

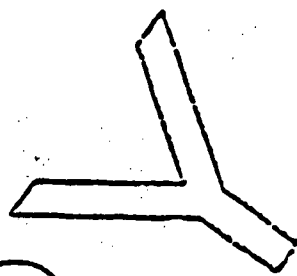


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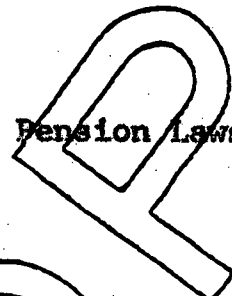
December 22, 1980

FILE NO. 80-046

STATE EMPLOYEES:  
Federal Age Discrimination  
in Employment Act of 1967



Senator Robert J. Egan  
Chairman  
Illinois Public Employees Pension Laws Commission  
221 North LaSalle Street  
Suite 1026  
Chicago, Illinois 60601



Dear Senator Egan:

I have your letter in which you inquire whether the 1978 amendments to the Federal Age Discrimination in Employment Act of 1967 (29 U.S.C.A. § 621 et seq.) and the subsequent Interpretive Bulletin, issued May 25, 1979, apply to public employers in Illinois. For the reasons hereinafter stated, it is my opinion that public employers in Illinois are bound by the provisions of the 1978 amendments and the Interpretive Bulletin.

The Federal Act was passed by Congress to prohibit

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arbitrary age discrimination in employment. (29 U.S.C.A. § 621.) The provisions of the Act apply to employers, employment agencies, and labor organizations. (29 U.S.C.A. § 623.) In 1974 the Act was amended by Public Law 93-259, section 28(a)(2), 88 Stat. 74 (codified at 29 U.S.C. § 630(b)) to include State employers:

"For the purposes of this chapter --

\* \* \*

(b) The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: \* \* \* . The term also means \* \* \* (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency \* \* \* .

\* \* \*

In Arritt v. Grisell (1977), 567 F.2d 1267, the court stated that the application of the Act to the States was a proper exercise of congressional power under section 5 of the fourteenth amendment to the United States Constitution.

In the case of McMann v. United Airlines (1977), 434 U.S. 192, 98 S.Ct. 444, the Supreme Court interpreted the Act as permitting compulsory retirement of employees pursuant to a bona fide employee benefit plan. As the Interpretive Bulletin, issued May 25, 1979, states, the 1978 amendments to the Act were passed to prevent compulsory retirement:

" \* \* \*

The principal purpose of this amendment was to make clear 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' (H.Rept. No. 95-950, 95th Cong. 2d Sess. (1978), p. 8 (ADEA Conference Report)).

\* \* \*

To this end, the 1978 amendments added a final clause to section 4(f)(2) of the Act (29 U.S.C.A. § 623(f)(2)) so that it now reads:

" \* \* \*

(f) It shall not be unlawful for an employer, employment agency, or labor organization -- \* \* \*

(2) to observe the terms of \* \* \* any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such \* \* \* employee benefit plan 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 \* \* \* .

\* \* \*

(Emphasis added.)

Further, the protection of the Act was extended by the amendments to cover persons between the ages of 40 and 70. (29 U.S.C.A. § 631(a).)

The new amendments do permit employers to adjust pension plans to reflect the greater costs that older workers

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represent. The Interpretive Bulletin was issued to explain the amendments and to offer guidance as to their application. The application of the amendments to existing plans is clearly expressed in H.R. Conf. Rep. No. 95-950, 95th Cong., 2d Sess. 8 (1978):

" \* \* \* 'Plan provisions in effect prior to the date of enactment are not exempt under section 4(f)(2) by virtue of the fact that they antedate the act or these amendments'  
\* \* \*

\* \* \*

From the above discussion, it is clear that the Act was intended to apply to public employers. There is nothing in the provisions of either the 1978 amendments or the Interpretive Bulletin that indicates that public employers are exempt under the new provisions. Therefore, in the absence of such exemption, it is my opinion the 1978 amendments and Interpretive Bulletin apply to public employers in Illinois.

Very truly yours,

  
ATTORNEY GENERAL