

106TH CONGRESS  
1ST SESSION

# S. 1907

To prohibit employment discrimination against parents and those with parental responsibilities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Mr. DODD (by request) (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To prohibit employment discrimination against parents and those with parental responsibilities, 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 “Ending Discrimination  
5 Against Parents Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 (a) In 1998, thirty-eight percent of all United States  
8 workers had children under 18.

9 (b) The vast majority of Americans with children  
10 under 18 are employed.

1           (c) Federal law protects working parents from em-  
2 ployment discrimination in a number of important areas.  
3 For instance, title VII of the Civil Rights Act of 1964  
4 prohibits discrimination against workers on the basis of  
5 sex; the Americans with Disabilities Act of 1990 prohibits  
6 discrimination against workers on the basis of disability;  
7 and the Pregnancy Discrimination Act of 1978 prohibits  
8 discrimination against workers on the basis of pregnancy.  
9 Also, the Family and Medical Leave Act of 1993 provides  
10 covered workers with job protection when they take time  
11 off for certain family responsibilities.

12           (d) However, no existing Federal statute protects all  
13 workers from employment discrimination on the basis of  
14 their status as parents.

15           (e) Such discrimination against parents occurs where,  
16 for example, employers refuse to hire or promote both men  
17 and women who are parents based on unwarranted stereo-  
18 types or overbroad assumptions about their level of com-  
19 mitment to the workforce.

20           (f) Such discrimination has occurred in the workplace  
21 and has been largely unremedied.

22           (g) Such discrimination occurs in both the private  
23 and the public sectors.

24           (h) Such discrimination—

1           (1) reduces the income earned by families who  
2           rely on the wages of working parents to make ends  
3           meet;

4           (2) prevents the best use of available labor re-  
5           sources;

6           (3) has been spread and perpetuated, through  
7           commerce and the channels and instrumentalities of  
8           commerce, among the workers of several States;

9           (4) burdens commerce and the free flow of  
10          goods in commerce;

11          (5) constitutes an unfair method of competition  
12          in commerce; and

13          (6) leads to labor disputes burdening and ob-  
14          structing commerce and the free flow of goods in  
15          commerce.

16          (i) Elimination of such discrimination would have  
17          positive effects, including—

18               (1) solving problems in the economy created by  
19               unfair discrimination against parents;

20               (2) promoting stable families by enabling work-  
21               ing parents to work free from discrimination against  
22               parents; and

23               (3) remedying the effects of past discrimination  
24               against parents.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (a) to prohibit employers, employment agencies, and  
4 labor organizations from discriminating against parents  
5 and persons with parental responsibilities based on the as-  
6 sumption that they cannot satisfy the requirements of a  
7 particular position; and

8 (b) to provide meaningful and effective remedies for  
9 employment discrimination against parents and persons  
10 with parental responsibilities.

11 **SEC. 4. DEFINITIONS.**

12 In this Act:

13 (a) “Commission” means the Equal Employment Op-  
14 portunity Commission.

15 (b) “Complaining party” means the Commission, the  
16 Attorney General, or any other person who may bring an  
17 action or proceeding under this Act.

18 (c) “Covered entity” means an employer, employment  
19 agency, labor organization, or joint labor-management  
20 committee.

21 (d) “Demonstrates” means meets the burdens of pro-  
22 duction and persuasion.

23 (e)(1) the term “employee” means:

24 (A) an individual to whom section 701(f) of the  
25 Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) ap-  
26 plies;

1           (B) an individual to whom section 717(a) of the  
2 Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a))  
3 applies;

4           (C) an individual to whom section 302(a)(1) of  
5 the Government Employee Rights Act of 1991 (2  
6 U.S.C. 1202(a)(1)) applies;

7           (D) a covered employee as defined in section  
8 101(3) of the Congressional Accountability Act of  
9 1995 (2 U.S.C. 1301(3)); and

10           (E) a covered employee as defined in section  
11 411(c)(1) of title 3, United States Code.

