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**AUTHOR** Lancaster, Anita Sklare  
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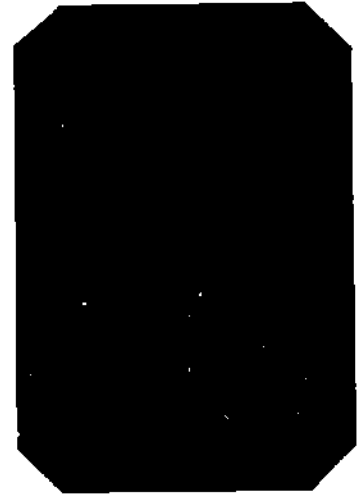
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### ABSTRACT

This learning module, one in a series of competency-based guidance program training packages focusing upon professional and paraprofessional competencies of guidance personnel, deals with assisting clients with equity rights and responsibilities. Addressed in the module are the following topics: defining various terms related to equality of employment opportunity, analyzing major Federal laws and executive orders related to equality of employment opportunity, and understanding major Federal guidelines related to equality of employment opportunity. The module consists of readings and learning experiences covering these three topics. Each learning experience contains some or all of the following: an overview, a competency statement, a learning objective, one or more individual learning activities, an individual feedback exercise, one or more group activities, and a facilitator's outline for use in directing the group activities. Concluding the module are a participant self-assessment questionnaire, a learner's assessment questionnaire, a checklist of performance indicators, a list of references, and an annotated list of suggested additional resources. Appendixes to the module include a list of state and regional offices of various enforcement and compliance agencies and the texts of nine laws and executive orders dealing with equal employment opportunity. (MN)

ED258003

# Assist Clients with Equity Rights and Responsibilities



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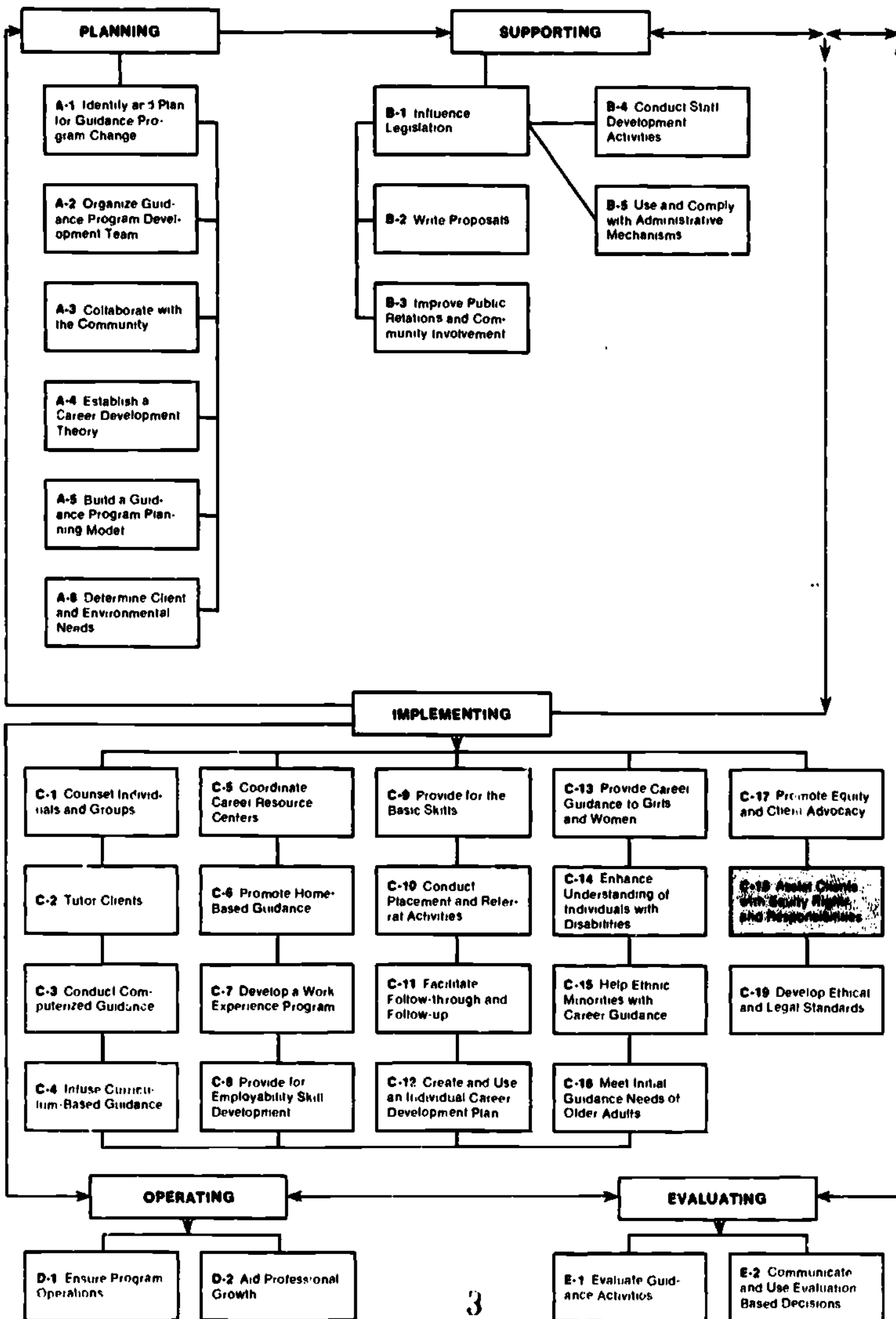
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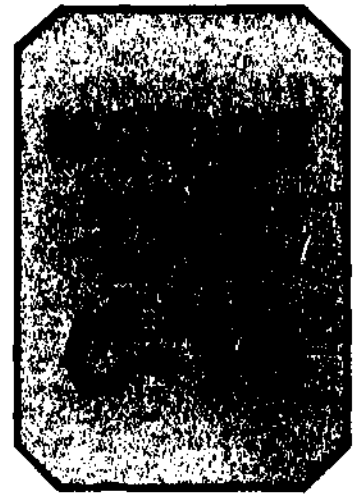
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# COMPETENCY-BASED CAREER GUIDANCE MODULES



# Assist Clients with Equity Rights and Responsibilities



**Module CG C-18 of Category C — Implementing  
Competency-Based Career Guidance Modules**

by Anita Sklare Lancaster

Department of Defense  
Washington, DC

**The National Center for Research in Vocational Education**

The Ohio State University  
1960 Kenny Road  
Columbus, Ohio 43210

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# FOREWORD

This counseling and guidance program series is patterned after the Performance-Based Teacher Education modules designed and developed at the National Center for Research in Vocational Education under Federal Number NE-C00-3-77. Because this model has been successfully and enthusiastically received nationally and internationally, this series of modules follows the same basic format.

This module is one of a series of competency-based guidance program training packages focusing upon specific professional and paraprofessional competencies of guidance personnel. The competencies upon which these modules are based were identified and verified through a project study as being those of critical importance for the planning, supporting, implementing, operating, and evaluating of guidance programs. These modules are addressed to professional and paraprofessional guidance program staff in a wide variety of educational and community settings and agencies.

Each module provides learning experiences that integrate theory and application, each culminates with competency referenced evaluation suggestions. The materials are designed for use by individuals or groups of guidance personnel who are involved in training. Resource persons should be skilled in the guidance program competency being developed and should be thoroughly oriented to the concepts and procedures used in the total training package.

The design of the materials provides considerable flexibility for planning and conducting competency-based preservice and inservice programs to meet a wide variety of individual needs and interests. The materials are intended for use by universities, state departments of education, postsecondary institutions, intermediate educational service agencies, JTPA agencies, employment security agencies, and other community agencies that are responsible for the employment and professional development of guidance personnel.

The competency-based guidance program training packages are products of a research effort by the National Center's Career Development Program Area. Many individuals, institutions, and agencies participated with the National Center and have made contributions to the systematic development, testing, and refinement of the materials.

National consultants provided substantial writing and review assistance in development of the initial module versions. Over 1300 guidance personnel used the materials in early stages of their development and provided feedback to the National Center for revision and refinement. The materials have been or are being used by 57 pilot community implementation sites across the country.

Special recognition for major roles in the direction, development, coordination of development, testing, and revision of these materials and the coordination of pilot implementation sites is extended to the following project staff: Harry N. Drier, Consortium Director; Robert E. Campbell, Linda Pfister, Directors; Robert Bhaerman, Research Specialist; Karen Kimmel Boyle, Fred Williams, Program Associates; and Janie B. Connell, Graduate Research Associate.

Appreciation also is extended to the subcontractors who assisted the National Center in this effort: Drs. Brian Jones and Linda Phillips-Jones of the American Institutes for Research developed the competency base for the total package, managed project evaluation, and developed the modules addressing special needs. Gratitude is expressed to Dr. Norman Gysbers of the University of Missouri-Columbia for his work on the module on individual career development plans. Both of these agencies provided coordination and monitoring assistance for the pilot implementation sites. Appreciation is extended to the American Vocational Association and the American Association for Counseling and Development for their leadership in directing extremely important subcontractors associated with the first phase of this effort.

The National Center is grateful to the U.S. Department of Education, Office of Vocational and Adult Education (OVAE), for sponsorship of three contracts related to this competency-based guidance program training package. In particular, we appreciate the leadership and support offered project staff by David H. Pritchard, who served as the project officer for the contracts. We feel the investment of the OVAE in this training package is sound and will have lasting effects in the field of guidance in the years to come.

Robert E. Taylor  
Executive Director  
National Center for Research  
in Vocational Education



The National Center for Research in Vocational Education's mission is to increase the ability of diverse agencies, institutions, and organizations to solve educational problems relating to individual career planning, preparation, and progression. The National Center fulfills its mission by:

- Generating knowledge through research
- Developing educational programs and products
- Evaluating individual program needs and outcomes
- Providing information for national planning and policy
- Installing educational programs and products
- Operating information systems and services
- Conducting leadership development and training programs

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# ABOUT THIS MODULE

## **ASSIST CLIENTS WITH EQUITY RIGHTS AND RESPONSIBILITIES**

### **Goal**

After completing this module, the career guidance worker will have increased knowledge of the equality of employment opportunity (EEO) concept and related legislation and compensatory justice measures; in addition, the career guidance worker will be able to translate such knowledge into work setting and client related equity strategies.

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# ABOUT USING THE CBCG MODULES

## CBCG Module Organization

The training modules cover the knowledge, skills, and attitudes needed to plan, support, implement, operate, and evaluate a comprehensive career guidance program. They are designed to provide career guidance program implementers with a systematic means to improve their career guidance programs. They are competency-based and contain specific information that is intended to assist users to develop at least part of the critical competencies necessary for overall program improvement.

These modules provide information and learning activities that are useful for both school-based and nonschool-based career guidance programs.

The modules are divided into five categories. The GUIDANCE PROGRAM PLANNING category assists guidance personnel in outlining in advance what is to be done.

The SUPPORTING category assists personnel in knowing how to provide resources or means that make it possible for planned program activities to occur.

The IMPLEMENTING category suggests how to conduct, accomplish, or carry out selected career guidance program activities.

