

103D CONGRESS  
1ST SESSION

# S. 404

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, JANUARY 5), 1993

Mr. GLENN (for himself, Ms. MIKULSKI, Mr. STEVENS, Mr. SIMON, Mr. DECONCINI, Mr. WOFFORD, Mr. AKAKA, Mr. FEINGOLD, Mr. CONRAD, Mr. McCAIN, Ms. MOSELEY-BRAUN, Mr. LIEBERMAN, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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# A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees, 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 “Federal Employee  
5       Fairness Act of 1993”.

1 **SEC. 2. AMENDMENTS RELATING TO ADMINISTRATIVE DE-**2 **TERMINATION OF FEDERAL EMPLOYEE DIS-**3 **CRIMINATION CLAIMS.**4 (a) **DEFINITIONS.**—Section 701 of the Civil Rights

5 Act of 1964 (42 U.S.C. 2000e) is amended—

6 (1) in paragraph (f) by striking “The term”  
7 and inserting “Except when it appears as part of the  
8 term ‘Federal employee’, the term”; and

9 (2) by adding at the end the following:

10 “(o) The term ‘Commission’ means the Equal Em-  
11 ployment Opportunity Commission.12 “(p) The term ‘entity of the Federal Government’  
13 means an entity to which section 717(a) applies, except  
14 that such term does not include the Library of Congress.15 “(q) The term ‘Federal employee’ means an individ-  
16 ual employed by, or who applies for employment with, an  
17 entity of the Federal Government.18 “(r) The term ‘Federal employment’ means employ-  
19 ment by an entity of the Federal Government.20 “(s) The terms ‘government’, ‘government agency’,  
21 and ‘political subdivision’ do not include an entity of the  
22 Federal Government.”.23 (b) **EEOC DETERMINATION OF FEDERAL EMPLOY-**  
24 **MENT DISCRIMINATION CLAIMS.**—Section 717 of the Civil

25 Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

26 (1) in subsection (b)—

(A) in the second sentence, by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

4 (B) in the fourth sentence, by redesignat-  
5 ing paragraphs (1) and (2) as subparagraphs  
6 (A) and (B), respectively;

10 (D) in paragraph (2) (as designated by  
11 subparagraph (C) of this paragraph)—

12 (i) in subparagraph (B) (as redesignated by subparagraph (A) of this para-  
13 graph) by striking “and” at the end;  
14

15 (ii) in subparagraph (C) (as redesignated by subparagraph (A) of this paragraph) by striking the period and inserting  
16  
17  
18 “; and”; and

19 (iii) by adding after subparagraph (C)  
20 the following:

21               “(D) require each entity of the Federal Govern-  
22               ment—

23                             “(i)(I) to make counseling available to a  
24                             Federal employee who chooses to notify such  
25                             entity that the employee believes such entity

1 has discriminated against the employee in violation  
2 of subsection (a), for the purpose of trying  
3 to resolve the matters with respect to which  
4 such discrimination is alleged;

5 “(II) to assist such employee in identifying  
6 the respondent required by subsection (c)(1) to  
7 be named in a complaint alleging such violation;

8 “(III) to inform such employee individually  
9 of the procedures and deadlines that apply  
10 under this section to a claim alleging such dis-  
11 crimination; and

12 “(IV) to make such counseling available  
13 throughout the administrative process;

14 “(ii) to establish a voluntary alternative  
15 dispute resolution process, as described in sub-  
16 section (e)(1), to resolve complaints;

17 “(iii) not to discourage Federal employees  
18 from filing complaints on any matter relating to  
19 discrimination in violation of this section; and

20 “(iv) not to require Federal employees to  
21 participate in such counseling or dispute resolu-  
22 tion process.”; and

23 (E) by inserting after paragraph (2) (as  
24 designated by subparagraph (C) of this para-  
25 graph) the following:

1       “(3) The decision of a Federal employee to forgo such  
2 counseling or dispute resolution process shall not affect  
3 the rights of such employee under this title.”;

4           (2) by striking subsection (c);

5           (3) in subsection (d)—

6               (A) by striking “(k)” and inserting “(j)”;

7               (B) by striking “brought hereunder” and  
8 inserting “commenced under this section”; and

9               (C) by striking “, and the same” and all  
10 that follows and inserting a period and the fol-  
11 lowing: “The head of the department, agency,  
12 or other entity of the Federal Government in  
13 which discrimination in violation of subsection  
14 (a) is alleged to have occurred shall be the de-  
15 fendant in a civil action alleging such violation.

16           In any action or proceeding under this section,  
17 the court, in the discretion of the court, may  
18 allow the prevailing party (other than an entity  
19 of the Federal Government) a reasonable attor-  
20 ney’s fee (including expert fees and other litiga-  
21 tion expenses), costs, and the same interest to  
22 compensate for delay in payment as a court has  
23 authority to award under section 706(k).”;

24           (4) by redesignating subsections (d) and (e) as  
25 subsections (m) and (n), respectively;

(5) by inserting after subsection (b) the following:

3       “(c)(1)(A) Except as provided in subparagraph (B),  
4 a complaint filed by or on behalf of a Federal employee  
5 or a class of Federal employees and alleging a claim of  
6 discrimination arising under subsection (a) or paragraph

7 (4) shall—

8                   “(i) name as the respondent the head of the de-  
9                   partment, agency, or other entity of the Federal  
10                  Government in which such discrimination is alleged  
11                  to have occurred (referred to in this section as the  
12                  ‘respondent’); and

13                   “(ii) be filed with the respondent, or with the  
14                   Commission, not later than 180 days after the al-  
15                   leged discrimination occurs.

