

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



JUN 03 1978

June 6, 1978

This is in further reply to your letter of May 23, 1978, enclosing a copy of an inquiry from [REDACTED], Esq., concerning the Age Discrimination in Employment Act (ADEA) Amendments of 1978, P.L. 95-256, 92 Stat. 189.

[REDACTED] question relates to sections 2(a) and 2(b) of the 1978 amendments. Section 2(a) amends section 4(f)(2) of the ADEA to provide that no seniority system or employee benefit plan of a type described in the section 4(f)(2) exception "shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual." According to the Conference Report (H. R. Rept. No. 95-950, 95th Cong., 2d Sess. (1978), p. 8), the purpose of this amendment is

to make absolutely clear one of the original purposes of this provision, namely, that the exception does not authorize an employer to require or permit involuntary retirement of an employee within the protected age group on account of age.

Section 2(b) of the 1978 amendments states that the above amendment to section 4(f)(2) takes effect on the date of enactment—which was April 6, 1978. However, section 2(b) delays this effective date with respect to certain employees covered by certain collective bargaining agreements. Specifically, for collective bargaining agreements in effect on September 1, 1977, which were entered into by a labor organization within the meaning of section 6(d)(4) of the Fair Labor Standards Act (29 U. S. C. 206 (d)(4)) and "which would otherwise be prohibited by the amendment made by section 3(a) of [the 1978 ADEA amendments]," the amendment to section 4(f)(2) as described above takes effect when the agreement terminates or on January 1, 1980, whichever occurs first.

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(3)

It is [redacted] position that the provision in section 2(b) quoted above limits the delay in the effective date of the prohibition against involuntary retirement with respect to persons 65 through 69 years old. In other words, [redacted] contends, there is no delay in the effective date with respect to retirement prior to age 65, even though such retirement is pursuant to a collective bargaining agreement of the type specified in section 2(b) of the 1978 amendments.

We agree with [redacted] position. Section 2(b)'s delayed effective date, as noted previously, applies only to "a collective bargaining agreement . . . which would otherwise be prohibited by the amendment made by section 3(a) of this Act" Section 3(a) of the 1978 amendments, among other things, amends section 12 of the ADEA by expanding the age group protected by the ADEA from those individuals between 40 and 65 years of age to those between 40 and 70 years of age, effective January 1, 1979. It is clear that the only kind of collective bargaining agreement which would "otherwise be prohibited" by this January 1, 1979, raising of the age protection from 65 to 70 is one which, after that date, permits or requires involuntary retirement at age 65 or above (but less than 70). Accordingly, the delay in effective date for certain collective bargaining agreements does not apply with respect to involuntary retirement below age 65.

This interpretation is confirmed by the legislative history. The Conference Committee Report, in accepting the Senate-passed bill's provision with respect to the collective bargaining delay, makes clear that the provision is restricted to "persons 65 through 69 years of age" (Conf. Rept., p. 3). See also S. Rept. No. 95-493, 95th Cong. 1st Sess. (1977), p. 11.

We trust that we have clarified this issue for [redacted].

Sincerely,

/s/ Xavier M. Vela

Xavier M. Vela
Administrator