The OPERATING category provides information on how to continue the program on a day-to-day basis once it has been initiated.

The EVALUATING category assists guidance personnel in judging the quality and impact of the program and either making appropriate modifications based on findings or making decisions to terminate it.

## Module Format

A standard format is used in all of the program's competency-based modules. Each module contains (1) an introduction, (2) a module focus, (3) a reading, (4) learning experiences, (5) evaluation techniques, and (6) resources.

**Introduction.** The introduction gives you, the module user, an overview of the purpose and content of the module. It provides enough information for you to determine if the module addresses an area in which you need more competence.

**About This Module.** This section presents the following information:

**Module Goal:** A statement of what one can accomplish by completing the module.

**Competencies:** A listing of the competency statements that relate to the module's area of concern. These statements represent the competencies thought to be most critical in terms of difficulty for inexperienced implementers, and they are not an exhaustive list.

This section also serves as the table of contents for the reading and learning experiences.

**Reading.** Each module contains a section in which cognitive information on each one of the competencies is presented

1 Use it as a textbook by starting at the first page and reading through until the end. You could then

complete the learning experiences that relate to specific competencies. This approach is good if you would like to give an overview of some competencies and a more in-depth study of others.

2. Turn directly to the learning experiences(s) that relate to the needed competency (competencies). Within each learning experience a reading is listed. This approach allows for a more experiential approach prior to the reading activity.

**Learning Experiences.** The learning experiences are designed to help users in the achievement of specific learning objectives. One learning experience exists for each competency (or a cluster of like competencies), and each learning experience is designed to stand on its own. Each learning experience is preceded by an overview sheet which describes what is to be covered in the learning experience.

Within the body of the learning experience, the following components appear.

**Individual Activity:** This is an activity which a person can complete without any outside assistance. All of the information needed for its completion is contained in the module.

**Individual Feedback:** After each individual activity there is a feedback section. This is to provide users with immediate feedback or evaluation regarding their progress before continuing. The concept of feedback is also intended with the group activities, but it is built right into the activity and does not appear as a separate section.

**Group Activity:** This activity is designed to be facilitated by a trainer, within a group training session.

The group activity is formatted along the lines of a facilitator's outline. The outline details suggested activities and information for you to use. A blend of presentation and "hands-on" participant activities such as games and role playing is included. A Notes column appears on each page of the facilitator's outline. This space is provided so trainers can add their own comments and suggestions to the cues that are provided.

Following the outline is a list of materials that will be needed by workshop facilitator. This section can serve as a duplication master for mimeographed handouts or transparencies you may want to prepare.

**Evaluation Techniques.** This section of each module contains information and instruments that can be used to measure what workshop participants need prior to training and what they have accomplished as a result of training. Included in this section are a Pre- and Post-Participant Assessment Questionnaire and a Trainer's Assessment Questionnaire. The latter contains a set of performance indicators which are designed to determine the degree of success the participants had with the activity.

**References.** All major sources that were used to develop the module are listed in this section. Also, major materials resources that relate to the competencies presented in the module are described and characterized.

# INTRODUCTION

In order to redress historical practices of discrimination, the Congress provided for **equal employment opportunity (EEO)** legislation and related compensatory justice measures. Such legislation and concomitant guidelines provide the bedrock for addressing present employment opportunity inequities.

While there has been substantial progress in eliminating many forms of inequity, there are still substantial issues that must be addressed. A survey cited in the *World of Work Report* (December 1981), from Work in America Institute, Inc., reported that 75 percent of the 2,000 women surveyed indicated that without government enforcement, employers would do little to comply with equal opportunity laws. Perhaps more significantly, less than half of those responding reported that their employers currently had voluntary fair employment policies, such as job posting, career paths, grievance procedures, and structured salary systems.

Although equal employment opportunity has been the law for years, compliance is still a problem and it is apparent that legislation alone cannot solve the inequities that exist in the work place today. Of strategic importance is the need to effect change in people's attitudes, beliefs, and values, notably among (1) those who have power to influence directly implementation of equal employment opportunity and (2) those who, because of past role socialization, would not avail themselves of such "opportunities" without advocacy support.

Changing attitudes, beliefs, and value systems, however, takes time. Legislation, and related compensatory justice measures might mandate changes in the work place, but it is one thing to introduce those changes and it is another to implement them and to maintain them over time. With regard to affirmative action, for example, what exists today is a situation whereby the rapid growth of legislative and compensatory justice of

one decade, the 1970s, is in juxtaposition with a new decade of economic turmoil. As unemployment soars, employers are prone to use the "last hired-first fired" principle, which may result in a retrenchment of many EEO gains that were achieved in the 1970s.

In effect, there are **no easy avenues** of implementation for equal employment opportunity, particularly during trying economic times. Realistically, for every person hired today, many with equally good qualifications are being turned away. Clearly this is a critical time for the continued development and implementation of equity strategies for promoting EEO in the work place. For example, it is important for significant groups such as employers and counselors, to--

1. examine their own attitudes, beliefs, and values with regard to EEO biases they may have;
2. understand the characteristics and needs of all classes, and the protected and affected classes in particular;
3. increase their knowledge of the current status of equality of employment and educational opportunity; and
4. become effective implementers of the spirit and intent of EEO laws and guidelines.

For counselors and guidance personnel, a basic competency is to be knowledgeable of EEO laws and their application to clients served. Imparting this competency to users is the major goal of this module. Because this module is one of a series of competency-based guidance modules, it is noteworthy that several others are somewhat related to this topic: CG C-13 *Provide Career Guidance to Girls and Women*, CG C-17 *Promote Equity and Client Advocacy*, CG C-19 *Develop Ethical and Legal Standards*, and CG B-1 *Influence Legislation*.



## EEO Overview and Definitions

### Competency 1

Given today's depressed economic times, it is more important than ever that career guidance workers and the job seekers they assist are able to recognize employment opportunity inequities, because for each person hired, many with the necessary qualifications are turned away. In addition, many employers honestly believe that they do not discriminate.

What is equality of employment opportunity and why do we need it? Given a history of discriminatory practices in our society, there is ample evidence regarding need. Quite simply, equal employment opportunity means **not discriminating**. It is the right of all persons to be hired, to work, and to advance on the basis of individual merit, ability, and potential. To safeguard this right, EEO laws have been enacted to combat discrimination in the work place. Discrimination in the work place, however, is quite complex. Almost 20 years ago, most people thought of discrimination in the work place as overt, conscious acts of ill will that restricted the employment of individuals or groups based, perhaps, upon a variable such as sex, race, color, religion, or national origin. In other words, from the onset, it was the employer's **intent** to discriminate.

Based upon almost 20 years of administering such laws in the work place, it now is known that discrimination can take many forms, the most pervasive of which are basic employment systems which almost can appear benign in intent, but the **effects** of which **perpetuate past discriminatory practices**. For example, employment requirements (education, height, age, or test scores) that do not relate to the actual requirements of the job opening have such an effect and, for years, persons were systematically excluded from many employment opportunities by the entry-level requirement of a high school diploma.

Today, then, EEO discrimination is judged not only by the **intent** of the employer, but also by the **consequences** or **effects** of employment practices. Therefore, elimination of discrimination involves not only the removal of overt discriminatory practices, but also an ending of "artificial . . . and unnecessary barriers to employment when (such) barriers operate invidiously to discriminate on the basis of racial or other impermissible classification" (*Griggs v. Duke Power Co.*, 401 U.S. 424 [1971]).

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## Overt and Systemic Employment Discrimination Examples

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Overt	Systemic
<ul style="list-style-type: none"> <li>• "Blacks need not apply."</li> <li>• "We only will accept young, college graduates."</li> <li>• "Because we consider men to be the typical family breadwinner, we promote men rather than women to management positions here."</li> <li>• "We do not hire handicapped workers here."</li> </ul>	<ul style="list-style-type: none"> <li>• "Although this is an entry-level position for which we have a training program, you must have a high school diploma to qualify to be hired."</li> <li>• "You have all the necessary qualifications, but you also must take a personality test which our company has developed."</li> <li>• "I know you feel you should be promoted. However, I gathered all the department level managers together and we developed a preferred eligibility list for this promotion and, unfortunately, your name was ranked seventh."</li> <li>• "Our firm's job description for National Sales Manager includes a requirement of an MBA from one of the colleges on this list. You simply do not qualify."</li> </ul>

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**Note:** In overt cases, discrimination by the employer is intentional. In systemic cases, discrimination may or may not be intentional. Some employers honestly believe that their practices and policies do not discriminate. Regardless of intent, the effects are the same: employment discrimination.

Often, entire groups or classes of persons are affected by discrimination practices and, thus, the term **affected class** has been coined to describe groups who, by virtue of past discrimination, continue to suffer the effects of such discrimination. An affected class can be determined by a court decision or by analyzing an employment practice, policy, or procedure to determine if it has a negative effect on a particular group of people

**Protected classes** are those groups who have been legally identified and are protected by statute against employment discrimination—for example, the Age Discrimination in Employment Act protects those persons between 40 and 70. Besides age, the other legally defined categories are sex, race, color, religion, national origin, and handicap. Finally, the term **adverse effect** or **disparate**

**effect** is used, overall, to indicate employment standards or practices that operate to exclude such individuals and groups from equal employment opportunity. If an employment standard or practice has an adverse effect on a particular group, but the employer can demonstrate that all alternatives have been exhausted and that the requirement is job related and necessary, the courts have ruled that such a practice or standard is legal for business/operational necessity. Examples are hiring a man for an actor's role or hiring a woman for a female restroom attendant's position.

Discriminatory practices vary and have occurred at every point in the employment process from recruitment to dismissal of employees. In addition, a patchwork of legislation, executive orders, regulations, guidelines, and court orders has evolved over the past 20 years.

Although the Supreme Court has stressed the importance of employer-initiated voluntary efforts to end employment discrimination, considerable litigation has taken place. Our nation's courts, in general, have shown great deference to the technical standards that have been developed for implementation of EEO legislation. The following is a sampling of some EEO-related court decisions:

1. An employer cannot force someone between the ages of 40 and 65 and doing satisfactory work to take an early retirement against his/her will and be replaced by a younger worker. This ruling was made in *Wilson v. Sealtest Foods Div. of Kraftco Corp.* (1974), and the ruling was based upon the Age Discrimination in Employment Act of 1967 and its subsequent amending legislation (which extended the age limit to 70). Yet another case, *Hodgson v. Greyhound Lines, Inc.* (1974) resulted in a court ruling that indicated it was illegal for Greyhound Lines to refuse to hire bus drivers over the age of 35 because they were a safety risk to passengers. In a pending case, *EEOC v. Allen Park*, in Baltimore, Maryland, U.S. Equal Employment Opportunity Commission (EEOC) attorneys obtained a restraining order one day before the mandatory retirement of Allen Park police and fire fighters who had reached the age of 57. Again, both of these cases were based upon the Age Discrimination in Employment Act of 1967 and its amending legislation.
2. An employer no longer can use an arrest record as an automatic disqualifier. In addition, convicted felons cannot be excluded from employment on the basis of their conviction unless it has job-related implications (e.g., hiring someone convicted of theft as a cashier). In *Butts v. Nichols* (Iowa 1974), the court held that excluding convicted felons from virtually all civil service jobs violated the 14th Amendment's Equal Protection Clause.
3. An employer cannot use "sex-plus" of an applicant as an automatic disqualifier. In *Sprogis v. United Airlines, Inc.* (1971), the court held that it was illegal to require a "no marriage" rule of female stewardesses and not of male employees and that "customer preference" was not a valid reason to use this "female plus not married" requirement. In yet another case, *Phillips v. Martin-Marietta*

*Corp.* (1971), the court held that this company could not exclude women with preschool children from employment unless they also excluded men with preschool children. Both of these court decisions were based upon Title VII of the Civil Rights Act of 1964.

