

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

PD
ADLA 304.1
ADLA 304.13


November 30, 1973

This is in further reference to your letter of September 10, 1973, concerning the application of the Age Discrimination in Employment Act to a new faculty tenure, retention, and retirement policy recently proposed by the [redacted] College Board of Trustees. We regret the delay in responding to your inquiry.

The proposed new policy provides that retirement could take place at age 62 if either the faculty member or the College should so choose. You feel that this could result in the forced retirement of a 62 year old faculty member and some reduction in his or her retirement benefits. Some faculty members feel that this is tantamount to withdrawing tenure from the faculty member who has reached age 62. Another part of the Board proposal states that no sabbatical leaves will be granted to become effective after a person has reached age 60." You ask if the proposed policies are in accord with the Age Discrimination in Employment Act.

Section 4(f)(2) of the Act permits involuntary retirement of individuals irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of this section. See Interpretative Bulletin, Part 860, Section 860.110.

There has been no definitive guidance from the courts on the question of the application of section 4(f)(2) in a situation such as you have described. As a general rule, however, we have considerable reservations about the bona fides of a plan that does not by its provisions spell out its conditions and limitations and instead is governed by an undefined policy entirely within the discretion of the employer outside the plan. It has been our experience that the operation of a plan in practice is of equal significance as the explicit terms of the plan in determining an employer's compliance status. We are therefore reluctant to issue an opinion in the abstract.

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The proposal to limit sabbatical leaves to those individuals under age 60 would, without more, appear to be in violation of section 4(a) of the Act inasmuch as age is the disqualifying factor in the denial of this benefit to those age 60 or over.

Sincerely,

/s/ Warren D. Landis

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosures