

SEC. 371. SHORT TITLE.

This subtitle may be cited as the "Fair Employment Opportunity Act of 2011".

SEC. 372. FINDINGS AND PURPOSE.

(a) Findings- Congress finds that denial of employment opportunities to individuals because of their status as unemployed is discriminatory and burdens commerce by--

(1) reducing personal consumption and undermining economic stability and growth;

(2) squandering human capital essential to the Nation's economic vibrancy and growth;

(3) increasing demands for Federal and State unemployment insurance benefits, reducing trust fund assets, and leading to higher payroll taxes for employers, cuts in benefits for jobless workers, or both;

(4) imposing additional burdens on publicly funded health and welfare programs; and

(5) depressing income, property, and other tax revenues that the Federal Government, States, and localities rely on to support operations and institutions essential to commerce.

(b) Purposes- The purposes of this Act are--

(1) to prohibit employers and employment agencies from disqualifying an individual from employment opportunities because of that individual's status as unemployed;

(2) to prohibit employers and employment agencies from publishing or posting any advertisement or announcement for an employment opportunity that indicates that an individual's status as unemployed disqualifies that individual for the opportunity; and

(3) to eliminate the burdens imposed on commerce due to the exclusion of such individuals from employment.

SEC. 373. DEFINITIONS.

As used in this Act--

- (1) the term 'affected individual' means any person who was subject to an unlawful employment practice solely because of that individual's status as unemployed;
- (2) the term 'Commission' means the Equal Employment Opportunity Commission;
- (3) the term 'employee' means:
 - (A) an employee as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));
 - (B) a State employee to which section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)) applies;
 - (C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or
 - (D) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;
- (4) the term 'employer' means:
 - (A) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;
 - (B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;
 - (C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code; or
 - (D) an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;
- (5) the term 'employment agency' means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for individuals opportunities to work as employees for an employer and includes an agent of such a person, and any person who maintains an Internet website or print medium that publishes advertisements or announcements of openings in jobs for employees;
- (6) the term 'person' has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a));
- (7) the term 'status as unemployed', used with respect to an individual, means that the individual, at the time of application for employment or at the time of action alleged to violate this Act, does not have a job, is available for work and is searching for work.

SEC. 374. PROHIBITED ACTS.

- (a) Employers- It shall be an unlawful employment practice for an employer to--
 - (1) publish in print, on the Internet, or in any other medium, an advertisement or announcement for an employee for any job that includes-

(A) any provision stating or indicating that an individual's status as unemployed disqualifies the individual for any employment opportunity; or

(B) any provision stating or indicating that an employer will not consider or hire an individual for any employment opportunity based on that individual's status as unemployed; or

(2) fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed;

(3) direct or request that an employment agency take an individual's status as unemployed into account to disqualify an applicant for consideration, screening, or referral for employment as an employee.

(b) Employment Agencies- It shall be an unlawful employment practice for an employment agency to—

(1) publish, in print or on the Internet or in any other medium, an advertisement or announcement for any vacancy in a job, as an employee, that includes--

(A) any provision stating or indicating that an individual's status as unemployed disqualifies the individual for any employment opportunity; or

(B) any provision stating or indicating that the employment agency or an employer will not consider or hire an individual for any employment opportunity based on that individual's status as unemployed.

(2) screen, fail or refuse to consider, or fail or refuse to refer an individual for employment as an employee because of the individual's status as unemployed;

(3) limit, segregate, or classify any individual in any manner that would limit or tend to limit the individual's access to information about jobs, or consideration, screening, or referral for jobs, as employees, solely because of an individual's status as unemployed.

(c) Interference With Rights, Proceedings or Inquiries- It shall be unlawful for any employer or employment agency to--

(1) interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this Act; or

(2) fail or refuse to hire, to discharge, or in any other manner to discriminate against any individual, as an employee, because such individual--

(A) opposed any practice made unlawful by this Act;

(B) has asserted any right, filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this Act;

(C) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this Act; or

(D) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Act.

(d) Construction – Nothing in this Act is intended to preclude an employer or employment agency from considering an individual's employment history, or from examining the reasons underlying an individual's status as unemployed, in assessing an individual's ability to perform a job or in otherwise making employment decisions about that individual. Such consideration or examination may include an assessment of whether an individual's employment in a similar or related job for a period of time reasonably proximate to the consideration of such individual for employment is job-related or consistent with business necessity.

SEC. 375. ENFORCEMENT.

(a) Enforcement Powers- With respect to the administration and enforcement of this Act -
(1) the Commission shall have the same powers as the Commission has to administer and enforce--

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c),

in the case of an affected individual who would be covered by such title, or by section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)), respectively;

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of an affected individual who would be covered by such title;

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of an affected individual who would be covered by section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

(4) the Attorney General shall have the same powers as the Attorney General has to administer and enforce--

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c);

in the case of an affected individual who would be covered by such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)), respectively;

(5) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of an affected individual who would be covered by section 411 of such title; and

(6) a court of the United States shall have the same jurisdiction and powers as the court has to enforce--

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b and 2000e-16c) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e-16b(a)(1));

(C) the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)); and

(D) chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

(b) Procedures- The procedures applicable to a claim alleged by an individual for a violation of this Act are--

(1) the procedures applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(2) the procedures applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)) in the case of a claim alleged by such individual for a violation of such section;

(3) the procedures applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in the case of a claim alleged by such individual for a violation of such section; and

(4) the procedures applicable for a violation of section 411 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of such section.

(c) Remedies-

(1) In any claim alleging a violation of Section 374(a)(1) or 374(b)(1) of this Act, an individual, or any person acting on behalf of the individual as set forth in Section 375(a) of this Act, may be awarded, as appropriate:

(A) an order enjoining the respondent from engaging in the unlawful employment practice;

(B) reimbursement of costs expended as a result of the unlawful employment practice;

(C) an amount in liquidated damages not to exceed \$1,000 for each day of the violation; and

(D) reasonable attorney's fees (including expert fees) and costs attributable to the pursuit of a claim under this Act, except that no person identified in Section 103(a) of this Act shall be eligible to receive attorney's fees.

(2) In any claim alleging a violation of any other subsection of this Act, an individual, or any person acting on behalf of the individual as set forth in Section 375(a) of this Act, may be awarded, as appropriate, the remedies available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)), section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)), and section 411 of title 3, United States Code, except that in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the individual, damages may be awarded in an amount not to exceed \$5,000.

SEC. 376. FEDERAL AND STATE IMMUNITY.

(a) Abrogation of State Immunity- A State shall not be immune under the 11th Amendment to the Constitution from a suit brought in a Federal court of competent jurisdiction for a violation of this Act.

(b) Waiver of State Immunity-

(1) IN GENERAL-

(A) WAIVER- A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th Amendment to the Constitution or otherwise, to a suit brought by

an employee or applicant for employment of that program or activity under this Act for a remedy authorized under Section 375(c) of this Act.

(B) DEFINITION- In this paragraph, the term 'program or activity' has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(2) EFFECTIVE DATE- With respect to a particular program or activity, paragraph (1) applies to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

(c) Remedies Against State Officials- An official of a State may be sued in the official capacity of the official by any employee or applicant for employment who has complied with the applicable procedures of this Act, for relief that is authorized under this Act.

(d) Remedies Against the United States and the States- Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including remedies at law and in equity) are available for the violation to the same extent as such remedies would be available against a non-governmental entity.

SEC. 377. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or regulation or any law or regulation of a State or political subdivision of a State.

SEC. 378. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstances shall not be affected by the invalidity.

SEC. 379. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act and shall not apply to conduct occurring before the effective date.