

## Equal Employment Opportunity Comm.

## § 1625.1

the views expressed therein. Any letter other than those defined in §1621.4 will be considered a letter of advice and may not be relied upon by any employer within the meaning of section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255.

[49 FR 31411, Aug. 7, 1984, as amended at 71 FR 26831, May 9, 2006; 74 FR 3430, Jan. 21, 2009]

### § 1621.4 Effect of opinions and interpretations of the Commission.

(a) Section 10 of the Portal to Portal Act of 1947, 29 U.S.C. 255, which applies to the Equal Pay Act of 1963, 29 U.S.C. 206(d), provides that:

In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment \* \* \* if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval or interpretation \* \* \* or any administrative practice or enforcement policy of [the Commission].

The Commission has determined that only the following documents may be relied upon by any employer as a “ruling, approval or interpretation” or as “evidence of any administrative practice or enforcement policy” of the Commission within the meaning of the statutory provisions quoted above.

(1) A written document, entitled “opinion letter,” signed by the Legal Counsel on behalf of and as approved by the Commission;

(2) A written document issued in the conduct of litigation, entitled “opinion letter,” signed by the General Counsel on behalf of and as approved by the Commission;

(3) A matter published and specifically designated as such in the FEDERAL REGISTER.

(b) An opinion letter issued pursuant to paragraph (a)(1) or (a)(2) of this section, when issued to a specific addressee, has no effect upon circumstances beyond the situation of the specific addressee.

## PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

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AUTHORITY: 29 U.S.C. 621–634; 5 U.S.C. 301; Pub. L. 99–502, 100 Stat. 3342; Secretary’s Order No. 10–68; Secretary’s Order No. 11–68; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807; Executive Order 12067, 43 FR 28967.

SOURCE: 46 FR 47726, Sept. 29, 1981, unless otherwise noted.

### Subpart A—Interpretations

#### § 1625.1 Definitions.

The Equal Employment Opportunity Commission is hereinafter referred to as the *Commission*. The terms *person*, *employer*, *employment agency*, *labor organization*, and *employee* shall have the meanings set forth in section 11 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, hereinafter referred to as the *Act*. References to *employers* in this part state principles that are applicable not

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only to employers but also to labor organizations and to employment agencies.

### § 1625.2 Discrimination prohibited by the Act.

It is unlawful for an employer to discriminate against an individual in any aspect of employment because that individual is 40 years old or older, unless one of the statutory exceptions applies. Favoring an older individual over a younger individual because of age is not unlawful discrimination under the ADEA, even if the younger individual is at least 40 years old. However, the ADEA does not require employers to prefer older individuals and does not affect applicable state, municipal, or local laws that prohibit such preferences.

[72 FR 36875, July 6, 2007]

### § 1625.3 Employment agency.

(a) As long as an employment agency regularly procures employees for at least one covered employer, it qualifies under section 11(c) of the Act as an employment agency with respect to all of its activities whether or not such activities are for employers covered by the act.

(b) The prohibitions of section 4(b) of the Act apply not only to the referral activities of a covered employment agency but also to the agency's own employment practices, regardless of the number of employees the agency may have.

### § 1625.4 Help wanted notices or advertisements.

(a) Help wanted notices or advertisements may not contain terms and phrases that limit or deter the employment of older individuals. Notices or advertisements that contain terms such as *age 25 to 35*, *young*, *college student*, *recent college graduate*, *boy*, *girl*, or others of a similar nature violate the Act unless one of the statutory exceptions applies. Employers may post help wanted notices or advertisements expressing a preference for older individuals with terms such as *over age 60*, *retirees*, or *supplement your pension*.

(b) Help wanted notices or advertisements that ask applicants to disclose or state their age do not, in them-

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selves, violate the Act. But because asking applicants to state their age may tend to deter older individuals from applying, or otherwise indicate discrimination against older individuals, employment notices or advertisements that include such requests will be closely scrutinized to assure that the requests were made for a lawful purpose.

[72 FR 36875, July 6, 2007]

### § 1625.5 Employment applications.

A request on the part of an employer for information such as *Date of Birth* or *age* on an employment application form is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination against older individuals, employment application forms that request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the Act. That the purpose is not one proscribed by the statute should be made known to the applicant by a reference on the application form to the statutory prohibition in language to the following effect:

The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age," or by other means. The term "employment applications," refers to all written inquiries about employment or applications for employment or promotion including, but not limited to, résumés or other summaries of the applicant's background. It relates not only to written preemployment inquiries, but to inquiries by employees concerning terms, conditions, or privileges of employment as specified in section 4 of the Act.

[46 FR 47726, Sept. 29, 1981, as amended at 53 FR 5972, Feb. 29, 1988; 72 FR 36875, July 6, 2007]

### § 1625.6 Bona fide occupational qualifications.

(a) Whether occupational qualifications will be deemed to be "bona fide" to a specific job and "reasonably necessary to the normal operation of the particular business," will be determined on the basis of all the pertinent