

103D CONGRESS
1ST SESSION

S. 404

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, JANUARY 5), 1993

Mr. GLENN (for himself, Ms. MIKULSKI, Mr. STEVENS, Mr. SIMON, Mr. DECONCINI, Mr. WOFFORD, Mr. AKAKA, Mr. FEINGOLD, Mr. CONRAD, Mr. MCCAIN, Ms. MOSELEY-BRAUN, Mr. LIEBERMAN, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees, 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 “Federal Employee
5 Fairness Act of 1993”.

1 **SEC. 2. AMENDMENTS RELATING TO ADMINISTRATIVE DE-**
2 **TERMINATION OF FEDERAL EMPLOYEE DIS-**
3 **CRIMINATION CLAIMS.**

4 (a) DEFINITIONS.—Section 701 of the Civil Rights
5 Act of 1964 (42 U.S.C. 2000e) is amended—

6 (1) in paragraph (f) by striking “The term”
7 and inserting “Except when it appears as part of the
8 term ‘Federal employee’, the term”; and

9 (2) by adding at the end the following:

10 “(o) The term ‘Commission’ means the Equal Em-
11 ployment Opportunity Commission.

12 “(p) The term ‘entity of the Federal Government’
13 means an entity to which section 717(a) applies, except
14 that such term does not include the Library of Congress.

15 “(q) The term ‘Federal employee’ means an individ-
16 ual employed by, or who applies for employment with, an
17 entity of the Federal Government.

18 “(r) The term ‘Federal employment’ means employ-
19 ment by an entity of the Federal Government.

20 “(s) The terms ‘government’, ‘government agency’,
21 and ‘political subdivision’ do not include an entity of the
22 Federal Government.”.

23 (b) EEOC DETERMINATION OF FEDERAL EMPLOY-
24 MENT DISCRIMINATION CLAIMS.—Section 717 of the Civil
25 Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

26 (1) in subsection (b)—

1 (A) in the second sentence, by redesignat-
2 ing paragraphs (1) through (3) as subpara-
3 graphs (A) through (C), respectively;

4 (B) in the fourth sentence, by redesignat-
5 ing paragraphs (1) and (2) as subparagraphs
6 (A) and (B), respectively;

7 (C) by designating the first through fifth
8 sentences as paragraphs (1), (2), (4), (5), and
9 (6), respectively, and indenting accordingly;

10 (D) in paragraph (2) (as designated by
11 subparagraph (C) of this paragraph)—

12 (i) in subparagraph (B) (as redesign-
13 nated by subparagraph (A) of this para-
14 graph) by striking “and” at the end;

15 (ii) in subparagraph (C) (as redesign-
16 nated by subparagraph (A) of this para-
17 graph) by striking the period and inserting
18 “; and”; and

19 (iii) by adding after subparagraph (C)
20 the following:

21 “(D) require each entity of the Federal Govern-
22 ment—

23 “(i)(I) to make counseling available to a
24 Federal employee who chooses to notify such
25 entity that the employee believes such entity

1 has discriminated against the employee in viola-
2 tion of subsection (a), for the purpose of trying
3 to resolve the matters with respect to which
4 such discrimination is alleged;

5 “(II) to assist such employee in identifying
6 the respondent required by subsection (c)(1) to
7 be named in a complaint alleging such violation;

8 “(III) to inform such employee individually
9 of the procedures and deadlines that apply
10 under this section to a claim alleging such dis-
11 crimination; and

12 “(IV) to make such counseling available
13 throughout the administrative process;

14 “(ii) to establish a voluntary alternative
15 dispute resolution process, as described in sub-
16 section (e)(1), to resolve complaints;

17 “(iii) not to discourage Federal employees
18 from filing complaints on any matter relating to
19 discrimination in violation of this section; and

20 “(iv) not to require Federal employees to
21 participate in such counseling or dispute resolu-
22 tion process.”; and

23 (E) by inserting after paragraph (2) (as
24 designated by subparagraph (C) of this para-
25 graph) the following:

1 “(3) The decision of a Federal employee to forgo such
2 counseling or dispute resolution process shall not affect
3 the rights of such employee under this title.”;

4 (2) by striking subsection (c);

5 (3) in subsection (d)—

6 (A) by striking “(k)” and inserting “(j)”;

7 (B) by striking “brought hereunder” and
8 inserting “commenced under this section”; and

9 (C) by striking “, and the same” and all
10 that follows and inserting a period and the fol-
11 lowing: “The head of the department, agency,
12 or other entity of the Federal Government in
13 which discrimination in violation of subsection
14 (a) is alleged to have occurred shall be the de-
15 fendant in a civil action alleging such violation.
16 In any action or proceeding under this section,
17 the court, in the discretion of the court, may
18 allow the prevailing party (other than an entity
19 of the Federal Government) a reasonable attor-
20 ney’s fee (including expert fees and other litiga-
21 tion expenses), costs, and the same interest to
22 compensate for delay in payment as a court has
23 authority to award under section 706(k).”;

24 (4) by redesignating subsections (d) and (e) as
25 subsections (m) and (n), respectively;

1 (5) by inserting after subsection (b) the follow-
2 ing:

3 “(c)(1)(A) Except as provided in subparagraph (B),
4 a complaint filed by or on behalf of a Federal employee
5 or a class of Federal employees and alleging a claim of
6 discrimination arising under subsection (a) or paragraph
7 (4) shall—

8 “(i) name as the respondent the head of the de-
9 partment, agency, or other entity of the Federal
10 Government in which such discrimination is alleged
11 to have occurred (referred to in this section as the
12 ‘respondent’); and

13 “(ii) be filed with the respondent, or with the
14 Commission, not later than 180 days after the al-
15 leged discrimination occurs.