These are but a few examples of how equality of employment opportunity legislation provided the impetus for court decisions that protect workers today. In general, employers must directly relate any criteria used to hire, fire, train, transfer, or promote individuals to the specific job content. Legally, this is referred to as the "job relatedness" principle.

### Range of Discriminatory Practices

If you were to make an intensive study of current and past discriminatory employment practices by employment phase, it would become readily apparent that none are unaffected by EEO court decisions. For example, consider the following seven areas in the employment process:

1. **Recruitment of Applicants:** There are a number of laws and regulations that guide employers in recruitment of applicants. Notably, in *United States v. Georgia Power Co.* (1973), the court ruled that word of mouth recruitment only and lack of advertising is illegal.
2. **Hiring Practices:** A myriad of discriminatory hiring practices now have been addressed through legislation, employer guidelines, and court decisions. For example, all discrimination in hiring because of race, color, religion, sex, or national origin has been banned under Title VII of the Civil Rights Act of 1964. In addition to overt discrimination, systemic discriminatory practices that disproportionately screen out such groups as minorities and women generally are unlawful. One example would be giving job applicants tests that are not "job related" and that tend to screen out minorities and women.
3. **Employee Benefits and Wages:** The Equal Pay Act of 1963, as amended, prohibits employers from paying workers of one sex less than they pay workers of the other sex for performing similar work, with some exceptions. One court case, *EEOC v. State of North Carolina* (1980), was initiated by the

U.S. Department of Labor against the state of North Carolina. EEOC charged the state with violation of the Equal Pay Act of 1963, as amended, with reference to two female magistrates who were paid less than males for performance of the same work. The judgment of the U.S. District Court in Charlotte gave both females full back pay with interest. Recently, the *EEOC v. Colby College* (Maine) provided the legal impetus for the development of a plan to equalize employee annuity benefits for men and women under contract with Teachers Insurance and Annuity Association and College Retirement Equities Fund (TIAA-CREF). Under the new plan, female employees no longer will be given lower retirement benefits than men who make the same contributions to the plan, and male employees no longer will be given lower death benefits than women who pay the same premiums. Another employee "benefit" that now has a legal base is that related to pregnancy and pregnancy-related conditions. Under the Pregnancy Discrimination Act, a sex discrimination amendment to Title VII of the Civil Rights Act, employers must treat pregnancy and pregnancy-related medical conditions the same as all other ailments in the administration of employment practices and employee health benefit plans.

4. **Selection for Advanced Training, Education:** Title VII of the Civil Rights Act of 1964 and amending legislation in 1972 prohibit discrimination in all phases of the employer-employee relationship, including selection for advanced training and educational opportunities, especially since such programs typically lead to job promotions.
5. **Harassment on the Job:** If harassment of an employee affects any of the phases listed here (recruitment, hiring, benefits and wages, selection for training/education, promotion, or firing), it may be illegal, depending upon the individual circumstances. The National Labor Relations Act prohibits harassment. In addition, one type of harassment that is illegal is sexual harassment. The EEOC guidelines on "sex-related intimidation" in the work place treat sexual harassment as illegal sex discrimination under Section 703 of Title VII of the Civil Rights Act of 1964, as amended. In *Mumford v. James T. Barnes & Co.* (Michigan 1977), the decision was ren-

dered that the employer has an affirmative duty to investigate complaints of sexual harassment and to deal appropriately with offending personnel. In *Williams v. Saxbe* (District of Columbia 1976), a person successfully claimed sexual harassment, and awarded damages included \$16,000 in back pay and all negative evaluations removed from the employee's record. In a six-year suit against Nabisco, Inc., EEOC charged Nabisco with using a variety of discriminatory employment practices, including sexual harassment, at 11 bakeries throughout the country. The total settlement, which includes sexual harassment benefits, will affect as many as 8,000 women and most likely will result in \$5 million in benefits to them.

6. **Promotion of Employees:** Like other employment phases, there are a number of laws that prohibit an employer from discriminating against promoting employees on the basis of such factors as age, sex, national origin, race, color, and religion. Numerous court decisions have ruled that, where an employment system operates to the detriment of specific groups, employers must promote such people. For example, in *Rowe v. General Motors Corp.* (1972), the court ruled that not having blacks in foreman jobs was due to the subjective judgment of superiors and, therefore, it was illegal. In *Newman v. Avco Corp.* (1973), the courts held that subjective assessments by supervisors for advancement were discriminatory. In one of six lawsuits that EEOC filed against Minnesota Mining and Manufacturing Co. (3M), a settlement was reached on behalf of an individual claimant who charged 3M with limiting women's job opportunities and advancement as sales representatives and in jobs in line of progression upward from sales representative. In *EEOC v. Frigidaire Division of General Motors Corp.* (Dayton, Ohio), it was found that women were discriminated against by means of height and weight classifications in Frigidaire's policy, which resulted in women employees being denied promotions to better paying jobs classified as too strenuous.
7. **Firing/Dismissal of Employees:** As in other phases of employment, a number of laws guide employers with regard to dismissal of employees. In *EEOC v. Econocar* (New

Orleans), a male worker was fired in retaliation for having filed an affidavit in support of a female's charge of race and sex discrimination. Due to EEOC's successful efforts in securing a preliminary injunction by consent, the man was reinstated. Recently, *EEOC v. U.S. Steel Corp.* resulted in a \$53,000 settlement requiring the steel manufacturer to pay nine former employees past wages. In this case, U.S. Steel discriminated against females who were fired prior to their completing their probationary period, whereas the company had a policy of firing male employees, when necessary, at the conclusion of their probationary period. U.S. Steel now has a policy that does not discriminate by sex among probationary employees.

### **Dismantling Employment Discrimination**

Systematically dismantling employment discrimination is no easy task. Furthermore, even though the actual process of discrimination is a result of individual actions, the attitudes and behaviors of individuals are cultivated and guided by **organizational and social structures** that actively or passively permit and often reinforce individual discriminatory processes. In essence, to rectify the substantial effects of past employment inequities, changes in employer or organization-level attitudes and behaviors have been needed.

Therefore, several EEO laws and executive orders now require more than nondiscrimination, or the elimination of all discriminatory conditions and practices. Such laws now require **affirmative action** or special efforts by employers to recruit, employ, and promote qualified persons who are members of groups (protected classes) that have been formerly underrepresented. Affirmative action is a compensatory justice measure, a remediation effort, and employers are encouraged to voluntarily establish affirmative action programs rather than be directed via litigation to do so. Therefore, for over 10 years, employers have begun serious attempts at examining the status of protected classes within their organizations (e.g., handicapped, women, minorities, and older Americans between the ages of 40 and 70), and establishing remediation efforts for these groups.

Compensatory justice measures such as affirmative action will not correct inequities immediately, but they will have an impact over time. For example, as a part of the industrial reform movement in the United States, many states passed what were termed **protective labor laws** that were designed to improve dangerous and unsanitary working conditions that existed. Such laws limited the number of hours and conditions under which women could work. Indeed, women were barred from certain kinds of work, and although these laws were written with the intention of protecting women, they eventually prevented women from competing for better paying "male" jobs. For many decades, "protective labor laws" hampered women from effectively competing in the world of work, and today, compensatory justice measures are assisting women and other protected classes to equalize their representation in the work force.

As guidance workers, each of us needs to understand some legal aspects of equal employment opportunity, depending upon what types of clients we normally serve. In addition, each of us needs to examine our attitudes toward equal employment opportunity and the consequences of our daily actions. Do we ever challenge organizational formal policies and informal practices that may perpetuate inequalities? Do we assist our clients to become aware of their employment rights and do we help them to seek restitution? Do we understand the major enforcement or compliance agencies for equal employment opportunity legislation? Such state and federal agencies exist, and they have responsibilities for helping individuals with equal employment opportunity problems and complaints against employers.

Guidance workers can contribute a great deal by implementing "equity strategies," which are processes and actions that can further equal employment opportunity. The major goal of this module is to help you become more knowledgeable about equal employment opportunity laws so that you can more effectively implement equity strategies to promote equal employment opportunity with your clients and employers.

# EEO Laws and Executive Orders

## Competency 2

Analyze major federal laws and executive orders related to equality of employment opportunity.

### Major Laws and Executive Orders

Federal legislative attempts to eliminate and remediate employment discrimination can be divided into four categories, the last three of which affect populations receiving federal monies:

- Laws that prohibit discrimination by employers
- Laws and executive orders that prohibit discrimination as a condition of federal financial assistance
- Laws and regulations that prohibit discrimination in specific federally funded programs
- Executive orders and regulations that govern nondiscrimination for federal employees

In addition, many agencies issue guidelines or interpretations for implementation of these laws and executive orders. As an introductory module on this topic, the following major laws, executive orders, and guidelines will be covered. In no way, however, are these to be construed as all-inclusive. Copies of these laws have been provided in appendix B of this module.

#### I. Laws that Prohibit Discrimination by Employers

- Equal Pay Act of 1963, as amended
- Civil Rights Act of 1964, Title VII, as amended
- Age Discrimination in Employment Act of 1967, as amended
- Equal Employment Opportunity Act of 1972 (amendment to Title VII, Civil Rights Act of 1964)

#### II. Laws and Executive Orders that Prohibit Discrimination as a Condition of Federal Financial Assistance

- Executive Order 11246, as amended
- Rehabilitation Act of 1973, as amended (Sections 503 and 504)
- Vietnam Era Veterans' Readjustment Act of 1974

#### III. Laws and Regulations that Prohibit Discrimination in Specific Federally Funded Programs

- Title IX of the Educational Amendments of 1972

#### IV. Executive Orders and Regulations that Govern Nondiscrimination for Federal Employees

- Equal Employment Opportunity Act of 1972
- Reorganization Plan No. 1 of 1978
- Executive Order 12067

### Summary of Laws

1. *Equal Pay Act of 1963 (P.L. 88-38)*: This is the oldest federal legislation that prohibits discrimination on the basis of sex. As an amendment to the Fair Labor Standards Act (FLSA) of 1938, this piece of legislation prohibits employers covered under FLSA from paying workers of one sex less than they pay workers of the other sex for performing similar work. As amended by the Educational Amendments of 1972, the Equal Pay Act

now covers not only employees covered by FLSA (mostly blue-collar workers in settings that have a yearly business of \$250,000 or more), but also outside sales employees and executive, administrative and professional employees, such as teachers.

**Major Points:**

- Differences in salary are allowable if differential is based upon (1) a seniority system, (2) a merit system, (3) a factor other than sex, or (4) an earnings system that is measured by quantity or equity of production.
- "Equal" does not mean identical. In the landmark case of *Shultz v. Wheaton Glass*, the Court stressed that "equal" really means "substantially equal."
- In analyzing any job, four criteria should be considered: (1) skill or performance; (2) effort, or mental and physical exertion needed to perform the job; (3) responsibility or the importance of the work, the value of the product, and the amount and type of supervision; and (4) working conditions.
- Substantial back pay awards have been rendered to protected classes who were found to have experienced pay-related discrimination. The statute of limitations for back pay is two years for a nonwillful employer violation; for a willful violation, back pay for three years may be awarded.
- This act prohibits a union or labor organization from actions that might motivate an employer to discriminate against an individual or group with respect to the equal pay provision in this legislation.
- Employers are not allowed to conform to the requirements of this act by reducing salaries.

**Enforcement Agency:** Equal Employment Opportunity Commission (EEOC).

- 2 *The Civil Rights Act of 1964 (P.L. 88-352):* Title VII of the Civil Rights Act of 1964 is the most comprehensive piece of federal equal employment opportunity legislation and

affects the greatest number of workers. Title VII prohibits discrimination on the basis of race, color, sex, religion, or national origin with respect to all phases of employment, including hiring, classification, promotion, compensation, firing, apprenticeship, job assignments, training, and retraining. Under Title VII, a number of guideline documents have been produced that assist employers in their implementation of Title VII.

**Major Points:**

- Prior to being amended by the 1972 Equal Employment Opportunity Act (EEOA), Title VII covered only private employers with 25 or more employees and labor unions with 25 or more members. Many other groups (educational institutions, religious groups, government owned corporations, etc.) were exempt. Under the EEOA of 1972, coverage was extended to state and local government agencies and public and private educational institutions. Also covered are all employment agencies public and private. In addition, as of March 24, 1973, employers with 15 or more employees and labor unions with 15 or more members are also covered by Title VII of the Civil Rights Act of 1964. Still exempt are religious educational institutions and associations with regard to the employment of individuals of a particular religion, federal agencies other than the federal-state employment service system, Indian tribes, federally owned corporations, and elected officials and their personal assistants and immediate advisors.
- The Civil Rights Act of 1964 established the Equal Employment Opportunity Coordinating Council (EEOCC), which became operational July 2, 1965. Subsequently, Executive Order 12067 of June 30, 1978 (effective July 1, 1978) abolished the EEOCC and established the Equal Employment Opportunity Commission (EEOC). When established, EEOC also was given the responsibility for establishing direction and giving guidance to the government's equal employment opportunity efforts.

- Title VII requires employers covered by its regulations to post notices that summarize Title VII requirements.
- The EEOC is the enforcement agency for Title VII, but charges filed with EEOC are deferred for a 60-day period when state and municipal settings have enforceable fair employment laws. Therefore, a guidance worker needs to become aware of his/her state's employment laws and the locations of the local employment practices agency, if one exists. The EEOC-designated state and local agencies with comparable legal and enforcement powers are sometimes referred to as "706"-designated agencies. A list of EEOC district and area offices and addresses is included in appendix A. Persons must file charges of Title VII violations within 180 days of the alleged violation or up to 300 days from when a state or local agency initially was contacted. Once receiving a charge, the EEOC must notify the person within ten days of receipt of the charge that it has been received. In general, if there is reasonable belief that the charge is true, the Commission encourages negotiated settlements of charges via informal methods of conciliation, conferences, and persuasion. If the suit is brought against a state or local government, governmental agency or political subdivision, the attorney general brings suit rather than the EEOC.

**Enforcement Agency:** Equal Employment Opportunity Commission (EEOC).

3. *Executive Order 11246 of 1965:* Although an executive order is not law, the courts have affirmed that the federal government has the right to set the terms of its contracts with contractors. E.O. 11246 was amended by E.O. 11375 in 1967 and prohibits all federal contractors and subcontractors with government contracts of more than \$10,000 (with some exceptions) from discriminating on the basis of race, color, sex, religion, or national origin.

The Department of Labor issued Revised Order No. 4, "Affirmative Action Guidelines," as part of E.O. 11246, in January 1970.

Because of confusion, "Sex Discrimination Guidelines" were issued in June 1970, and Revised Order No. 4 became effective on December 4, 1971. In essence, these revisions to E.O. 11246 prohibited sex discrimination by those covered and required employers to (1) designate an affirmative action person to be in charge of the program; (2) compile a job classification data base; (3) complete an examination of all employment practices (e.g., recruitment, hiring, salaries, and promotions); (4) identify areas of underrepresentation by women and minorities and make plans to overcome them; and (5) develop specific numerical goals and timetables.

**Major Points:**

- E.O. 11246 originally covered race, color, religion, and national origin.
- E.O. 11375 expanded E.O. 11246 by adding sex as a protected class.
- An employer is covered under these orders if the company has a federal contract of at least \$10,000; has federal deposits or issues savings bonds; is a union that works under a company contract with a large federal contract.
- Also, contractors with 50 or more employees and \$50,000 of federal government business in 1 or more contracts are required to adopt written affirmative action plans.

**Enforcement Agency:** U.S. Department of Labor, Office of Federal Contract Compliance Program (OFCCP). OFCCP has the overall responsibility but has delegated enforcement responsibility to appropriate other federal agencies--for example, if in higher education, to the Department of Education, Office of Civil Rights.

4. *Age Discrimination in Employment Act (ADEA) of 1967 (P.L. 95-256) as amended (P.L. 95-444):* The ADEA is similar to Title VII of the Civil Rights Act of 1964 in language and purpose. Like Title VII, the act includes the same overall coverage of all employment practices, but as amended by the Age Discrimination in Employment Act Amendments of 1978, it specifically bans



discrimination against workers aged 40 to 70. For federal government workers, there is no upper age limit.

**Major Points:**

- This act applies to private employers of 20 or more workers; federal, state, and local governments and employment agencies; labor unions with 25 or more members; and labor unions that operate a hiring hall or office that recruits employees for employers or vice versa.
- Like Title VII, ADEA does not apply if an age limit is a (1) *bona fide* job qualifier (e.g., for a teenage model); (2) part of a *bona fide* seniority system or employee benefit plan (however, mandatory retirement based upon age is prohibited); or (3) based upon reasonable factors other than age.
- The enforcement agency now is the Equal Employment Opportunity Commission (EEOC). Enforcement responsibilities were transferred from Department of Labor to EEOC on July 1 1979, as part of the Reorganization Plan No. 1 of 1978.
- A charge of discrimination based upon age must be filed with EEOC within 180 days of the alleged violation. If a state has an age discrimination law, this time is extended to 300 days of the alleged violation or within 30 days of termination of proceedings of the state enforcement agency. If an individual files a charge with EEOC, he/she may not file a private suit against the employer until 60 days after filing a charge with EEOC.
- A person may file an ADEA *complaint or charge* with EEOC. A person may retain complete confidentiality when filing an ADEA complaint. However, if an individual wishes to retain his/her right to a private suit against the employer, then the individual must file a charge, and once a charge is filed, the name can be disclosed to the employer.

**Enforcement Agency:** Equal Employment Opportunity Commission (EEOC).

5. *Equal Employment Opportunity Act (EEOA) of 1972 (P.L. 92-261)*: The Equal Employment Opportunity Act of 1972, an amendment to Title VII of the Civil Rights Act of 1964, prohibits discrimination on the basis of sex, expands the powers of the Equal Employment Opportunity Commission (EEOC), and enlarges EEOC's jurisdiction for enforcement of Title VII. Passage of EEOA extended Title VII coverage to state, local, and federal governments.

**Major Points:**

- At the time of this amendment, EEOC was named the Equal Employment Opportunity Coordinating Council (EEOCC). It officially became "EEOC" in 1978.
- The amendment expands EEOC's powers by allowing EEOC to bring cases to court.
- EEOC's enlarged jurisdiction includes the following new groups: (1) private employers with 15 or more persons; (2) educational institutions, public and private; (3) public and private employment agencies; (4) state and local governments; (5) labor unions with 15 or more members; and (6) labor-management joint committees for training and apprenticeship.

**Enforcement Agency:** Equal Employment Opportunity Commission (EEOC).

6. *Title IX, The Educational Amendments Act of 1972 (P.L. 92-318)*: Title IX bans discrimination on the basis of sex by an educational institution receiving federal financial aid and provides coverage for both employees and students of such institutions. The regulations regarding enforcement of Title IX were effective July 21, 1975, and the main tenet of Title IX is that educational institutions should make every effort to treat the sexes equitably. Although the guidelines include student admissions and treatment of students in general, inclusion of guidelines on employment was not expected by the educational community.

### Major Employment Points:

- Regarding employment, Title IX treats pregnancy as a temporary disability and also allows males a leave of absence to care for a newborn child.
- Fringe benefits are to apply equally to both full-time and part-time employees once they have worked one academic semester.
- Inequities of hiring, transfer, and promotion opportunities are prohibited.

**Enforcement Agency:** U.S. Department of Education.

7. *Rehabilitation Act of 1973 (P.L. 93-112):* The Rehabilitation Act of 1973 prohibits discrimination against qualified workers based upon disability or handicap and requires written affirmative action for the handicapped. Specifically, Section 504 prohibits discrimination against the handicapped in employment, services, and participation and access to all programs that receive federal financial aid. The Department of Education, through its Office of Civil Rights (OCR), handles discrimination charges. (Department of Education Regional Offices for Civil Rights are listed in appendix A.) Section 503 bans discrimination in the employment of the handicapped by federal contractors and subcontractors. This section is enforced by the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP). OFCCP has developed guidelines for requiring employers to institute affirmative action in employment of the handicapped.

### Major Points:

- Employers required to have written affirmative action plans for the handicapped include (1) state and local agencies, (2) those with 50 or more employees, and (3) those holding contracts of \$50,000 or more.
- Employers must provide "reasonable accommodations" for a handicapped worker, such as accessibility to the building, parking, or a cassette recorder for a blind employee.

- Preemployment physical examination requirements by employees are banned unless such medical examinations are required of all employees; no one given such an exam is disqualified unless a deficiency is job related.
- Preemployment inquiries regarding a person's handicapping condition must be limited to questions related to an applicant's ability to perform job-related functions.
- The affirmative action section (503) of the act mandates employers with government contracts of \$2,500 or more must actively recruit qualified handicapped workers, and make "reasonable accommodations" for such workers. If there is an added cost because of hiring a handicapped worker, the cost can be added to the contract bid. Under this definition, about one-half of all businesses (3,000,000) are covered.

**Enforcement Agencies:** U.S. Department of Education, Office of Civil Rights (Section 504) and U.S. Department of Labor, Office of Federal Contract Compliance Programs (Section 503).

8. *Vietnam Era Veteran's Readjustment Act (VEVRA) of 1974 (P.L. 93-508):* This act's regulations are similar in scope and purpose to the Rehabilitation Act of 1973 guidelines in Section 503. Section 402 of the VEVRA requires covered employers to initiate affirmative action to employ and promote disabled veterans and veterans of the Vietnam era "Reasonable accommodation" must be made for physical and mental impairments of disabled veterans by employers. Employers covered are (1) government contractors and subcontractors with contracts over \$10,000 and (2) state and local governments that participate in or work on or under a government contract or subcontract or hold such contracts. Affirmative action plans are required, but not numerical goals and timetables.