16       “(B) A complaint described in subparagraph (A)  
17 shall be considered to be filed in compliance with subpara-  
18 graph (A), if not later than 180 days after the alleged  
19 discrimination occurs, the complaint is filed—

20                   “(i) with such department, agency, or entity; or

21               “(ii) if the complaint does not arise out of a  
22 dispute with an agency within the intelligence com-  
23 munity, as defined by Executive order, with any  
24 other entity of the Federal Government, regardless  
25 of the respondent named.

1       “(2) If the complaint is filed with an entity of the  
2 Federal Government other than the department, agency,  
3 or entity in which such discrimination is alleged to have  
4 occurred—

5           “(A) the entity (other than the Commission)  
6 with whom the complaint is filed shall transmit the  
7 complaint to the Commission, not later than 15 days  
8 after receiving the complaint; and

9           “(B) the Commission shall transmit a copy of  
10 the complaint, not later than 10 days after receiving  
11 the complaint, to the respondent.

12       “(3)(A) Not later than 3 days after the respondent  
13 receives the complaint from a source other than the Com-  
14 mission, the respondent shall notify the Commission that  
15 the respondent has received the complaint and shall in-  
16 form the Commission of the identity of the Federal em-  
17 ployee aggrieved by the discrimination alleged in the com-  
18 plaint.

19       “(B) Not later than 10 days after the respondent or  
20 the Merit Systems Protection Board receives the com-  
21 plaint from a source other than the Commission, the re-  
22 spondent or the Board shall transmit to the Commission  
23 a copy of the complaint.

24       “(4)(A) No person shall, by reason of the fact that  
25 a Federal employee or an authorized representative of

1 Federal employees has filed, instituted, or caused to be  
2 filed or instituted any proceeding under this section, or  
3 has testified or is about to testify in any proceeding result-  
4 ing from the administration or enforcement of this sec-  
5 tion—

6           “(i) discharge the employee or representative;

7           “(ii) discriminate against the employee or rep-  
8 resentative in administering a performance-rating  
9 plan under chapter 43 of title 5, United States  
10 Code;

11           “(iii) in any other way discriminate against the  
12 employee or representative; or

13           “(iv) cause another person to take an action de-  
14 scribed in clause (i), (ii), or (iii).

15           “(B) Any Federal employee or representative of Fed-  
16 eral employees who believes that the employee or rep-  
17 resentative has been discharged or otherwise discriminated  
18 against by any person in violation of subparagraph (A),  
19 may file a complaint in accordance with paragraph (1).

20           “(d)(1) Throughout the period beginning on the date  
21 the respondent receives the complaint and ending on the  
22 latest date by which all administrative and judicial pro-  
23 ceedings available under this section have been concluded  
24 with respect to such claim, the respondent shall collect and  
25 preserve documents and information (including the com-

1   plaint) that are relevant to such claim, including not less  
2   than the documents and information that comply with  
3   rules issued by the Commission.

4           “(2) If the complaint alleges that a person has—

5               “(A) participated in the discrimination that is  
6   the basis for the complaint; or

7               “(B) at the time of the discrimination—

8                   “(i) was a supervisor of the Federal em-  
9   ployee subject to the discrimination;

10                   “(ii) was aware of the discrimination; and  
11                   “(iii) failed to make reasonable efforts to  
12   curtail or mitigate the discrimination,

13   the respondent shall ensure that the person shall not be  
14   designated to carry out the requirements of paragraph (1),  
15   or to conduct any investigation related to the complaint.

16           “(e)(1)(A) The respondent shall make reasonable ef-  
17   forts to conciliate each claim alleged in the complaint  
18   through alternative dispute resolution procedures dur-  
19   ing—

20                   “(i) the 30-day period; or

21                   “(ii) with the written consent of the aggrieved  
22   Federal employee, the 60-day period,

23   beginning on the date the respondent receives the com-  
24   plaint.

1       “(B) Alternative dispute resolution under this para-  
2 graph may include a conciliator described in subparagraph  
3 (C), the respondent, and the aggrieved Federal employee  
4 in a process involving meetings with the parties separately  
5 or jointly for the purposes of resolving the dispute between  
6 the parties.

7       “(C) A conciliator shall be appointed by the Commis-  
8 sion to consider each complaint filed under this section.  
9 The Commission shall appoint a conciliator after consider-  
10 ing any candidate who is recommended to the Director by  
11 the Federal Mediation and Conciliation Service, the Ad-  
12 ministrative Conference of the United States, or organiza-  
13 tions composed primarily of individuals experienced in ad-  
14 judicating or arbitrating personnel matters.

15       “(2) Before the expiration of the applicable period  
16 specified in paragraph (1)(A) and with respect to such  
17 claim, the respondent shall—

18           “(A) enter into a settlement agreement with  
19 such Federal employee; or

20           “(B) give formal written notice to such Federal  
21 employee that such Federal employee may, before  
22 the expiration of the 90-day period beginning on the  
23 date such Federal employee receives such notice, ei-  
24 ther—

25           “(i) file with the Commission—

1                     “(I) a written request for a deter-  
2                     mination of such claim under subsection  
3                     (f) by an administrative judge of the Com-  
4                     mission;

5                     “(II) if such claim alleges an action  
6                     appealable to the Merit System Protection  
7                     Board, a written request electing that a  
8                     determination of such claim be made under  
9                     the procedures specified in either subpara-  
10                    graph (A) or (B) of section 7702(a)(2) of  
11                    title 5, United States Code; or

12                    “(III) if such claim alleges a grievance  
13                    that is subject to section 7121 of title 5,  
14                    United States Code but not appealable to  
15                    the Merit Systems Protection Board, a  
16                    written request to raise such claim under  
17                    the administrative and judicial procedures  
18                    provided in such section 7121; or

19                    “(ii) commence a civil action in an appro-  
20                    priate district court of the United States for de  
21                    novo review of such claim.

22                    “(3) Such Federal employee may file a written re-  
23                    quest described in paragraph (2)(B)(i), or commence a  
24                    civil action described in paragraph (2)(B)(ii), at any  
25                    time—

1           “(A) after the expiration of the applicable pe-  
2        riod specified in paragraph (1)(A); and

3           “(B) before the expiration of the 90-day period  
4        specified in paragraph (2).

5           “(f)(1)(A) If such Federal employee files a written  
6        request under subsection (e)(2)(B)(i)(I) and in accordance  
7        with subsection (e)(3) with the Commission for a deter-  
8        mination under this subsection of the claim described in  
9        subsection (a), the Commission shall transmit a copy of  
10      such request to the respondent and shall appoint an ad-  
11      ministrative judge of the Commission to determine such  
12      claim.

13           “(B) If such Federal employee files a written request  
14      under subclause (II) or (III) of subsection (e)(2)(B)(i) and  
15      in accordance with section (e)(3), the Commission shall  
16      transmit, not later than 10 days after receipt of such re-  
17      quest, the request to the appropriate agency for deter-  
18      mination.

19           “(2) Immediately after receiving a copy of a request  
20      under subsection (e)(2)(B)(i), the respondent shall trans-  
21      mit a copy of all documents and information collected by  
22      the respondent under subsection (d) with respect to such  
23      claim—

24           “(A) to the Commission if such request is for  
25      a determination under this subsection; or

1           “(B) to the Merit Systems Protection Board if  
2       such request is for a determination under the proce-  
3       dures specified in section 7702(a)(2)(A) of title 5,  
4       United States Code.

5           “(3)(A)(i) If the administrative judge determines  
6       there are reasonable grounds to believe that to carry out  
7       the purposes of this section it is necessary to stay a per-  
8       sonnel action by the respondent against the aggrieved  
9       Federal employee, the administrative judge may request  
10      any member of the Commission to issue a stay against  
11      such personnel action for 15 calendar days.

12           “(ii) A stay requested under clause (i) shall take ef-  
13      fect on the earlier of—

14           “(I) the order of such member; and

15           “(II) the fourth calendar day (excluding Satur-  
16      day, Sunday, and any legal public holiday) following  
17      the date on which such stay is requested.

18           “(B) The administrative judge may request any  
19      member of the Commission to extend, for a period not to  
20      exceed 30 calendar days, a stay issued under subpara-  
21      graph (A).

22           “(C) The administrative judge may request the Com-  
23      mission to extend such stay for any period the Commission  
24      considers to be appropriate beyond the period in effect  
25      under subparagraph (A) or (B).

1       “(D) Members of the Commission shall have author-  
2 ity to issue and extend a stay for the periods referred to  
3 in subparagraphs (A) and (B), respectively. The Commis-  
4 sion shall have authority to extend a stay in accordance  
5 with subparagraph (C) for any period.

6       “(E) The respondent shall comply with a stay in ef-  
7 fect under this paragraph.

8       “(4)(A) The administrative judge shall determine  
9 whether the documents and information received under  
10 paragraph (2) comply with subsection (d) and are com-  
11 plete and accurate.

12       “(B) If the administrative judge finds that the re-  
13 spondent has failed to produce the documents and infor-  
14 mation necessary to comply with such subsection, the ad-  
15 ministrative judge shall, in the absence of good cause  
16 shown by the respondent, impose any of the sanctions  
17 specified in paragraph (6)(C) and shall require the re-  
18 spondent—

19           “(i) to obtain any additional documents and in-  
20 formation necessary to comply with such subsection;  
21           and

22           “(ii) to correct any inaccuracy in the documents  
23 and information so received.

1       “(5)(A) After examining the documents and informa-  
2    tion received under paragraph (4), the administrative  
3    judge shall issue an order dismissing—

4           “(i) any frivolous claim alleged in the com-  
5    plaint; and

6           “(ii) the complaint if it fails to state a  
7    nonfrivolous claim for which relief may be granted  
8    under this section.

9       “(B)(i) If a claim or the complaint is dismissed under  
10  subparagraph (A), the administrative judge shall give for-  
11  mal written notice to the aggrieved Federal employee that  
12  such Federal employee may, before the expiration of the  
13  90-day period beginning on the date such Federal em-  
14  ployee receives such notice—

15           “(I) file with the Commission a written request  
16  for review of such order; or

17           “(II) commence a civil action in an appropriate  
18  district court of the United States for de novo review  
19  of such claim or such complaint.

20           “(ii) Such Federal employee may commence such civil  
21  action in the 90-day period specified in clause (i).

22       “(6)(A)(i) If the complaint is not dismissed under  
23  paragraph (5)(A), the administrative judge shall make a  
24  determination, after an opportunity for a hearing, on the  
25  merits of each claim that is not dismissed under such

1 paragraph. The administrative judge shall make a deter-  
2 mination on the merits of any other nonfrivolous claim  
3 under this section, and on any action such Federal em-  
4 ployee may appeal to the Merit Systems Protection Board,  
5 reasonably expected to arise from the facts on which the  
6 complaint is based.

