

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

ADEA 2024

AUG. 26, 1976

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This will reply to your letters of October 29, 1975, and January 23, 1976, requesting an opinion concerning the applicability of the Age Discrimination in Employment Act to Article VI, Paragraph 8, of the collective bargaining agreement between the [redacted] Plumbing Contractors Association and the [redacted] Journeymen Plumbers Local Union No. 55, which states that "[e]very fifth (5th) journeyman to be employed in a shop shall be 55 years of age or over." You have been advised that this contract language is illegal under the ADEA because it could result in a 55-year-old journeyman being hired over a 46-year-old journeyman solely because of age.

It is my opinion that the extension of additional benefits to workers between the ages of 55 and 65 is not prohibited by the ADEA. The ADEA was designed to prohibit discriminatory practices which limit or preclude the employment of older workers, or which deny them various benefits and perquisites. It was not designed to preclude the employer from extending additional reasonable benefits to older workers which will be made available to all other workers when they reach a certain age.

Although it is thus permissible to require that a reasonable number of jobs be awarded to workers 55 years of age or over, it would be a violation of the ADEA to use the contract language to limit the number of

journeymen 55 years of age or over to 20 percent of the workforce. To avoid any possible misconstruction, you may wish to amend the contract language to state that "At least every fifth (5th) journeyman to be employed in a shop shall be 55 years of age or over." It would also be advisable (although not required) to state in the contract that discrimination based on age is unlawful, and that the purpose of the language in question is to prevent age discrimination against older journeymen.

This opinion revokes the prior opinions issued by Wage-Hour Administrator Robert D. Moran on May 1, 1970 and May 25, 1970 (WH-30 and WH-36). In addition, §860.91(a) of the Interpretative Bulletin (29 CFR Part 860) will be amended to reflect this change in position.

I apologize for the delay in answering your inquiry.

Sincerely,

Ronald J. James
Administrator

