

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, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pregnant Workers
5 Fairness Act”.

1 **SEC. 2. NONDISCRIMINATION WITH REGARD TO REASON-**
2 **ABLE ACCOMMODATIONS RELATED TO PREG-**
3 **NANCY.**

4 It shall be an unlawful employment practice for a cov-
5 ered entity to—

6 (1) not make reasonable accommodations to the
7 known limitations related to the pregnancy, child-
8 birth, or related medical conditions of a qualified
9 employee, unless such covered entity can dem-
10 onstrate that the accommodation would impose an
11 undue hardship on the operation of the business of
12 such covered entity;

13 (2) require a qualified employee affected by
14 pregnancy, childbirth, or related medical conditions
15 to accept an accommodation other than any reason-
16 able accommodation arrived at through the inter-
17 active process referred to in section 5(7);

18 (3) deny employment opportunities to a quali-
19 fied employee if such denial is based on the need of
20 the covered entity to make reasonable accommoda-
21 tions to the known limitations related to the preg-
22 nancy, childbirth, or related medical conditions of a
23 qualified employee;

24 (4) require a qualified employee to take leave,
25 whether paid or unpaid, if another reasonable ac-
26 commodation can be provided to the known limita-

tions related to the pregnancy, childbirth, or related medical conditions of a qualified employee; or

(5) take adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

9 SEC. 3. REMEDIES AND ENFORCEMENT.

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

12 (1) IN GENERAL.—The powers, remedies, and
13 procedures provided in sections 705, 706, 707, 709,
14 710, and 711 of the Civil Rights Act of 1964 (42
15 U.S.C. 2000e–4 et seq.) to the Commission, the At-
16 torney General, or any person alleging a violation of
17 title VII of such Act (42 U.S.C. 2000e et seq.) shall
18 be the powers, remedies, and procedures this Act
19 provides to the Commission, the Attorney General,
20 or any person, respectively, alleging an unlawful em-
21 ployment practice in violation of this Act against an
22 employee described in section 5(3)(A) except as pro-
23 vided in paragraphs (2) and (3) of this subsection.

24 (2) COSTS AND FEES.—The powers, remedies,
25 and procedures provided in subsections (b) and (c)

1 of section 722 of the Revised Statutes (42 U.S.C.
 2 1988) shall be the powers, remedies, and procedures
 3 this Act provides to the Commission, the Attorney
 4 General, or any person alleging such practice.

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

15 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
 16 COUNTABILITY ACT OF 1995.—

17 (1) IN GENERAL.—The powers, remedies, and
 18 procedures provided in the Congressional Account-
 19 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
 20 Board (as defined in section 101 of such Act (2
 21 U.S.C. 1301)) or any person alleging a violation of
 22 section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1))
 23 shall be the powers, remedies, and procedures this
 24 Act provides to the Board or any person, respec-
 25 tively, alleging an unlawful employment practice in

1 violation of this Act against an employee described
2 in section 5(3)(B), except as provided in paragraphs
3 (2) and (3) of this subsection.

4 (2) COSTS AND FEES.—The powers, remedies,
5 and procedures provided in subsections (b) and (c)
6 of section 722 of the Revised Statutes (42 U.S.C.
7 1988) shall be the powers, remedies, and procedures
8 this Act provides to the Board or any person alleg-
9 ing 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 Board or any person
16 alleging such practice (not an employment practice
17 specifically excluded from coverage under section
18 1977A(a)(1) of the Revised Statutes).

19 (4) OTHER APPLICABLE PROVISIONS.—With re-
20 spect to a claim alleging a practice described in
21 paragraph (1), title III of the Congressional Ac-
22 countability Act of 1995 (2 U.S.C. 1381 et seq.)
23 shall apply in the same manner as such title applies
24 with respect to a claim alleging a violation of section
25 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

1 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
2 3, UNITED STATES CODE.—

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

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

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

1 dures this Act provides to the President, the Com-
2 mission, the Board, or any person alleging such
3 practice (not an employment practice specifically ex-
4 cluded from coverage under section 1977A(a)(1) of
5 the Revised Statutes).

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

8 (1) IN GENERAL.—The powers, remedies, and
9 procedures provided in sections 302 and 304 of the
10 Government Employee Rights Act of 1991 (42
11 U.S.C. 2000e–16b; 2000e–16c) to the Commission
12 or any person alleging a violation of section
13 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1))
14 shall be the powers, remedies, and procedures this
15 Act provides to the Commission or any person, re-
16 spectively, alleging an unlawful employment practice
17 in violation of this Act against an employee de-
18 scribed in section 5(3)(D), except as provided in
19 paragraphs (2) and (3) of this subsection.

20 (2) COSTS AND FEES.—The powers, remedies,
21 and procedures provided in subsections (b) and (c)
22 of section 722 of the Revised Statutes (42 U.S.C.
23 1988) shall be the powers, remedies, and procedures
24 this Act provides to the Commission or any person
25 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 Commission or any
 7 person alleging such practice (not an employment
 8 practice specifically excluded from coverage under
 9 section 1977A(a)(1) of the Revised Statutes).

