

# Employment Discrimination Law

by Robert B. Fitzpatrick  
1666 Connecticut Ave., N.W., Suite 230  
Washington, D.C. 20009

[rfitzpatrick@robertbfitzpatrick.com](mailto:rfitzpatrick@robertbfitzpatrick.com)



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# Robert B. Fitzpatrick

- ▣ **Robert Brian Fitzpatrick** is the principal in the boutique law firm of Robert B. Fitzpatrick PLLC in Washington, D.C., which represents clients in employment law matters in the federal and state courts of the District of Columbia, Maryland and Virginia. Mr. Fitzpatrick has concentrated his practice in employment law disputes for nearly fifty years. He has been a member of the D.C. Bar since 1968. He is the father of three, and grandfather of three.



# Title VII Of the Civil Rights Act of 1964

- 42 U.S.C. § 2000e- *et seq.*
- <https://www.law.cornell.edu/uscode/text/42/2000e>
- Prohibits discrimination in employment based on race, color, religion, sex, or national origin.
- Whalen, Charles & Whalen, Barbara, *The Longest Debate: A Legislative History of the 1964 Civil Rights Act* (1989)
  - <https://www.amazon.com/Longest-Debate-Legislative-History-Rights/dp/093202033X>

# Disparate Treatment

- 42 U.S.C. § 2000e-2  
(<https://www.eeoc.gov/laws/statutes/titlevii.cfm>)
- (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 respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
  - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
- *McDonnell Douglas Corp. v. Gen*, 411 U.S. 792 (1973)
- [https://scholar.google.com/scholar\\_case?case=4011882228792863251&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=4011882228792863251&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

# Disparate Impact

- 42 U.S.C. § 2000e-2  
(<https://www.eeoc.gov/laws/statutes/titlevii.cfm>)
- (1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if-
  - (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or
  - (ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.
- *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)
- [https://scholar.google.com/scholar\\_case?case=8655598674229196978&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=8655598674229196978&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

# Relief

## □ Make-Whole

- “To effectuate this “make whole” objective, Congress in § 706 (g) vested broad equitable discretion in the federal courts to “order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . , or any other equitable relief as the court deems appropriate.” The legislative history supporting the 1972 amendments... is emphatic confirmation that federal courts are empowered to fashion such relief as the particular circumstances of a case may require to effect restitution, making whole insofar as possible the victims of racial discrimination in hiring.”
- *Franks v. Bowman Transp. Co.*, 424 U.S. 747 (1976) (internal quotations and citations omitted).
- [https://scholar.google.com/scholar\\_case?case=6949439624756717709&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=6949439624756717709&hl=en&as_sdt=6&as_vis=1&oi=scholar)

# Relief

- Caps on Damages
  - Civil Rights Act of 1991 (codified at 42 U.S.C. § 1981a(b)(3))
  - <https://www.law.cornell.edu/uscode/text/42/1981a>
- Caps apply to the “sum of punitive and compensatory damages”.
- The caps are based on the size of the employer:
  - 15 to 100 Employees - \$50,000.00
  - 101 to 200 Employees - \$100,000.00
  - 201 to 500 Employees - \$200,000.00
  - 501+ Employees - \$300,000.00



# The Americans With Disabilities Act

- ▣ 42 U.S.C. § 12101 *et seq.*
  - <https://www.law.cornell.edu/uscode/text/42/12101>
- ▣ *Bragdon v. Abbott*, 424 U.S. 624 (1998)  
(Court held that HIV infection qualifies as a disability under the ADA)
  - [https://scholar.google.com/scholar\\_case?case=11295524924367699420&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=11295524924367699420&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

# The Americans With Disabilities Act Amendments Act

- ▣ P.L. 110-325 (S. 3406)

- <https://www.eeoc.gov/laws/statutes/adaaa.cfm>

- Codified at 42 U.S.C. § 12101 *et seq.*

- ▣ Overturns *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999)

- [https://scholar.google.com/scholar\\_case?case=18389776619126544360&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=18389776619126544360&hl=en&as_sdt=6&as_vis=1&oi=scholar)

- ▣ *Summers v. Altarum Inst., Corp.*, 740 F.3d 325 (4th Cir. 2014)

- [https://scholar.google.com/scholar\\_case?case=7956725969330798863&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=7956725969330798863&hl=en&as_sdt=6&as_vis=1&oi=scholar)

