

## SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-433, §1, Oct. 16, 1990, 104 Stat. 978, provided that: "This Act [amending sections 623, 626, and 630 of this title and enacting provisions set out as notes under this section and sections 623 and 626 of this title] may be cited as the 'Older Workers Benefit Protection Act'."

## SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-592, §1, Oct. 31, 1986, 100 Stat. 3342, provided that: "This Act [amending sections 623, 630, and 631 of this title and enacting provisions set out as notes under sections 622 to 624 and 631 of this title] may be cited as the 'Age Discrimination in Employment Amendments of 1986'."

## SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-256, §1, Apr. 6, 1978, 92 Stat. 189, provided that: "This Act [amending sections 623, 624, 626, 631, 633a, and 634 of this title and sections 8335 and 8339 of Title 5, Government Organization and Employees, repealing section 3322 of Title 5, and enacting provisions set out as notes under sections 623, 626, 631, and 633a of this title] may be cited as the 'Age Discrimination in Employment Act Amendments of 1978'."

## SHORT TITLE

Pub. L. 90-202, §1, Dec. 15, 1967, 81 Stat. 602, provided: "That this Act [enacting this chapter] may be cited as the 'Age Discrimination in Employment Act of 1967'."

## SEVERABILITY

Pub. L. 101-433, title III, §301, Oct. 16, 1990, 104 Stat. 984, provided that: "If any provision of this Act [see Short Title of 1990 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby."

## CONGRESSIONAL FINDING

Pub. L. 101-433, title I, §101, Oct. 16, 1990, 104 Stat. 978, provided that: "The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations."

## Executive Documents

## 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.

### § 622. Education and research program; recommendation to Congress

(a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this chapter, the Secretary of Labor shall carry on a continuing pro-

gram of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this chapter, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of this title.

(Pub. L. 90-202, §3, Dec. 15, 1967, 81 Stat. 602.)

## Editorial Notes

## REFERENCES IN TEXT

The effective date of this chapter, referred to in subsection (b), means the effective date of Pub. L. 90-202, which is one hundred and eighty days after the enactment of this chapter, except that the Secretary of Labor may extend the delay in effective date an additional ninety days thereafter for any provision to permit adjustments to such provisions. See section 16 of Pub. L. 90-202, set out as a note under section 621 of this title.

## Statutory Notes and Related Subsidiaries

## STUDY AND PROPOSED GUIDELINES RELATING TO POLICE OFFICERS AND FIREFIGHTERS

Pub. L. 99-592, §5, Oct. 31, 1986, 100 Stat. 3343, provided that:

"(a) STUDY.—Not later than 4 years after the date of enactment of this Act [Oct. 31, 1986], the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall—

"(1) conduct a study—

"(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs,

"(B) if such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

"(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests should satisfy, and

"(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes—

"(A) a description of the results of such study, and

"(B) a statement of the recommendations developed under paragraph (1)(C).

"(b) CONSULTATION REQUIREMENT.—The Secretary of Labor and the Equal Employment Opportunity Commission shall, during the conduct of the study required under subsection (a) and prior to the development of recommendations under paragraph (1)(C), consult with the United States Fire Administration, the Federal Emergency Management Agency, organizations rep-

representing law enforcement officers, firefighters, and their employers, and organizations representing older Americans.

“(c) PROPOSED GUIDELINES.—Not later than 5 years after the date of the enactment of this Act [Oct. 31, 1986], the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code, guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.”

### § 623. Prohibition of age discrimination

#### (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.

#### (b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

#### (c) Labor organization practices

It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

#### (d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

#### (e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

#### (f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan—

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or