

PHOTOCOPY
PRESERVATION

THE WHITE HOUSE

WASHINGTON
November 17, 1999

Familial

*proposed
discrim*

MEMORANDUM FOR JACK LEW

FROM: BRUCE REED

SUBJECT: EXECUTIVE ORDER TO BAN DISCRIMINATION AGAINST
PARENTS IN THE EXECUTIVE BRANCH

I am writing to request that you put into expedited clearance the attached Executive Order, pursuant to Executive Order 11030. The proposed Order would prohibit employment discrimination in the executive branch against employees because they are parents or exercise parental responsibilities.

The proposed Executive Order mirrors the "Ending Discrimination Against Parents Act of 1999," legislation that the President announced in his 1999 State of the Union address and was introduced on November 10, 1999 by Senators Dodd and Kennedy. This bill would, for the first time, protect parents and those with parental responsibilities against job discrimination. It does not bar employers from making hiring and promotion decisions on the basis of qualifications or job performance regardless of the employee's parental status, but it does ensure that workers are not discriminated against simply because they are parents or exercise parental responsibilities.

By issuing this Executive Order, the President will hold the Executive Branch as a model for this important new set of protections. The Executive Order would cover employees in the Executive Branch who are biological, adoptive, or foster parents; stepparents; custodians of individuals who are under the age of 18 or who are 18 or older but incapable of self-care because of a mental or physical disability; and those actively seeking custody or adoption of, and those who stand "in loco parentis" for, such individuals. The Order would bar discrimination against covered persons in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment.

The Order would also prohibit employers in the Executive Branch from acting on mere assumptions that parents, or those with parental responsibilities, cannot satisfy the requirements of a particular position. It would, for example, prohibit employers from:

- taking a parent off the "fast track" due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs;
- preferring applicants without children over equally or better qualified working parents; or

- refusing to hire single parents under any circumstances.

However, the proposed Order would not prohibit an employer from making decisions on the basis of a person's job performance. The Order would not, for example, prevent an employer from disciplining workers who arrive late, even if an individual is late because of child care responsibilities. The Executive Order also would not bar an employer from rejecting, for a job that requires extensive travel, an applicant who states that he is unwilling to travel because of his parental responsibilities. Thus, the Order would not interfere with an employer's ability to select workers who are able to perform the jobs in question; the Order would simply ensure that workers are not discriminated against simply because they are parents.

Thank you for your assistance in clearing this Order expeditiously, for release as early as November 27, 1999. The staff contact in the Domestic Policy Council is Nicole Rabner, who is reachable at extension 67263.

Draft

EXECUTIVE ORDER

FURTHER AMENDMENT TO EXECUTIVE ORDER 11478, EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

By the authority vested in me as President by the Constitution and the laws of the United States, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination based on an individual's status as a parent, it is hereby ordered that Executive Order 11478, as amended, is further amended as follows:

Section 1. Amend the first sentence of section 1 by substituting "sexual orientation, or status as a parent." for "or sexual orientation."

Sec. 2. Insert the following new sections 6 and 7 after section 5:

"Sec. 6. An individual has the status of a parent, if, with regard to another individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, that individual –

- (a) stands in loco parentis to such other individual; or
- (b) has the status of –
 - (i) a biological parent;
 - (ii) an adoptive parent;
 - (iii) a foster parent
 - (iv) a stepparent;
 - (v) a custodian of a legal ward; or
 - (vi) a person who is actively seeking legal custody or adoption.

"Sec. 7. The Office of Personnel Management shall be responsible for developing and implementing guidance to effectuate the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent."

Sec. 3. Amend section 4 by substituting “and appropriate to carry out its responsibilities under this Order” for “appropriate to carry out this Order.”

Sec. 4. Renumber current sections, 6, 7, and 8 as sections 8, 9, and 10, respectively.

Sec. 5. Add a section 11 to read as follows:

“Sec. 7. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.”