16 “(B) A complaint described in subparagraph (A)
17 shall be considered to be filed in compliance with subpara-
18 graph (A), if not later than 180 days after the alleged
19 discrimination occurs, the complaint is filed—

20 “(i) with such department, agency, or entity; or

21 “(ii) if the complaint does not arise out of a
22 dispute with an agency within the intelligence com-
23 munity, as defined by Executive order, with any
24 other entity of the Federal Government, regardless
25 of the respondent named.

1 “(2) If the complaint is filed with an entity of the
2 Federal Government other than the department, agency,
3 or entity in which such discrimination is alleged to have
4 occurred—

5 “(A) the entity (other than the Commission)
6 with whom the complaint is filed shall transmit the
7 complaint to the Commission, not later than 15 days
8 after receiving the complaint; and

9 “(B) the Commission shall transmit a copy of
10 the complaint, not later than 10 days after receiving
11 the complaint, to the respondent.

12 “(3)(A) Not later than 3 days after the respondent
13 receives the complaint from a source other than the Com-
14 mission, the respondent shall notify the Commission that
15 the respondent has received the complaint and shall in-
16 form the Commission of the identity of the Federal em-
17 ployee aggrieved by the discrimination alleged in the com-
18 plaint.

19 “(B) Not later than 10 days after the respondent or
20 the Merit Systems Protection Board receives the com-
21 plaint from a source other than the Commission, the re-
22 spondent or the Board shall transmit to the Commission
23 a copy of the complaint.

24 “(4)(A) No person shall, by reason of the fact that
25 a Federal employee or an authorized representative of

1 Federal employees has filed, instituted, or caused to be
2 filed or instituted any proceeding under this section, or
3 has testified or is about to testify in any proceeding result-
4 ing from the administration or enforcement of this sec-
5 tion—

6 “(i) discharge the employee or representative;

7 “(ii) discriminate against the employee or rep-
8 resentative in administering a performance-rating
9 plan under chapter 43 of title 5, United States
10 Code;

11 “(iii) in any other way discriminate against the
12 employee or representative; or

13 “(iv) cause another person to take an action de-
14 scribed in clause (i), (ii), or (iii).

15 “(B) Any Federal employee or representative of Fed-
16 eral employees who believes that the employee or rep-
17 resentative has been discharged or otherwise discriminated
18 against by any person in violation of subparagraph (A),
19 may file a complaint in accordance with paragraph (1).

20 “(d)(1) Throughout the period beginning on the date
21 the respondent receives the complaint and ending on the
22 latest date by which all administrative and judicial pro-
23 ceedings available under this section have been concluded
24 with respect to such claim, the respondent shall collect and
25 preserve documents and information (including the com-

1 plaint) that are relevant to such claim, including not less
2 than the documents and information that comply with
3 rules issued by the Commission.

4 “(2) If the complaint alleges that a person has—

5 “(A) participated in the discrimination that is
6 the basis for the complaint; or

7 “(B) at the time of the discrimination—

8 “(i) was a supervisor of the Federal em-
9 ployee subject to the discrimination;

10 “(ii) was aware of the discrimination; and

11 “(iii) failed to make reasonable efforts to
12 curtail or mitigate the discrimination,

13 the respondent shall ensure that the person shall not be
14 designated to carry out the requirements of paragraph (1),
15 or to conduct any investigation related to the complaint.

16 “(e)(1)(A) The respondent shall make reasonable ef-
17 forts to conciliate each claim alleged in the complaint
18 through alternative dispute resolution procedures dur-
19 ing—

20 “(i) the 30-day period; or

21 “(ii) with the written consent of the aggrieved
22 Federal employee, the 60-day period,

23 beginning on the date the respondent receives the com-
24 plaint.

1 “(B) Alternative dispute resolution under this para-
2 graph may include a conciliator described in subparagraph
3 (C), the respondent, and the aggrieved Federal employee
4 in a process involving meetings with the parties separately
5 or jointly for the purposes of resolving the dispute between
6 the parties.

7 “(C) A conciliator shall be appointed by the Commis-
8 sion to consider each complaint filed under this section.
9 The Commission shall appoint a conciliator after consider-
10 ing any candidate who is recommended to the Director by
11 the Federal Mediation and Conciliation Service, the Ad-
12 ministrative Conference of the United States, or organiza-
13 tions composed primarily of individuals experienced in ad-
14 judicating or arbitrating personnel matters.

