

Public Law 95-256  
95th Congress

An Act

To amend the Age Discrimination in Employment Act of 1967 to extend the age group of employees who are protected by the provisions of such Act, and for other purposes.

Apr. 6, 1978  
[H.R. 5383]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Age Discrimination in Employment Act Amendments of 1978".

Age  
Discrimination in  
Employment Act  
Amendments of  
1978.  
29 USC 621 note.

SENIORITY SYSTEMS AND EMPLOYEE BENEFIT PLANS

SEC. 2. (a) Section 4(f)(2) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(f)(2)) is amended by inserting after "individual" a comma and the following: "and no such seniority system or 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".

*Infra.*

(b) The amendment made by subsection (a) of this section shall take effect on the date of enactment of this Act, except that, in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938), and which would otherwise be prohibited by the amendment made by section 3(a) of this Act, the amendment made by subsection (a) of this section shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first.

Effective date.  
29 USC 623 note.

29 USC 206.

APPLICATION OF AGE LIMITATION

SEC. 3. (a) Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended to read as follows:

"AGE LIMITATION

"SEC. 12. (a) The prohibitions in this Act shall be limited to individuals who are at least 40 years of age but less than 70 years of age.

(b) In the case of any personnel action affecting employees or applicants for employment which is subject to the provisions of section 15 of this Act, the prohibitions established in section 15 of this Act shall be limited to individuals who are at least 40 years of age.

29 USC 633a.

(c) (1) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable

annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$27,000.

**Regulations.**

“(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Secretary, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

“(d) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965).”

**Effective date.**  
29 USC 631 note.  
*Ante*, p. 189.

(b) (1) Sections 12(a), 12(c), and 12(d) of the Age Discrimination in Employment Act of 1967, as amended by subsection (a) of this section, shall take effect on January 1, 1979.

**Effective date.**

(2) Section 12(b) of such Act, as amended by subsection (a) of this section, shall take effect on September 30, 1978.

**Repeal, effective date.**  
29 USC 631.

(3) Section 12(d) of such Act, as amended by subsection (a) of this section, is repealed on July 1, 1982.

**ENFORCEMENT PROCEDURE**

**SEC. 4.** (a) Section 7(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(c)) is amended by inserting “(1)” after the subsection designation and by adding at the end thereof the following new paragraph:

**Trial by jury.**

“(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this Act, regardless of whether equitable relief is sought by any party in such action.”

(b) (1) Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended to read as follows:

**Filing of charges.**

“(d) No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Secretary. Such a charge shall be filed—

“(1) within 180 days after the alleged unlawful practice occurred; or

**29 USC 633.**

“(2) in a case to which section 14(b) applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

**Notice.**

Upon receiving such a charge, the Secretary shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.”

**29 USC 626 note.**

(2) The amendment made by paragraph (1) of this subsection shall

take effect with respect to civil actions brought after the date of enactment of this Act.

(c) (1) Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended by inserting “(1)” after the subsection designation and by adding at the end thereof the following new paragraph: 29 USC 626.

“(2) For the period during which the Secretary is attempting to effect voluntary compliance with requirements of this Act through informal methods of conciliation, conference, and persuasion pursuant to subsection (b), the statute of limitations as provided in section 6 of the Portal-to-Portal Act of 1947 shall be tolled, but in no event for a period in excess of one year.”. 29 USC 255.

(2) The amendment made by paragraph (1) of this subsection shall take effect with respect to conciliations commenced by the Secretary of Labor after the date of enactment of this Act. Effective date. 29 USC 626 note.

#### FEDERAL GOVERNMENT EMPLOYMENT

SEC. 5. (a) Section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)) is amended by inserting “who are at least 40 years of age” after “applicants for employment” and by inserting “personnel actions” after “except”.

(b) (1) Section 3322 of title 5, United States Code, relating to temporary appointments after age 70, is repealed. Repeal.

(2) The analysis for chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3322.

(c) Section 8335 of title 5, United States Code, relating to mandatory separation, is amended— Mandatory separation.

(1) by striking out subsections (a), (b), (c), (d), and (e) thereof;

(2) by redesignating subsections (f) and (g) as subsections (a) and (b), respectively; and

(3) by adding after subsection (b), as so redesignated, the following new subsections:

“(c) An employee of the Alaska Railroad in Alaska and an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Company or the Canal Zone Government, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes age 62 or completes 15 years of service in Alaska or on the Isthmus of Panama if then over that age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

“(d) The President, by Executive order, may exempt an employee from automatic separation under this section when he determines the public interest so requires.”. Exemption by President.

(d) Section 8339(d) of title 5, United States Code, relating to computation of annuity, is amended by striking out “section 8335(g)” and inserting in lieu thereof “section 8335(b)”.

(e) Section 15 of the Age Discrimination in Employment Act of

1967 (29 U.S.C. 633a) is amended by adding at the end thereof the following new subsections:

“(f) Any personnel action of any department, agency, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of this Act, other than the provisions of section 12(b) of this Act and the provisions of this section.

*Ante*, p. 189.  
Study.

“(g) (1) The Civil Service Commission shall undertake a study relating to the effects of the amendments made to this section by the Age Discrimination in Employment Act Amendments of 1978, and the effects of section 12(b) of this Act, as added by the Age Discrimination in Employment Act Amendments of 1978.

Report to  
President and  
Congress.

“(2) The Civil Service Commission shall transmit a report to the President and to the Congress containing the findings of the Commission resulting from the study of the Commission under paragraph (1) of this subsection. Such report shall be transmitted no later than January 1, 1980.”

Effective date.  
29 USC 633a  
note.  
*Supra*.

(f) The amendments made by this section shall take effect on September 30, 1978, except that section 15(g) of the Age Discrimination in Employment Act of 1967, as amended by subsection (e) of this section, shall take effect on the date of enactment of this Act.

#### REPORT BY SECRETARY OF LABOR

SEC. 6. (a) (1) Section 5 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 624) is amended by inserting “(a) (1)” after the section designation, and by adding at the end thereof the following new sentence: “Such study shall include—

*Ante*, p. 189.

“(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 in raising the upper age limitation established by section 12(a) of this Act to 70 years of age;

“(B) a determination of the feasibility of eliminating such limitation;

“(C) a determination of the feasibility of raising such limitation above 70 years of age; and

“(D) an examination of the effect of the exemption contained in section 12(c), relating to certain executive employees, and the exemption contained in section 12(d), relating to tenured teaching personnel.”

(2) Section 5(a) of the Age Discrimination in Employment Act of 1967, as so redesignated by paragraph (1) of this subsection, is amended by adding at the end thereof the following new paragraph:

“(2) The Secretary may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.”

(b) Section 5 of the Age Discrimination in Employment Act of 1967, as amended by subsection (a) of this section, is further amended by adding at the end thereof the following new subsection:

Transmittal to  
President and  
Congress.

“(b) The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.”

## AUTHORIZATION OF APPROPRIATIONS

SEC. 7. Section 17 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 635) is amended by striking out “, not in excess of \$5,000,000 for any fiscal year;”.

29 USC 634.

Approved April 6, 1978.

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**LEGISLATIVE HISTORY:**

**HOUSE REPORTS:** No. 95-527, pt. 1 (Comm. on Education and Labor) and No. 95-950 (Comm. of Conference).

**SENATE REPORT** No. 95-493 (Comm. on Human Resources).

**CONGRESSIONAL RECORD:**

Vol. 123 (1977): Sept. 13, 23, considered and passed House.

Oct. 19, considered and passed Senate, amended.

Vol. 124 (1978): Mar. 21, House agreed to conference report.

Mar. 23, Senate agreed to conference report.

**WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:**

Vol. 14, No. 14 (1978): Apr. 6, Presidential statement.