WILLIAM J. CLINTON

THE WHITE HOUSE
[date]

October 28, 1999

MEMORANDUM

TO: ~~BRUCE REED~~
ERIC LIU

Rebecca
Parental Discrimination

FROM: NICOLE RABNER
ANN O'LEARY

SUBJECT: PROPOSED EXECUTIVE ORDER ON PARENTAL DISCRIMINATION

Attached please find a draft proposal for an executive order on parental discrimination in the Federal workplace. The intent of this executive order is to mirror the Administration's legislative proposal on non-discrimination against parents in the work place specifically with regard to hiring and promotion. The legislation and the executive order are intended to be one-way policies prohibiting discrimination against individuals because of their status as parents. Both are intended to further the Administration's policies on a "family-friendly" workplace.

This executive order would amend Executive Order 11478, "Nondiscrimination in Federal Government." This order currently prohibits discrimination in federal employment on account of race, color, religion, sex, national origin, handicap, age, or sexual orientation. Status as a parent would be added to this list and defined.

In developing this draft executive order, however, the Office of Personnel Management has raised some valid concerns regarding the implications and implementation problems that this EO may cause. Their concerns include:

- **No data to suggest that a problem exists.** The Office of Personnel Management has no record of complaints or cases filed specifically claiming discrimination based on parenthood. This may suggest that the discrimination is being identified or categorized based on other factors or it could suggest that Federal employees are not filing complaints due to the fact that there is no policy in place to rectify such a situation. OPM, however, believes that due to the plethora of family friendly policies (from flexi-schedules to accommodations for nursing mothers to telecommuting options), parents face little discrimination in the Federal workplace. They are currently doing further research to determine the extent of the problem. The real concern, however, is that we are creating a solution in search of a problem that does not appear to exist in the Federal workplace.
- **Concerns about reactions, perceptions, and managing expectations.** In addition, OPM is concerned about the implications for implementation and the expectations of Federal employees (parents and non-parents alike). In terms of managing expectations, there was a real sense among the group that non-parents often feel that they get the short end of the stick in terms of working later hours to finish projects, etc. The concern is that non-parents may

feel that they could not be rewarded for their extra hours and extra work. Additionally, there was some concern that under this EO managers would feel that they could not reward a non-parent for extra work in terms of promotions. It also raises some concerns in terms of implementing flexi-schedules. Managers may feel that they must grant flexi-schedules to parents rather than non-parents and, in the end, would decide not to offer any flexi-schedules so as not to show favoritism. While OPM would certainly put out guidance, they were concerned about these types of interpretations in the implementation phase.

The White House Counsel's office (Eddie Correia) argued that if we are going to put forth legislation then the Federal government should be prepared to take leadership in this area. He argued that it would help to signal the importance of not discriminating against parents and that if, indeed, the Federal government does not have a problem then the policy will not be an additional burden.

There are several options to consider:

- (1) Heed the caution of OPM while we do more to research the problem and develop draft guidance. Dodd will introduce the legislation on the Administration's behalf prior to the end of the session. We could hold off on the EO until a later date while we worked on draft guidance.
- (2) Do not create an EO and, instead, focus energies on passing the legislation with the understanding that the Federal government will be covered by the legislation.

Option #1 allows us time to consider how to manage expectations in the development of draft guidance. Option #2 fully takes OPM's concerns into consideration and does not put us in the position of highlighting an issue that is not particularly problematic in the Federal workforce.

Please advise on how you would like us to proceed.

Draft – October 15, 1999

EXECUTIVE ORDER

FURTHER AMENDMENT TO EXECUTIVE ORDER 11478, EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

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- (b) has the status of –
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 - (ii) an adoptive parent;
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 - (v) a custodian of a legal ward; or
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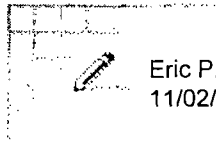
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Sec. 5. Add a section 11 to read as follows:

“Sec. 7. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.”