12           (2) The term “employee” includes applicants for em-  
13 ployment and former employees.

14           (f)(1) The term “employer” means:

15           (A) a person engaged in an industry affecting  
16 commerce (as defined in section 701(h) of the Civil  
17 Rights Act of 1964 (42 U.S.C. 2000e(h))) who has  
18 fifteen or more employees (as defined in section  
19 701(f) of such Act (42 U.S.C. 2000e(f))) for each  
20 working day in each of twenty or more calendar  
21 weeks in the current or preceding calendar year, and  
22 any agent of such a person;

23           (B) an entity to which section 717(a) of the  
24 Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a))  
25 applies;

1 (C) an employing authority to which section  
2 302(a)(1) of the Government Employee Rights Act  
3 of 1991 (2 U.S.C. 1202(a)(1)) applies;

4 (D) an employing office, as defined in section  
5 101(9) of the Congressional Accountability Act of  
6 1995 (2 U.S.C. 1301(9)); and

7 (E) an employing office as defined in section  
8 411(c)(2) of title 3, United States Code.

9 (2) The term “employer” does not include a bona fide  
10 private membership club (other than a labor organization)  
11 that is exempt from taxation under section 501(c) of title  
12 26, United States Code.

13 (g) “Employment agency” has the meaning given  
14 that term in section 701(c) of the Civil Rights Act of 1964  
15 (42 U.S.C. 2000e(c)).

16 (h) “Incapable of self-care” means that the individual  
17 needs active assistance or supervision to provide daily self-  
18 care in three or more of the “activities of daily living”  
19 or “instrumental activities of daily living.” Activities of  
20 daily living include adaptive activities such as caring ap-  
21 propriately for one’s grooming and hygiene, bathing,  
22 dressing, and eating. Instrumental activities of daily living  
23 include cooking, cleaning, shopping, taking public trans-  
24 portation, paying bills, maintaining a residence, using tele-

1 phones and directories, using a post office, and similar ac-  
2 tivities.

3 (i) “Labor organization” has the meaning given that  
4 term in sections 701(d) and (e) of the Civil Rights Act  
5 of 1964 (42 U.S.C. 2000e(d), (e)).

6 (j) “Office of Compliance” has the meaning given  
7 that term in the Congressional Accountability Act of 1995  
8 (2 U.S.C. 1301 et seq.).

9 (k) “Parent” means a person who, with regard to an  
10 individual who is under the age of 18, or who is 18 or  
11 older but is incapable of self-care because of a physical  
12 or mental disability—

13 (1) has the status of—

14 (A) a biological parent;

15 (B) an adoptive parent;

16 (C) a foster parent;

17 (D) a stepparent; or

18 (E) a custodian of a legal ward;

19 (2) is actively seeking legal custody or adoption;

20 or

21 (3) stands in loco parentis to such an indi-  
22 vidual.

23 (l) “Person” has the meaning given that term in sec-  
24 tion 701(a) of the Civil Rights Act of 1964 (42 U.S.C.  
25 2000e(a)).

1 (m) “Physical or mental disability” means a physical  
2 or mental impairment that substantially limits one or  
3 more of the major life activities of an individual.

4 (n) “State” has the meaning given that term in sec-  
5 tion 701(i) of the Civil Rights Act of 1964 (42 U.S.C.  
6 2000e(i)).

7 **SEC. 5. DISCRIMINATION PROHIBITED.**

8 (a) EMPLOYER PRACTICES.—It shall be an unlawful  
9 employment practice for an employer—

10 (1) to fail or refuse to hire, or to discharge, any  
11 individual, or otherwise to discriminate against any  
12 individual with regard to the compensation, terms,  
13 conditions, or privileges of employment of the indi-  
14 vidual, because such individual is a parent; or

15 (2) to limit, segregate, or classify employees in  
16 any way that would deprive, or tend to deprive, any  
17 individual of employment opportunities or otherwise  
18 adversely affect the status of the individual as an  
19 employee, because such individual is a parent.