15 “(2) Before the expiration of the applicable period
16 specified in paragraph (1)(A) and with respect to such
17 claim, the respondent shall—

18 “(A) enter into a settlement agreement with
19 such Federal employee; or

20 “(B) give formal written notice to such Federal
21 employee that such Federal employee may, before
22 the expiration of the 90-day period beginning on the
23 date such Federal employee receives such notice, ei-
24 ther—

25 “(i) file with the Commission—

1 “(I) a written request for a deter-
2 mination of such claim under subsection
3 (f) by an administrative judge of the Com-
4 mission;

5 “(II) if such claim alleges an action
6 appealable to the Merit System Protection
7 Board, a written request electing that a
8 determination of such claim be made under
9 the procedures specified in either subpara-
10 graph (A) or (B) of section 7702(a)(2) of
11 title 5, United States Code; or

12 “(III) if such claim alleges a grievance
13 that is subject to section 7121 of title 5,
14 United States Code but not appealable to
15 the Merit Systems Protection Board, a
16 written request to raise such claim under
17 the administrative and judicial procedures
18 provided in such section 7121; or

19 “(ii) commence a civil action in an appro-
20 priate district court of the United States for de
21 novo review of such claim.

22 “(3) Such Federal employee may file a written re-
23 quest described in paragraph (2)(B)(i), or commence a
24 civil action described in paragraph (2)(B)(ii), at any
25 time—

1 “(A) after the expiration of the applicable pe-
2 riod specified in paragraph (1)(A); and

3 “(B) before the expiration of the 90-day period
4 specified in paragraph (2).

5 “(f)(1)(A) If such Federal employee files a written
6 request under subsection (e)(2)(B)(i)(I) and in accordance
7 with subsection (e)(3) with the Commission for a deter-
8 mination under this subsection of the claim described in
9 subsection (a), the Commission shall transmit a copy of
10 such request to the respondent and shall appoint an ad-
11 ministrative judge of the Commission to determine such
12 claim.

13 “(B) If such Federal employee files a written request
14 under subclause (II) or (III) of subsection (e)(2)(B)(i) and
15 in accordance with section (e)(3), the Commission shall
16 transmit, not later than 10 days after receipt of such re-
17 quest, the request to the appropriate agency for deter-
18 mination.

19 “(2) Immediately after receiving a copy of a request
20 under subsection (e)(2)(B)(i), the respondent shall trans-
21 mit a copy of all documents and information collected by
22 the respondent under subsection (d) with respect to such
23 claim—

24 “(A) to the Commission if such request is for
25 a determination under this subsection; or

1 “(B) to the Merit Systems Protection Board if
2 such request is for a determination under the proce-
3 dures specified in section 7702(a)(2)(A) of title 5,
4 United States Code.

5 “(3)(A)(i) If the administrative judge determines
6 there are reasonable grounds to believe that to carry out
7 the purposes of this section it is necessary to stay a per-
8 sonnel action by the respondent against the aggrieved
9 Federal employee, the administrative judge may request
10 any member of the Commission to issue a stay against
11 such personnel action for 15 calendar days.

12 “(ii) A stay requested under clause (i) shall take ef-
13 fect on the earlier of—

14 “(I) the order of such member; and

15 “(II) the fourth calendar day (excluding Satur-
16 day, Sunday, and any legal public holiday) following
17 the date on which such stay is requested.

18 “(B) The administrative judge may request any
19 member of the Commission to extend, for a period not to
20 exceed 30 calendar days, a stay issued under subpara-
21 graph (A).

22 “(C) The administrative judge may request the Com-
23 mission to extend such stay for any period the Commission
24 considers to be appropriate beyond the period in effect
25 under subparagraph (A) or (B).

1 “(D) Members of the Commission shall have author-
2 ity to issue and extend a stay for the periods referred to
3 in subparagraphs (A) and (B), respectively. The Commis-
4 sion shall have authority to extend a stay in accordance
5 with subparagraph (C) for any period.

6 “(E) The respondent shall comply with a stay in ef-
7 fect under this paragraph.

8 “(4)(A) The administrative judge shall determine
9 whether the documents and information received under
10 paragraph (2) comply with subsection (d) and are com-
11 plete and accurate.

12 “(B) If the administrative judge finds that the re-
13 spondent has failed to produce the documents and infor-
14 mation necessary to comply with such subsection, the ad-
15 ministrative judge shall, in the absence of good cause
16 shown by the respondent, impose any of the sanctions
17 specified in paragraph (6)(C) and shall require the re-
18 spondent—

19 “(i) to obtain any additional documents and in-
20 formation necessary to comply with such subsection;
21 and

22 “(ii) to correct any inaccuracy in the documents
23 and information so received.

1 “(5)(A) After examining the documents and informa-
2 tion received under paragraph (4), the administrative
3 judge shall issue an order dismissing—

4 “(i) any frivolous claim alleged in the com-
5 plaint; and

6 “(ii) the complaint if it fails to state a
7 nonfrivolous claim for which relief may be granted
8 under this section.

9 “(B)(i) If a claim or the complaint is dismissed under
10 subparagraph (A), the administrative judge shall give for-
11 mal written notice to the aggrieved Federal employee that
12 such Federal employee may, before the expiration of the
13 90-day period beginning on the date such Federal em-
14 ployee receives such notice—

15 “(I) file with the Commission a written request
16 for review of such order; or

17 “(II) commence a civil action in an appropriate
18 district court of the United States for de novo review
19 of such claim or such complaint.

20 “(ii) Such Federal employee may commence such civil
21 action in the 90-day period specified in clause (i).

22 “(6)(A)(i) If the complaint is not dismissed under
23 paragraph (5)(A), the administrative judge shall make a
24 determination, after an opportunity for a hearing, on the
25 merits of each claim that is not dismissed under such

1 paragraph. The administrative judge shall make a deter-
2 mination on the merits of any other nonfrivolous claim
3 under this section, and on any action such Federal em-
4 ployee may appeal to the Merit Systems Protection Board,
5 reasonably expected to arise from the facts on which the
6 complaint is based.