7       “(ii) In making the determination required by clause  
8 (i), the administrative judge shall—

9           “(I) decide whether the aggrieved Federal em-  
10 ployee was the subject of unlawful intentional dis-  
11 crimination in a department, agency, or other entity  
12 of the Federal Government under this title, section  
13 102 of the Americans with Disabilities Act of 1990,  
14 section 501 of the Rehabilitation Act of 1973, sec-  
15 tion 4 of the Age Discrimination in Employment Act  
16 of 1967, or the Equal Pay Act of 1963;

17           “(II) if the employee was the subject of such  
18 discrimination, contemporaneously identify the per-  
19 son who engaged in such discrimination; and

20           “(III) notify the person identified in subclause  
21 (II) of the complaint and the allegations raised in  
22 the complaint.

23       “(iii) As soon as practicable, the administrative judge  
24 shall—

1           “(I) determine whether the administrative pro-  
2        ceeding with respect to such claim may be main-  
3        tained as a class proceeding; and

4           “(II) if the administrative proceeding may be so  
5        maintained, describe persons whom the administra-  
6        tive judge finds to be members of such class.

7           “(B) With respect to such claim, a party may conduct  
8        discovery by such means as may be available in a civil ac-  
9        tion to the extent determined to be appropriate by the ad-  
10       ministrative judge.

11           “(C) If the aggrieved Federal employee or the re-  
12        spondent fails without good cause to respond fully and in  
13        a timely fashion to a request made or approved by the  
14        administrative judge for information or the attendance of  
15        a witness, and if such information or such witness is solely  
16        in the control of the party who fails to respond, the admin-  
17        istrative judge may, in appropriate circumstances—

18           “(i) draw an adverse inference that the re-  
19        quested information, or the testimony of the re-  
20        quested witness, would have reflected unfavorably on  
21        the party who fails to respond;

22           “(ii) consider the matters to which such infor-  
23        mation or such testimony pertains to be established  
24        in favor of the opposing party;

1           “(iii) exclude other evidence offered by the  
2 party who fails to respond;

3           “(iv) grant full or partial relief to the aggrieved  
4 Federal employee; or

5           “(v) take such other action as the administra-  
6 tive judge considers to be appropriate.

7           “(D) In a hearing on a claim, the administrative  
8 judge shall—

9           “(i) limit attendance to persons who have a di-  
10 rect connection with such claim;

11           “(ii) bring out pertinent facts and relevant em-  
12 ployment practices and policies, but—

13           “(I) exclude irrelevant or unduly repeti-  
14 tious information; and

15           “(II) not apply the Federal Rules of Evi-  
16 dence strictly;

17           “(iii) permit all parties to examine and cross-  
18 examine witnesses;

19           “(iv) require that testimony be given under  
20 oath or affirmation; and

21           “(v) permit the person notified in subparagraph  
22 (A)(ii)(III) to appear at the hearing—

23           “(I) in person; or

24           “(II) by or with counsel or another duly  
25 qualified representative.

1       “(E) At the request of any party or the administra-  
2 tive judge, a transcript of all or part of such hearing shall  
3 be provided in a timely manner and simultaneously to the  
4 parties and the Commission. The respondent shall bear  
5 the cost of providing such transcript.

6       “(F) The administrative judge shall have authority—

7           “(i) to administer oaths and affirmation;

8           “(ii) to regulate the course of hearings;

9           “(iii) to rule on offers of proof and receive evi-  
10 dence;

11           “(iv) to issue subpoenas to compel—

12           “(I) the production of documents or infor-  
13 mation by the entity of the Federal Government  
14 in which discrimination is alleged to have oc-  
15 curred; and

16           “(II) the attendance of witnesses who are  
17 Federal officers or employees of such entity;

18           “(v) to request the Commission to issue subpoe-  
19 nas to compel the production of documents or infor-  
20 mation by any other entity of the Federal Govern-  
21 ment and the attendance of other witnesses, except  
22 that any witness who is not an officer or employee  
23 of an entity of the Federal Government—

24           “(I) may be compelled only to attend any  
25 place—

1                   “(aa) less than 100 miles from the  
2                   place where such witness resides, is em-  
3                   ployed, transacts business in person, or is  
4                   served; or

5                   “(bb) at such other convenient place  
6                   as is fixed by the administrative judge; and  
7                   “(II) shall be paid fees and allowances, by  
8                   the party that requests the subpoena, to the  
9                   same extent that fees and allowances are paid  
10                  to witnesses under chapter 119 of title 28,  
11                  United States Code;

12                  “(vi) to exclude witnesses whose testimony  
13                  would be unduly repetitious;

14                  “(vii) to exclude any person from a hearing for  
15                  contumacious conduct, or for misbehavior, that ob-  
16                  structs such hearing; and

17                  “(viii) to grant any and all relief of a kind de-  
18                  scribed in subsections (g) and (k) of section 706.

19                  “(G) The administrative judge and Commission shall  
20                  have authority to award a reasonable attorney's fee (in-  
21                  cluding expert fees and other litigation expenses), costs,  
22                  and the same interest to compensate for delay in payment  
23                  as a court has authority to award under section 706(k).

24                  “(H) The Commission shall have authority to issue  
25                  subpoenas described in subparagraph (F)(v).

1       “(I) In the case of contumacy or failure to obey a  
2 subpoena issued under subparagraph (F), the United  
3 States district court for the judicial district in which the  
4 person to whom the subpoena is addressed resides or is  
5 served may issue an order requiring such person to appear  
6 at any designated place to testify or to produce documen-  
7 tary or other evidence.