WILLIAM J. CLINTON

THE WHITE HOUSE
[date]



Eric P. Liu

11/02/99 06:54:50 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP@EOP, Ann O'Leary/OPD/EOP@EOP

cc: Bruce N. Reed/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP

Subject: parental discrimination

Thanks for the memo. I think these are valid concerns (no evidence of a problem, concern about reaction), but frankly, they are ones that counsel against doing *anything* on this front, including legislation. How, after all, would our bill deal with the non-parent concerns flagged by OPM? What is the bill's answer to the charge of "solution looking for a problem"?

One could argue that being where we are on this issue doesn't make sense generally. But now that we are already committed to this stance (we are, aren't we?), I'm inclined to agree with Eddie. If parental discrim is not a demonstrable problem in the fed workplace, then this exec action still has value as a statement of principle.

TO THE CONGRESS OF THE UNITED STATES:

FAMILY -
Parental Discrimination?

I am pleased to transmit today for immediate consideration and prompt enactment the "Ending Discrimination Against Parents Act of 1999." This legislative proposal would prohibit employment discrimination against workers simply because they are parents.

My proposal builds on our nation's longstanding commitment to equal opportunity. It follows in the footsteps of anti-discrimination laws like Title VII of the Civil Rights Act, which prohibits job bias on the basis of race, color, sex, religion, and national origin, and the Pregnancy Discrimination Act, which bars employment discrimination against pregnant women.

This bill would, for the first time, include parents as a protected class with respect to job discrimination. While the bill would not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not discriminated against simply because they are parents. It would prohibit, for example, employers from taking a parent off the "fast track" due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it would bar employers from preferring applicants without children over equally or better qualified working parents or from refusing to hire single parents. It would cover discrimination in hiring, promotions, and firing — as well as in pay and other conditions of employment.

Such protections are increasingly important as more and more mothers join fathers in participating in the workforce and contributing to their families' economic security -- and as more and more families rely on the earnings of single parents, both male and female. Indeed, a 1997 survey revealed that 46 percent of all American workers are parents. Nearly one in five working parents is single; more than a quarter of these are single dads. [CK: FINAL STATS TO COME] As a nation, we can't afford to lose the talents and labor of these working parents due to unfounded assumptions about their capacity to work. Parents who are dedicated to meeting their responsibilities both at home and at work should be valued and celebrated, rather than targeted for discrimination.

In recognition of this problem, eight states (Alaska, Kentucky, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, South Dakota) and the District of Columbia have enacted laws prohibiting or authorizing the prohibition of discrimination on the basis of parental or family status.

I urge the Congress to give this legislation prompt and favorable consideration.

WILLIAM J. CLINTON

What the Affirmative?

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

FACT SHEET

The President today transmitted to the Congress the "Ending Discrimination Against Parents Act of 1999." This legislative proposal would ban discrimination against private and public employees on the basis of their status as parents.

The Need for this Legislation

Federal law protects working parents from employment discrimination in a number of important areas. Under Title VII of the Civil Rights Act of 1964, for example, employees are protected from discrimination on the bases of race, color, sex, national origin, and religion. The Pregnancy Discrimination Act of 1978 further prohibits discrimination against workers on the basis of pregnancy.

Despite these critical protections, there is no existing federal law that protects workers from employment discrimination that is based on their status as parents. Such protection is well warranted, however. Where an employer, an employment agency, or a labor organization acts on the basis of unsubstantiated assumptions that parents – or those who have caretaking responsibilities for others who are physically or mentally incapable of taking care of themselves – are unwilling or unable to make a commitment to their jobs, it injures not only the individuals concerned, but the economy as a whole.

For the individual who is subject to such discrimination, the consequences can be harsh and immediate. Discrimination on the basis of parental status is unfair. Such discrimination deprives the targeted individual of employment opportunities and undermines the person's ability to control the progress of his or her career. Such discrimination can also depress the income received by the millions of families who rely on the wages of working parents to make ends meet. It can thus limit opportunities for American families.