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

12 (1) IN GENERAL.—The powers, remedies, and
 13 procedures provided in section 717 of the Civil
 14 Rights Act of 1964 (42 U.S.C. 2000e–16) to the
 15 Commission, the Attorney General, the Librarian of
 16 Congress, or any person alleging a violation of that
 17 section shall be the powers, remedies, and proce-
 18 dures this Act provides to the Commission, the At-
 19 torney General, the Librarian of Congress, or any
 20 person, respectively, alleging an unlawful employ-
 21 ment practice in violation of this Act against an em-
 22 ployee described in section 5(3)(E), except as pro-
 23 vided in paragraphs (2) and (3) of this subsection.

24 (2) COSTS AND FEES.—The powers, remedies,
 25 and procedures provided in subsections (b) and (c)

1 of section 722 of the Revised Statutes (42 U.S.C.
2 1988) shall be the powers, remedies, and procedures
3 this Act provides to the Commission, the Attorney
4 General, the Librarian of Congress, or any person
5 alleging such practice.

6 (3) DAMAGES.—The powers, remedies, and pro-
7 cedures provided in section 1977A of the Revised
8 Statutes (42 U.S.C. 1981a), including the limita-
9 tions contained in subsection (b)(3) of such section
10 1977A, shall be the powers, remedies, and proce-
11 dures this Act provides to the Commission, the At-
12 torney General, the Librarian of Congress, 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 (f) PROHIBITION AGAINST RETALIATION.—

17 (1) IN GENERAL.—No person shall discriminate
18 against any employee because such employee has op-
19 posed any act or practice made unlawful by this Act
20 or because such employee made a charge, testified,
21 assisted, or participated in any manner in an inves-
22 tigation, proceeding, or hearing under this Act.

23 (2) PROHIBITION AGAINST COERCION.—It shall
24 be unlawful to coerce, intimidate, threaten, or inter-
25 fere with any individual in the exercise or enjoyment

1 of, or on account of such individual having exercised
2 or enjoyed, or on account of such individual having
3 aided or encouraged any other individual in the exer-
4 cise or enjoyment of, any right granted or protected
5 by this Act.

6 (3) REMEDY.—The remedies and procedures
7 otherwise provided for under this section shall be
8 available to aggrieved individuals with respect to vio-
9 lations of this subsection.

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

1 **SEC. 4. RULEMAKING.**

2 Not later than 2 years after the date of enactment
 3 of this Act, the Commission shall issue regulations in an
 4 accessible format in accordance with subchapter II of
 5 chapter 5 of title 5, United States Code, to carry out this
 6 Act. Such regulations shall provide examples of reasonable
 7 accommodations addressing known limitations related to
 8 pregnancy, childbirth, or related medical conditions.

9 **SEC. 5. DEFINITIONS.**

10 As used in this Act—

11 (1) the term “Commission” means the Equal
 12 Employment Opportunity Commission;

13 (2) the term “covered entity”—

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

17 (B) includes—

18 (i) an employer, which means a per-
 19 son engaged in industry affecting com-
 20 merce who has 15 or more employees as
 21 defined in section 701(b) of title VII of the
 22 Civil Rights Act of 1964 (42 U.S.C.
 23 2000e(b));

24 (ii) an employing office, as defined in
 25 section 101 of the Congressional Account-
 26 ability Act of 1995 (2 U.S.C. 1301) and

1 section 411(c) of title 3, United States
2 Code;

3 (iii) an entity employing a State em-
4 ployee described in section 304(a) of the
5 Government Employee Rights Act of 1991
6 (42 U.S.C. 2000e–16c(a)); and

7 (iv) an entity to which section 717(a)
8 of the Civil Rights Act of 1964 (42 U.S.C.
9 2000e–16(a)) applies;

10 (3) the term “employee” means—

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

14 (B) a covered employee (including an ap-
15 plicant), as defined in section 101 of the Con-
16 gressional Accountability Act of 1995 (2 U.S.C.
17 1301);

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

21 (D) a State employee (including an appli-
22 cant) described in section 304(a) of the Govern-
23 ment Employee Rights Act of 1991 (42 U.S.C.
24 2000e–16c(a)); or

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

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

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

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

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

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

24 (C) the inability to perform the essential
25 function can be reasonably accommodated; and

1 (7) the terms “reasonable accommodation” and
2 “undue hardship” have the meanings given such
3 terms in section 101 of the Americans with Disabil-
4 ities Act of 1990 (42 U.S.C. 12111) and shall be
5 construed as such terms are construed under such
6 Act and as set forth in the regulations required by
7 this Act, including with regard to the interactive
8 process that will typically be used to determine an
9 appropriate reasonable accommodation.

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

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

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

21 Nothing in this Act shall be construed to invalidate
22 or limit the powers, remedies, and procedures under any
23 Federal law or law of any State or political subdivision
24 of any State or jurisdiction that provides greater or equal

1 protection for individuals affected by pregnancy, child-
2 birth, or related medical conditions.

3 **SEC. 8. SEVERABILITY.**

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