8       “(7)(A)(i) The administrative judge shall issue a  
9 written order making the determination required by para-  
10 graph (6)(A), and granting or denying relief.

11       “(ii) The order shall not be reviewable by the re-  
12 spondent, and the respondent shall have no authority to  
13 modify or vacate the order.

14       “(iii) Except as provided in clause (iv) or subpara-  
15 graph (B), the administrative judge shall issue the order  
16 not later than—

17           “(I) 210 days after the complaint containing  
18 such claim is filed on behalf of a Federal employee;  
19 or

20           “(II) 270 days after the complaint containing  
21 such claim is filed on behalf of a class of Federal  
22 employees.

23       “(iv) The time periods described in clause (i) shall  
24 not begin running until 30 days after the administrative  
25 judge is assigned to the case if the administrative judge

1 certifies, in writing, that such 30-day period is needed to  
2 secure additional documents or information from the re-  
3 spondent to have a complete administrative record.

4       “(B) The administrative judge shall issue such order  
5 not later than 30 days after the applicable period specified  
6 in subparagraph (A) if the administrative judge certifies  
7 in writing, before the expiration of such applicable pe-  
8 riod—

9           “(i) that such 30-day period is necessary to  
10 make such determination; and

11           “(ii) the particular and unusual circumstances  
12 that prevent the administrative judge from comply-  
13 ing with the applicable period specified in subpara-  
14 graph (A).

15       “(C) The administrative judge may apply to the Com-  
16 mission to extend any period applicable under subpara-  
17 graph (A) or (B) if manifest injustice would occur in the  
18 absence of such an extension.

19       “(D) If the aggrieved Federal employee shows that  
20 such extension would prejudice a claim of, or otherwise  
21 harm, such Federal employee, the Commission—

22           “(i) may not grant such extension; or

23           “(ii) shall terminate such extension.

24       “(E) In addition to findings of fact and conclusions  
25 of law, including findings and conclusions pertaining spe-

1 cifically to the decision and identification described in  
2 paragraph (6)(A)(ii), such order shall include formal writ-  
3 ten notice to each party that before the expiration of the  
4 90-day period beginning on the date such party receives  
5 such order—

6           “(i) the aggrieved Federal employee may com-  
7 mence a civil action in an appropriate district court  
8 of the United States for de novo review of a claim  
9 with respect to which such order is issued; and

10           “(ii) unless a civil action is commenced in such  
11 90-day period under clause (i) with respect to such  
12 claim, any party may file with the Commission a  
13 written request for review of the determination  
14 made, and relief granted or denied, in such order  
15 with respect to such claim.

16           “(F) Such Federal employee may commence such  
17 civil action at any time—

18           “(i) after the expiration of the applicable period  
19 specified in subparagraph (A) or (B); and

20           “(ii) before the expiration of the 90-day period  
21 beginning on the date such Federal employee re-  
22 ceives an order described in subparagraph (A).

23           “(G) The determination made, and relief granted, in  
24 such order with respect to a particular claim shall be en-

1 forceable immediately, if such order applies to more than  
2 one claim and if such employee does not—

3           “(i) commence a civil action in accordance with  
4           subparagraph (E)(i) with respect to the claim; or  
5           “(ii) request review in accordance with subpara-  
6           graph (E)(ii) with respect to the claim.

7           “(g)(1) If a party timely files a written request in  
8 accordance with subsection (f)(5)(B)(i) or (f)(7)(E)(ii)  
9 with the Commission for review of the determination  
10 made, and relief granted or denied, with respect to a claim  
11 in such order, then the Commission shall immediately  
12 transmit a copy of such request to the other parties in-  
13 volved and to the administrative judge who issued such  
14 order.

15           “(2) Not later than 7 days after receiving a copy of  
16 such request, the administrative judge shall transmit to  
17 the Commission the record of the proceeding on which  
18 such order is based, including all documents and informa-  
19 tion collected by the respondent under subsection (d).

20           “(3)(A) After allowing the parties to file briefs with  
21 respect to such determination, the Commission shall issue  
22 an order applicable with respect to such claim affirming,  
23 reversing, or modifying the applicable provisions of the  
24 order of the administrative judge not later than—

25           “(i) 150 days after receiving such request; or

1               “(ii) 30 days after such 150-day period if the  
2               Commission certifies in writing, before the expiration  
3               of such 150-day period—

4               “(I) that such 30-day period is necessary  
5               to review such claim; and

6               “(II) the particular and unusual cir-  
7               cumstances that prevent the Commission from  
8               complying with clause (i).

9               “(B) The Commission shall affirm the determination  
10       made, and relief granted or denied, by the administrative  
11       judge with respect to such claim if such determination and  
12       such relief are supported by substantial evidence in the  
13       record taken as a whole. The findings of fact of the admin-  
14       istrative judge shall be conclusive unless the Commission  
15       determines that they are clearly erroneous.

16               “(C) In addition to findings of fact and conclusions  
17       of law, including findings and conclusions pertaining spe-  
18       cifically to the decision and identification described in sub-  
19       section (f)(6)(A)(ii), the Commission shall include in the  
20       order of the Commission formal written notice to the ag-  
21       grieved Federal employee that, before the expiration of the  
22       90-day period beginning on the date such Federal em-  
23       ployee receives such order, such Federal employee may  
24       commence a civil action in an appropriate district court

1 of the United States for de novo review of a claim with  
2 respect to which such order is issued.

