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AGE DISCRIMINATION AND LAW ENFORCEMENT

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

This article examines the law concerning age discrimination claims in the context of law enforcement employment. Employment policies which either mandate retirement at a certain age or establish a maximum hiring age have been challenged under both the Age Discrimination in Employment Act of 1967 [1] (ADEA) and the Equal Protection Clause of the U.S. Constitution. Some important provisions of the ADEA will be discussed in general terms, including recent litigation addressing two important issues: (1) When age may be considered a bona fide occupational qualification (BFOQ) for law enforcement employment and (2) whether the ADEA is constitutional when applied to State and local law enforcement agencies. The article will then analyze age discrimination claims based on the Equal Protection Clause.

It is important to emphasize at the outset that the article is directed specifically at those issues which are important for law enforcement employment. Accordingly, it does not purport to address the full range of issues that might be raised in the context of an age discrimination case.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

Purpose and General Provisions

The ADEA is generally worded Federal legislation designed to eliminate both the conscious and unconscious stereotypes about the employment capabilities of workers between the ages of 40 and 70 and to promote the employment of those persons based on their *ability* rather than *age*.[2] The ADEA reflects a national awareness of the injustice that age discrimination imposes upon "elderly" citizens. Its central purposes are to reduce unemployment, welfare, and waste which accompany the underutilization of experienced workers and to alleviate the economic, psychological, and health problems faced by the individual victims of age discrimination.[3]

Since 1979, the primary responsibility for administering and enforcing the provisions of the ADEA has rested with the Federal Equal Employment Opportunity Commission (EEOC) and its State counterparts.[4] The legislation provides that the EEOC or appropriate State agency be given an opportunity to remedy a claim of age discrimination by informal methods, such as education and conciliation, before a private lawsuit is initiated.[5] In this regard, the U.S. Supreme Court has ruled that an employee must resort to the administrative remedies provided by a State before initiating suit in Federal court.[6] Moreover, lower courts have held that a failure to follow the specific procedural requirements of the ADEA constitutes grounds for dismissal of a claim.[7]

Establishing a Prima Facie Case

In order to establish a prima facie case[8] of age discrimination under the ADEA, an individual within the protected age range need only show by a preponderance of the evidence that age was a motivating factor in a refusal to hire or mandatory retirement.[9] In response, an employer may rebut a prima facie case by arguing that age was not the real reason for the decision and that some reasonable factor other than age motivated the action.[10] Where an employer successfully rebuts a prima facie case, a plaintiff still has an opportunity to prove that the reasons offered by the employer are merely a pretext for discrimination.[11] While the employer has the burden of producing evidence rebutting a prima facie case, the plaintiff generally bears the ultimate burden of persuasion to establish a case of age discrimination by a preponderance of evidence.[12]

An employer can also respond to a prima facie case by admitting that age was, in fact, a motivating factor and then assert in the form of an affirmative defense that age is a BFOQ

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reasonably necessary to the normal operation of his particular business.[13] On the issue of a BFOQ defense, the employer bears both the burden of production and persuasion.[14] The burden of persuasion shifts to the employer in this instance, because in asserting a BFOQ, the employer is really admitting that he made an employment decision based on age. Such decisions are prohibited by the ADEA, and in order to avoid liability, the employer must produce empirical data to support the BFOQ.[15] Moreover, the employer is not permitted to rely on mere stereotypes or untested assumptions.[16]

In view of the fact BFOQ's are frequently asserted by law enforcement agencies in defense of their maximum hiring age and mandatory retirement policies, a discussion of some recent cases involving such claims is pertinent.

The BFOQ and Law Enforcement

In a sense, BFOQ's may require older workers who are individually competent to suffer because of the risk that others in the same age range are probably not competent. Courts will therefore carefully evaluate the reasons offered in support of a BFOQ exception to the ADEA's prohibition against age discrimination.

