



Leadership Council
of Aging Organizations

Katie Smith Sloan, Chair

Dear Member of Congress,

The Leadership Council of Aging Organizations (LCAO) is a coalition of 69 national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena. We are writing to urge you to vote for passage of the Protecting Older Workers Against Discrimination Act (POWADA, H.R. 2062). POWADA is bipartisan legislation introduced by Representatives Bobby Scott (D-VA) and Rodney Davis (R-IL).

Age discrimination is pervasive and stubbornly entrenched. It often starts in the hiring process when employers circumvent anti-age discrimination laws by using such tactics as setting a maximum number of years of experience that a prospective employer will consider.¹ Whether it starts at the hiring process or not, six in 10 older workers say they have experienced age discrimination and 90% of them say it is common.² It is even more pervasive among older women and African American workers--nearly two thirds of women and three-fourths of African Americans say they have seen or experienced workplace discrimination.³ The COVID-19 pandemic has wreaked havoc on employment for everyone, with older workers taking a harder hit. Older workers experienced a 1.1% higher unemployment rate from April through September of 2020 than their mid-career counterparts (9.7% were unemployed versus 8.6%).⁴ The rates were worse for older workers who were black, female, or who did not have a college degree.

Courts have not taken age discrimination as seriously as other forms of discrimination and older workers have fewer protections as a result. Over ten years ago, the Supreme Court decision in *Gross v. FBL Financial Services Inc.* (2009), set a higher standard of proof for age discrimination than previously applied, and much higher than for other forms of discrimination. Since *Gross*, court decisions have continued to chip away at protections. As a result, plaintiffs now must prove that age was a determinative cause for their employers' adverse treatment of them. Before the *Gross* case, it was enough for plaintiffs to prove that age was one of the motivating factors.

POWADA would restore the standard of proof in age discrimination cases to the pre-2009 level and treat age discrimination as unjust as other forms of employment discrimination. Moreover, because courts have applied *Gross*' higher burden of proof to retaliation charges and to disability discrimination, POWADA would also amend the Age Discrimination in Employment Act, Title VII's provision on retaliation, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.

¹ "America's Aging Workforce: Opportunities and Challenges," Senate Special Committee on Aging, December 2017, p.23

² AARP, <https://www.aarp.org/content/dam/aarp/politics/advocacy/2021/03/testimony-mccann-aarp-powada-031821>

³ AARP, <https://www.aarp.org/content/dam/aarp/politics/advocacy/2021/03/testimony-mccann-aarp-powada-031821>

⁴ "Older Workers Report," The Schwartz Center For Economic Policy, October 2020, page 1.



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Please vote to restore fairness for older workers by passing the Protecting Older Workers Against Discrimination Act (H.R. 2062).

Sincerely,

AARP
AFL-CIO
Alliance for Retired Americans
AMDA - The Society for Post-Acute and Long-Term Care Medicine
American Postal Workers Union Retirees Department
American Society on Aging
Association for Gerontology and Human Development in Historically Black Colleges and Universities
Association of Jewish Aging Services
Asociacion Nacional Pro Personas Mayores
Caring Across Generations
Center for Eldercare Improvement, Altarum
The Gerontological Society of America
Justice in Aging
LeadingAge
Medicare Rights Center
National Active and Retired Federal Employees Association
National Adult Day Services Association
National Alliance for Caregiving
National Association of Area Agencies on Aging
National Association of Nutrition and Aging Services Programs
National Association of Social Workers
National Caucus and Center on Black Aging
National Committee to Preserve Social Security and Medicare
National Council on Aging
National Indian Council on Aging
National Senior Corps Association
Pension Rights Center
Social Security Works
Women's Institute for a Secure Retirement