20 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be  
21 an unlawful employment practice for an employment agen-  
22 cy to fail or refuse to refer for employment, or otherwise  
23 to discriminate against, any individual because such indi-  
24 vidual is a parent or to classify or refer for employment  
25 any individual because such individual is a parent.

1 (c) LABOR ORGANIZATION PRACTICES.—It shall be  
2 an unlawful employment practice for a labor  
3 organization—

4 (1) to exclude or expel from its membership, or  
5 otherwise to discriminate against, any individual be-  
6 cause such individual is a parent;

7 (2) to limit, segregate, or classify its member-  
8 ship or applicants for membership, or to classify or  
9 fail or refuse for employment any individual, in any  
10 way that would deprive or tend to deprive any indi-  
11 vidual of employment opportunities, or would limit  
12 such employment opportunities or otherwise ad-  
13 versely affect the status of the individual as an em-  
14 ployee, because such individual is a parent; or

15 (3) to cause or attempt to cause an employer to  
16 discriminate against an individual in violation of this  
17 Act.

18 (d) TRAINING PROGRAMS.—It shall be an unlawful  
19 employment practice for any employer, labor organization,  
20 or joint labor-management committee controlling appren-  
21 ticeship or other training or retraining, including on-the-  
22 job training programs, to discriminate against any indi-  
23 vidual because such individual is a parent in admission  
24 to, or employment in, any program established to provide  
25 apprenticeship or other training.

1 **SEC. 6. RETALIATION AND COERCION PROHIBITED.**

2 (a) RETALIATION.—A covered entity shall not dis-  
3 criminate against an employee because the employee has  
4 opposed any act or practice prohibited by this Act or be-  
5 cause the employee made a charge, testified, assisted, or  
6 participated in any manner in an investigation, pro-  
7 ceeding, or hearing under this Act.

8 (b) INTERFERENCE, COERCION, OR INTIMIDATION.—  
9 A covered entity shall not coerce, intimidate, threaten, or  
10 interfere with any employee in the exercise or enjoyment  
11 of, or on account of the employee's having exercised or  
12 enjoyed, or on account of the employee's having aided or  
13 encouraged any other individual in the exercise or enjoy-  
14 ment of, any right granted or protected by this Act.

15 **SEC. 7. OTHER PROHIBITIONS.**

16 (a) COLLECTION OF STATISTICS.—Notwithstanding  
17 any other provision of this Act, the Commission shall not  
18 collect statistics from covered entities on their employment  
19 of parents, or compel the collection of such statistics by  
20 covered entities, unless such statistics are to be used in  
21 investigation, litigation, or resolution of a claim of dis-  
22 crimination under this Act.

23 (b) QUOTAS.—A covered entity shall not adopt or im-  
24 plement a quota with respect to its employment of parents.

1 **SEC. 8. MIXED MOTIVE DISCRIMINATION.**

2 (a) An unlawful employment practice is established  
3 under this Act when the complaining party demonstrates  
4 that—

5 (1) an individual's status as a parent; or

6 (2) retaliation, coercion, or threats against, in-  
7 timidation of, or interference with an individual as  
8 described in section 6 of this Act;

9 was a motivating factor for any employment practice, even  
10 though other factors also motivated the practice.

11 (b) When an individual proves a violation under this  
12 section, and a respondent demonstrates that the respon-  
13 dent would have taken the same action in the absence of  
14 the prohibited motivating factor, a court or any other enti-  
15 ty authorized in section 11(a) of this Act to award relief—

16 (1) may grant declaratory relief, injunctive re-  
17 lief (except as provided in clause (2) below), and at-  
18 torney's fees and costs demonstrated to be directly  
19 attributable only to the pursuit of a claim under this  
20 section; and

21 (2) shall not award damages or issue an order  
22 requiring any admission, reinstatement, hiring, pro-  
23 motion, or payment.