**Enforcement Agency:** U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP).

9. *Reorganization Plan No. 1 of 1978*: Under this plan, the Equal Employment Opportunity Commission (EEOC) was formed and all coordination efforts of the Equal Employment Opportunity Coordinating Council (EEOCC--established in Section 715, EEOA, 1972) were transferred to the EEOC. In addition, this plan gave EEOC jurisdiction over Title VII complaints against federal agencies, formerly a Civil Service Commission (OPM) function.

**Enforcement Agency:** Equal Employment Opportunity Commission (EEOC).

10. *Executive Order 12067 of 1978*: Executive Order 12067 implemented the EEOC concepts contained in the Reorganization Plan

No. 1 of 1978. The EEOC was given authority to coordinate the efforts of all federal departments and agencies enforcing equal employment laws and policies. Also, EEOC was given the charge of developing uniform standards, guidelines, and policies for dealing with employment discrimination against federal employees. Under E.O. 12067, EEOC has the task of promoting efficiency and eliminating duplication among EEO programs administered by federal agencies; of reducing the costs of EEO legal compliance requirements for employers and for the federal government; and of developing publications to inform and assist federal departments, agencies, and employees of EEO related information.

## EEO Guidelines

### Competency 2

#### Equality of Employment Opportunity: The Use of Guidelines

Whenever employment legislation is passed and executive orders are issued, employers are confused about how to interpret and implement the laws and orders. In such situations, guidelines and regulations typically have been issued to assist employers. Another reason for the issuance of guidelines is to facilitate uniform interpretation of the law/order for litigation purposes. Finally, guidelines may contain actual "amendments" that can greatly enlarge upon the intent of the initial law or order.

Because the scope and size of this module are limited, it is not feasible to review the sets of guidelines issued for the ten laws covered in Competency 2. However, an illustration of the guideline process and format typically used is provided herein for one area, Title VII, and specifically for sex discrimination.

#### Sample Guidelines

**Law:** *Civil Rights Act of 1964*, as amended

With regard to Title VII, EEOC has issued a number of sets of guidelines:

1. *Guidelines on Employee Selection Procedures*
2. *Guidelines on Discrimination Because of Sex*
3. *Guidelines on Discrimination Because of National Origin*
4. *Guidelines on Discrimination Because of Religion*
5. *Guidelines on Affirmative Action*

#### How Guidelines Evolve and Are Revised

**Title/Section:** Title VII, Section 703, "Sex Discrimination"

#### Evolution of Guidelines/Changes:

1. *December 2, 1965*: EEOCC issued "Guidelines on Discrimination Because of Sex."

\*2. *March 31, 1982*: EEOC issued "Guidelines on Discrimination Because of Sex" that replaced the guidelines issued in 1965. These guidelines included the following sections:

- General Principles
- Sex as a Bona Fide Occupational Qualification (BFOQ)
- Separate Lines of Progression and Seniority Systems
- Discrimination against Married Women
- Job Opportunities Advertising
- Employment Agencies
- Pre-employment Inquiries as to Sex
- Relationship of Title VII to the Equal Pay Act
- Fringe Benefits
- Employment Policies Relating to Pregnancy and Childbirth.

\*3. *October 31, 1978*: P.L. 95-555, the Pregnancy Discrimination Act, was signed as an amendment to Title VII of the Civil Rights Act of 1964, as amended.

\*4. *April 20, 1979*: EEOC issued "Guidelines on Sex Discrimination. Adoption of Final Interpretive Guidelines. Questions and Answers." These amendments to the 1972 guidelines were issued in order to bring the 1972 guidelines into conformity with P.L. 95-555 and to provide answers to questions that had been raised by the public.

\*5. *October 9, 1979*: EEOC "Clarification of Pregnancy Act Guidelines, Questions 29 and 30, Interim Rule." This document was intended to clarify EEOC's enforcement position (questions 29 and 30) regarding charges of violation of P.L. 95-555.

6. *April 11, 1980*: EEOC issued "Interim Guidelines on Sexual Harassment as an Amendment to the Guidelines on Discrimination Because of Sex."

\*7. *November 10, 1980*: EEOC issued final guidelines on sexual harassment entitled "Discrimination Because of Sex Under Title VII of Civil Rights Act of 1964, as Amended; Adoption of Final Interpretive Guidelines." Under these guidelines, sexual harassment is defined and is pinpointed as an unlawful employment practice.

For each law and executive order, you may wish to become familiarized with the major interpretive guidelines that have been issued. For example, a number of guidelines related to sex discrimination have been issued as a result of other laws, such as Title IX, E.O. 11246, and E.O. 11375. In other words, if sexual discrimination in the work place is a concern of one of your clients, there are other information sources besides the Title VII set of Sex Discrimination Guidelines. In general, the best source for obtaining those guidelines that may apply to your clients is to request them from your nearest state enforcement agency or from the national agency.

As a sample, the following pages contain the documents asterisked (\*) in the list presented above.

# GUIDELINES ON DISCRIMINATION BECAUSE OF SEX



Title 29, Labor, Chapter XIV, Part 1604, As Amended  
(As of March 31, 1972)

## PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

### Sec.

- 1604.1 General Principles.
- 1604.2 Sex as a Bona Fide Occupational Qualification.
- 1604.3 Separate Lines of Progression and Seniority Systems.
- 1604.4 Discrimination Against Married Women.
- 1604.5 Job Opportunities Advertising.
- 1604.6 Employment Agencies.
- 1604.7 Pre-employment Inquiries as to Sex.
- 1604.8 Relationship of Title VII to the Equal Pay Act.
- 1604.9 Fringe Benefits.
- 1604.10 Employment Policies Relating to Pregnancy and  
Childbirth.

**Authority:** The provisions of this Part 1604 are issued under  
Section 713(b), 78 Stat. 265, 42 U.S.C., Sec. 2000e-12.

**Source:** The provisions of this Part 1604 appear at 37 F.R. 6835,  
April 5, 1972, unless otherwise noted.

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Please see attached amendment and guidelines

## PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e-12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, § 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

### Section 1604.1 General Principles.

(a) References to "employer" or "employers" in Part 1604 state principles that are applicable not only to employers, but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

### Section 1604.2 Sex as a Bona Fide Occupational Qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels -- "Men's jobs" and "Women's jobs" -- tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e. g., an actor or actress.

(b) Effect of sex-oriented state employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e. g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by Title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that state laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by Title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established

unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of states require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by state law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented state employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of Title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the state law is in conflict with and superseded by Title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some states require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

#### Section 1604.3 Separate Lines of Progression and Seniority Systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect



any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression" and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

#### Section 1604.4 Discrimination Against Married Women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

#### Section 1604.5 Job Opportunities Advertising,

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

**Section 1604.6 Employment Agencies.**

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

**Section 1604.7 Pre-employment Inquiries as to Sex.**

A pre-employment inquiry may ask "Male \_\_\_\_\_, Female \_\_\_\_\_"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

**Section 1604.8 Relationship of Title VII to the Equal Pay Act.**

(a) The employee coverage of the prohibitions against discrimination based on sex contained in Title VII is co-extensive with that of the other prohibitions contained in Title VII and is not limited by Section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of Section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under Title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

#### Section 1604.9 Fringe Benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

**Section 1604.10 Employment Policies Relating to Pregnancy and  
Childbirth.**

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Public Law 95-555  
95th Congress

An Act

Oct. 31, 1978  
(S. 995)

To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

Pregnancy sex  
discrimination,  
prohibition.  
42 USC 2000e.  
Definitions

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That section 701 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

“(k) The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.”

42 USC  
2000e-2.

Effective date.  
42 USC 2000e  
note.

Sec. 2. (a) Except as provided in subsection (b), the amendment made by this Act shall be effective on the date of enactment.

(b) The provisions of the amendment made by the first section of this Act shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act until 180 days after enactment of this Act.

42 USC 2000e  
note.

Sec. 3. Until the expiration of a period of one year from the date of enactment of this Act or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.

Approved October 31, 1978.

BEST COPY AVAILABLE

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Friday  
April 20, 1979

Equal  
Opportunity  
Commission

Guidelines on Sex  
Discrimination

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**Part VIII**

**Equal Employment  
Opportunity  
Commission**

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**Guidelines on Sex Discrimination**

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**Adoption of Final Interpretive Guidelines**

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**Questions and Answers**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1604

#### Guidelines on Sex Discrimination; Adoption of Final Interpretive Guidelines; Question and Answers

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final Amendments to Guidelines on Discrimination Because of Sex, and Addition of Questions and Answers concerning the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076 (1978).

**SUMMARY:** On October 31, 1978, President Carter signed into law the Pregnancy Discrimination Act, Pub. L. 95-555, 92 Stat. 2076, as an amendment to Title VII of the Civil Rights Act of 1964, as amended. The act makes clear that discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII. The amendments to the Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex bring the Guidelines into conformity with Pub. L. 95-555. The accompanying questions and answers respond to concerns raised by the public about compliance with the Pregnancy Discrimination Act.

**EFFECTIVE DATE:** April 20, 1979.

**FOR FURTHER INFORMATION CONTACT:** Peter C. Robertson, Director, Office of Policy Implementation, Room 4002A, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, (202) 634-7060.

**SUPPLEMENTARY INFORMATION:** The Pregnancy Discrimination Act makes clear that Title VII of the Civil Rights Act of 1964, as amended, forbids discrimination on the basis of pregnancy, childbirth and related medical conditions. As reflected in the Committee Reports (Senate Report 95-331, 95th Cong., 1st Session (1977) and House of Representatives Report 95-948, 95th Cong., 2d Session (1978)), Congress believed that the Equal Employment Opportunity Commission (EEOC or the Commission), in its Guidelines on Discrimination Because of Sex (29 CFR Part 1604, published at 39 FR 6836, April 5, 1972) had "rightly implemented the Title VII prohibition of sex discrimination in the 1964 act." H.R. 95-948 at p. 2.

Contrary to the EEOC's Guidelines and rulings by eighteen District Courts and all seven Courts of Appeal which faced the issue, in *General Electric Co.*

*v. Gilbert*, 429 U.S. 125 (1976), the Supreme Court ruled that General Electric's exclusion of pregnancy related disabilities from its comprehensive disability plan did not violate Title VII. The Supreme Court further indicated that it believed that the EEOC Guidelines located at 29 CFR 1604.10(b) incorrectly interpreted the Congressional intent in the statute.

The Pregnancy Discrimination Act reaffirms EEOC's Guidelines with but minor modifications. For that reason, the Commission believed that only slight modifications of its Guidelines were necessary and issued them on an interim basis on March 9, 1979 at 44 FR 13278. Along with these amended Sex Discrimination Guidelines, the Commission published a list of questions and answers concerning the Pregnancy Discrimination Act. These responded to urgent concerns raised by employees, employers, unions and insurers who sought the Commission's guidance in understanding their rights and obligations under the Pregnancy Discrimination Act.

