

The Civil Rights Act of 1991

EDITOR'S NOTE: The text of the Civil Rights Act of 1991 (Pub. L. 102-166), as enacted on November 21, 1991, appears below with the following modifications:

- 1. The text of the sections of the CRA that amend the laws enforced by EEOC (i.e., Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990) is not printed below. Instead, these amendments are printed elsewhere in this publication.*
 - 2. The following portions of the CRA that are not enforced by EEOC are referenced, but not reprinted here:*
 - o Section 117 (coverage of the U.S. House of Representatives and agencies of the Legislative Branch);*
 - o Title II (The Glass Ceiling Act); and*
 - 3. Title V, which amends the Civil War Sites Study Act of 1990 (Pub. L. 101-628) is not reprinted here.*
 - 4. Cross references to the U.S. Code, where applicable, appear in italics following each section heading. Editor's notes also appear in italics.*
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An Act

To amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, This Act may be cited as the "Civil Rights Act of 1991".

* * *

FINDINGS

SEC. 2. [42 U.S.C. 1981 note]

The Congress hereby finds and declares that-

- (1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;
- (2) the decision of the Supreme Court in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and
- (3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

PURPOSES

SEC. 3 [42 U.S.C. 1981 note]

The purposes of this Act are-

- (1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I - FEDERAL CIVIL RIGHTS REMEDIES

PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS

SEC. 101

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended-

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."

DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

SEC. 102

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT. [42 U.S.C. 1981a]

"(a) RIGHT OF RECOVERY. -

"(1) CIVIL RIGHTS. - In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e-2 or 2000e-3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY. - In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed

a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

“(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT. - In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 or regulations implementing section 501 of the Rehabilitation Act of 1973, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

“(b) COMPENSATORY AND PUNITIVE DAMAGES. -

“(1) DETERMINATION OF PUNITIVE DAMAGES. - A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

“(2) EXCLUSIONS FROM COMPENSATORY DAMAGES. - Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

“(3) LIMITATIONS. - The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party -

“(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;

“(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000; and

“(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and

“(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.

“(4) CONSTRUCTION. - Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

“(c) JURY TRIAL. - If a complaining party seeks compensatory or punitive damages under this section -

“(1) any party may demand a trial by jury; and

“(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

“(d) DEFINITIONS. - As used in this section:

“(1) COMPLAINING PARTY. - The term ‘complaining party’ means -

“(A) in the case of a person seeking to bring an action under subsection (a)(1), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

“(B) in the case of a person seeking to bring an action under subsection (a)(2), the Equal Employment Opportunity Commission, the Attorney General, a person who may bring an action or proceeding under section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

“(2) DISCRIMINATORY PRACTICE. - The term ‘discriminatory Practice’ means the discrimination described in paragraph (1), or the discrimination or the violation described in paragraph (2), of subsection (a).

ATTORNEY’S FEES

[This section amends section 722 of the Revised Statutes (42 U.S.C. 1988) by adding a reference to section 102 of the Civil Rights Act of 1991 to the list of civil rights actions in which reasonable attorney's fees may be awarded to the prevailing party, other than the United States.]

SEC. 103

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting “, 1977A” after “1977”.

DEFINITIONS

SEC. 104

[This section amends section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) by adding the following new subsections: (l) “complaining party,” (m) “demonstrates,” and (n) “respondent”.]

BURDEN OF PROOF IN DISPARATE IMPACT CASES

SEC. 105

(a) *[This subsection amends section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) by adding a new subsection (k), on the burden of proof in disparate impact cases.]*

(b) No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act that relates to Wards Cove - Business necessity/ cumulation/alternative business practice. *[42 U.S.C. 1981 note]*

PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES

SEC. 106

[This section amends section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) by adding a new subsection (l), on the prohibition against discriminatory use of test scores.]

CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES

SEC. 107

(a) IN GENERAL. *[This subsection amends section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) by adding a new subsection (m), clarifying the prohibition against consideration of race, color, religion, sex, or national origin in employment practices.]*

(b) ENFORCEMENT PROVISIONS. *[This subsection amends section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) by renumbering existing subsection (g), and adding at the end a new subparagraph (B) to*

provide a limitation on available relief in "mixed motive" cases (cases in which the employer demonstrates it would have made the same decision in the absence of discrimination).]

FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS

SEC. 108

[This section amends section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) by adding a new subsection (n), on the resolution of challenges to employment practices implementing litigated or consent judgments or orders.]

PROTECTION OF EXTRATERRITORIAL EMPLOYMENT

SEC. 109

(a) DEFINITION OF EMPLOYEE. *[This subsection amends the definition of "employee" in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) by adding a sentence to the end of each definition to include U.S. citizens employed abroad within the laws' protections.]*

(b) EXEMPTION. *[This subsection amends section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) by adding new subsections (b) (on compliance with the statute if violative of foreign law) and (c) (on the control of a corporation incorporated in a foreign country). This subsection similarly amends section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) by relettering the existing subsections and adding a new subsection (c) "Covered Entities in Foreign Countries."]*

(c) APPLICATION OF AMENDMENTS. - The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act. *[42 U.S.C. 2000e note]*

TECHNICAL ASSISTANCE TRAINING INSTITUTE

SEC. 110

(a) TECHNICAL ASSISTANCE. *[This subsection amends section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4) by adding a new subsection (j), establishing the Technical Assistance Training Institute.]*

(b) EFFECTIVE DATE. - The amendment made by this section shall take effect on the date of the enactment of this Act. *[42 U.S.C. 2000e-4 note]*

EDUCATION AND OUTREACH

SEC. 111

[This section amends section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(h)) by renumbering the existing subsection and adding at the end a paragraph requiring the EEOC to engage in certain educational and outreach activities.]

EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

SEC. 112

[This section amends section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) by renumbering the subsection and adding at the end a paragraph to expand the right of claimants to challenge discriminatory seniority systems.]

AUTHORIZING AWARD OF EXPERT FEES

SEC. 113

(a) REVISED STATUTES. - Section 722 of the Revised Statutes is amended-

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

“(c) In awarding an attorney’s fee under subsection (b) in any action or proceeding to enforce a provision of section 1977 or 1977A of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney’s fee.” [42 U.S.C. 1988]

(b) CIVIL RIGHTS ACT OF 1964. *[This section amends section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) to provide for recovery of expert fees as part of an attorney’s fees award.]*

PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

SEC. 114

[This section amends section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) by extending the time for federal employees or applicants to file a civil action from 30 to 90 days (from receipt of notice of final action taken by a department, agency or unit), and allowing federal employees or applicants the same interest to compensate for delay in payments as is available in cases involving nonpublic parties.]

NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

SEC. 115

[This section amends section 7(e) of the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. 626(e)) by eliminating the two- and three- year statute of limitations and making ADEA suit- filing requirements the same as those under Title VII, and requiring the EEOC to provide notice to charging parties upon termination of the proceedings.]

LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED

SEC. 116 [42 U.S.C. 1981 note]

Nothing in the amendments made by this title shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

COVERAGE OF HOUSE OF REPRESENTATIVES AND THE AGENCIES OF THE LEGISLATIVE BRANCH

SEC. 117 [2 U.S.C. 60I]

(a) COVERAGE OF THE HOUSE OF REPRESENTATIVES. *[This subsection extends the rights and protections of Title VII of the Civil Rights Act of 1964, as amended, to employees of the U.S. House of Representatives. Procedures for processing discrimination complaints are handled internally by the House, not by the EEOC.]*

(b) INSTRUMENTALITIES OF CONGRESS. *[This subsection extends the rights and protections of the Civil Rights Act of 1991 and Title VII of the Civil Rights Act of 1964, as amended, to "instrumentalities of Congress," which are defined to include: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office (now the Government Accountability Office), the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden. Each agency is to establish its own remedies and procedures for enforcement.]*

ALTERNATIVE MEANS OF DISPUTE RESOLUTION

SEC. 118 *[42 U.S.C. 1981 note]*

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

TITLE II - GLASS CEILING

[This title sets up a "Glass Ceiling Commission" to focus attention on, and complete a study relating to, the existence of artificial barriers to the advancement of women and minorities in the workplace, and to make recommendations for overcoming such barriers. The Commission is to be composed of 21 members, with the Secretary of Labor serving as the Chairperson of the Commission. This title does not directly impose any responsibilities or obligations on the EEOC except to provide information and technical assistance as requested by the new Commission.] [42 U.S.C. 2000e note]

TITLE III - GOVERNMENT EMPLOYEE RIGHTS

GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

SEC. 301 *[2 U.S.C. 1201]*

(a) SHORT TITLE. - This title may be cited as the "Government Employee Rights Act of 1991".

(b) PURPOSE. - The purpose of this title is to provide procedures to protect the rights of certain government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) DEFINITION. - The term "violation" means a practice that violates section 302 of this title.

DISCRIMINATORY PRACTICES PROHIBITED

SEC. 302 *[2 U.S.C. 1202]*

[Section 321 (which protects previously exempt state employees who may file complaints of discrimination with EEOC under this title) refers to the rights, protections and remedies established in this section.]

(a) PRACTICES. - All personnel actions affecting the State employees described in section 321 *[2 U.S.C. 1220]* of this title shall be made free from any discrimination based on -

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102-104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112-14).

(b) REMEDIES. – The remedies referred to in section 2000e-16c(a) of [title 42] [*Civil Rights Act of 1964*] –

(1) may include, in the case of a determination that a violation of subsection (a)(1) or (a)(3) of [section 2000e of title 42] has occurred, such remedies as would be appropriate if awarded under sections 2000e-5(g), 2000e-5(k), and 2000e-16(d) of [title 42], and such compensatory damages as would be appropriate if awarded under section 1981 or sections 1981a(a) and 1981a(b)(2) of [title 42];

(2) may include, in the case of a determination that a violation of subsection (a)(2) of [section 2000e of title 42] has occurred, such remedies as would be appropriate if awarded under section 633a(c) of Title 29 [*Age Discrimination in Employment Act of 1967*]; and

(3) may not include punitive damages.

SEC. 303 to 320. [*Repealed*]

COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES

SEC. 321 [*2 U.S.C. 1220*]

(a) APPLICATION. - The rights, protections, and remedies provided pursuant to section 302 of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof -

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) ENFORCEMENT BY ADMINISTRATIVE ACTION. -

(1) IN GENERAL. - Any individual referred to in subsection (a) may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) REFERRAL TO STATE AND LOCAL AUTHORITIES. -

(A) APPLICATION. - Section 706(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(d)) shall apply with respect to any proceeding under this section.

(B) DEFINITION. - For purposes of the application described in subparagraph (A), the term "any charge filed by a member of the Commission alleging an unlawful employment practice" means a complaint filed under this section.

(c) JUDICIAL REVIEW. - Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(d) STANDARD OF REVIEW. - To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was -

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) ATTORNEY'S FEES. - If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

SEC. 322 to 325 [2 U.S.C. 1221 to 1224]

[Repealed]

TITLE IV - GENERAL PROVISIONS SEVERABILITY

SEC. 401 [42 U.S.C. 1981 note]

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

EFFECTIVE DATE

SEC. 402 [42 U.S.C. 1981 note]

(a) IN GENERAL. - Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

(b) CERTAIN DISPARATE IMPACT CASES. - Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.