7 “(ii) In making the determination required by clause
8 (i), the administrative judge shall—

9 “(I) decide whether the aggrieved Federal em-
10 ployee was the subject of unlawful intentional dis-
11 crimination in a department, agency, or other entity
12 of the Federal Government under this title, section
13 102 of the Americans with Disabilities Act of 1990,
14 section 501 of the Rehabilitation Act of 1973, sec-
15 tion 4 of the Age Discrimination in Employment Act
16 of 1967, or the Equal Pay Act of 1963;

17 “(II) if the employee was the subject of such
18 discrimination, contemporaneously identify the per-
19 son who engaged in such discrimination; and

20 “(III) notify the person identified in subclause
21 (II) of the complaint and the allegations raised in
22 the complaint.

23 “(iii) As soon as practicable, the administrative judge
24 shall—

1 “(I) determine whether the administrative pro-
2 ceeding with respect to such claim may be main-
3 tained as a class proceeding; and

4 “(II) if the administrative proceeding may be so
5 maintained, describe persons whom the administra-
6 tive judge finds to be members of such class.

7 “(B) With respect to such claim, a party may conduct
8 discovery by such means as may be available in a civil ac-
9 tion to the extent determined to be appropriate by the ad-
10 ministrative judge.

11 “(C) If the aggrieved Federal employee or the re-
12 spondent fails without good cause to respond fully and in
13 a timely fashion to a request made or approved by the
14 administrative judge for information or the attendance of
15 a witness, and if such information or such witness is solely
16 in the control of the party who fails to respond, the admin-
17 istrative judge may, in appropriate circumstances—

18 “(i) draw an adverse inference that the re-
19 quested information, or the testimony of the re-
20 quested witness, would have reflected unfavorably on
21 the party who fails to respond;

22 “(ii) consider the matters to which such infor-
23 mation or such testimony pertains to be established
24 in favor of the opposing party;

1 “(iii) exclude other evidence offered by the
2 party who fails to respond;

3 “(iv) grant full or partial relief to the aggrieved
4 Federal employee; or

5 “(v) take such other action as the administra-
6 tive judge considers to be appropriate.

7 “(D) In a hearing on a claim, the administrative
8 judge shall—

9 “(i) limit attendance to persons who have a di-
10 rect connection with such claim;

11 “(ii) bring out pertinent facts and relevant em-
12 ployment practices and policies, but—

13 “(I) exclude irrelevant or unduly repeti-
14 tious information; and

15 “(II) not apply the Federal Rules of Evi-
16 dence strictly;

17 “(iii) permit all parties to examine and cross-
18 examine witnesses;

19 “(iv) require that testimony be given under
20 oath or affirmation; and

21 “(v) permit the person notified in subparagraph
22 (A)(ii)(III) to appear at the hearing—

23 “(I) in person; or

24 “(II) by or with counsel or another duly
25 qualified representative.

1 “(E) At the request of any party or the administra-
2 tive judge, a transcript of all or part of such hearing shall
3 be provided in a timely manner and simultaneously to the
4 parties and the Commission. The respondent shall bear
5 the cost of providing such transcript.

6 “(F) The administrative judge shall have authority—

7 “(i) to administer oaths and affirmation;

8 “(ii) to regulate the course of hearings;

9 “(iii) to rule on offers of proof and receive evi-
10 dence;

11 “(iv) to issue subpoenas to compel—

12 “(I) the production of documents or infor-
13 mation by the entity of the Federal Government
14 in which discrimination is alleged to have oc-
15 curred; and

16 “(II) the attendance of witnesses who are
17 Federal officers or employees of such entity;

18 “(v) to request the Commission to issue subpoe-
19 nas to compel the production of documents or infor-
20 mation by any other entity of the Federal Govern-
21 ment and the attendance of other witnesses, except
22 that any witness who is not an officer or employee
23 of an entity of the Federal Government—

24 “(I) may be compelled only to attend any
25 place—

1 “(aa) less than 100 miles from the
2 place where such witness resides, is em-
3 ployed, transacts business in person, or is
4 served; or

5 “(bb) at such other convenient place
6 as is fixed by the administrative judge; and

7 “(II) shall be paid fees and allowances, by
8 the party that requests the subpoena, to the
9 same extent that fees and allowances are paid
10 to witnesses under chapter 119 of title 28,
11 United States Code;

12 “(vi) to exclude witnesses whose testimony
13 would be unduly repetitious;

14 “(vii) to exclude any person from a hearing for
15 contumacious conduct, or for misbehavior, that ob-
16 structs such hearing; and

17 “(viii) to grant any and all relief of a kind de-
18 scribed in subsections (g) and (k) of section 706.

19 “(G) The administrative judge and Commission shall
20 have authority to award a reasonable attorney’s fee (in-
21 cluding expert fees and other litigation expenses), costs,
22 and the same interest to compensate for delay in payment
23 as a court has authority to award under section 706(k).

24 “(H) The Commission shall have authority to issue
25 subpoenas described in subparagraph (F)(v).