# Age Discrimination in Employment Act

- 29 U.S.C. § 621 *et seq.*
  - Prohibits age discrimination in employment against individuals over 40 years of age.
  - <https://www.law.cornell.edu/uscode/text/29/chapter-14>
- *O'Connor v. Consolidated Coin Caterers*, 517 U.S. 308 (1996) (ADEA liability does not require comparisons outside the protected class (e.g. you can compare a 50 year old and a 60 year old)).
  - [https://scholar.google.com/scholar\\_case?case=7002620990625859659&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=7002620990625859659&hl=en&as_sdt=6&as_vis=1&oi=scholar)

# ADEA - Disparate Treatment

- 29 U.S.C. § 623
- <https://www.law.cornell.edu/uscode/text/29/623>
  - **(a) EMPLOYER PRACTICES** It shall be unlawful for an employer—**(1)** to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
  - **(2)** to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
  - **(3)** to reduce the wage rate of any employee in order to comply with this chapter.
- *Gross v. FBL Financial Servs., Inc.*, 129 S. Ct. 2343 (2009) (but-for causation)
- [https://scholar.google.com/scholar\\_case?case=11161861274984420877&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=11161861274984420877&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

# ADEA - Disparate Impact

- 29 U.S.C. § § 623, 631
- <https://www.law.cornell.edu/uscode/text/29/cha-14>
- *Smith v. City of Jackson*, 544 U.S. 228 (2005)
  - [https://scholar.google.com/scholar\\_case?case=9749401509062904417&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=9749401509062904417&hl=en&as_sdt=6&as_vis=1&oi=scholar)
- *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84 (2008).
  - [https://scholar.google.com/scholar\\_case?case=1760543897621539034&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=1760543897621539034&hl=en&as_sdt=6&as_vis=1&oi=scholar)

# Retaliation

- 42 U.S.C. § 2000e-3
- <https://www.law.cornell.edu/uscode/text/42/2000e-3>
- *Burlington Northern & Santa Fe Ry. Corp. v. White*, 548 U.S. 53 (2006)
- <https://www.law.cornell.edu/supct/html/05-259.ZS.html>

# Civil Rights Act of 1866

- 42 U.S.C. § 1981
  - <https://www.law.cornell.edu/uscode/text/42/1981>
- **(a) STATEMENT OF EQUAL RIGHTS** All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
- **(b) “MAKE AND ENFORCE CONTRACTS” DEFINED** 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) PROTECTION AGAINST IMPAIRMENT** The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.
- *Runyon v. McCrary*, 427 U.S. 160 (1976) (§1981 applies to private conduct)
  - [https://scholar.google.com/scholar\\_case?case=14335650974953296246&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=14335650974953296246&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

# Pregnancy Discrimination Act of 1978

- ▣ Amends Title VII to prohibit sex discrimination on the basis of pregnancy
  - 78 Stat. 265, 42 U.S.C. § 2000e-12
  - <https://www.law.cornell.edu/uscode/text/42/2000e-12>
- ▣ *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976)
  - (Held that a health insurance plan for employees that excluded coverage of pregnancy did not constitute sex discrimination)
  - <https://supreme.justia.com/cases/federal/us/429/125/>
- ▣ *AT&T Corp. v. Hulteen*, 556 U.S. 701 (2009)
  - (Maternity leave taken before passage of the PPA cannot be considered in calculating pension benefits)
  - <https://supreme.justia.com/cases/federal/us/556/701/>



# Equal Pay Act

- 29 U.S.C. § 206(d)
- <https://www.law.cornell.edu/uscode/text/29/206>
- *Corning Glass Works v. Brennan*, 417 U.S. 188 (1974)
- [https://scholar.google.com/scholar\\_case?case=7542299068311812851&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholarr](https://scholar.google.com/scholar_case?case=7542299068311812851&hl=en&as_sdt=6&as_vis=1&oi=scholarr)

# Lilly Ledbetter Fair Pay Act

- Amends Title VII of the Civil Rights Act to overturn Supreme Court decision in *Ledbetter v. Goodyear*, below.
  - Pub. L. 111-2
  - [https://www.law.cornell.edu/topn/lilly\\_ledbetter\\_fair\\_pay\\_act\\_of\\_2009](https://www.law.cornell.edu/topn/lilly_ledbetter_fair_pay_act_of_2009)
- *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).
  - <https://www.law.cornell.edu/supct/html/05-1074.ZS.html>