The economy is similarly disadvantaged by discrimination based on parental status. Such discrimination prevents the optimum utilization of available labor resources and constitutes an unfair method of competition in commerce. Because such discrimination is spread and perpetuated through commerce, moreover, it is a problem that is national in scope.

Ending Discrimination Against Parents Act of 1999

Acting to respond to this problem, President Clinton announced legislation prohibiting employment discrimination against workers because they are parents. The legislation applies to private and public sector employers, as well as employment agencies and labor organizations. The legislation protects individuals who are biological, adoptive, foster, stepparents, or custodians of -- as well as those who are actively seeking custody or adoption of and those who stand in loco parentis to -- individuals who are under the age of 18 or who are 18 or over but incapable of self-care because of a mental or physical disability. The legislation bars

discrimination against parents in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training, and other terms and conditions of employment. While this legislation would not prohibit employers from making hiring and promotion decisions on the basis of job performance, it would ensure that workers are not discriminated against simply because they are parents.

The legislation will offer a remedy where, for example, an employer takes a parent off the “fast track” due to unsubstantiated concerns that parents cannot meet the requirements of demanding jobs. Similarly, it will bar employers from preferring applicants without children over equally or better qualified working parents or from refusing to hire single parents.

The scope of the problem has been recognized in the states, eight of which (Alaska, Kentucky, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, and South Dakota), plus the District of Columbia prohibit or authorize prohibition of discrimination based on familial status. The federal government should do no less.

A BILL

To prohibit employment discrimination on the basis of parental status, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. -- This Act may be cited as the “Ending Discrimination Against Parents Act of 1999.”

SECTION 2. FINDINGS.

- (a) XX percent of American workers are parents of children under the age of 18;
- (b) Federal law protects working parents from employment discrimination in a number of important areas. For instance, title VII of the Civil Rights Act of 1964 prohibits discrimination against workers on the basis of sex; the Americans with Disabilities Act of 1990 prohibits discrimination against workers on the basis of disability; and the Pregnancy Discrimination Act of 1978 prohibits discrimination against workers on the basis of pregnancy. Also, the Family and Medical Leave Act of 1993 provides covered workers job protection when they take time off for certain family responsibilities. Nothing in this Act is intended to affect the interpretation or application of these laws.
- (c) However, no existing federal statute protects workers from employment discrimination on the basis of their status as parents.
- (d) Such discrimination against parents occurs where, for example, employers refuse to hire or promote both men and women who are parents based on unwarranted stereotypes or overbroad assumptions about their level of commitment to the work force.
- (e) Such discrimination has occurred in the workplace and has been largely unremedied.
- (f) Such discrimination occurs in both the private and the governmental sectors.
- (g) The existence of such discrimination –

- (1) depresses the income earned by families who rely on the wages of working parents to make ends meet;
 - (2) prevents the optimum utilization of available labor resources;
 - (3) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of several States;
 - (4) burdens commerce and the free flow of goods in commerce;
 - (5) constitutes an unfair method of competition in commerce;
 - (6) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and
 - (7) interferes with the orderly and fair marketing of goods in commerce.
- (h) Elimination of such discrimination would have positive effects, including –
- (1) providing a solution to problems in the economy created by unfair discrimination against parents;
 - (2) promoting stable families by enabling working parents to work free from discrimination against parents; and
 - (3) remedying the effects of past discrimination against parents.

SECTION 3. PURPOSES

The purposes of this Act are –

- (a) to prohibit employers, employment agencies, and labor organizations from discriminating against parents based on the assumption that they cannot satisfy the requirements of a particular position; and
- (b) to provide meaningful and effective remedies for employment discrimination against parents.

SECTION 4. DEFINITIONS

In this Act:

- (a) “Commission” means the Equal Employment Opportunity Commission.

(b) “Complaining Party” means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.

(c) “Covered Entity” means an employer, employment agency, labor organization, and joint labor-management committee.

(d) “Demonstrates” means meets the burdens of production and persuasion.

(e) “Employee” means:

(1) an individual to whom section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) applies;

(2) an individual to whom section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;

(3) an individual to whom section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(4) a covered employee as defined in section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)); and

(5) a covered employee as defined in section 411(c)(1) of title 3, United States Code.

The term “employee” includes applicants for employment and former employees.

(f) “Employer” means:

(1) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has fifteen or more employees (as defined in section 701(f) of such Act (42 U.S.C. 2000e(f)) for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person;

(2) an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(a)) applies;

(3) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(4) an employing office, as defined in section 101(9) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(9)); and

(5) an employing office as defined in section 411(c)(2) of title 3, United States Code.

The term “employer” does not include a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, United States Code.

(g) “Employment Agency” has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(h) “Incapable of Self-Care” means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, and similar activities.

(i) “Labor Organization” has the meaning given the term in sections 701(d) and (e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d), (e)).

(j) “Office of Compliance” has the meaning given the term in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

(k) “Parent” means a person who, with regard to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability --

(1) has the status of --

- (i) a biological parent;
- (ii) an adoptive parent;
- (iii) a foster parent;
- (iv) a stepparent;
- (v) a custodian of a legal ward; or
- (vi) a person who is actively seeking legal custody or adoption; or

(2) stands in loco parentis to such an individual.

(l) “Person” has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(m) "Physical or Mental Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

(n) "State" has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

SECTION 5. DISCRIMINATION PROHIBITED.

(a) Employer Practices. -- It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with regard to the compensation, terms, conditions, or privileges of employment of the individual, because such individual is a parent; or

(2) to limit, segregate, or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent.

(b) Employment Agency Practices. -- It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because such individual is a parent or to classify or refer for employment any individual because such individual is a parent.

(c) Labor Organization Practices. -- It shall be an unlawful employment practice for a labor organization --

(1) to exclude or expel from its membership, or otherwise to discriminate against, any individual because such individual is a parent;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this Act.

(d) **Training Programs.** -- It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because such individual is a parent in admission to, or employment in, any program established to provide apprenticeship or other training.

SECTION 6. RETALIATION AND COERCION PROHIBITED.

(a) **Retaliation.** -- A covered entity shall not discriminate against an employee because the employee has opposed any act or practice prohibited by this Act or because the employee made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) **Interference, Coercion, or Intimidation.** -- A covered entity shall not coerce, intimidate, threaten, or interfere with any employee in the exercise or enjoyment of, or on account of the employee's having exercised or enjoyed, or on account of the employee's having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

SECTION 7. OTHER PROHIBITIONS.

(a) **Collection of Statistics.** -- Notwithstanding any other provision of this Act, the Commission shall not collect statistics from covered entities on their employment of parents, or compel the collection of such statistics by covered entities, unless such statistics are to be used in investigation, litigation, or resolution of a claim of discrimination under this Act.

(b) **Quotas.** -- A covered entity shall not adopt or implement a quota with respect to its employment of parents.

SECTION 8. MIXED MOTIVE DISCRIMINATION. -- An unlawful employment practice is established under this Act when the complaining party demonstrates that an individual's status as a parent, or retaliation, coercion, intimidation, threats, or interference with an individual as

described in section 6 of this Act, was a motivating factor for any employment practice, even though other factors also motivated the practice.

SECTION 9. DISPARATE IMPACT. – Notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact on parents, as the term “disparate impact” is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)), shall not establish a violation of this Act.

SECTION 10. DEFENSES WHERE ACTIONS TAKEN IN A FOREIGN COUNTRY

(a) It shall not be unlawful under this Act for a covered entity to take any action otherwise prohibited under this Act with respect to an employee in a workplace in a foreign country if compliance with this Act would cause such entity to violate the law of the foreign country in which such workplace is located.

(b) If a covered entity controls a corporation whose place of incorporation is a foreign country, any practice prohibited by this Act engaged in by such corporation shall be presumed to be engaged in by such covered entity.

(1) This Act shall not apply with respect to the foreign operations of a corporation that is a foreign person not controlled by an American covered entity.

(2) For purposes of this subsection, the determination of whether a covered entity controls a corporation shall be based on the factors set forth in section 702(c)(3) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1(c)(3)).

(c) This Act shall not apply to a covered entity with respect to the employment of aliens outside any State.

SECTION 11. ENFORCEMENT AND REMEDIES

(a) **Incorporation of Powers, Remedies, and Procedures in Other Civil Rights Statutes.** -- With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act, the following statutory provisions are hereby incorporated, and shall, along with the provisions in subsection (b), establish the powers,

remedies, procedures, and jurisdiction that this Act provides to the Equal Employment Opportunity Commission, to the Attorney General, to the Librarian of Congress, to the Office of Compliance and its Board of Directors, to the Merit Systems Protection Board, to the President, to courts of the United States, and/or to any other person alleging a violation of any provision of this Act --

(1) for individuals who are covered under title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.), sections 705, 706, 707, 709, 710, 711, and 717 of that Act (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9, 2000e-10, and 2000e-16), and sections 7121, 7701, 7702, and 7703 of title 5, United States Code, as applicable;

(2) for individuals who are covered under section 302(a) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)), sections 302(b)(1) and 304(b) - (e) of that Act (2 U.S.C. 1202(b)(1), 1220(b)-(e));

(3) for individuals who are covered under section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)), sections 201(b)(1), 225, and 401-416 of that Act (2 U.S.C. 1311(b)(1), 1361, 1401-1416); and

(4) for individuals who are covered under section 411(c)(1) of title 3, United States Code, sections 411(b)(1), 435, and 451-456 of that title.

(b) Additional Remedies. --

(1) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection (a), and except as provided in subsection (b)(2) and in section 12, any covered entity that violates this Act shall be liable for such compensatory or punitive damages as may be appropriate.

(2) Notwithstanding subsection (b)(1),

(i) absent its consent to a monetary remedy, a State may be liable for monetary relief only in an action brought by the Attorney General in a court of the United States; and

(ii) a State shall not be liable for punitive damages.

(3) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection (a) or included in subsection (b)(2) above,

- (i) an individual may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official for a violation of this Act; and
- (ii) the Attorney General may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official or State for a violation of this Act.

SECTION 12. FEDERAL IMMUNITY. – Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for a violation to the same extent as the remedies are available against a private entity, except that punitive damages are not available.

SECTION 13. POSTING NOTICES. – A covered entity shall post notices for individuals to whom this Act applies, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SECTION 14. REGULATIONS.

(a) **In General.** Except as provided in subsections (b), (c), and (d) below, the Commission shall have authority to issue regulations to carry out this Act.

(b) **Librarian of Congress.** The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

(c) **Board.** The Board of the Office of Compliance shall have authority to issue regulations to carry out this Act, in accordance with sections 303 and 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1383, 1384), with respect to covered employees as defined in section 101(3) of such Act (2 U.S.C. 1301(3)).

(d) **President.** The President shall have authority to issue regulations to carry out this Act with respect to covered employees as defined in section 411(c)(1) of title 3, United States Code.

SECTION 15. RELATIONSHIP TO OTHER LAWS. – This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or any law of a State or political subdivision of a State.

SECTION 16. SEVERABILITY. – If any provision of 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 application of such provision to other persons and circumstances, shall not be affected.

SECTION 17. APPROPRIATIONS. -- There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SECTION 18. EFFECTIVE DATE. – This Act shall take effect 60 days after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

SECTION-BY-SECTION ANALYSIS

Short Title

Section 1 assigns the draft bill the short title “Ending Discrimination Against Parents Act of 1999.”

