

ADEA2087D

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
Wage and Hour Division  
WASHINGTON, D.C. 20210



8 4 APR 1975

This is in reply to your letter of December 28, 1974, addressed to the Special Assistant to the Secretary of Labor, and your letter of February 28, 1975, with enclosure, addressed to Secretary of Labor Dunlop, in which you request an opinion as to the legality of Section 11 of P.L. 1108 (53 P.S. 39871) as enacted by the Pennsylvania State Legislature on May 31, 1933. You inquire as to whether the above statute is in direct conflict with the new Age Discrimination in Employment Act as enacted by the Congress. The State Law reads "if for reasons of economy there is a reduction in Fire Department personnel, the man oldest in age and service shall be placed on pension". We regret the delay in responding.

The Age Discrimination in Employment Act of 1967, which is enforced by the Wage and Hour Division of the Department of Labor, protects individuals who are at least 40 but less than 65 years old from arbitrary age discrimination in most phases of employment. The Fair Labor Standards Amendments of 1974, effective May 1, 1974, extended the coverage of the Age Discrimination in Employment Act to most Federal, State and local government employment.

2

Generally, the Act prohibits employers from basing any employment decision on the factor of age. There are, however, a number of exceptions from the Act's prohibitions as outlined in the marked section of the enclosed pamphlet. Whether or not an exception applies depends upon the factual situation in each particular situation.

On the basis of the available information, it is our opinion that Section 11 of P.L. 1108 (53 P.S. 39871) violates the Age Discrimination in Employment Act. As stated above, the 1974 amendments to the ADEA forbid States as well as private employers from discriminating against older workers. Furthermore, the implementation of the policy contained in the State statute cannot be justified under any of the exceptions contained in the ADEA.

Sincerely,

*ds*  
/s/ Warren D. Landis

Warren D. Landis  
Acting Administrator

Enclosure