

ADEA 3041  
PD Copy

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



JAN 31 1978

This is in further reply to your letters requesting an opinion on the application of the Age Discrimination in Employment Act (ADEA) to a particular severance pay plan for non-union salaried employees.

Under the terms of the plan, employees with equal years of credited service may receive differing amounts of severance pay, depending on their age at termination of service. Thus, a non-exempt employee with 15 years of service would receive 14 weeks of severance pay if he or she were 40 years old or under; 18 weeks of severance pay if between ages 41 and 50; 20 weeks if between ages 51 and 55; and 22 weeks if between ages 56 and 65. You state that the objective of the plan is to allow a measure of financial security to those employees whose age may make occupational relocation more difficult.

You further state that employees who remain on the payroll until age 65 (the company's normal retirement age) are not entitled to receive any severance pay. Moreover, if employees are involuntarily terminated before that age and thereby entitled to severance pay, their retirement benefits will not begin until the severance pay has run out, or until they reach age 65, whichever event occurs first. Retirement benefits are calculated as of the date of termination.

It is my opinion that in the situation described above there is no violation of the ADEA. Although Section 4(a) of the Act prohibits employment practices which discriminate against the older worker in his compensation, terms, conditions or privileges of employment, not every distinction based on age is unlawful under the Act. The purpose of the ADEA is to protect the older worker from employment practices

WH-451

(4)

2

which discriminate against him in favor of younger workers. We agree with you that the severance pay plan you propose comes within the scope of Wage-Hour Opinion Letter (WH-389), dated June 25, 1976, which approved a job assignment plan giving certain benefits to employees over age 55. As you note, to the extent that the Interpretative Bulletin, 29 CFR 860.91(a) is inconsistent with these opinions, it will be amended accordingly.

We note that an employee who retires at age 65 is not entitled to severance pay. We also note that severance pay is terminated when an employee reaches 65 years of age (for example, an exempt employee laid off at the age of 64 years, 7 months, with 30 years of service, would receive severance pay for 5 months, rather than for 7 months, which is the normal severance pay for all exempt employees over age 56 who have 30 years of service). We do not believe that these restrictions, in and of themselves, violate the ADEA. In our view, the purpose of severance pay is to replace income from employment, which in this case an employee would not reasonably expect to be earning after age 65, because the pension plan mandates retirement at age 65 and because section 12 of the ADEA limits the protection of the Act to individuals at least 40 but not yet 65.

We trust this information will be helpful to you and we regret the delay in our response.

Sincerely,

William VanZanen  
Acting Deputy Administrator  
Wage and Hour Division

Xavier M. Vela  
Administrator