The generally accepted standard for a BFOQ is set forth in the case of *Arritt* v. *Grisell*.[17] In that case, the plaintiff applied to be a police officer in Moundsville, W. Va. His application was denied on the sole ground that he was 40 years of age and the maximum hiring age was 35 as set by a State statute. The U.S. Court of Appeals for the Fourth Circuit ruled that the burden is on an employer who wishes to rely on a BFOQ to establish (1) that the BFOQ is reasonably necessary to the essence of the business (here the operation of an efficient police department for the protection of the public) and (2) that the employer has reasonable cause, i.e., a factual basis, for believing that all or substantially all persons within the class would be unable to perform safely and efficiently the duties of a police officer or that it is impossible or impractical to deal with persons over the age of 35 on an individualized basis.[18]

With respect to maximum hiring age policy for law enforcement, courts appear to have reached different results. For example, in *EEOC* v. *County of Allegheny*,[19] a State statute which mandated that the county refuse to consider applicants over the age of 35 for positions as police officers was challenged by the EEOC. The court concluded that the policy was in violation of the ADEA and that the county had failed to produce sufficient evidence to justify its hiring policy as a BFOQ.[20] However, in *Stewart* v. *Civiletti*,[21] the court ruled that a maximum hiring age of 35 for law enforcement positions in penal institutions operated by the U.S. Bureau of Prisons could qualify as a BFOQ.[22]

On the question of mandatory retirement, several courts have concluded that the mandatory retirement of law enforcement officers is not in violation of the ADEA. For example, in *EEOC* v. *State of Wyoming*,[23] a Federal district court upheld a State requirement that mandated the retirement at

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age 55 of game wardens with law enforcement responsibilities. The court noted with approval a prior decision of the U.S. Court of Appeals for the 10th Circuit, where it was held that minimum and maximum ages could validly be set for Federal officers.[24] The court therefore reasoned that the sovereign State of Wyoming should also be able to establish age requirements similar to those used by Federal employers for their law enforcement officers.[25]

In another case, *Beck* v. *Borough of Manheim*,[26] a Federal district court said that where the risk of harm runs high and alternative measures lack certainty and adequacy, the ADEA countenances a greater degree of arbitrariness in establishing a BFOQ for mandatory retirement.[27] In *Beck*, a police officer challenged his forced retirement at age 60. His department consisted of a chief and five officers who were assigned to regular patrol duties. The court found that the physical condition of the police force was particularly important not only because of the difficulty in arranging for substitute coverage in the event of illness but also because the small size of the police force often made backup help unavailable to an officer responding to an emergency.[28] Because the inability of any officer to perform could result in serious adverse consequences to the personal welfare of fellow officers and the community, the court concluded that the mandatory retirement policy of 60 was reasonably necessary to accomplish the purpose of safely and efficiently running the department.[29]

The court observed that the scant human resources of the Manheim Police Department imposed burdens upon individual members of the force that larger police departments may not confront. The court said that public safety merits paramount concern under the ADEA and that where the safety of fellow employees and third parties is threatened, an employer must be afforded substantial discretion in selecting specific age standards.[30]

Moreover, the U.S. Court of Appeals for the Seventh Circuit has ruled that the ADEA permits a city to establish a BFOQ for the generic class of law enforcement personnel employed by the city to operate its police department.[31] The court rejected the argument that the city had to establish a BFOQ for each particular occupation within the police department.[32]

A summary of the litigation involving the assertion of a BFOQ for law enforcement employment indicates that an employer has the burden of providing a factual basis for its age policies.[33] The list that follows includes some of the factors courts are likely to consider relevant in assessing whether a particular law enforcement employer has presented a sufficient justification for a BFOQ:

1) How physically demanding and stressful is the job in question? Has the employer produced empirical evidence to show that as a person ages there is a decline in ability which creates a substantial safety risk or reduces markedly the efficiency of the agency? Has the employer produced medical evidence that physical qualifications cannot reliably be determined on an individualized basis? Is decreasing physical ability offset by increased experience and knowledge?
2) How large is the agency? Are human resources sufficient so that the illness of one would not put a substantial strain on the manpower requirements of the employer in the event of an emergency? Should the age requirements be the same for all positions within a particular agency?
3) What are the past age policies of the employer? If older workers were permitted to work in the past, how did they perform? Has the employer made any exceptions to the age policy being defended as a BFOQ?

Remedies for ADEA Violations

The remedial section of the ADEA provides for the recovery of back pay and other appropriate legal and equitable relief.[34] Such relief could encompass an order to hire or reinstate a person who is individually victimized by age discrimination.[35] Moreover, the ADEA provides for the recovery of liquidated damages (double the amount of lost wages) in instances where the discrimination is deemed to have been willful.[36]

The remedies available for an ADEA violation in the context of law enforcement employment was an issue confronted by the Third Circuit Court of Appeals in the case of *Rodriguez* v. *Taylor*.[37] In that case, the court concluded that Philadelphia's policy of refusing to hire anyone over the age of 41 as a security officer constituted a willful violation of the ADEA and could not be defended as a BFOQ. With respect to remedies, the court said the ADEA encompasses a "make whole" objective and that victims of age discrimination are entitled only to be restored to the economic position they would have occupied but for the discrimination.[38] Once a violation is established, the plaintiff has the burden of producing evidence of his entitlement to damages in the amount of lost wages.[39] The employer may respond by proving the employee would not have been hired or would have been retired even absent the discriminatory age barriers.[40]

In another case involving damages under the ADEA, a Federal district court ruled that damages for pain and suffering or other psychological injuries are not recoverable.[41] The court said that liquidated damages were intended by Congress to remedy willful violations and are in effect an alternative to compensatory and punitive damages.[42] The court noted that Congress intended to restrict the penalty provisions of the ADEA to a doubling of the amount of lost wages for willful violations and that this liquidated damages provision represents adequate compensation to the victim and provides a sufficient deterrent against willful violations.[43]

The most persuasive view seems to be that an employer has committed a willful violation only if the plaintiff has produced proof that an employer intended to take action knowing such action was prohibited by the ADEA.[44] Moreover, a plaintiff is entitled to a jury trial on the issues of lost wages and liquidated damages for willful violations.[45]

Waiving ADEA Rights

Two cases have recently addressed the question of whether an employer can defend an age policy by arguing that an employee previously waived rights under the ADEA through participation in a collective bargaining agreement or retirement program. Both courts rejected this waiver argument.

For example, in *Johnson* v. *Mayor and City Council of Baltimore*,[46] the city claimed that employees waived their rights under the ADEA by previously agreeing (in the 1960's) to retire pursuant to the city plan. However, the court rejected this claim by noting that the ADEA was amended in 1978 to preclude the involuntary retirement of an individual because of age pursuant to an established pension or seniority system.[47] Thus, the court concluded that the employees could not have waived their Federal rights under the ADEA by joining a plan at a time when those Federal rights were unknown. Moreover, the court ruled that a statutory right conferred upon a private party but affecting the public interest may not be waived or released if such waiver contravenes public policy.[48]

Another Federal court rejected a county's argument that a collective bargaining agreement contained an implied consent that in exchange for the county's payment into a retirement fund, employees agreed to retire at a particular time.[49] The court said the ADEA prohibits forced retirements pursuant to such retirement plans and that rights under the act cannot be waived through collective bargaining agreements.[50]

Constitutional Challenges to the ADEA

Several courts have considered challenges to the constitutionality of the ADEA as applied to State and local governmental employers. The prevailing view on that issue was expressed in *Arritt* v. *Grisell*,[51] where the court ruled that the ADEA is constitutional. The court acknowledged a prior decision of the U.S. Supreme Court in *National League of Cities* v. *Usery*,[52] which held that the 10th amendment to the U.S. Constitution protects certain areas of a State's traditional governmental functions from congressional action pursuant to the Commerce Clause.[53] However, the *Arritt* court concluded that the ADEA was extended to the States pursuant to the power of Congress under section 5 of the 14th amendment and that its constitutionality is not affected by the decision in *National League of Cities* or any constitutional limitations on the power of Congress under the 10th amendment.[54]

Moreover, in *U.S. E.E.O.C.* v. *County of Calumet*,[55] the court said that Congress may forbid employment discrimination by State and local governments despite the 10th amendment's protection of State sovereignty.[56] The court said that employment discrimination is not a function that is essential to a State's separate and independent existence and therefore does not need to be protected from congressional interference.[57]

"While the employer has the burden of producing evidence rebutting a prima facie case, the plaintiff generally bears the ultimate burden of persuasion to establish a case of age discrimination by a preponderance of evidence."

In contrast to the view adopted in the above cases, a Federal district court recently concluded in the case of *EEOC* v. *State of Wyoming*[58] that the ADEA was passed pursuant to the power of Congress under the Commerce Clause and not the 14th amendment. Thus, the court ruled that the ADEA constitutes an unconstitutional intrusion into important State policies and functions which are essential to a State's separate and independent existence.[59]

AGE AND THE EQUAL PROTECTION CLAUSE

In addition to the ADEA, the Equal Protection Clause of the U.S. Constitution also furnishes a basis to challenge employment decisions which are premised on a person's age. An analysis of several cases involving equal protection challenges to law enforcement age policies suggests that such challenges are not likely to succeed where a law enforcement agency can demonstrate a rational basis for those policies.

