

Protect Older Job Applicants Act of 2021 (H.R. 3992)

The *Protect Older Job Applicants Act of 2021* (POJA) clarifies that older job applicants can challenge disparate impact discriminatory hiring practices under the *Age Discrimination in Employment Act* (ADEA).

For nearly 50 years since enactment, the ADEA protected both older employees *and job applicants* from disparate impact age discrimination. Unlike disparate treatment claims, which involve an employer's intent to discriminate based on age, disparate impact claims involve employer policies and practices that appear to be neutral, but result in a disproportionate impact on older workers.

Two federal court decisions have interpreted the ADEA to exclude older job applicants from the law's disparate impact coverage, while still protecting employees. Despite the history of protecting older job applicants, and the opinion of the Equal Employment Opportunity Commission (EEOC) that the ADEA affords such protection, the Supreme Court has declined to review these adverse decisions. At this point, Congressional action is needed.

[Forty-four percent](#) of older applicants report being asked for age-related information when applying for a job, and three-fourths of workers age 45 and older blame age discrimination for their lack of confidence in finding a new job. Derogatory stereotypes about older workers' physical and cognitive health, personal ambition, and time flexibility are [often embedded in hiring decisions](#) made by managers.

The Problem: *The 7th and 11th Circuit Courts of Appeals have held that the ADEA prevents older job applicants from pursuing disparate impact claims for age-based discrimination in hiring.*

- In 2016, the 11th Circuit held that the ADEA's disparate impact provision only covers employees, but not older job applicants (*Villarreal v. R.J. Reynolds Tobacco Company*).
- In 2019, the 7th Circuit adopted the same restriction regarding job applicants in *Kleber v. CareFusion Corporation*.
- Both decisions rejected decades of EEOC guidance that job applicants are covered by the ADEA, as well as the Supreme Court's interpretation of a parallel statute under Title VII of the *Civil Rights Act of 1964*.

The Solution: *Protect Older Job Applicants Act clarifies that the Age Discrimination in Employment Act protects older job applicants.*

- POJA clarifies that older "applicants for employment" are also protected from age discrimination under the ADEA's disparate impact provision.
- POJA will directly restore protections for older job applicants in the 7th and 11th Circuits by reversing *Villarreal* and *Kleber*, as well as prevent other circuits from adopting similar interpretations of the ADEA.
- POJA aligns ADEA protections for job applicants with Title VII of the *Civil Rights Act of 1964*.
- AARP and the National Council on Aging support this legislation.
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