Fringe benefit programs subject to Title VII which existed on October 31, 1978, must be modified in accordance with the Pregnancy Discrimination Act no later than April 29, 1979. It is the Commission's desire, therefore, that all interested parties be made aware of EEOC's view of their rights and obligations in advance of April 29, 1979, so that they may be in compliance by that date. For that reason, the Commission has determined that the amendment to 29 CFR 1604.10 and the questions and answers, which will be appended to 29 CFR Part 1604, are not subject to the requirements of Executive Order 12044. See section 6(b)(6) of Executive Order 12044.

The Commission, however, invited and received comments from the public and affected Federal agencies. The Commission has considered the comments and determined that its Sex Discrimination Guidelines at 29 CFR 1604.10 should be issued in final form as they were published in 44 FR 13278 (March 9, 1979), except that the word "opportunities" has been inserted in Subsection (a) of Section 1604.10 to emphasize that this subsection applies to all employment-related policies or practices, since there was apparent confusion on this point. Also as a result of the comments, the Commission has added several questions and answers which will be of further assistance to those seeking Commission guidance with respect to their rights and obligations under the Pregnancy Discrimination Act, and has amended

two of the originally published questions and answers.

Question 21 was amended by changing the second paragraph of the answer to read "non-spouse dependents" instead of "other dependents", to clarify the intent of the answers. Question 30 (now question 34) has been amended to include women who are contemplating an abortion within the prohibition against discrimination on the basis of abortion.

Questions 29 and 30 were added to address many of the concerns which had been raised with respect to "extended benefits" provisions.

Question 16(A) was added in response to questions and comments which pertain to child care leave.

A majority of the comments questioned the appropriateness of the Commission's answer to Question 21 of the questions and answers at 44 FR 13278. Question 21 asked whether an employer has to make available health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees and of the non-spouse dependents of all employees.

The Commission concluded that health insurance benefits for the pregnancy-related conditions of the male employee's spouse must be available to the same extent as health insurance benefits are available to the female employee's spouse. The pregnancy-related conditions of non-spouse dependents, however, would not have to be covered under the health insurance program so long as that practice applied to the non-spouse dependents of male and female employees equally.

The Pregnancy Discrimination Act amends Title VII of the Civil Rights Act of 1964, as amended. To the extent that a specific question is not directly answered by a reading of the Pregnancy Discrimination Act, existing principles of Title VII must be applied to resolve that question. The legislative history of the Pregnancy Discrimination Act states explicitly that existing principles of Title VII law would have to be applied to resolve the question of benefits for dependents. (S. Rep. No. 95-331 at 6.)

The Commission, being responsible for interpreting and implementing Title VII, utilized Title VII principles to arrive at the position reached on the dependent question.

The underlying principle of Title VII is that applicants for employment or employees be treated equally without regard to their race, sex, color, religion, or national origin. This equality of treatment encompasses the receiving of

fringe benefits made available in connection with employment. Title VII does not require employers to provide the same coverage for the pregnancy-related medical conditions of spouses of male employees as it provides for the pregnancy-related costs of its female employees. However, if an employer makes available to female employees insurance which covers the costs of all of the medical conditions of their spouses, but provides male employees with insurance coverage for only some of the medical conditions (i.e., all but pregnancy-related expenses) of their spouses, male employees are receiving a less favorable fringe benefit package. This view was explicitly supported in the Senate by Senators Bayh and Cranston, 123 Cong. Rec. S15037, S15058 (daily ed. Sept. 18, 1977), and not specifically opposed.

Absent a state statute to the contrary, it would not be a violation of Title VII if an employer's health insurance policy denied pregnancy benefits for the other dependents of employees (e.g., daughters) so long as the exclusion applied equally to non-spouse dependents of male employees and non-spouse dependents of female employees. Since male and female employees have an equal chance of having pregnant dependent daughters, male and female employees would be equally affected by such an exclusion.

Although costs may increase as a result of providing pregnancy benefits for the spouses of male employees where benefits are made available for the spouses of female employees, the Pregnancy Discrimination Act provides that where costs were apportioned on the date of enactment between employers and employees, any payments or contributions required to comply with the Act may be made by employers and employees in the same proportion, if that apportionment was non-discriminatory.

As a result of the many comments and questions raised on the dependent question, questions 22 and 23 were added to provide additional guidance to interested parties.

With the exception of the addition of questions 18(A), 22, 23, 29, and 30, and the amendments to questions 21 and 30 (now 34), the questions and answers are issued in final form as they were published in 44 FR 13278 (March 9, 1979).

By virtue of the authority vested in it by Section 713 of Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000-12, 78 Stat. 285, the Equal Employment Opportunity Commission hereby approves as final § 1604.10 and adopts questions and answers concerning the

Pregnancy Discrimination Act, Pub. L. 95-555, 92 Stat. 2076 (1978), as an appendix to Part 1604 of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, D.C., this 17th day of April, 1979.

Deborah K. Norton,

Chair, Equal Employment Opportunity Commission.

1. 29 CFR 1604.10 is amended to read as follows:

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment opportunities applicants or employees because of pregnancy, childbirth or related medical conditions is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d)(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth, or related medical conditions the same as other persons not so affected but similar in their ability or

inability to work, must be in compliance with the provisions of § 1604.10(b) by April 29, 1979. In order to come into compliance with the provisions of § 1604.10(b), there can be no reduction of benefits or compensation which were in effect on October 31, 1978, before October 31, 1979 or the expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of § 1604.10(b) upon implementation.

2. The following questions and answers, with an introduction, are added to 29 CFR Part 1604 as an appendix:

Questions and Answers on the Pregnancy Discrimination Act, Pub. L. 95-555, 92 Stat. 2076 (1978)

#### Introduction

On October 31, 1978, President Carter signed into law the *Pregnancy Discrimination Act* (Pub. L. 95-553). The Act is an amendment to Title VII of the Civil Rights Act of 1964 which prohibits, among other things, discrimination in employment on the basis of sex. The *Pregnancy Discrimination Act* makes it clear that "because of sex" or "on the basis of sex", as used in Title VII, includes "because of or on the basis of pregnancy, childbirth or related medical conditions." Therefore, Title VII prohibits discrimination in employment against women affected by pregnancy or related conditions.

The basic principle of the Act is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired, or refused a job or promotion, merely because she is pregnant or has had an abortion. She usually cannot be forced to go on leave as long as she can still work. If other employees who take disability leave are entitled to get their jobs back when they are able to work again, so are women who have been unable to work because of pregnancy.

In the area of fringe benefits, such as disability benefits, sick leave and health insurance, the same principle applies. A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons. Also, any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions. However, health



insurance for expenses arising from abortion is not required except where the life of the mother would be endangered if the fetus were carried to term, or where medical complications have arisen from an abortion.

Some questions and answers about the *Pregnancy Discrimination Act* follow. Although the questions and answers often use only the term "employer," the Act—and these questions and answers—apply also to unions and other entities covered by Title VII.

1. Q. What is the effective date of the Pregnancy Discrimination Act?

A. The Act became effective on October 31, 1978, except that with respect to fringe benefit programs in effect on that date, the Act will take effect 180 days thereafter, that is, April 29, 1979.

To the extent that Title VII already required employers to treat persons affected by pregnancy-related conditions the same as persons affected by other medical conditions, the Act does not change employee rights arising prior to October 31, 1978, or April 29, 1979. Most employment practices relating to pregnancy, childbirth and related conditions—whether concerning fringe benefits or other practices—were already controlled by Title VII prior to this Act. For example, Title VII has always prohibited an employer from firing, or refusing to hire or promote, a woman because of pregnancy or related conditions, and from failing to accord a woman on pregnancy-related leave the same seniority retention and accrual accorded those on other disability leaves.

2. Q. If an employer had a sick leave policy in effect on October 31, 1978, by what date must the employer bring his policy into compliance with the Act?

A. With respect to payment of benefits, an employer has until April 29, 1979, to bring into compliance any fringe benefit or insurance program, including a sick leave policy, which was in effect on October 31, 1978. However, any such policy or program created after October 31, 1978, must be in compliance when created.

With respect to all aspects of sick leave policy other than payment of benefits, such as the terms governing retention and accrual of seniority, credit for vacation, and resumption of former job on return from sick leave, equality of treatment was required by Title VII without the Amendment.

3. Q. Must an employer provide benefits for pregnancy-related conditions to an employee whose

pregnancy begins prior to April 29, 1979, and continues beyond that date?

A. As of April 29, 1979, the effective date of the Act's requirements, an employer must provide the same benefits for pregnancy-related conditions as it provides for other conditions, regardless of when the pregnancy began. Thus, disability benefits must be paid for all absences on or after April 29, 1979, resulting from pregnancy-related temporary disabilities to the same extent as they are paid for absences resulting from other temporary disabilities. For example, if an employee gives birth before April 29, 1979, but is still unable to work on or after that date, she is entitled to the same disability benefits available to other employees. Similarly, medical insurance benefits must be paid for pregnancy-related expenses incurred on or after April 29, 1979.

If an employer requires an employee to be employed for a predetermined period prior to being eligible for insurance coverage, the period prior to April 29, 1979, during which a pregnant employee has been employed must be credited toward the eligibility waiting period on the same basis as for any other employee.

As to any programs instituted for the first time after October 31, 1978, coverage for pregnancy-related conditions must be provided in the same manner as for other medical conditions.

4. Q. Would the answer to the preceding question be the same if the employee became pregnant prior to October 31, 1978?

A. Yes.

5. Q. If, for pregnancy-related reasons, an employee is unable to perform the functions of her job, does the employer have to provide her an alternative job?

A. An employer is required to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition in the same manner as it treats other temporarily disabled employees, whether by providing modified tasks, alternative assignments, disability leaves, leaves without pay, etc. For example, a woman's primary job function may be the operation of a machine, and, incidental to that function, she may carry materials to and from the machine. If other employees temporarily unable to lift are relieved of these functions, pregnant employees also unable to lift must be temporarily relieved of the function.

6. Q. What procedures may an employer use to determine whether to place on leave as unable to work a pregnant employee who claims she is

able to work or deny leave to a pregnant employee who claims that she is disabled from work?

A. An employer may not single out pregnancy-related conditions for special procedures for determining an employee's ability to work. However, an employer may use any procedure used to determine the ability of all employees to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. Similarly, if an employer allows its employees to obtain doctor's statements from their personal physicians for absences due to other disabilities or return dates from other disabilities it must accept doctor's statements from personal physicians for absences and return dates connected with pregnancy-related disabilities.

7. Q. Can an employer have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth?

A. No.

8. Q. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, may her employer require her to remain on leave until after her baby is born?

A. No. An employee must be permitted to work at all times during pregnancy when she is able to perform her job.

9. Q. Must an employer hold open the job of an employee who is absent on leave because she is temporarily disabled by pregnancy-related conditions?

A. Unless the employee on leave has informed the employer that she does not intend to return to work, her job must be held open for her return on the same basis as jobs are held open for employees on sick or disability leave for other reasons.

10. Q. May an employer's policy concerning the accrual and crediting of seniority during absences for medical conditions be different for employees affected by pregnancy-related conditions than for other employees?

