

117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1065

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IN THE SENATE OF THE UNITED STATES

MAY 17, 2021

Received; read twice and referred to the Committee on Health, Education,  
Labor, and Pensions

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## AN ACT

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”.

6 **SEC. 2. NONDISCRIMINATION WITH REGARD TO REASON-**  
7 **ABLE ACCOMMODATIONS RELATED TO PREG-**  
8 **NANCY.**

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

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

18            (2) require a qualified employee affected by  
19 pregnancy, childbirth, or related medical conditions  
20 to accept an accommodation other than any reason-  
21 able accommodation arrived at through the inter-  
22 active process referred to in section 5(7);

23            (3) deny employment opportunities to a quali-  
24 fied employee if such denial is based on the need of  
25 the covered entity to make reasonable accommoda-

1 tions to the known limitations related to the preg-  
2 nancy, childbirth, or related medical conditions of a  
3 qualified employee;

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

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

15 **SEC. 3. REMEDIES AND ENFORCEMENT.**

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

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

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

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

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

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

23 (1) IN GENERAL.—The powers, remedies, and  
24 procedures provided in the Congressional Account-  
25 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the

1 Board (as defined in section 101 of such Act (2  
2 U.S.C. 1301)) or any person alleging a violation of  
3 section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1))  
4 shall be the powers, remedies, and procedures this  
5 Act provides to the Board or any person, respec-  
6 tively, alleging an unlawful employment practice in  
7 violation of this Act against an employee described  
8 in section 5(3)(B) except as provided in paragraphs  
9 (2) and (3) of this subsection.

10 (2) COSTS AND FEES.—The powers, remedies,  
11 and procedures provided in subsections (b) and (c)  
12 of section 722 of the Revised Statutes (42 U.S.C.  
13 1988) shall be the powers, remedies, and procedures  
14 this Act provides to the Board or any person alleg-  
15 ing such practice.

16 (3) DAMAGES.—The powers, remedies, and pro-  
17 cedures provided in section 1977A of the Revised  
18 Statutes (42 U.S.C. 1981a), including the limita-  
19 tions contained in subsection (b)(3) of such section  
20 1977A, shall be the powers, remedies, and proce-  
21 dures this Act provides to the Board or any person  
22 alleging such practice (not an employment practice  
23 specifically excluded from coverage under section  
24 1977A(a)(1) of the Revised Statutes).

1           (4) OTHER APPLICABLE PROVISIONS.—With re-  
2           spect to a claim alleging a practice described in  
3           paragraph (1), title III of the Congressional Ac-  
4           countability Act of 1995 (2 U.S.C. 1381 et seq.)  
5           shall apply in the same manner as such title applies  
6           with respect to a claim alleging a violation of section  
7           201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

8           (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE  
9           3, UNITED STATES CODE.—

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

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

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

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

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

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

1 scribed in section 5(3)(D) except as provided in  
2 paragraphs (2) and (3) of this subsection.

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

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

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

20 (1) IN GENERAL.—The powers, remedies, and  
21 procedures provided in section 717 of the Civil  
22 Rights Act of 1964 (42 U.S.C. 2000e–16) to the  
23 Commission, the Attorney General, the Librarian of  
24 Congress, or any person alleging a violation of that  
25 section shall be the powers, remedies, and proce-



1       dures this Act provides to the Commission, the At-  
2       torney General, the Librarian of Congress, or any  
3       person, respectively, alleging an unlawful employ-  
4       ment practice in violation of this Act against an em-  
5       ployee described in section 5(3)(E) except as pro-  
6       vided in paragraphs (2) and (3) of this subsection.

7               (2) COSTS AND FEES.—The powers, remedies,  
8       and procedures provided in subsections (b) and (c)  
9       of section 722 of the Revised Statutes (42 U.S.C.  
10       1988) shall be the powers, remedies, and procedures  
11       this Act provides to the Commission, the Attorney  
12       General, the Librarian of Congress, or any person  
13       alleging such practice.

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

24              (f) PROHIBITION AGAINST RETALIATION.—

1           (1) IN GENERAL.—No person shall discriminate  
2           against any employee because such employee has op-  
3           posed any act or practice made unlawful by this Act  
4           or because such employee made a charge, testified,  
5           assisted, or participated in any manner in an inves-  
6           tigation, proceeding, or hearing under this Act.