3       “(D) Such Federal employee may commence such  
4 civil action at any time—

5           “(i) after the expiration of the applicable period  
6 specified in subparagraph (A); and

7           “(ii) before the expiration of the 90-day period  
8 specified in subparagraph (C).

9       “(h)(1) In addition to the periods authorized by sub-  
10 sections (f)(7)(F) and (g)(3)(D), an aggrieved Federal  
11 employee may commence a civil action in an appropriate  
12 district court of the United States for de novo review of  
13 a claim—

14           “(A) during the period beginning 300 days  
15 after the Federal employee timely requests an ad-  
16 ministrative determination under subsection (f) with  
17 respect to such claim and ending on the date the ad-  
18 ministrative judge issues an order under such sub-  
19 section with respect to such claim; and

20           “(B) during the period beginning 180 days  
21 after such Federal employee timely requests review  
22 under subsection (g) of such determination with re-  
23 spect to such claim and ending on the date the Com-  
24 mission issues an order under such subsection with  
25 respect to such claim.

1       “(2) Whenever a civil action is commenced timely and  
2 otherwise in accordance with this section to determine the  
3 merits of a claim arising under this section, the jurisdic-  
4 tion of the administrative judge or the Commission (as  
5 the case may be) to determine the merits of such claim  
6 shall terminate.

7       “(i) A Federal employee who prevails on a claim aris-  
8 ing under this section, or the Commission, may bring a  
9 civil action in an appropriate district court of the United  
10 States to enforce—

11       “(1) the provisions of a settlement agreement  
12 applicable to such claim;

13       “(2) the provisions of an order issued by an ad-  
14 ministrative judge under subsection (f)(7)(A) appli-  
15 cable to such claim if—

16           “(A) a request is not timely filed of such  
17 claim under subsection (g)(1) for review of such  
18 claim by the Commission; and

19           “(B) a civil action is not timely com-  
20 menced under subsection (f)(7)(F) for de novo  
21 review of such claim; or

22       “(3) the provisions of an order issued by the  
23 Commission under subsection (g)(3)(A) applicable to  
24 such claim if a civil action is not commenced timely

1       under subsection (g)(3)(D) for de novo review of  
2       such claim.

3       “(j) Any amount awarded under this section (includ-  
4       ing fees, costs, and interest awarded under subsection  
5       (f)(6)(G)), or under title 28, United States Code, with re-  
6       spect to a violation of subsection (a), shall be paid by the  
7       entity of the Federal Government that violated such sub-  
8       section from any funds made available to such entity by  
9       appropriation or otherwise.

10       “(k)(1) An entity of the Federal Government against  
11       which a claim of discrimination or retaliation is alleged  
12       under this section shall grant the aggrieved Federal em-  
13       ployee a reasonable amount of official time, in accordance  
14       with regulations issued by the Commission, to prepare an  
15       administrative complaint based on such allegation and to  
16       participate in administrative proceedings relating to such  
17       claim.

18       “(2) An entity of the Federal Government against  
19       which a claim of discrimination is alleged in a complaint  
20       filed in a civil action under this section shall grant the  
21       aggrieved Federal employee paid leave for time reasonably  
22       expended to prepare for, and participate in, such civil ac-  
23       tion. Such leave shall be granted in accordance with regu-  
24       lations issued by the Commission, except that such leave  
25       shall include reasonable time for—

1           “(A) attendance at depositions;  
2           “(B) meetings with counsel;  
3           “(C) other ordinary and legitimate undertak-  
4           ings in such civil action, that require the presence of  
5           such Federal employee; and  
6           “(D) attendance at such civil action.

7           “(3) If the administrative judge or the Commission  
8           (as the case may be), makes or affirms a determination  
9           of intentional unlawful discrimination as described in sub-  
10           section (f)(6)(A), the administrative judge or Commission,  
11           respectively, shall, not later than 30 days after issuing the  
12           order described in subsection (f)(7) or (g)(3), as appro-  
13           priate, submit to the Special Counsel the order and a copy  
14           of the record compiled at any hearing on which the order  
15           is based.

16           “(4)(A) On receipt of the submission described in  
17           paragraph (3), the Special Counsel shall conduct an inves-  
18           tigation in accordance with section 1214 of title 5, United  
19           States Code, and may initiate disciplinary proceedings  
20           against any person identified in a determination described  
21           in subsection (f)(6)(A)(ii)(II), if the Special Counsel finds  
22           that the requirements of section 1215 of title 5, United  
23           States Code, have been satisfied.

24           “(B) The Special Counsel shall conduct such proceed-  
25           ings in accordance with such section, and shall accord to

1 the person described in subparagraph (A) the rights avail-  
2 able to the person under such section, including applicable  
3 due process rights.

4 “(C) The Special Counsel shall impose appropriate  
5 sanctions on such person.

6 “(l) This section, as in effect immediately before the  
7 effective date of the Federal Employee Fairness Act of  
8 1993, shall apply with respect to employment in the Li-  
9 brary of Congress.”; and

10 (6) by adding at the end the following new sub-  
11 sections:

12 “(o)(1) Each respondent that is the subject of a com-  
13 plaint that has not been resolved under this section, or  
14 that has been resolved under this section within the most  
15 recent calendar year, shall prepare a report. The report  
16 shall contain information regarding the complaint, includ-  
17 ing the resolution of the complaint if applicable, and the  
18 measures taken by the respondent to lower the average  
19 number of days necessary to resolve such complaints.

