

The Protecting Older Workers Against Discrimination Act (POWADA) – S.485

Introduced by Senator Bob Casey (D-PA)

Why do we need POWADA?

In 2009, the Supreme Court ruled in *Gross v. FBL Financial Services* that workers who face age discrimination have to meet a higher burden of proof than workers who face discrimination based on other characteristics like race, sex, national origin or religion. The court ruled that, whereas for decades a worker needed to prove only that discrimination was *a* factor in an adverse employment decision to make an age discrimination claim, now a worker needs to prove it was the *deciding* factor in that decision. This sent a clear signal to employers: some age discrimination is perfectly fine.

What would POWADA do?

POWADA would amend the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the retaliation provision in Title VII of the Civil Rights Act of 1964 to level the playing field for older workers. The bill would restore the pre-*Gross* standard, recognizing once again the legitimacy of so-called “mixed-motive” claims in which discrimination is a, if not the deciding, factor. It would also reaffirm that workers may use any type of admissible evidence to prove their claims.

It’s time to level the playing field.

A 2017 AARP study found that more than three in five workers ages 45-plus reported seeing or experiencing age discrimination in the workplace. Age discrimination is a key reason why many older Americans have trouble finding work after a period of unemployment and struggle to return to the workforce. Age discrimination is unacceptable, and victims of age discrimination should have equal access to the courts.

Cosponsors: Senators Grassley, Leahy and Collins.

Endorsers: AARP, American Association of People with Disabilities, Leadership Conference for Civil and Human Rights, National Employment Law Project, National Employment Lawyers Association, National Partnership for Women and Families and Paralyzed Veterans of America.

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