.S.C. 1981a), including the limita-
13 tions contained in subsection (b)(3) of such section
14 1977A, shall be the powers, remedies, and proce-
15 dures this Act provides to the Commission, the At-
16 torney General, the Librarian of Congress, or any
17 person alleging such practice (not an employment
18 practice specifically excluded from coverage under
19 section 1977A(a)(1) of the Revised Statutes (42
20 U.S.C. 1981a(a)(1))).

21 (f) PROHIBITION AGAINST RETALIATION.—

22 (1) IN GENERAL.—No person shall discriminate
23 against any employee because such employee has op-
24 posed any act or practice made unlawful by this Act
25 or because such employee made a charge, testified,

1 assisted, or participated in any manner in an inves-
2 tigation, proceeding, or hearing under this Act.

3 (2) PROHIBITION AGAINST COERCION.—It shall
4 be unlawful to coerce, intimidate, threaten, or inter-
5 fere with any individual in the exercise or enjoyment
6 of, or on account of such individual having exercised
7 or enjoyed, or on account of such individual having
8 aided or encouraged any other individual in the exer-
9 cise or enjoyment of, any right granted or protected
10 by this Act.

11 (3) REMEDY.—The remedies and procedures
12 otherwise provided for under this section shall be
13 available to aggrieved individuals with respect to vio-
14 lations of this subsection.

15 (g) LIMITATION.—Notwithstanding subsections
16 (a)(3), (b)(3), (c)(3), (d)(3), and (e)(3), if an unlawful em-
17 ployment practice involves the provision of a reasonable
18 accommodation pursuant to this Act or regulations imple-
19 menting this Act, damages may not be awarded under sec-
20 tion 1977A of the Revised Statutes (42 U.S.C. 1981a) if
21 the covered entity demonstrates good faith efforts, in con-
22 sultation with the employee with known limitations related
23 to pregnancy, childbirth, or related medical conditions who
24 has informed the covered entity that accommodation is
25 needed, to identify and make a reasonable accommodation

1 that would provide such employee with an equally effective
2 opportunity and would not cause an undue hardship on
3 the operation of the covered entity.

4 **SEC. 5. RULEMAKING.**

5 (a) EEOC RULEMAKING.—Not later than 1 year
6 after the date of enactment of this Act, the Commission
7 shall issue regulations in an accessible format in accord-
8 ance with subchapter II of chapter 5 of title 5, United
9 States Code, to carry out this Act. Such regulations shall
10 provide examples of reasonable accommodations address-
11 ing known limitations related to pregnancy, childbirth, or
12 related medical conditions.

13 (b) OCWR RULEMAKING.—

14 (1) IN GENERAL.—Not later than 6 months
15 after the Commission issues regulations under sub-
16 section (a), the Board (as defined in section 101 of
17 the Congressional Accountability Act of 1995 (2
18 U.S.C. 1301)) shall (in accordance with section 304
19 of the Congressional Accountability Act of 1995 (2
20 U.S.C. 1384)), issue regulations to implement the
21 provisions of this Act made applicable to employees
22 described in section 2(3)(B), under section 4(b).

23 (2) PARALLEL WITH AGENCY REGULATIONS.—

24 The regulations issued under paragraph (1) shall be
25 the same as substantive regulations issued by the

1 Commission under subsection (a) except to the ex-
2 tent that the Board may determine, for good cause
3 shown and stated together with the regulations
4 issued under paragraph (1) that a modification of
5 such substantive regulations would be more effective
6 for the implementation of the rights and protection
7 under this Act.

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

9 A State shall not be immune under the 11th Amend-
10 ment to the Constitution from an action in a Federal or
11 State court of competent jurisdiction for a violation of this
12 Act. In any action against a State for a violation of this
13 Act, remedies (including remedies both at law and in eq-
14 uity) are available for such a violation to the same extent
15 as such remedies are available for such a violation in an
16 action against any public or private entity other than a
17 State.

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

19 Nothing in this Act shall be construed—

20 (1) to invalidate or limit the powers, remedies,
21 and procedures under any Federal law or law of any
22 State or political subdivision of any State or juris-
23 diction that provides greater or equal protection for
24 individuals affected by pregnancy, childbirth, or re-
25 lated medical conditions; or

1 (2) by regulation or otherwise, to require an
2 employer-sponsored health plan to pay for or cover
3 any particular item, procedure, or treatment or to
4 affect any right or remedy available under any other
5 Federal, State, or local law with respect to any such
6 payment or coverage requirement.

7 **SEC. 8. SEVERABILITY.**

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

13 **SEC. 9. EFFECTIVE DATE.**

14 This Act shall take effect on the date that is 180 days
15 after the date of enactment of this Act.

Calendar No. 425

117TH CONGRESS
2^D SESSION

S. 4431

A BILL

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