20 “(2) Not later than October 1 of each year, the re-  
21 spondent shall submit to the Commission the report de-  
22 scribed in paragraph (1).

23 “(3) Not later than December 1 of each year, the  
24 Commission shall submit to the appropriate committees  
25 of the House of Representatives and of the Senate a report

1 summarizing the information contained in the reports sub-  
2 mitted in accordance with paragraph (2).

3       “(p)(1) The Commission, in consultation with the Di-  
4 rector of Central Intelligence, the Secretary of Defense,  
5 and the Director of the Information Security Oversight  
6 Office of the General Services Administration, shall pro-  
7 mulgate regulations to ensure the protection of classified  
8 information and national security information in adminis-  
9 trative proceedings under this section. Such regulations  
10 shall provide, among other things, that complaints under  
11 this section that bear upon classified information shall be  
12 handled only by such administrative judges, Commission  
13 personnel, and conciliators as have been granted appro-  
14 priate security clearances.

15       “(2) For the purposes of paragraph (1), the term  
16 ‘classified information’ has the meaning given the term in  
17 section 606(1) of the National Security Act of 1947 (50  
18 U.S.C. 426(1)).”.

19 **SEC. 3. AMENDMENTS TO THE AGE DISCRIMINATION IN EM-  
20 PLOYMENT ACT.**

21       (a) ENFORCEMENT BY EEOC.—Section 15 of the  
22 Age Discrimination in Employment Act of 1967 (29  
23 U.S.C. 633a) is amended—

24               (1) by striking subsections (c) and (d); and

1 (2) by inserting after subsection (b) the follow-  
2 ing:

3       “(c)(1) Any individual aggrieved by a violation of  
4 subsection (a) may file a complaint with the Equal Em-  
5 ployment Opportunity Commission in accordance with  
6 subsections (c) through (m), and subsections (o) and (p),  
7 of section 717 of the Civil Rights Act of 1964.

8       “(2) Except as provided in subsection (d) and para-  
9 graph (3), such subsections of section 717 shall apply to  
10 a violation alleged in a complaint filed under paragraph  
11 (1) in the same manner as such section applies to a claim  
12 arising under section 717 of such Act.

13       “(3) The Equal Employment Opportunity Commis-  
14 sion, and the administrative judges of the Commission,  
15 shall have authority to award such legal or equitable relief  
16 as will effectuate the purposes of this Act to an individual  
17 described in paragraph (1) with respect to a complaint  
18 filed under this subsection.

19       “(d)(1) If an individual aggrieved by a violation of  
20 this section does not file a complaint under subsection  
21 (c)(1), such individual may commence a civil action in an  
22 appropriate district court of the United States for de novo  
23 review of such violation—

1           “(A) not less than 30 days after filing with the  
2       Equal Employment Opportunity Commission a no-  
3       tice of intent to commence such action; and

4           “(B) not more than 2 years after the alleged  
5       violation of this section occurs.

6       “(2) On receiving such notice, the Equal Employment  
7       Opportunity Commission shall—

8           “(A) promptly notify all persons named in such  
9       notice as prospective defendants in such action; and

10           “(B) take any appropriate action to ensure the  
11       elimination of any unlawful practice.

12       “(3) Except as provided in paragraph (4), section  
13       717(m) of the Civil Rights Act of 1964 (as redesignated  
14       by section 2 of the Federal Employee Fairness Act of  
15       1993) shall apply to civil actions commenced under this  
16       subsection in the same manner as such section applies to  
17       civil actions commenced under section 717 of the Civil  
18       Rights Act of 1964.

19           “(4) The court described in paragraph (1) shall have  
20       authority to award such legal or equitable relief as will  
21       effectuate the purposes of this Act to an individual de-  
22       scribed in paragraph (1) in an action commenced under  
23       this subsection.”.

24       (b) OPPORTUNITY TO COMMENCE CIVIL ACTION.—  
25       If a complaint filed under section 15 of the Age Discrimi-

1 nation in Employment Act of 1967 (29 U.S.C. 633a) with  
2 the Equal Employment Opportunity Commission is pend-  
3 ing in the period beginning on the date of the enactment  
4 of this Act and ending on December 31, 1993, the individ-  
5 ual who filed such complaint may commence a civil action  
6 under such section not later than June 30, 1994.

7 **SEC. 4. AMENDMENTS TO TITLE 5, UNITED STATES CODE.**

8 (a) GRIEVANCE PROCEDURES.—Section 7121 of title  
9 5, United States Code, is amended—

10 (1) in subsection (a)(1) by inserting “adminis-  
11 trative” after “exclusive”; and

12 (2) in subsection (d)—

13 (A) by inserting “(1)” after “(d)”;

14 (B) in the first and second sentences by  
15 striking “An” and inserting “Except as pro-  
16 vided in paragraph (2), an”; and

17 (C) in the last sentence by striking “Selec-  
18 tion” and all that follows through “any other”  
19 and inserting the following:

20 “(3) An employee may commence, not later than 120  
21 days after a final decision, a civil action in an appropriate  
22 district court of the United States for de novo review of  
23 a”; and

24 (D) by inserting after the second sentence  
25 the following:

1       “(2) Matters covered under section 7702 of this title,  
2 or under a law administered by the Equal Employment  
3 Opportunity Commission, may be raised under the nego-  
4 tiated grievance procedure in accordance with this section  
5 only if an employee elects under subclause (II) or (III)  
6 of section 717(e)(2)(B)(i) of the Civil Rights Act of 1964  
7 to proceed under this section.”.