24 **SEC. 9. DISPARATE IMPACT.**

25 Notwithstanding any other provision of this Act, the  
26 fact that an employment practice has a disparate impact

1 on parents, as the term “disparate impact” is used in sec-  
2 tion 703(k) of the Civil Rights Act of 1964 (42 U.S.C.  
3 2000e-2(k)), shall not establish a violation of this Act.

4 **SEC. 10. DEFENSES WHERE ACTIONS TAKEN IN A FOREIGN**  
5 **COUNTRY.**

6 (a) It shall not be unlawful under this Act for a cov-  
7 ered entity to take any action otherwise prohibited under  
8 this Act with respect to an employee in a workplace in  
9 a foreign country if compliance with this Act would cause  
10 such entity to violate the law of the foreign country in  
11 which such workplace is located.

12 (b)(1) If a covered entity controls a corporation  
13 whose place of incorporation is a foreign country, any  
14 practice prohibited by this Act engaged in by such cor-  
15 poration shall be presumed to be engaged in by such cov-  
16 ered entity.

17 (2) This Act shall not apply with respect to the for-  
18 eign operations of a corporation that is a foreign person  
19 not controlled by an American covered entity.

20 (3) For purposes of this subsection, the determina-  
21 tion of whether a covered entity controls a corporation  
22 shall be based on the factors set forth in section 702(e)(3)  
23 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(c)(3)).

24 (c) This Act shall not apply to a covered entity with  
25 respect to the employment of aliens outside any State.

1 **SEC. 11. ENFORCEMENT AND REMEDIES.**

2 (a) INCORPORATION OF POWERS, REMEDIES, AND  
3 PROCEDURES IN OTHER CIVIL RIGHTS STATUTES.—With  
4 respect to the administration and enforcement of this Act  
5 in the case of a claim alleged by an individual for a viola-  
6 tion of this Act, the following statutory provisions are  
7 hereby incorporated, and shall, along with the provisions  
8 in subsection 11(b), establish the powers, remedies, proce-  
9 dures, and jurisdiction that this Act provides to the Equal  
10 Employment Opportunity Commission, the Attorney Gen-  
11 eral, the Librarian of Congress, the Office of Compliance  
12 and its Board of Directors, the Merit Systems Protection  
13 Board, the President, the courts of the United States, and/  
14 or any other person alleging a violation of any provision  
15 of this Act—

16 (1) for individuals who are covered under title  
17 VII of the Civil Rights Act of 1964, as amended (42  
18 U.S.C. 2000e et seq.), sections 705, 706, 707, 709,  
19 710, 711, and 717 of that Act (42 U.S.C. 2000e–  
20 4, 2000e–5, 2000e–6, 2000e–8, 2000e–9 2000e–10,  
21 and 2000e–16), and sections 7121, 7701, 7702, and  
22 7703 of title 5, United States Code, as applicable;

23 (2) for individuals who are covered under sec-  
24 tion 302(a) of the Government Employee Rights Act  
25 of 1991 (2 U.S.C. 1202(a)), sections 302(b)(1) and

1 304(b)–(e) of that Act (2 U.S.C. 1202(b)(1),  
2 1220(b)–(e));

3 (3) for individuals who are covered under sec-  
4 tion 101(3) of the Congressional Accountability Act  
5 of 1995 (2 U.S.C. 1301(3)), sections 201(b)(1),  
6 225, and 401–416 of that Act (2 U.S.C. 1311(b)(1),  
7 1361, 1401–1416); and

8 (4) for individuals who are covered under sec-  
9 tion 411(c)(1) of title 3, United States Code, sec-  
10 tions 411(b)(1), 435, and 451–456 of that title.

11 (b) ADDITIONAL REMEDIES.—

12 (1) Notwithstanding any express or implied lim-  
13 itation on the remedies incorporated by reference in  
14 subsection 11(a), and except as provided in sub-  
15 section (b)(2) of this section, section 8, or section 12  
16 of this Act, any covered entity that violates this Act  
17 shall be liable for such compensatory damages as  
18 may be appropriate and for punitive damages if the  
19 covered entity engaged in a discriminatory practice  
20 of practices with malice or with reckless indifference  
21 to the federally protected rights of an aggrieved indi-  
22 vidual.