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

15          (3) REMEDY.—The remedies and procedures  
16          otherwise provided for under this section shall be  
17          available to aggrieved individuals with respect to vio-  
18          lations of this subsection.

19          (g) LIMITATION.—Notwithstanding subsections  
20          (a)(3), (b)(3), (c)(3), (d)(3), and (e)(3), if an unlawful em-  
21          ployment practice involves the provision of a reasonable  
22          accommodation pursuant to this Act or regulations imple-  
23          menting this Act, damages may not be awarded under sec-  
24          tion 1977A of the Revised Statutes (42 U.S.C. 1981a) if  
25          the covered entity demonstrates good faith efforts, in con-

1 sultation with the employee with known limitations related  
2 to pregnancy, childbirth, or related medical conditions who  
3 has informed the covered entity that accommodation is  
4 needed, to identify and make a reasonable accommodation  
5 that would provide such employee with an equally effective  
6 opportunity and would not cause an undue hardship on  
7 the operation of the covered entity.

8 **SEC. 4. RULEMAKING.**

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

16 **SEC. 5. DEFINITIONS.**

17 As used in this Act—

18 (1) the term “Commission” means the Equal  
19 Employment Opportunity Commission;

20 (2) the term “covered entity”—

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

24 (B) includes—

1 (i) an employer, which means a per-  
2 son engaged in industry affecting com-  
3 merce who has 15 or more employees as  
4 defined in section 701(b) of title VII of the  
5 Civil Rights Act of 1964 (42 U.S.C.  
6 2000e(b));

7 (ii) an employing office, as defined in  
8 section 101 of the Congressional Account-  
9 ability Act of 1995 (2 U.S.C. 1301) and  
10 section 411(c) of title 3, United States  
11 Code;

12 (iii) an entity employing a State em-  
13 ployee described in section 304(a) of the  
14 Government Employee Rights Act of 1991  
15 (42 U.S.C. 2000e–16e(a)); and

16 (iv) an entity to which section 717(a)  
17 of the Civil Rights Act of 1964 (42 U.S.C.  
18 2000e–16(a)) applies;

19 (3) the term “employee” means—

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

23 (B) a covered employee (including an ap-  
24 plicant), as defined in section 101 of the Con-

1           gressional Accountability Act of 1995 (2 U.S.C.  
2           1301);

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

6           (D) a State employee (including an appli-  
7           cant) described in section 304(a) of the Govern-  
8           ment Employee Rights Act of 1991 (42 U.S.C.  
9           2000e–16c(a)); or

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

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

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

24          (6) the term “qualified employee” means an  
25          employee or applicant who, with or without reason-

1 able accommodation, can perform the essential func-  
2 tions of the employment position, except that an em-  
3 ployee or applicant shall be considered qualified if—

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

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

8 (C) the inability to perform the essential  
9 function can be reasonably accommodated; and

10 (7) the terms “reasonable accommodation” and  
11 “undue hardship” have the meanings given such  
12 terms in section 101 of the Americans with Disabil-  
13 ities Act of 1990 (42 U.S.C. 12111) and shall be  
14 construed as such terms are construed under such  
15 Act and as set forth in the regulations required by  
16 this Act, including with regard to the interactive  
17 process that will typically be used to determine an  
18 appropriate reasonable accommodation.

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

20 A State shall not be immune under the 11th Amend-  
21 ment to the Constitution from an action in a Federal or  
22 State court of competent jurisdiction for a violation of this  
23 Act. In any action against a State for a violation of this  
24 Act, remedies (including remedies both at law and in eq-  
25 uity) are available for such a violation to the same extent

1 as such remedies are available for such a violation in an  
2 action against any public or private entity other than a  
3 State.

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

5 Nothing in this Act shall be construed to invalidate  
6 or limit the powers, remedies, and procedures under any  
7 Federal law or law of any State or political subdivision  
8 of any State or jurisdiction that provides greater or equal  
9 protection for individuals affected by pregnancy, child-  
10 birth, or related medical conditions.

11 **SEC. 8. SEVERABILITY.**

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

Passed the House of Representatives May 14, 2021.

Attest:                      CHERYL L. JOHNSON,  
*Clerk.*