8       (b) ACTIONS INVOLVING DISCRIMINATION.—Section  
9 7702 of title 5, United States Code, is amended to read  
10 as follows:

11 **“§ 7702. Actions involving discrimination**

12       “(a)(1) Notwithstanding any other provision of law,  
13 in the case of any employee or applicant for employment  
14 who—

15           “(A) is affected by an action which the em-  
16 ployee or applicant may appeal to the Merit System  
17 Protection Board; and

18           “(B) alleges that a basis for the action was dis-  
19 crimination prohibited by—

20           “(i) section 717 of the Civil Rights Act of  
21 1964 (42 U.S.C. 2000e–16);

22           “(ii) section 6(d) of the Fair Labor Stand-  
23 ards Act of 1938 (29 U.S.C. 206(d));

24           “(iii) section 501 of the Rehabilitation Act  
25 of 1973 (29 U.S.C. 791);

1               “(iv) sections 12 and 15 of the Age Dis-  
2               crimination in Employment Act of 1967 (29  
3               U.S.C. 631 and 633a); or

4               “(v) any rule, regulation, or policy directive  
5               prescribed under any provision of law described  
6               in clauses (i) through (iv) of this subparagraph,  
7               the employee or applicant may raise the action as provided  
8               in paragraph (2).

9               “(2) For purposes of paragraph (1), the employee  
10               shall raise the action by filing a complaint with the Equal  
11               Employment Opportunity Commission in accordance with  
12               section 717 of the Civil Rights Act of 1964 and shall make  
13               a request under section 717(e)(2)(B)(i) selecting the pro-  
14               cedures specified in one of the following subparagraphs:

15               “(A) The administrative and judicial procedures  
16               provided under sections 7701 and 7703.

17               “(B) The administrative and judicial procedures  
18               provided under section 7121.

19               “(C) The administrative and judicial procedures  
20               provided under section 717 of the Civil Rights Act  
21               of 1964.

22               “(3) The agency (including the Board and the Equal  
23               Employment Opportunity Commission) that carries out  
24               such procedures shall apply the substantive law that is ap-  
25               plied by the agency that administers the particular law

1 referred to in subsection (a)(1) that prohibits the conduct  
2 alleged to be the basis of the action referred to in sub-  
3 section (a)(1)(A).

4       “(b)(1) Except as provided in paragraph (2), the em-  
5 ployee shall have 90 days in which to raise the action  
6 under the procedures specified in subparagraph (A) or (B)  
7 of subsection (a)(2), if—

8           “(A) an employee elects the procedures speci-  
9 fied in subsection (a)(2)(C); and

10           “(B) the Equal Employment Opportunity Com-  
11 mission dismisses under section 717(f)(5)(A) of the  
12 Civil Rights Act of 1964 a claim that is based on  
13 the action raised by the employee.

14           “(2) No allegation of a kind described in subsection  
15 (a)(1)(B) may be raised under this subsection.

16           “(c) If at any time after the 120th day following an  
17 election made under section 717(e)(2)(B)(i) of the Civil  
18 Rights Act of 1964 to raise an action under the proce-  
19 dures specified in subsection (a)(2)(A) of this section there  
20 is no judicially reviewable action, an employee shall be en-  
21 titled to file, not later than 240 days after making such  
22 election, a civil action in an appropriate district court of  
23 the United States for de novo review of the action raised  
24 under subsection (a).

1       “(d) Nothing in this section shall be construed to af-  
2 fect the right to trial de novo under any provision of law  
3 described in subsection (a)(1) after a judicially reviewable  
4 action.”.

5 **SEC. 5. ISSUANCE OF PROCEDURAL GUIDELINES AND NO-  
6 TICE RULES.**

7       Not later than 1 year after the date of the enactment  
8 of this Act, the Equal Employment Opportunity Commis-  
9 sion shall issue—

10           (1) rules to assist entities of the Federal Gov-  
11 ernment in complying with section 717(d) of the  
12 Civil Rights Act of 1964, as added by section 2 of  
13 this Act, and

14           (2) rules establishing—

15               (A) a uniform written official notice to be  
16 used to comply with section 717 of such Act, as  
17 added by section 2 of this Act; and

18               (B) requirements applicable to collecting  
19 and preserving documents and information  
20 under section 717(d), as added by section 2 of  
21 this Act.

22 **SEC. 6. TECHNICAL AMENDMENTS.**

23       (a) CIVIL RIGHTS ACT OF 1964.—Subsections (b)  
24 and (c) of section 717 of the Civil Rights Act of 1964  
25 (42 U.S.C. 2000e–16 (b) and (c)) are amended by striking

1 "Civil Service Commission" each place it appears and in-  
2 serting "Commission".

3 (b) CIVIL RIGHTS ACT OF 1991.—The second sen-  
4 tence of section 307(h) of the Civil Rights Act of 1991  
5 (2 U.S.C. 1207(h)) is amended by striking "section 15(c)"  
6 and all that follows and inserting "section 15(d)(4) of the  
7 Age Discrimination in Employment Act of 1967 (29  
8 U.S.C. 633a(d)(4)).".

9 **SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

10 (a) EFFECTIVE DATE.—Except as provided in sub-  
11 section (b), this Act and the amendments made by this  
12 Act shall take effect on January 1, 1994.

13 (b) APPLICATION OF AMENDMENTS.—The amend-  
14 ments made by this Act (other than sections 3 and 4) shall  
15 apply only with respect to complaints filed under section  
16 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-  
17 16) on or after the effective date of this Act.

○

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