Findings

Section 2 sets forth findings regarding the problems caused by, and the benefits of Federal protection against, employment discrimination against parents. The findings state that this Act is not intended to affect interpretation or application of existing federal statutes prohibiting employment discrimination on other bases.

Purposes

Section 3 states that the purposes of the Act are to prohibit employers, employment agencies, and labor organizations from discriminating against parents based on an assumption that they cannot satisfy the requirements of a particular job. The Act bars covered entities from treating parents unfavorably. The Act does not require, but does not prevent, covered entities from making accommodations for parents, by, for example, allowing flexible work schedules or offering employee benefits that provide advantages to families.

Where employment discrimination against parents occurs, it is the purpose of the Act to provide meaningful and effective remedies for that discrimination.

Definitions

Section 4 contains definitions.

Subsection (a) defines “Commission” as the Equal Employment Opportunity Commission.

Subsection (b) defines “Complaining Party” to include all of those authorized to bring administrative or judicial actions under the Act.

Subsection (c) defines “Covered Entity” to mean employers, employment agencies, labor organizations, and joint labor-management committees.

Subsection (d) defines “Demonstrates” to mean meeting the burdens of production and persuasion.

Subsection (e) defines “Employee” to mean individuals covered under title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; or section 411 of title 3, United States Code. “Employee” is explicitly defined to cover applicants for employment and former employees.

Subsection (f) defines “Employer” to mean entities covered by section 701 or section 717 of title VII of the Civil Rights Act of 1964; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; or section 411 of title 3, United States Code. The term “Employer” does not include a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, United States Code.

Subsection (g) defines “Employment Agency” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (h) defines “Incapable of Self-Care” to mean that an individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Subsection (h) gives examples of ADLs and IADLs.

Subsection (i) defines “Labor Organization” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (j) defines “Office of Compliance” as it is used in the Congressional Accountability Act of 1995.

Subsection (k) defines “Parent” to mean a person who, with regard to an individual who is under the age of 18 or over 18 but incapable of self-care because of a physical or mental disability, has the status of a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; or a person who is actively seeking legal custody or adoption; or who stands in loco parentis to such an individual. Persons who are “actively seeking legal custody or adoption” are those who have been pursuing the requirements to obtain legal custody or to adopt and whose custody or adoption of an individual described above reasonably appears to be imminent. Persons who are “in loco parentis” include those with day-to-day responsibilities to care for and financially support a child.

Subsection (l) defines “Person” as it is defined in title VII of the Civil Rights Act of 1964.

Subsection (m) defines “Physical or Mental Disability” to mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

Subsection (n) defines “State” as it is defined in title VII of the Civil Rights Act of 1964.

Discrimination Prohibited

Section 5 sets forth prohibited discrimination.

Subsection (a) describes unlawful employment practices by employers. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (b) describes unlawful employment practices by employment agencies. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (c) describes unlawful employment practices by labor organizations. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964, as applied to discrimination against parents.

Subsection (d) bars discrimination against parents in training programs. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964.

Retaliation and Coercion Prohibited

Subsection 6(a) bars retaliation against an employee because that employee has opposed acts made unlawful by this Act or because the employee has participated in any way in filing a charge or assisting in an investigation or proceeding under the Act.

Subsection 6(b) prohibits a covered entity from coercing, intimidating or threatening an employee because that individual has exercised, or planned to exercise, or assisted another in exercising, rights protected by this Act.

These sections mirror the prohibitions of the Americans with Disabilities Act.

Other Prohibitions

Subsection 7(a) states that notwithstanding any other provision of this Act, the Commission may not collect, or require covered entities to collect, statistics on their employment of parents unless such statistics are to be used in investigation, litigation, or resolution of a claim of discrimination under this Act.

Subsection 7(b) bars covered entities from adopting or implementing quotas with respect to their employment of parents.