1 “(I) In the case of contumacy or failure to obey a
2 subpoena issued under subparagraph (F), the United
3 States district court for the judicial district in which the
4 person to whom the subpoena is addressed resides or is
5 served may issue an order requiring such person to appear
6 at any designated place to testify or to produce documen-
7 tary or other evidence.

8 “(7)(A)(i) The administrative judge shall issue a
9 written order making the determination required by para-
10 graph (6)(A), and granting or denying relief.

11 “(ii) The order shall not be reviewable by the re-
12 spondent, and the respondent shall have no authority to
13 modify or vacate the order.

14 “(iii) Except as provided in clause (iv) or subpara-
15 graph (B), the administrative judge shall issue the order
16 not later than—

17 “(I) 210 days after the complaint containing
18 such claim is filed on behalf of a Federal employee;
19 or

20 “(II) 270 days after the complaint containing
21 such claim is filed on behalf of a class of Federal
22 employees.

23 “(iv) The time periods described in clause (i) shall
24 not begin running until 30 days after the administrative
25 judge is assigned to the case if the administrative judge

1 certifies, in writing, that such 30-day period is needed to
2 secure additional documents or information from the re-
3 spondent to have a complete administrative record.

4 “(B) The administrative judge shall issue such order
5 not later than 30 days after the applicable period specified
6 in subparagraph (A) if the administrative judge certifies
7 in writing, before the expiration of such applicable pe-
8 riod—

9 “(i) that such 30-day period is necessary to
10 make such determination; and

11 “(ii) the particular and unusual circumstances
12 that prevent the administrative judge from comply-
13 ing with the applicable period specified in subpara-
14 graph (A).

15 “(C) The administrative judge may apply to the Com-
16 mission to extend any period applicable under subpara-
17 graph (A) or (B) if manifest injustice would occur in the
18 absence of such an extension.

19 “(D) If the aggrieved Federal employee shows that
20 such extension would prejudice a claim of, or otherwise
21 harm, such Federal employee, the Commission—

22 “(i) may not grant such extension; or

23 “(ii) shall terminate such extension.

24 “(E) In addition to findings of fact and conclusions
25 of law, including findings and conclusions pertaining spe-

1 cifically to the decision and identification described in
2 paragraph (6)(A)(ii), such order shall include formal writ-
3 ten notice to each party that before the expiration of the
4 90-day period beginning on the date such party receives
5 such order—

6 “(i) the aggrieved Federal employee may com-
7 mence a civil action in an appropriate district court
8 of the United States for de novo review of a claim
9 with respect to which such order is issued; and

10 “(ii) unless a civil action is commenced in such
11 90-day period under clause (i) with respect to such
12 claim, any party may file with the Commission a
13 written request for review of the determination
14 made, and relief granted or denied, in such order
15 with respect to such claim.

16 “(F) Such Federal employee may commence such
17 civil action at any time—

18 “(i) after the expiration of the applicable period
19 specified in subparagraph (A) or (B); and

20 “(ii) before the expiration of the 90-day period
21 beginning on the date such Federal employee re-
22 ceives an order described in subparagraph (A).

23 “(G) The determination made, and relief granted, in
24 such order with respect to a particular claim shall be en-

1 forceable immediately, if such order applies to more than
2 one claim and if such employee does not—

3 “(i) commence a civil action in accordance with
4 subparagraph (E)(i) with respect to the claim; or

5 “(ii) request review in accordance with subpara-
6 graph (E)(ii) with respect to the claim.

7 “(g)(1) If a party timely files a written request in
8 accordance with subsection (f)(5)(B)(i) or (f)(7)(E)(ii)
9 with the Commission for review of the determination
10 made, and relief granted or denied, with respect to a claim
11 in such order, then the Commission shall immediately
12 transmit a copy of such request to the other parties in-
13 volved and to the administrative judge who issued such
14 order.

15 “(2) Not later than 7 days after receiving a copy of
16 such request, the administrative judge shall transmit to
17 the Commission the record of the proceeding on which
18 such order is based, including all documents and informa-
19 tion collected by the respondent under subsection (d).

20 “(3)(A) After allowing the parties to file briefs with
21 respect to such determination, the Commission shall issue
22 an order applicable with respect to such claim affirming,
23 reversing, or modifying the applicable provisions of the
24 order of the administrative judge not later than—

25 “(i) 150 days after receiving such request; or

1 “(ii) 30 days after such 150-day period if the
2 Commission certifies in writing, before the expiration
3 of such 150-day period—

4 “(I) that such 30-day period is necessary
5 to review such claim; and

6 “(II) the particular and unusual cir-
7 cumstances that prevent the Commission from
8 complying with clause (i).

9 “(B) The Commission shall affirm the determination
10 made, and relief granted or denied, by the administrative
11 judge with respect to such claim if such determination and
12 such relief are supported by substantial evidence in the
13 record taken as a whole. The findings of fact of the admin-
14 istrative judge shall be conclusive unless the Commission
15 determines that they are clearly erroneous.

16 “(C) In addition to findings of fact and conclusions
17 of law, including findings and conclusions pertaining spe-
18 cifically to the decision and identification described in sub-
19 section (f)(6)(A)(ii), the Commission shall include in the
20 order of the Commission formal written notice to the ag-
21 grieved Federal employee that, before the expiration of the
22 90-day period beginning on the date such Federal em-
23 ployee receives such order, such Federal employee may
24 commence a civil action in an appropriate district court

1 of the United States for de novo review of a claim with
2 respect to which such order is issued.

