

Protecting Older Workers Against Discrimination Act of 2021 (H.R. 2062)

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. Age discrimination appears to be a significant factor in older workers' long-term unemployment.

A [2018 AARP survey](#) found that 3 in 5 workers age 45 and older had seen or experienced age discrimination in the workplace. Moreover, the United States missed out on a [potential \\$850 billion in GDP](#) in 2018 because those age 50-plus who wished to remain in or re-enter the labor force, switch jobs or be promoted within their existing company were not given that opportunity, according to study produced by AARP and Economist Intelligence Unit in 2020.

The Problem: *The Supreme Court has undermined legal protections for older workers seeking relief from 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* overturned past precedent which previously only required that plaintiffs seeking to prove age discrimination in employment demonstrate that age was a *motivating factor* for the employer's adverse action. This is also called the "mixed motive" standard.
- However, this 5-4 Supreme Court decision now requires plaintiffs to prove "but-for" causation, or that age was the sole reason for the adverse employment action. 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. Since the 2009 *Gross* decision, courts have applied the "but-for" standard to other civil rights laws.

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. And it restores protections to other laws affected by the *Gross* decision's reasoning.*

- POWADA would restore longstanding protections under the ADEA which covers workers aged 40 and over. It does so 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 currently in law for proving discrimination based on race and national origin.
- POWADA amends three other civil laws in addition to the ADEA – the anti-retaliation provisions in Title VII of the *Civil Rights Act*, the *Americans with Disabilities Act*, and the *Rehabilitation Act of 1973* – to ensure that charges of discrimination under these three laws will also be adjudicated under the "mixed motive" standard. This will ensure victims are not required to refute every purported nondiscriminatory motive offered by the employer for their discriminatory action.