



June 22, 2021

**VOTE YES ON THE PROTECTING OLDER WORKERS AGAINST  
DISCRIMINATION ACT (POWADA), H.R. 2062**

Dear Representative:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, **we urge you to vote yes on H.R. 2062, the Protecting Older Workers Against Discrimination Act (POWADA)**, without amendments that would limit the bill's scope or undermine its protections. POWADA is a priority of The Leadership Conference, and we will include your vote in our voting record for the 117<sup>th</sup> Congress.

Despite longstanding federal prohibitions against workplace discrimination based on age, pervasive age discrimination in the United States continues to harm older workers — denying working people dignity on the job and threatening their economic security. In 2020, 78 percent of older workers reported having seen or experienced age discrimination in the workplace,<sup>1</sup> with Hispanic workers perceiving slightly more age discrimination at 82 percent.<sup>2</sup> These numbers reflect an increase in age discrimination during the COVID-19 pandemic for all workers, across race and gender.<sup>3</sup> Previous research on age discrimination before the pandemic reflects that women workers and workers of color, especially Black workers, have been more likely to experience age discrimination,<sup>4</sup> and unemployment rates suggest that workers of color may continue to be more vulnerable. For example, although the unemployment rate in May 2021 for White workers ages 45-59 was 4.2 percent, for Black workers, the rate was 10.6 percent.<sup>5</sup>

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<sup>1</sup> Perron, Rebecca. "Age Discrimination Continues to Hold Old Workers Back." *AARP*. May 2021. <https://www.aarp.org/research/topics/economics/info-2021/older-workers-new-skills-covid-19-pandemic.html>

<sup>2</sup> Perron, Rebecca. "As Economy Improves, Age Discrimination Continues to Hold Older Workers Back." *AARP*. 2021. [https://www.aarp.org/content/dam/aarp/research/surveys\\_statistics/econ/2021/older-workers-age-discrimination-covid-19-pandemic-infographic.doi.10.26419-2Fres.00445.003.pdf](https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2021/older-workers-age-discrimination-covid-19-pandemic-infographic.doi.10.26419-2Fres.00445.003.pdf)

<sup>3</sup> *Id.*

<sup>4</sup> Neumark, David, Burn, Ian, and Button, Patrick. "Age Discrimination and Hiring of Older Workers." *FRBS.org*. February 27, 2017. <https://www.frbsf.org/economic-research/files/el2017-06.pdf>; Lipnic, Victoria A. "The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)." *U.S. Equal Employment Opportunity Commission*. June 2018. [https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment#\\_ftn150](https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment#_ftn150)

<sup>5</sup> "Labor Force Statistics from the Current Population Survey." *U.S. Bureau of Labor Statistics*. June 4, 2021. <https://www.bls.gov/web/empsit/cpseea13.htm>

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AAJC

Interim President & CEO  
Wade Henderson

The ability to enjoy employment opportunities, free from unlawful discrimination, is key to promoting economic security for marginalized and multi-marginalized communities. Systemic racism and decades of structural inequality in almost every area of life, including education, health care, housing, and employment, have resulted in economic disparities that have severely threatened the lives and well-being of far too many people in the United States. Women, for example, are nearly two-thirds of all individuals aged 65 and over living in poverty, with women of color struggling at increased rates.<sup>6</sup> LGBTQ older adults are also at increased risk of poverty compared to non-LGBTQ older adults,<sup>7</sup> and people with disabilities are twice as likely to live in poverty than people without disabilities.<sup>8</sup> Congress must ensure that our federal laws are able to protect all persons in the United States from unlawful discrimination. A key step toward that goal is to ensure that unlawful discrimination plays no role in employment practices.

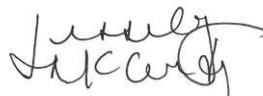
POWADA is critically needed legislation that would restore fairness by reinstating well-established legal protections against workplace discrimination that were undermined by the 2009 Supreme Court decision in *Gross v. FBL Financial Services, Inc.*,<sup>9</sup> which imposed a higher burden of proof on working people in age discrimination cases. After *Gross*, working people must prove not only that age discrimination influenced an employer's conduct but that age played a decisive role in the employer's conduct. The burden of proof for age discrimination is now higher than the standard of proof for allegations of discrimination based on sex, race, religion, or national origin, sending the signal that some amount of age discrimination in the workplace is acceptable. Just as troubling, though, is that the *Gross* decision paved the way for the same unreasonably difficult burden of proof in cases in which an employer retaliates against workers who challenge workplace discrimination based on race, sex, or other grounds.<sup>10</sup> POWADA is necessary to return the law to what it was before the *Gross* decision.

Simply put, no amount of unlawful discrimination in the workplace is acceptable. We therefore urge you to vote yes on H.R. 2062, the Protecting Older Workers Against Discrimination Act. If you have any questions or would like to discuss this matter further, please contact Gaylynn Burroughs, senior policy counsel, at [burroughs@civilrights.org](mailto:burroughs@civilrights.org).

Sincerely,



Wade Henderson  
Interim President & CEO



Jesselyn McCurdy  
Managing Director and Interim Executive Vice President  
for Government Affairs

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<sup>6</sup> Christ, Amber and Gronniger, Tracey. "Older Women and Poverty." *Justice in Aging*. December 2018.

<https://justiceinaging.org/wp-content/uploads/2020/08/Older-Women-and-Poverty.pdf>

<sup>7</sup> Greenesmith, Heron. "Aging as LGBT: Two Stories." *Justice in Aging*. August 2, 2017.

<https://justiceinaging.org/aging-as-lgbt/>

<sup>8</sup> Altrairafi, Azza. "Advancing Economic Security for People with Disabilities." *Center for American Progress*. July 26, 2019. <https://www.americanprogress.org/issues/disability/reports/2019/07/26/472686/advancing-economic-security-people-disabilities/>

<sup>9</sup> 557 U.S. 167 (2009).

<sup>10</sup> *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013).