3 “(D) Such Federal employee may commence such
4 civil action at any time—

5 “(i) after the expiration of the applicable period
6 specified in subparagraph (A); and

7 “(ii) before the expiration of the 90-day period
8 specified in subparagraph (C).

9 “(h)(1) In addition to the periods authorized by sub-
10 sections (f)(7)(F) and (g)(3)(D), an aggrieved Federal
11 employee may commence a civil action in an appropriate
12 district court of the United States for de novo review of
13 a claim—

14 “(A) during the period beginning 300 days
15 after the Federal employee timely requests an ad-
16 ministrative determination under subsection (f) with
17 respect to such claim and ending on the date the ad-
18 ministrative judge issues an order under such sub-
19 section with respect to such claim; and

20 “(B) during the period beginning 180 days
21 after such Federal employee timely requests review
22 under subsection (g) of such determination with re-
23 spect to such claim and ending on the date the Com-
24 mission issues an order under such subsection with
25 respect to such claim.

1 “(2) Whenever a civil action is commenced timely and
2 otherwise in accordance with this section to determine the
3 merits of a claim arising under this section, the jurisdic-
4 tion of the administrative judge or the Commission (as
5 the case may be) to determine the merits of such claim
6 shall terminate.

7 “(i) A Federal employee who prevails on a claim aris-
8 ing under this section, or the Commission, may bring a
9 civil action in an appropriate district court of the United
10 States to enforce—

11 “(1) the provisions of a settlement agreement
12 applicable to such claim;

13 “(2) the provisions of an order issued by an ad-
14 ministrative judge under subsection (f)(7)(A) appli-
15 cable to such claim if—

16 “(A) a request is not timely filed of such
17 claim under subsection (g)(1) for review of such
18 claim by the Commission; and

19 “(B) a civil action is not timely com-
20 menced under subsection (f)(7)(F) for de novo
21 review of such claim; or

22 “(3) the provisions of an order issued by the
23 Commission under subsection (g)(3)(A) applicable to
24 such claim if a civil action is not commenced timely

1 under subsection (g)(3)(D) for de novo review of
2 such claim.

3 “(j) Any amount awarded under this section (includ-
4 ing fees, costs, and interest awarded under subsection
5 (f)(6)(G)), or under title 28, United States Code, with re-
6 spect to a violation of subsection (a), shall be paid by the
7 entity of the Federal Government that violated such sub-
8 section from any funds made available to such entity by
9 appropriation or otherwise.

10 “(k)(1) An entity of the Federal Government against
11 which a claim of discrimination or retaliation is alleged
12 under this section shall grant the aggrieved Federal em-
13 ployee a reasonable amount of official time, in accordance
14 with regulations issued by the Commission, to prepare an
15 administrative complaint based on such allegation and to
16 participate in administrative proceedings relating to such
17 claim.

18 “(2) An entity of the Federal Government against
19 which a claim of discrimination is alleged in a complaint
20 filed in a civil action under this section shall grant the
21 aggrieved Federal employee paid leave for time reasonably
22 expended to prepare for, and participate in, such civil ac-
23 tion. Such leave shall be granted in accordance with regu-
24 lations issued by the Commission, except that such leave
25 shall include reasonable time for—

1 “(A) attendance at depositions;

2 “(B) meetings with counsel;

3 “(C) other ordinary and legitimate undertak-
4 ings in such civil action, that require the presence of
5 such Federal employee; and

6 “(D) attendance at such civil action.

7 “(3) If the administrative judge or the Commission
8 (as the case may be), makes or affirms a determination
9 of intentional unlawful discrimination as described in sub-
10 section (f)(6)(A), the administrative judge or Commission,
11 respectively, shall, not later than 30 days after issuing the
12 order described in subsection (f)(7) or (g)(3), as appro-
13 priate, submit to the Special Counsel the order and a copy
14 of the record compiled at any hearing on which the order
15 is based.

16 “(4)(A) On receipt of the submission described in
17 paragraph (3), the Special Counsel shall conduct an inves-
18 tigation in accordance with section 1214 of title 5, United
19 States Code, and may initiate disciplinary proceedings
20 against any person identified in a determination described
21 in subsection (f)(6)(A)(ii)(II), if the Special Counsel finds
22 that the requirements of section 1215 of title 5, United
23 States Code, have been satisfied.

24 “(B) The Special Counsel shall conduct such proceed-
25 ings in accordance with such section, and shall accord to

1 the person described in subparagraph (A) the rights avail-
2 able to the person under such section, including applicable
3 due process rights.

4 “(C) The Special Counsel shall impose appropriate
5 sanctions on such person.

6 “(l) This section, as in effect immediately before the
7 effective date of the Federal Employee Fairness Act of
8 1993, shall apply with respect to employment in the Li-
9 brary of Congress.”; and

10 (6) by adding at the end the following new sub-
11 sections:

12 “(o)(1) Each respondent that is the subject of a com-
13 plaint that has not been resolved under this section, or
14 that has been resolved under this section within the most
15 recent calendar year, shall prepare a report. The report
16 shall contain information regarding the complaint, includ-
17 ing the resolution of the complaint if applicable, and the
18 measures taken by the respondent to lower the average
19 number of days necessary to resolve such complaints.

