

Protecting Older Workers Against Discrimination Act

Today, Americans are working more and longer than they ever have. When older workers lose their jobs, they are far more likely than other workers to join the ranks of the long-term unemployed. And unfortunately, discrimination appears to be a significant factor in older workers' long-term unemployment.

A 2018 survey conducted by the AARP found that 3 in 5 workers age 45 and older had seen or experienced age discrimination in the workplace. The 2018 survey also found that three-quarters of older workers blame age discrimination for their lack of confidence in being able to find a new job.

The Problem: *The Supreme Court has undermined legal protections for older workers facing age discrimination.*

- Despite older workers' clear need for strong workplace protections from discrimination, the Supreme Court's 2009 decision in *Gross v. FBL Financial Services, Inc.* has weakened protections against age discrimination under the *Age Discrimination in Employment Act* (ADEA).
- *Gross* requires that plaintiffs seeking to prove age discrimination in employment demonstrate that age was the *motivating factor* for the employer's adverse action.
- Also known as "but-for" causation, this heightened evidentiary standard upends decades of precedent that had allowed individuals to prove discrimination by showing that a discriminatory motive was *one of the factors* on which an employer's adverse action was based.

The Solution: *The Protecting Older Workers Against Discrimination Act (POWADA) restores legal protections for older workers so they can hold employers accountable for age discrimination.*

- POWADA simply returns the standard for age discrimination claims to the pre-2009 evidentiary threshold, replacing the *Gross* "but-for" test with the mixed-motive test that Courts applied prior to 2009. This aligns the burden of proof for age discrimination with the same standards for proving discrimination based on race and national origin.
- POWADA bill amends four laws – the ADEA, Title VII of the *Civil Rights Act of 1964*, the *Americans with Disabilities Act*, and the *Rehabilitation Act* – to ensure that all victims of discrimination, including older workers, can have their claims adjudicated fairly without the affirmative obligation of refuting every purported nondiscriminatory motive offered by the wrongdoer for their discriminatory action.