H. R.

To prohibit discrimination in employment on the basis of an individual’s status or history of unemployment.

IN THE HOUSE OF REPRESENTATIVES

Ms. DeLauro introduced the following bill; which was referred to the Committee on

A BILL

To prohibit discrimination in employment on the basis of an individual’s status or history of unemployment.

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 “Fair Employment Opportunity Act of 2011”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that denial of employment opportunities to individuals because they are or
have been unemployed is discriminatory and burdens commerce by—

(1) reducing personal consumption and undermining economic stability and growth;

(2) squandering human capital essential to the Nation’s economic vibrancy and growth;

(3) increasing demands for State and Federal unemployment insurance benefits, reducing trust fund assets, and leading to higher payroll taxes for employers, cuts in benefits for jobless workers, or both;

(4) imposing additional burdens on publicly funded health and welfare programs; and

(5) depressing income, property, and other tax revenues that states, localities and the Federal Government rely on to support operations and institutions essential to commerce.

(b) PURPOSE.—The purpose of this Act is to prohibit consideration of an individual’s status as unemployed in screening for or filling positions except where a requirement related to employment status is a bona fide occupational qualification reasonably necessary to successful performance in the job and to eliminate the burdens imposed on commerce by excluding such individuals from employment.
SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term “employer” means any person engaged in commerce or any industry or activity affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and includes—

(A) any person who acts, directly or indirectly, in the interest of an employer with respect to employing individuals to work for the employer; and

(B) any successor in interest of an employer.

(2) the term “employment agency” means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for individuals opportunities to work for an employer and includes an agent of such a person, and includes any person who maintains an Internet website that publishes advertisements or announcements of job openings;

(3) the term “affected individual” means any person who was refused consideration for employment or was not hired by an employer because of the person’s current employment status, or any person
who was not considered, screened, or referred for employment opportunities by an employment agency because of the person’s current employment status;

(4) the term “status as unemployed” means an individual’s present or past unemployment regardless of the length of time such individual was unemployed; and

(5) the term “Secretary” means the Secretary of Labor.

SEC. 4. PROHIBITED ACTS.

(a) EMPLOYERS.—It shall be an unlawful practice for an employer to—

(1) refuse to consider for employment or refuse to offer employment to an individual because of the individual’s status as unemployed;

(2) publish in print, on the Internet, or in any other medium, an advertisement or announcement for any job that includes—

(A) any provision stating or indicating that an individual’s status as unemployed disqualifies the individual for a job; and

(B) any provision stating or indicating that an employer will not consider an applicant for employment based on that individual’s status as unemployed; and
(3) direct or request that an employment agency take an individual’s status as unemployed into account in screening or referring applicants for employment.

(b) Employment Agencies.—It shall be an unlawful practice for an employment agency to—

(1) refuse to consider or refer an individual for employment based on the individual’s status as unemployed;

(2) limit, segregate, or classify individuals in any manner that may limit their access to information about jobs or referral for consideration of jobs because of their status as unemployed; or

(3) publish, in print or on the Internet or in any other medium, an advertisement or announcement for any job vacancy that includes—

(A) any provision stating or indicating that an individual’s status as unemployed disqualifies the individual for a job; and

(B) any provision stating or indicating that an employer will not consider individuals for employment based on that individual’s status as unemployed.
(c) INTERFERENCE WITH RIGHTS, PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any employer or employment agency to—

(1) interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this Act; or

(2) refuse to hire, to discharge, or in any other manner to discriminate against any individual because such individual—

(A) opposed any practice made unlawful by this Act;

(B) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this Act;

(C) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this Act; or

(D) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Act.

(d) BONA FIDE OCCUPATIONAL QUALIFICATION.—Notwithstanding any other provision of this Act, consideration by an employer or employment agency of an individual’s status as unemployed shall not be an unlawful em-
ployment practice where an individual’s employment in a similar or related job for a period of time reasonably proximate to the hiring of such individual is a bona fide occupational qualification reasonably necessary to successful performance of the job that is being filled.

SEC. 5. ENFORCEMENT.

(a) Civil Action by Individual.—

(1) Liability for Employers and Employment Agencies.—Any employer or employment agency that violates section 4(a) and (b) shall be liable to any affected individual—

(A) for actual damages equal to—

(i) the amount of—

(I) any wages, salary, employment benefits, or other compensation denied or lost to such individual by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the individual, any actual monetary losses sustained by the individual as a direct result of the violation or a civil penalty of $1000 per
violation per day, whichever is greater;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer or employment agency that has violated section 4 proves to the satisfaction of the court that the act or omission that violated section 4 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 4, such court may, in its discretion, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment and compensatory and punitive damages.

(2) Right of action.—An action to recover the damages or equitable relief prescribed in para-
graph (1) of this subsection may be maintained
against any employer or employment agency in any
Federal or State court of competent jurisdiction by
any one or more persons for and in behalf of—

(A) the affected individual; or

(B) the affected individual and other indi-
viduals similarly situated.

(3) FEES AND COSTS.—The court in such an
action shall, in addition to any judgment awarded to
the plaintiff, allow a reasonable attorney’s fee, rea-
sonable expert witness fees, and other costs of the
action to be paid by the defendant.

(4) LIMITATIONS.—The right provided by para-
graph (2) of this subsection to bring an action by or
on behalf of any affected individual shall termi-
nate—

(A) on the filing of a complaint by the Sec-
retary in an action under subsection (d) in
which restraint is sought of any violation of sec-
tion 4; or

(B) on the filing of a complaint by the Sec-
retary in an action under subsection (b) in
which a recovery is sought of the damages de-
scribed in paragraph (1)(A) owing to an af-
feeted individual by an employer or employment
agency liable under paragraph (1), unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) Action by the Secretary.—

(1) Administrative Action.—The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 4 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) Civil Action.—The Secretary may bring an action in any court of competent jurisdiction—

(A) to enjoin violations of this title and seek other relief going forward necessary to prevent future violations;

(B) to recover—

(i) the damages described in subsection (a)(1)(A);

(ii) in the case of a violation of section 4(c), a civil penalty of not less than $250 per violation; or

(iii) such other equitable relief the Court deems appropriate.
(3) Sums Recovered.—Any sums recovered by the Secretary pursuant to paragraph (2)(A) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each affected individual. Any such sums recovered pursuant to paragraph (2)(A) that are not paid to an affected individual because of inability to do so within a period of 3 years and any sums recovered pursuant to paragraph (2)(B) shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Limitation.—

(1) In General.—Except as provided in paragraph (2), an action under subsection (a) may be brought not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought, provided that the limitations for filing an action shall be tolled during the period that the Secretary is considering a complaint against any defendant named in a complaint filed with the Secretary under subsection (b)(1) above.

(2) Willful Violation.—In the case of such action brought for a willful violation of section 4, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought, provided that
the limitations for filing an action by an individual shall be tolled during the period that the Secretary is considering a complaint pursuant to subsection (b)(1).

(3) COMMENCEMENT.—In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the Secretary files a complaint in a court of competent jurisdiction.

(d) ACTION FOR INJUNCTION BY SECRETARY.—The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary—

(1) to restrain violations of section 4; and

(2) to award such other equitable relief as may be appropriate, including employment and monetary damages.

(e) SOLICITOR OF LABOR.—The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.