20 “(2) Not later than October 1 of each year, the re-
21 spondent shall submit to the Commission the report de-
22 scribed in paragraph (1).

23 “(3) Not later than December 1 of each year, the
24 Commission shall submit to the appropriate committees
25 of the House of Representatives and of the Senate a report

1 summarizing the information contained in the reports sub-
2 mitted in accordance with paragraph (2).

3 “(p)(1) The Commission, in consultation with the Di-
4 rector of Central Intelligence, the Secretary of Defense,
5 and the Director of the Information Security Oversight
6 Office of the General Services Administration, shall pro-
7 mulgate regulations to ensure the protection of classified
8 information and national security information in adminis-
9 trative proceedings under this section. Such regulations
10 shall provide, among other things, that complaints under
11 this section that bear upon classified information shall be
12 handled only by such administrative judges, Commission
13 personnel, and conciliators as have been granted appro-
14 priate security clearances.

15 “(2) For the purposes of paragraph (1), the term
16 ‘classified information’ has the meaning given the term in
17 section 606(1) of the National Security Act of 1947 (50
18 U.S.C. 426(1)).”.

19 **SEC. 3. AMENDMENTS TO THE AGE DISCRIMINATION IN EM-**
20 **PLOYMENT ACT.**

21 (a) ENFORCEMENT BY EEOC.—Section 15 of the
22 Age Discrimination in Employment Act of 1967 (29
23 U.S.C. 633a) is amended—

24 (1) by striking subsections (c) and (d); and

1 (2) by inserting after subsection (b) the follow-
2 ing:

3 “(c)(1) Any individual aggrieved by a violation of
4 subsection (a) may file a complaint with the Equal Em-
5 ployment Opportunity Commission in accordance with
6 subsections (c) through (m), and subsections (o) and (p),
7 of section 717 of the Civil Rights Act of 1964.

8 “(2) Except as provided in subsection (d) and para-
9 graph (3), such subsections of section 717 shall apply to
10 a violation alleged in a complaint filed under paragraph
11 (1) in the same manner as such section applies to a claim
12 arising under section 717 of such Act.

13 “(3) The Equal Employment Opportunity Commis-
14 sion, and the administrative judges of the Commission,
15 shall have authority to award such legal or equitable relief
16 as will effectuate the purposes of this Act to an individual
17 described in paragraph (1) with respect to a complaint
18 filed under this subsection.

19 “(d)(1) If an individual aggrieved by a violation of
20 this section does not file a complaint under subsection
21 (c)(1), such individual may commence a civil action in an
22 appropriate district court of the United States for de novo
23 review of such violation—

1 “(A) not less than 30 days after filing with the
2 Equal Employment Opportunity Commission a no-
3 tice of intent to commence such action; and

4 “(B) not more than 2 years after the alleged
5 violation of this section occurs.

6 “(2) On receiving such notice, the Equal Employment
7 Opportunity Commission shall—

8 “(A) promptly notify all persons named in such
9 notice as prospective defendants in such action; and

10 “(B) take any appropriate action to ensure the
11 elimination of any unlawful practice.

12 “(3) Except as provided in paragraph (4), section
13 717(m) of the Civil Rights Act of 1964 (as redesignated
14 by section 2 of the Federal Employee Fairness Act of
15 1993) shall apply to civil actions commenced under this
16 subsection in the same manner as such section applies to
17 civil actions commenced under section 717 of the Civil
18 Rights Act of 1964.

19 “(4) The court described in paragraph (1) shall have
20 authority to award such legal or equitable relief as will
21 effectuate the purposes of this Act to an individual de-
22 scribed in paragraph (1) in an action commenced under
23 this subsection.”.

24 (b) OPPORTUNITY TO COMMENCE CIVIL ACTION.—
25 If a complaint filed under section 15 of the Age Discrimi-

1 nation in Employment Act of 1967 (29 U.S.C. 633a) with
2 the Equal Employment Opportunity Commission is pend-
3 ing in the period beginning on the date of the enactment
4 of this Act and ending on December 31, 1993, the individ-
5 ual who filed such complaint may commence a civil action
6 under such section not later than June 30, 1994.

7 **SEC. 4. AMENDMENTS TO TITLE 5, UNITED STATES CODE.**

8 (a) GRIEVANCE PROCEDURES.—Section 7121 of title
9 5, United States Code, is amended—

10 (1) in subsection (a)(1) by inserting “adminis-
11 trative” after “exclusive”; and

12 (2) in subsection (d)—

13 (A) by inserting “(1)” after “(d)”;

14 (B) in the first and second sentences by
15 striking “An” and inserting “Except as pro-
16 vided in paragraph (2), an”; and

17 (C) in the last sentence by striking “Selec-
18 tion” and all that follows through “any other”
19 and inserting the following:

20 “(3) An employee may commence, not later than 120
21 days after a final decision, a civil action in an appropriate
22 district court of the United States for de novo review of
23 a”; and

24 (D) by inserting after the second sentence
25 the following:

1 “(2) Matters covered under section 7702 of this title,
2 or under a law administered by the Equal Employment
3 Opportunity Commission, may be raised under the nego-
4 tiated grievance procedure in accordance with this section
5 only if an employee elects under subclause (II) or (III)
6 of section 717(e)(2)(B)(i) of the Civil Rights Act of 1964
7 to proceed under this section.”.