23 (2) Notwithstanding subsection 11(b)(1),

24 (A) absent its consent to a monetary rem-  
25 edy, a State may be liable for monetary relief

1           only in an action brought by the Attorney Gen-  
2           eral in a court of the United States; and

3                   (B) a State shall not be liable for punitive  
4           damages.

5           (3) Notwithstanding any express or implied lim-  
6           itation on the remedies incorporated by reference in  
7           subsection 11(a) or included in subsection 11(b)(2)  
8           above,

9                   (A) an individual may bring an action in a  
10          district court of the United States for declara-  
11          tory or injunctive relief against any appropriate  
12          State official for a violation of this Act; and

13                   (B) the Attorney General may bring an ac-  
14          tion in a district court of the United States for  
15          declaratory or injunctive relief against any ap-  
16          propriate State official or State for a violation  
17          of this Act.

18 **SEC. 12. FEDERAL IMMUNITY.**

19          Notwithstanding any other provision of this Act, in  
20          an action or administrative proceeding against the United  
21          States for a violation of this Act, remedies (including rem-  
22          edies at law and in equity, and interest) are available for  
23          a violation to the same extent as the remedies are available  
24          against a private entity, except that punitive damages are  
25          not available.

1 **SEC. 13. POSTING NOTICES.**

2 A covered entity shall post notices for individuals to  
3 whom this Act applies that describe the applicable provi-  
4 sions of this Act in the manner prescribed by, and subject  
5 to the penalty provided under, section 711 of the Civil  
6 Rights Act of 1964 (42 U.S.C. 2000e–10).

7 **SEC. 14. REGULATIONS.**

8 (a) IN GENERAL.—Except as provided in subsections  
9 14(b), (c), (d), and (e) below, the Commission shall have  
10 authority to issue regulations to carry out this Act.

11 (b) LIBRARIAN OF CONGRESS.—The Librarian of  
12 Congress shall have authority to issue regulations to carry  
13 out this Act with respect to employees of the Library of  
14 Congress.

15 (c) BOARD.—The Board of the Office of Compliance  
16 shall have authority to issue regulations to carry out this  
17 Act, in accordance with sections 303 and 304 of the Con-  
18 gressional Accountability Act of 1995 (2 U.S.C. 1383,  
19 1384), with respect to covered employees as defined in sec-  
20 tion 101(3) of such Act (2 U.S.C. 1301(3)).

21 (d) PRESIDENT.—The President shall have authority  
22 to issue regulations to carry out this Act with respect to  
23 covered employees as defined in section 411(c)(1) of title  
24 3, United States Code.

25 (e) COMMISSION AND MERIT SYSTEM PROTECTION  
26 BOARD.—The Commission and the Merit System Protec-

1 tion Board shall each have authority to issue regulations  
2 to carry out this Act with respect to individuals covered  
3 by sections 7121, 7701, 7702, and 7703 of title 5, United  
4 States Code.

5 **SEC. 15. RELATIONSHIP TO OTHER LAWS.**

6 Nothing in this Act shall affect the interpretation or  
7 application of, and this Act shall not invalidate or limit  
8 the rights, remedies, or procedures available to an indi-  
9 vidual claiming discrimination prohibited under, any other  
10 Federal law or any law of a State or political subdivision  
11 of a State.

12 **SEC. 16. SEVERABILITY.**

13 If any provision of this Act, or the application of such  
14 provision to any person or circumstances, is held to be  
15 invalid, the remainder of this Act and the application of  
16 such provisions to other persons and circumstances shall  
17 not be affected.

18 **SEC. 17. APPROPRIATIONS.**

19 There are authorized to be appropriated such sums  
20 as may be necessary to carry out this Act.

21 **SEC. 18. EFFECTIVE DATE.**

22 This Act shall take effect 180 days after enactment  
23 and shall not apply to conduct occurring before the effec-  
24 tive date.

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