For example, the U.S. Supreme Court in *Massachusetts Board of Retirement* v. *Murgia*[60] held that the forced retirement of uniformed State highway patrolmen at age 50 is not violative of equal protection because it is rationally related to legitimate State interests. The Court said:

> "Through mandatory retirement at age 50, the legislature seeks to protect the public by assuring physical preparedness of its uniformed police. Since physical ability generally declines with age, mandatory retirement at 50 serves to remove from police service those whose fitness for uniformed work presumptively has diminished with age. This clearly is rationally related to the State's objective. . . . That the State chooses not to determine fitness more precisely through individualized testing after age 50 is not to say that the objective of assuring physical fitness is not rationally furthered by a maximum age limitation." [61]

In accordance with the *Murgia* decision, other courts have found a "rational basis" for a Federal statute which requires that Federal law enforcement officers be retired at age 55,[62] and for the policy of the U.S. Postal Service that fixed the maximum age for a beginning postal inspector at age 34.[63]

However, in *McMahon* v. *Barclay*,[64] a Federal district court ruled that a New York civil service law which prohibited the hiring of persons over 29 as police officers constituted a denial of equal protection because the statute bore no rational relationship to any legitimate State purpose. The court said the statute permitted exceptions for veterans and transferees,[65] and constituted a blanket disqualification for relatively sound and physically fit persons from pursuing a career for many years as a police officer.[66]

Conclusion

An analysis of the cases discussed in this article reveals that the courts are somewhat divided over several important issues involved in age discrimination litigation. One significant question that remains to be resolved is whether the exacting standards for a BFOQ exception to the prohibition against race or sex discrimination contained in Title VII of the Civil Rights Act of 1964 (Title VII) should apply with equal force to cases under the ADEA. Courts that automatically apply Title VII precedent in construing provisions of the ADEA may be failing to address some distinctive aspects of age discrimination litigation.[67] For example, it seems fair to suggest that at some point age, unlike race or sex, is inherently related to a person's ability to function as a law enforcement officer. This fact seems implicit in the Supreme Court's decision in *Murgia* and may result in less demanding standards for employers in instances where discrimination is allegedly based on age rather than race or sex.

Additional litigation is inevitable as the courts continue to delineate the precise contours of protection to be afforded law enforcement employees against age discrimination. To the extent law enforcement age policies are deemed discriminatory in subsequent litigation, a fair conclusion is that they result from inaccurate estimates of older workers' abilities rather than from any feelings of hostility or prejudice.

In view of the complex nature of age discrimination litigation, law enforcement age policies should be carefully and periodically reviewed to insure they are operationally sound and legally defensible. It is also recommended that professional legal advice be considered when age policies are formulated. FBI

Footnotes

[1] 29 U.S.C. § 621-634 (1976).

[2] *Id.* at § 621(b). It should be noted that the statute does permit the compulsory retirement of any employee who has attained 65 years of age and who for the 2-year period immediately before retirement is employed in a bona fide executive or a high policy position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension or deferred compensation plan which equals, in the aggregate, at least $27,000. *Id.* at § 631(c) (1) and (2).

[3] *E.E.O.C.* v. *County of Allegheny*, 519 F.Supp. 1328, 1331 (W.D.Pa. 1981).

[4] 29 U.S.C. § 625 (1978).

[5] *Id.* at § 626(b).

[6] *See Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750 (1979).

[7] For a detailed discussion of the procedural provisions of the ADEA and citations to cases interpreting those provisions, *see* note, "Recent Issues in Litigation Under the Age Discrimination in Employment Act," 41 Ohio State Law Journal, 349 (1980).

[8] The term "prima facie case" merely constitutes a sensible and orderly way to evaluate the evidence in light of common experience. A prima facie case raises an inference of discrimination only because the employer's conduct is presumed to be based on impermissible factors in the absence of another explanation. A prima facie case of age discrimination is established where an employee demonstrates that (1) he belongs to the protected class, (2) he applied for or was qualified for a particular position, (3) he was not selected, and (4) the position was filled by a younger employee. *See Smithers* v. *Bailar*, 629 F.2d 892, 895 (3d Cir. 1980).