8 (b) ACTIONS INVOLVING DISCRIMINATION.—Section
9 7702 of title 5, United States Code, is amended to read
10 as follows:

11 **“§ 7702. Actions involving discrimination**

12 “(a)(1) Notwithstanding any other provision of law,
13 in the case of any employee or applicant for employment
14 who—

15 “(A) is affected by an action which the em-
16 ployee or applicant may appeal to the Merit System
17 Protection Board; and

18 “(B) alleges that a basis for the action was dis-
19 crimination prohibited by—

20 “(i) section 717 of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e-16);

22 “(ii) section 6(d) of the Fair Labor Stand-
23 ards Act of 1938 (29 U.S.C. 206(d));

24 “(iii) section 501 of the Rehabilitation Act
25 of 1973 (29 U.S.C. 791);

1 “(iv) sections 12 and 15 of the Age Dis-
2 crimination in Employment Act of 1967 (29
3 U.S.C. 631 and 633a); or

4 “(v) any rule, regulation, or policy directive
5 prescribed under any provision of law described
6 in clauses (i) through (iv) of this subparagraph,
7 the employee or applicant may raise the action as provided
8 in paragraph (2).

9 “(2) For purposes of paragraph (1), the employee
10 shall raise the action by filing a complaint with the Equal
11 Employment Opportunity Commission in accordance with
12 section 717 of the Civil Rights Act of 1964 and shall make
13 a request under section 717(e)(2)(B)(i) selecting the pro-
14 cedures specified in one of the following subparagraphs:

15 “(A) The administrative and judicial procedures
16 provided under sections 7701 and 7703.

17 “(B) The administrative and judicial procedures
18 provided under section 7121.

19 “(C) The administrative and judicial procedures
20 provided under section 717 of the Civil Rights Act
21 of 1964.

22 “(3) The agency (including the Board and the Equal
23 Employment Opportunity Commission) that carries out
24 such procedures shall apply the substantive law that is ap-
25 plied by the agency that administers the particular law

1 referred to in subsection (a)(1) that prohibits the conduct
2 alleged to be the basis of the action referred to in sub-
3 section (a)(1)(A).

4 “(b)(1) Except as provided in paragraph (2), the em-
5 ployee shall have 90 days in which to raise the action
6 under the procedures specified in subparagraph (A) or (B)
7 of subsection (a)(2), if—

8 “(A) an employee elects the procedures speci-
9 fied in subsection (a)(2)(C); and

10 “(B) the Equal Employment Opportunity Com-
11 mission dismisses under section 717(f)(5)(A) of the
12 Civil Rights Act of 1964 a claim that is based on
13 the action raised by the employee.

14 “(2) No allegation of a kind described in subsection
15 (a)(1)(B) may be raised under this subsection.

16 “(c) If at any time after the 120th day following an
17 election made under section 717(e)(2)(B)(i) of the Civil
18 Rights Act of 1964 to raise an action under the proce-
19 dures specified in subsection (a)(2)(A) of this section there
20 is no judicially reviewable action, an employee shall be en-
21 titled to file, not later than 240 days after making such
22 election, a civil action in an appropriate district court of
23 the United States for de novo review of the action raised
24 under subsection (a).

1 “(d) Nothing in this section shall be construed to af-
2 fect the right to trial de novo under any provision of law
3 described in subsection (a)(1) after a judicially reviewable
4 action.”.

5 **SEC. 5. ISSUANCE OF PROCEDURAL GUIDELINES AND NO-**
6 **TICE RULES.**

7 Not later than 1 year after the date of the enactment
8 of this Act, the Equal Employment Opportunity Commis-
9 sion shall issue—

10 (1) rules to assist entities of the Federal Gov-
11 ernment in complying with section 717(d) of the
12 Civil Rights Act of 1964, as added by section 2 of
13 this Act, and

14 (2) rules establishing—

15 (A) a uniform written official notice to be
16 used to comply with section 717 of such Act, as
17 added by section 2 of this Act; and

18 (B) requirements applicable to collecting
19 and preserving documents and information
20 under section 717(d), as added by section 2 of
21 this Act.

22 **SEC. 6. TECHNICAL AMENDMENTS.**

23 (a) CIVIL RIGHTS ACT OF 1964.—Subsections (b)
24 and (c) of section 717 of the Civil Rights Act of 1964
25 (42 U.S.C. 2000e–16 (b) and (c)) are amended by striking

1 “Civil Service Commission” each place it appears and in-
 2 serting “Commission”.

3 (b) CIVIL RIGHTS ACT OF 1991.—The second sen-
 4 tence of section 307(h) of the Civil Rights Act of 1991
 5 (2 U.S.C. 1207(h)) is amended by striking “section 15(c)”
 6 and all that follows and inserting “section 15(d)(4) of the
 7 Age Discrimination in Employment Act of 1967 (29
 8 U.S.C. 633a(d)(4)).”.

9 **SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

10 (a) EFFECTIVE DATE.—Except as provided in sub-
 11 section (b), this Act and the amendments made by this
 12 Act shall take effect on January 1, 1994.

13 (b) APPLICATION OF AMENDMENTS.—The amend-
 14 ments made by this Act (other than sections 3 and 4) shall
 15 apply only with respect to complaints filed under section
 16 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-
 17 16) on or after the effective date of this Act.

○

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S 404 IS—3