

(c) Bona fide executives or high policymakers

(1) Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$44,000.

(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(Pub. L. 90-202, §12, Dec. 15, 1967, 81 Stat. 607; Pub. L. 95-256, §3(a), (b)(3), Apr. 6, 1978, 92 Stat. 189, 190; 1978 Reorg. Plan No. 1, §2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 98-459, title VIII, §802(c)(1), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99-272, title IX, §9201(b)(2), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99-592, §§2(c), 6(a), Oct. 31, 1986, 100 Stat. 3342, 3344; Pub. L. 101-239, title VI, §6202(b)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2233.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239 struck out “(except the provisions of section 623(g) of this title)” after “in this chapter”.

1986—Subsec. (a). Pub. L. 99-592, §2(c)(1), which directed that “but less than seventy years of age” be struck out was executed by striking out “but less than 70 years of age” after “40 years of age” as the probable intent of Congress.

Pub. L. 99-272 inserted “(except the provisions of section 623(g) of this title)” after “this chapter”.

Subsec. (c)(1). Pub. L. 99-592, §2(c)(2), which directed that “but not seventy years of age,” be struck out was executed by striking out “but not 70 years of age,” after “65 years of age” as the probable intent of Congress.

Subsec. (d). Pub. L. 99-592, §6(a), (b), temporarily added subsec. (d) which read as follows: “Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1141(a) of title 20).” See Effective and Termination Dates of 1986 Amendments note below.

1984—Subsec. (c)(1). Pub. L. 98-459 substituted “\$44,000” for “\$27,000”.

Pub. L. 95-256, §3(a), designated existing provisions as subsec. (a), substituted “40 years of age but less than 70 years of age” for “forty years of age but less than sixty-five years of age”, added subsecs. (b) and (c), and temporarily added subsec. (d). See Effective and Termination Dates of 1978 Amendment note below.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to items and services furnished after Dec. 19, 1989, see section

6202(b)(5) of Pub. L. 101-239, set out as a note under section 162 of Title 26, Internal Revenue Code.

EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENTS

Amendment by Pub. L. 99-592 effective Jan. 1, 1987, with certain exceptions, see section 7(a) of Pub. L. 99-592 set out as a note under section 623 of this title.

Pub. L. 99-592, §6(b), Oct. 31, 1986, 100 Stat. 3344, provided that: “The amendment made by subsection (a) of this section [amending this section] is repealed December 31, 1993.”

Amendment by Pub. L. 99-272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99-272, set out as an Effective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-459, title VIII, §802(c)(2), Oct. 9, 1984, 98 Stat. 1792, provided that: “The amendment made by paragraph (1) of this subsection [amending this section] shall not apply with respect to any individual who retires, or is compelled to retire, before the date of the enactment of this Act [Oct. 9, 1984].”

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Pub. L. 95-256, §3(b), Apr. 6, 1978, 92 Stat. 190, provided that:

“(1) Sections 12(a), 12(c), and 12(d) of the Age Discrimination in Employment Act of 1967, as amended by subsection (a) of this section [subsecs. (a), (c), and (d) of this section] shall take effect on January 1, 1979.

“(2) Section 12(b) of such Act, as amended by subsection (a) of this section [subsec. (b) of this section], shall take effect on September 30, 1978.

“(3) Section 12(d) of such Act, as amended by subsection (a) of this section [enacting subsec. (d) of this section], is repealed on July 1, 1982.”

TRANSFER OF FUNCTIONS

“Equal Employment Opportunity Commission” substituted for “Secretary”, meaning Secretary of Labor, in subsec. (c)(2) pursuant to Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in Secretary of Labor to Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

§ 632. Omitted

CODIFICATION

Section, Pub. L. 90-202, §13, Dec. 15, 1967, 81 Stat. 607; 1978 Reorg. Plan No. 1, §2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781, which required the Equal Employment Opportunity Commission to submit to Congress an annual report on the Commission’s activities including an evaluation and appraisal of the effect of the minimum and maximum ages established by this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 123 of House Document No. 103-7.

§ 633. Federal-State relationship**(a) Federal action superseding State action**

Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

(b) Limitation of Federal action upon commencement of State proceedings

In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

(Pub. L. 90-202, §14, Dec. 15, 1967, 81 Stat. 607.)

TRANSFER OF FUNCTIONS

Functions vested by this section in Secretary of Labor or Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

§ 633a. Nondiscrimination on account of age in Federal Government employment

(a) Federal agencies affected

All personnel actions affecting employees or applicants for employment who are at least 40 years of age (except personnel actions with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on age.

(b) Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission; compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission is authorized to enforce the provi-

sions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Equal Employment Opportunity Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a) of this section;

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Equal Employment Opportunity Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil actions; jurisdiction; relief

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

(d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices

When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) Duty of Government agency or official

Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on ac-