[9] *See Allegheny, supra* note 3, at 1331 and 1335.

[10] 29 U.S.C. § 623(f)(1) (1978). Reasonable factors other than age might include: (1) Physical fitness requirements, so long as the minimum standards are reasonably necessary for the specific work to be performed and are uniformly applied; (2) evaluation factors, such as quantity or quality of production or educational level; (3) refusal to hire relatives of current employees; (4) lack of training for a particular job; and (5) chronic tardiness. *Id.* at 1335.

[11] *See Allegheny, supra* note 3, at 1331.

[12] *Texas Department of Community Affairs* v. *Burdine*, 67 L.Ed.2d 207 (1981). Shifting evidentiary burdens and presumptions are merely tools employed to facilitate the plaintiff's task of proving liability in certain cases. *See* also *Smith* v. *Farah Manufacturing Co. Inc.*, 650 F.2d 64, 67 (5th Cir. Unit A 1981).

[13] 29 U.S.C. § 623(f)(1).

[14] *Houghton* v. *McDonnell Douglas Corp.*, 553 F.2d 561 (8th Cir. 1977), *cert. denied*, 434 U.S. 966 (1978).

[15] *Marshall* v. *Westinghouse Electric Corp.*, 576 F.2d 588, 591 (5th Cir. 1978).

[16] *Aaron* v. *Davis*, 414 F.Supp. 453 (E.D.Ark. 1976).

[17] 567 F.2d 1267 (4th Cir. 1977); see also *Usery* v. *Tamiami Trail Tours*, 531 F.2d 224 (5th Cir. 1976).

[18] *Id.* at 1271. The court remanded the case to the district court with instructions to apply this test. Thus, the fourth circuit did not decide the validity of this BFOQ claim.

[19] 519 F.Supp. 1328 (W.D.Pa. 1981).

[20] *Id.* at 1334.

[21] 25 FEP Cases 1703 (D.D.C. 1980).

[22] *Id.* at 1704.

[23] 514 F.Supp. 595 (D.Wyo. 1981).

[24] *Id.* at 597. The court's reliance on the 10th circuit's opinion in *Thomas* v. *U.S. Postal Inspection Service*, 647 F.2d 1035 (10th Cir. 1981) is questionable in view of the fact the *Thomas* decision was not based on the ADEA, but rather on the equal protection clause. *See Thomas* at 1036.

[25] *Id.* With respect to Federal law enforcement officers, Congress in 1974, recognizing the hazardous nature of the work of law enforcement officers and others, amended the retirement provisions relating to such employment. P.L. 93-350, 2 U.S. Cong. & Adm. News 1974, 3698. This act requires retirement at the age of 55 years. 5 U.S.C. § 8335(b). It also establishes a procedure authorizing the head of any agency to determine and fix minimum and maximum ages within which law enforcement officers may be employed. 5 U.S.C. § 3307(d).

[26] 505 F.Supp. 923 (E.D.Pa. 1981).

[27] *Id.* at 925.

[28] *Id.* at 926.

[29] *Id.*

[30] *Id.*

[31] *E.E.O.C.* v. *City of Janesville*, 630 F.2d 1254 (7th Cir. 1980).

[32] *Id.* at 1258. At issue in this case was the forced retirement of the chief of police at age 55.

[33] Two courts have recently decided cases involving challenges to age requirements for fire department personnel. In *Johnson* v. *Mayor and City Council of Baltimore*, 515 F.Supp. 1287 (D.Md. 1981), the court concluded that the forced retirement of firefighters before age 65 was a violation of the ADEA and not justified by a BFOQ. The court said the burden on an employer to establish a BFOQ is substantial and that the BFOQ exception should be narrowly construed and applicable in very few cases. *Id.* at 1295. In *U.S. E.E.O.C.* v. *City of Saint Paul*, 500 F.Supp. 1135 (D.Minn. 1980), the court ruled that age was a BFOQ justifying the forced retirement at age 65 for captains and firefighters, but not for the positions of district fire chiefs and higher level positions within the fire department. *Id.* at 1143. The court said the stressful nature of the job of firefighter should be viewed differently from higher level positions where experience and judgment in directing firefighting activities may be possessed to a greater extent by older workers. *Id.* at 1145.

[34] 29 U.S.C. § 626(b).

[35] *Id. See also Allegheny, supra* note 3, at 1336.