A. No. An employer's seniority policy must be the same for employees absent for pregnancy-related reasons as for those absent for other medical reasons.

11. Q. For purposes of calculating such matters as vacations and pay increases, may an employer credit time spent on leave for pregnancy-related reasons differently than time spent on leave for other reasons?

A. No. An employer's policy with respect to crediting time for the purpose of calculating such matters as vacations and pay increases cannot treat employees on leave for pregnancy-related reasons less favorably than employees on leave for other reasons. For example, if employees on leave for medical reasons are credited with the time spent on leave when computing entitlement to vacation or pay raises, an employee on leave for pregnancy-related disability is entitled to the same kind of time credit.

12. Q. Must an employer hire a woman who is medically unable, because of a pregnancy-related condition, to perform a necessary function of a job?

A. An employer cannot refuse to hire a woman because of her pregnancy-related condition so long as she is able to perform the major functions necessary to the job. Nor can an employer refuse to hire her because of its preferences against pregnant workers or the preferences of co-workers, clients, or customers.

13. Q. May an employer limit disability benefits for pregnancy-related conditions to married employees?

A. No.

14. Q. If an employer has an all female workforce or job classification, must benefits be provided for pregnancy-related conditions?

A. Yes. If benefits are provided for other conditions, they must also be provided for pregnancy-related conditions.

15. Q. For what length of time must an employee who provides income maintenance benefits for temporary disabilities provide such benefits for pregnancy-related disabilities?

A. Benefits should be provided for as long as the employee is unable to work for medical reasons unless some other limitation is set for all other temporary disabilities, in which case pregnancy-related disabilities should be treated the same as other temporary disabilities.

16. Q. Must an employer who provides benefits for long-term or permanent disabilities provide such benefits for pregnancy-related conditions?

A. Yes. Benefits for long term or permanent disabilities resulting from pregnancy-related conditions must be provided to the same extent that such benefits are provided for other conditions which result in long term or permanent disability.

17. Q. If an employer provides benefits to employees on leave, such as installment purchase disability insurance, payment of premiums for health, life or other insurance, continued payments into pension, saving or profit

sharing plans, must the same benefits be provided for those on leave for pregnancy-related conditions?

A. Yes, the employer must provide the same benefits for those on leave for pregnancy-related conditions as for those on leave for other reasons.

18. Q. Can an employee who is absent due to a pregnancy-related disability be required to exhaust vacation benefits before receiving sick leave pay or disability benefits?

A. No. If employees who are absent because of other disabling causes receive sick leave pay or disability benefits without any requirement that they first exhaust vacation benefits, the employer cannot impose this requirement on an employee absent for a pregnancy-related cause.

18(A). Q. Must an employer grant leave to a female employee for childcare purposes after she is medically able to return to work following leave necessitated by pregnancy, childbirth or related medical conditions?

A. While leave for childcare purposes is not covered by the Pregnancy Discrimination Act, ordinary Title VII principles would require that leave for childcare purposes be granted on the same basis as leave which is granted to employees for other non-medical reasons. For example, if an employer allows its employees to take leave without pay or accrued annual leave for travel or education which is not job related, the same type of leave must be granted to those who wish to remain on leave for infant care, even though they are medically able to return to work.

19. Q. If state law requires an employer to provide disability insurance for a specified period before and after childbirth, does compliance with the state law fulfill the employer's obligation under the Pregnancy Discrimination Act?

A. Not necessarily. It is an employer's obligation to treat employees temporarily disabled by pregnancy in the same manner as employees affected by other temporary disabilities. Therefore, any restrictions imposed by state law on benefits for pregnancy-related disabilities, but not for other disabilities, do not excuse the employer from treating the individuals in both groups of employees the same. If, for example, a state law requires an employer to pay a maximum of 26 weeks benefits for disabilities other than pregnancy-related ones but only six weeks for pregnancy-related disabilities, the employer must provide benefits for the additional weeks to an employee disabled by pregnancy-related

conditions, up to the maximum provided other disabled employees.

20. Q. If a State or local government provides its own employees income maintenance benefits for disabilities, may it provide different benefits for disabilities arising from pregnancy-related conditions than for disabilities arising from other conditions?

A. No. State and local governments, as employers, are subject to the Pregnancy Discrimination Act in the same way as private employers and must bring their employment practices and programs into compliance with the Act, including disability and health insurance programs.

21. Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees? Of the dependents of all employees?

A. Where an employer provides no coverage for dependents, the employer is not required to institute such coverage. However, if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions.

But the insurance does not have to cover the pregnancy-related conditions of non-spouse dependents as long as it excludes the pregnancy-related conditions of such non-spouse dependents of male and female employees equally.

22. Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical conditions of the spouses of male employees as it provides for its female employees?

A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees. However, where the employer provides coverage for the medical conditions of the spouses of its employees, then the level of coverage for pregnancy-related medical conditions of the spouses of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees. For example, if the employer covers employees for 100 percent of reasonable and customary expenses sustained for a medical condition, but only covers dependent spouses for 50 percent of reasonable and customary expenses for their medical conditions, the pregnancy-related expenses of the

male employee's spouse must be covered at the 50 percent level.

23. Q. May an employer offer optional dependent coverage which excludes pregnancy-related medical conditions or offers less coverage for pregnancy-related medical conditions where the total premium for the optional coverage is paid by the employee?

A. No. Pregnancy-related medical conditions must be treated the same as other medical conditions under any health or disability insurance or sick leave plan available in connection with employment, regardless of who pays the premiums.

24. Q. Where an employer provides its employees a choice among several health insurance plans, must coverage for pregnancy-related conditions be offered in all of the plans?

A. Yes. Each of the plans must cover pregnancy-related conditions. For example, an employee with a single coverage policy cannot be forced to purchase a more expensive family coverage policy in order to receive coverage for her own pregnancy-related condition.

25. Q. On what basis should an employee be reimbursed for medical expenses arising from pregnancy, childbirth or related conditions?

A. Pregnancy-related expenses should be reimbursed in the same manner as are expenses incurred for other medical conditions. Therefore, whether a plan reimburses the employee on a fixed basis, or a percentage of reasonable and customary charge basis, the same basis should be used for reimbursement of expenses incurred for pregnancy-related conditions. Furthermore, if medical costs for pregnancy-related conditions increase, reevaluation of the reimbursement level should be conducted in the same manner as are cost reevaluations of increases for other medical conditions.

Coverage provided by a health insurance program for other conditions must be provided for pregnancy-related conditions. For example, if a plan provides major medical coverage, pregnancy-related conditions must be so covered. Similarly, if a plan covers the cost of a private room for other conditions, the plan must cover the cost of a private room for pregnancy-related conditions. Finally, where a health insurance plan covers office visits to physicians, pre-natal and post-natal visits must be included in such coverage.

26. Q. May an employer limit payment of costs for pregnancy-related medical conditions to a specified dollar amount set forth in an insurance policy,

collective bargaining agreement or other statement of benefits to which an employee is entitled?

A. The amounts payable for the costs incurred for pregnancy-related conditions can be limited only to the same extent as are costs for other conditions. Maximum recoverable dollar amounts may be specified for pregnancy-related conditions if such amounts are similarly specified for other conditions, and so long as the specified amounts in all instances cover the same proportion of actual costs. If, in addition to the scheduled amount for other procedures, additional costs are paid for, either directly or indirectly, by the employer, such additional payments must also be paid for pregnancy-related procedures.

27. Q. May an employer impose a different deductible for payment of costs for pregnancy-related medical conditions than for costs of other medical conditions?

A. No. Neither an additional deductible, an increase in the usual deductible, nor a larger deductible can be imposed for coverage for pregnancy-related medical costs, whether as a condition for inclusion of pregnancy-related costs in the policy or for payment of the costs when incurred. Thus, if pregnancy-related costs are the first incurred under the policy, the employee is required to pay only the same deductible as would otherwise be required had other medical costs been the first incurred. Once this deductible has been paid, no additional deductible can be required for other medical procedures. If the usual deductible has already been paid for other medical procedures, no additional deductible can be required when pregnancy-related costs are later incurred.

28. Q. If a health insurance plan excludes the payment of benefits for any conditions existing at the time the insured's coverage becomes effective (pre-existing condition clause), can benefits be denied for medical costs arising from a pregnancy existing at the time the coverage became effective?

A. Yes. However, such benefits cannot be denied unless the pre-existing condition clause also excludes benefits for other pre-existing conditions in the same way.

29. Q. If an employer's insurance plan provides benefits after the insured's employment has ended (i.e. extended benefits) for costs connected with pregnancy and delivery where conception occurred while the insured was working for the employer, but not for the costs of any other medical condition which began prior to

termination of employment, may an employer: (a) continue to pay these extended benefits for pregnancy-related medical conditions but not for other medical conditions, or (b) terminate these benefits for pregnancy-related conditions?

A. Where a health insurance plan currently provides extended benefits for other medical conditions on a less favorable basis than for pregnancy-related medical conditions, extended benefits must be provided for other medical conditions on the same basis as for pregnancy-related medical conditions. Therefore, an employer can neither continue to provide less benefits for other medical conditions nor reduce benefits currently paid for pregnancy-related medical conditions.

30. Q. Where an employer's health insurance plan currently requires total disability as a prerequisite for payment of extended benefits for other medical conditions but not for pregnancy-related costs, may the employer now require total disability for payment of benefits for pregnancy-related medical conditions as well?

A. Since extended benefits cannot be reduced in order to come into compliance with the Act, a more stringent prerequisite for payment of extended benefits for pregnancy-related medical conditions, such as a requirement for total disability, cannot be imposed. Thus, in this instance, in order to comply with the Act, the employer must treat other medical conditions as pregnancy-related conditions are treated.

31. Q. Can the added cost of bringing benefit plans into compliance with the Act be apportioned between the employer and employee?

A. The added cost, if any, can be apportioned between the employer and employee in the same proportion that the cost of the fringe benefit plan was apportioned on October 31, 1978, if that apportionment was nondiscriminatory. If the costs were not apportioned on October 31, 1978, they may not be apportioned in order to come into compliance with the Act. However, in no circumstance may male or female employees be required to pay unequal apportionments on the basis of sex or pregnancy.

32. Q. In order to come into compliance with the Act, may an employer reduce benefits or compensation?

A. In order to come into compliance with the Act, benefits or compensation which an employer was paying on October 31, 1978 cannot be reduced before October 31, 1979 or before the

expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

Where an employer has not been in compliance with the Act by the times specified in the Act, and attempts to reduce benefits, or compensation, the employer may be required to remedy its practices in accord with ordinary Title VII remedial principles.