Mixed Motive Discrimination

Section 8 states that an unlawful employment practice may be established where a complaining party demonstrates that an individual's status as a parent, or retaliation, coercion, threats, intimidation, or interference, was a motivating factor for the practice, even if other factors also motivated the practice. It mirrors the prohibitions of title VII of the Civil Rights Act of 1964.

Disparate Impact

Section 9 states that, notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact on parents, as "disparate impact" is defined in title VII of the Civil Rights Act of 1964, shall not establish a violation of this Act.

Defenses

Subsection 10(a) permits a covered entity to take action otherwise prohibited under this Act against an employee in a workplace in a foreign country if compliance with the Act would cause the covered entity to violate the law of the country in which the workplace is located.

Subsection 10(b) states that actions taken by a corporation that is incorporated in a foreign country will be presumed to be covered by the Act if the corporation is controlled by a covered entity. For purposes of making this determination, the Act incorporates the factors for evaluating control that are set forth in title VII of the Civil Rights Act of 1964.

Subsection 10(c) states that this Act shall not apply to a covered entity with respect to the employment of aliens outside any State.

Enforcement

Section 11 describes the ways in which the Act will be enforced and the remedies that will be available for a violation of the Act.

Subsection (a) authorizes the Equal Employment Opportunity Commission, the Attorney General, the Librarian of Congress, the Office of Compliance and its Board of Directors, the Merit Systems Protection Board, the President, the courts, and any other person alleging a violation of this Act to exercise, obtain, and use, as applicable, the powers, remedies, procedures, and jurisdiction set forth in specified sections of title VII of the Civil Rights Act of 1964; sections 7121, 7701, 7702, and 7703 of title 5, United States Code; the Government Employee Rights Act of 1991; the Congressional Accountability Act of 1995; and section 401 et seq. of title 3, United States Code. This subsection is not intended to authorize the Commission to

require or monitor, or covered entities to implement, an affirmative program of equal employment opportunity for parents.

Subsection (b)(1) states that notwithstanding any limitation on the remedies incorporated by reference in subsection (a), and except as provided otherwise in this Act, covered entities that violate this Act will be liable for appropriate compensatory and punitive damages.

Subsection (b)(2) states that, notwithstanding subsection (b)(1), absent its consent to a monetary remedy, a state may be liable for monetary relief only in an action brought by the Attorney General in a federal court, and will not be liable for punitive damages.

Subsection (b)(3) states that, notwithstanding any limitations in this section, individuals may bring an action in federal court for declaratory or injunctive relief against any appropriate State official for a violation of this Act and that the Attorney General may bring an action for such relief against any appropriate State official or State.

Federal Immunity

Section 12 states that, notwithstanding any other provision of this Act, remedies under this Act will be available against the United States to the same extent that remedies are available against a private entity, except that punitive damages are not available.

Posting Notices

Section 13 requires covered entities to post notices for individuals covered by the Act that describe the applicable provisions of the Act. Section 13 incorporates the posting requirements and penalties for failure to meet this obligation set forth in title VII of the Civil Rights Act of 1964.

Regulations

Section 14 identifies the entities that are authorized to issue regulations to carry out this Act. The Commission is authorized to issue regulations except as explicitly provided in this section; the Librarian of Congress is authorized to issue regulations with respect to employees of the Library of Congress; the Board of the Office of Compliance is authorized to issue regulations with respect to employees covered by the Congressional Accountability Act of 1995; and the President is authorized to issue regulations with respect to employees covered under section 411(a)(1) of title 3, United States Code.

Relationship to Other Laws

Section 15 states that this Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination under other Federal, state, or local laws.

Severability

Section 16 states that if any provision of this Act, or any application of a provision of this Act, is held to be invalid, the remainder of this Act, and the application of the provision to other persons and circumstances, will not be affected.

Appropriations

Section 17 states that there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Effective Date

Section 18 states that this Act shall take effect 60 days after the date of enactment and will not apply to conduct occurring before the effective date.