[36] *Id.* For a detailed discussion of the remedial section of the ADEA, *see* note "Compensatory and Punitive Damages in Age Discrimination in Employment," 32 U. Fla. L. Rev. 701 (1980).

[37] 569 F.2d 1231 (3d Cir. 1977).

[38] *Id.* at 1238.

[39] Courts have ruled that the amount of lost wages is generally reduced by income earned from interim employment. *Id.* at 1243.

[40] *Id.*

[41] *Placos* v. *Cosmair, Inc.*, 517 F.Supp. 1287 (S.D.N.Y. 1981).

[42] *Id.* at 1288.

[43] *Id.* at 1289.

[44] *Loeb* v. *Textron Inc.*, 600 F.2d 1003 (1st Cir. 1979).

[45] *See Lorillard* v. *Pons*, 434 U.S. 575 (1978). In *Lehman* v. *Nakshian*, 69 L.Ed.2d 548 (1981), the Supreme Court ruled that Federal employees do not have a right to a jury trial under the ADEA.

[46] 515 F.Supp. 1287 (D.Md. 1981).

[47] *Id.* at 1293. 29 U.S.C. § 623(l)(2) (1978) reads in pertinent part: "It shall not be unlawful for an employer to observe the terms of a bona fide seniority or any bona fide employee benefit plan . . . except that no such plan shall require or permit the involuntary retirement of a protected employee because of age."

[48] *Id.* at 1294.

[49] *U.S. E.E.O.C.* v. *County of Calumet*, 519 F.Supp. 195 (E.D.Wisc. 1981).

[50] *Id.* at 203.

[51] 567 F.2d 1267 (4th Cir. 1977).

[52] 426 U.S. 833 (1976).

[53] *National League of Cities* held that the extension of the minimum wage and overtime provisions of the FLSA (29 U.S.C. § 206(a)(b), 207(a) (1974)) to State and local government employees could not be upheld as a constitutionally valid regulation of interstate commerce, because the 10th amendment limits exercise of the powers of Congress under the Commerce Clause (U.S. Const., art. I, § 8, cl. 3).

[54] *Arritt, supra* note 52, at 1271. *See* also *Johnson* v. *Mayor and City Council of Baltimore*, 515 F.Supp. 1287 (D.Md. 1981).

[55] 519 F.Supp. 195 (E.D.Wisc. 1981).

[56] *Id.* at 197.

[57] *Id.* at 202. The court noted the similarities between Title VII of the Civil Rights Act of 1964 and the ADEA, and that the Supreme Court had ruled in *Fitzpatrick* v. *Bitzer*, 427 U.S. 445 (1976) that Title VII's prohibitions against discrimination were constitutionally applied to the States pursuant to the power of Congress under § 5 of the 14th amendment.

[58] 514 F.Supp. 595 (D.Wyo. 1981).

[59] *Id.* at 600. A contrary view was expressed in *Carpenter* v. *Commonwealth of Pa.*, 508 F.Supp. 148 (E.D.Pa. 1981) where the court said that while the ADEA's legislative history does not clearly reveal the source of authority relied upon by Congress, the States ratification of the 14th amendment permits enforcement of the ADEA to a State agency despite the 10th amendment. *Id.* at 149-50.

[60] 427 U.S. 307 (1976). *See* also *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979) where the court ruled that the forced retirement of a foreign service officer at age 60 did not violate equal protection.

[61] *Id.* at 314-316.

[62] *Bowman* v. *United States Dept. of Justice*, 510 F.Supp. 1163 (E.D.Va. 1981). The court said: "Because such a classification neither burdens the exercise of a fundamental right, nor functions so as to disadvantage a 'suspect class,' mandatory retirement does not violate equal protection if it is rationally related to a legitimate governmental purpose." *Id.* at 1185. Moreover, the court ruled that the policy was not in violation of the ADEA. *Id.* at 1186.

[63] *Thomas* v. *U.S. Postal Inspection Service*, 647 F.2d 1035 (10th Cir. 1981). The court said the policy was not only rational but sensible in that it acted to furnish the Postal Service with a continuous staff of young, moderately young, and experienced postal inspectors. *Id.* at 1037.

[64] 510 F.Supp. 1114 (S.D.N.Y. 1981).

[65] *Id.* at 1116.

[66] *Id.* at 1117.

[67] *See* note, "The Age Discrimination In Employment Act of 1967," 90 Harv. L. Rev. 380 (1976).

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