**33. Q. Can an employer self-insure benefits for pregnancy-related conditions if it does not self-insure benefits for other medical conditions?**

**A. Yes, so long as the benefits are the same. In measuring whether benefits are the same, factors other than the dollar coverage paid should be considered. Such factors include the range of choice of physicians and hospitals, and the processing and promptness of payment of claims.**

**34. Q. Can an employer discharge, refuse to hire or otherwise discriminate against a woman because she has had or is contemplating having an abortion?**

**A. No. An employer cannot discriminate in its employment practices against a woman who has had or is contemplating having an abortion.**

**35. Q. Is an employer required to provide fringe benefits for abortions if fringe benefits are provided for other medical conditions?**

**A. All fringe benefits other than health insurance, such as sick leave, which are provided for other medical conditions, must be provided for abortions. Health insurance, however, need be provided for abortions only where the life of the woman would be endangered if the fetus were carried to term or where medical complications arise from an abortion.**

**36. Q. If complications arise during the course of an abortion, as for instance excessive hemorrhaging, must an employer's health insurance plan cover the additional cost due to the complications of the abortion?**

**A. Yes. The plan is required to pay those additional costs attributable to the complications of the abortion. However, the employer is not required to pay for the abortion itself, except where the life of the mother would be endangered if the fetus were carried to term.**

**37. Q. May an employer elect to provide insurance coverage for abortions?**

**A. Yes. The Act specifically provides that an employer is not precluded from providing benefits for abortions whether directly or through a collective bargaining agreement, but if an employer decides to cover the costs of abortion, the employer must do so in the**

**same manner and to the same degree as it covers other medical conditions.**

(FR Doc. 79-12387 Filed 4-19-79; 44 FR 10484)

BILLING CODE 8370-09-10

Tuesday  
October 9, 1979

# Equal Employment Opportunity Commission

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## Part II

### Equal Employment Opportunity Commission

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Clarification of Pregnancy Act Guidelines,  
Questions 29 and 30

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1604

(N-915)

Clarification of Pregnancy Act Guidelines, Questions 29 and 30

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim Rule.

**SUMMARY:** This document clarifies the Commission's enforcement position with regard to charges alleging violations of the Pregnancy Act.

**EFFECTIVE DATE:** September 28, 1979.

**FOR FURTHER INFORMATION CONTACT:** Frederick Dorsey, Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506. (202) 634-7060.

**SUPPLEMENTARY INFORMATION:** On April 20, 1979, the Equal Employment Opportunity Commission published Final Interpretive Guidelines, Questions and Answers, related to the Pregnancy Discrimination Act, at 44 FR 23804.

On September 28, 1979, the Commission adopted the attached Notice for distribution to staff. The Notice clarifies the Commission's enforcement position with regard to charges alleging violations of the Pregnancy Act in the areas addressed by Questions and Answers 29 and 30. Coordination of this matter with other affected federal agencies, as is required by Executive Order 12067, is presently taking place. Should the coordination efforts result in any changes in the attached Notice, the revised Notice will be published in the Federal Register.

For the Commission.

Dated: September 28, 1979.

Eleanor Holmes Norton,

Chair.

Notice.—Automatically cancelled in sixty days

Number: N-915.

Date: September 28, 1979.

1. *Subject:* Interim changes in processing certain pregnancy discrimination charges.

2. *Purpose:* This notice sets forth the Commission's interpretation of the requirements for compliance with the Pregnancy Discrimination Act, Pub. L. 95-333, 92 Stat. 2076 (1978), as discussed in the Answers to Questions 29 and 30 of the Commission's "Questions and Answers on the Pregnancy Discrimination Act", published at 44 FR 23804, 23808 (April 20, 1979) and specifically, the manner of compliance during the transition period provided by Section 3 of the Act.

Further, this notice provides interim guidance on the disposition of certain charges brought pursuant to Section 701(k) of Title VII as amended, dealing specifically with pregnancy benefits as discussed in Question and Answer Numbers 29 and 30.

3. *Originator:* Office of Policy Implementation, Office of Field Services and Office of the General Counsel.

4. *Effective date:* September 28, 1979.

5. *Responsibilities:* District and Area Directors are responsible for ensuring that all Equal Opportunity Specialists are familiar with the instructions and the interpretation in this Notice and that letters of determination drafted in or issued from their offices conform to these instructions.

6. *Interpretation:* Questions 29 and 30 deal with health insurance plans which provide benefits for pregnancy and related medical conditions on an extended basis, i.e., the plans pay the expenses of pregnancy-related medical conditions after employment has terminated if conception occurred prior to the termination of employment.

The Commission in Questions 29 and 30 correctly took the position that, in order to come into compliance with the Act by April 29, 1979, employers who provided extended benefits for pregnancy and related medical conditions at the date of enactment of the Pregnancy Discrimination Act, would have to provide extended benefits on the same basis for other medical conditions. Consistent with settled legal principles, the Commission could have taken no other position on the application of Title VII to the issue of extended benefits as expressed in Questions and Answers 29 and 30, and its view of the applicable Title VII law remains unchanged.

However, Section 3 of the Pregnancy Discrimination Act read in conjunction with the legislative history leads us to the conclusion that Congress did not intend to require employers to provide extended benefits for all conditions between the effective date of the Act and October 31, 1979.

Section 3 of the Pregnancy Discrimination Act prohibits the reduction of benefits (for a one year period or until the expiration of a later-expiring collective bargaining agreement) in order to come into compliance with the Act. Hence, extended benefits for pregnancy and related conditions may not be reduced to achieve compliance.

The legislative history demonstrates that, in including Section 3, Congress intended that the Act "not interfere with the legitimate expectations of employees as regards their current fringe benefit coverage, or result in instability in labor-management relations." Sen. Rep. No. 95-331, 95th Cong. 2d Sess., at 8 (1978). Withdrawing extended benefits for pregnancy before October 31, 1979 would in fact interfere with the "legitimate expectations" that employees held as to extended benefit coverage. Similarly, raising benefits of all workers during the transition period could result in "instability in labor-management relations".

Accordingly, it is the Commission's position that compliance with the Pregnancy Discrimination Act does not require health insurance plans which, on the effective date of the Act, provided extended benefit

coverage for pregnancy and related conditions to expand extended benefit coverage to include other conditions before October 31, 1979 or the later expiration of an existing collective bargaining agreement.

7. *Instructions:* In all charges of discrimination which allege that an employer failed to provide extended benefits for medical conditions other than pregnancy or provided extended benefits for pregnancy on a more favorable basis than medical conditions other than pregnancy before October 31, 1979 (or the later expiration of an existing collective bargaining agreement), the charge shall be taken and a co cause letter of determination issued immediately.

In all charges of discrimination which raise the above allegation(s), among others, the investigation shall proceed as usual on the other allegations and the letter of determination shall include a no cause finding on the allegation(s) mentioned above.

Preston David,

Executive Director.

*Filing instructions:* File behind Section 411, Discrimination on the Basis of Pregnancy, Childbirth or Related Medical Conditions.

(FR Doc. 79-3007 Filed 10-9-79; 8:45 AM)

MAILING CODE 4470-04-M

# Equal Employment Opportunity Commission

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Monday  
November 10, 1980

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## Part IV

# Equal Employment Opportunity Commission

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Final Amendment to Guidelines on  
Discrimination Because of Sex

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1604

#### Discrimination Because of Sex Under Title VII of the Civil Rights Act of 1964, as Amended; Adoption of Final Interpretive Guidelines

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final Amendment to Guidelines on Discrimination Because of Sex.

**SUMMARY:** On April 11, 1980, the Equal Employment Opportunity Commission published the Interim Guidelines on sexual harassment as an amendment to the Guidelines on Discrimination Because of Sex, 29 CFR Part 1604.11, 45 FR 25024. This amendment will re-affirm that sexual harassment is an unlawful employment practice. The EEOC received public comments for 60 days subsequent to the date of publication of the Interim Guidelines. As a result of the comments and the analysis of them, these Final Guidelines were drafted.

**EFFECTIVE DATE:** November 10, 1980.

**FOR FURTHER INFORMATION CONTACT:** Karen Dunant, Acting Director, Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 F Street, NW., Washington, D.C. 20541, (202) 634-7100.

**SUPPLEMENTARY INFORMATION:** During the 60-day public comment period which ended on June 10, 1980, the Commission received over 160 letters regarding the Guidelines on sexual harassment. These comments came from all sectors of the public, including employers, private individuals, women's groups, and local, state, and federal government agencies.

The greatest number of comments, including many from employers, were those commending the Commission for publishing guidelines on the issue of sexual harassment, as well as for the content of the guidelines.

The second highest number of comments specifically referred to § 1604.11(c) which defines employer liability with respect to acts of supervisors and agents. Many commentators, especially employers, expressed the view that the liability of employers under this section is too broad and unsupported by case law. However, the strict liability imposed in § 1604.11(c) is in keeping with the general standard of employer liability with respect to agents and supervisory employees. Similarly, the Commission and the courts have held for years that an employer is liable if a supervisor or an agent violates the Title VII, regardless of knowledge or any other

mitigating factor. *Anderson v. Methodist Evangelical Hospital, Inc.*, \_\_\_\_\_

P.Supp. \_\_\_\_\_, 3 EPD ¶8282 (D.C. Ky. 1971), *aff'd* 464 F.2d 723, 4 EPD ¶7901 (10th Cir. 1972); Commission Decision No. 71-969, CCH EEOC Decisions (1973) ¶6193; Commission Decision No. 71-1442, CCH EEOC Decisions (1973) ¶6216. Furthermore, a recent 9th Circuit case on sexual harassment imposed strict liability on the employer where a supervisor harassed an employee without the knowledge of the employer. *Miller v. Bank of America*, 600 F.2d 211, 20 EPD ¶30,086 (9th Cir. 1979). In keeping with this standard, the Commission, after full consideration of the comments and the accompanying concerns, will let § 1604.11(c) stand as it is now worded.

A number of people asked the Commission to clarify the use of the term "agent" in § 1604.11(c). "Agent" is used in the same way here as it is used in § 701(b) of Title VII where "agent" is included in the definition of "employer."

A large number of comments referred to § 1604.11(a) in which the Commission defines sexual harassment. These comments generally suggested that the section is too vague and needs more clarification. More specifically, the comments referred to subsection (3) of § 1604.11(a) as presenting the most troublesome definition of what constitutes sexual harassment. The Commission has considered these comments and has decided that subsection (3) is a necessary part of the definition of sexual harassment. The courts have found sexual harassment both in cases where there is concrete economic detriment to the plaintiff. *Heelan v. Johns-Manville Corp.*, 451 F.Supp. 1382, 16 EPD ¶8330 (D. Colo. 1976). *Barnes v. Castle*, 561 F.2d 983, 14 EPD ¶7755 (D.C. Cir. 1977). *Garber v. Saxon Business Products*, 552 F.2d 1032, 14 EPD ¶7587 (4th Cir. 1977), and where unlawful conduct results in creating an unproductive or an offensive working atmosphere. *Kyriazi v. Western Electric Co.*, 461 F.Supp. 894, 18 EPD ¶8700 (D.N.J. 1978). For analogous cases with respect to racial harassment see *Rogers v. EEOC*, 454 F.2d 234, 4 EPD ¶7597 (5th Cir. 1971); *EEOC v. Murphy Motor Freight Lines, Inc.*, 488 F.Supp. 381, 22 EPD ¶30,888 (D.C. Mn. 1980).

The word "substantially" in § 1604.11(a)(3) has been changed to "unreasonably." Many commentators raised questions as to the meaning of the word "substantially." The word "unreasonably" more accurately states the intent of the Commission and was therefore substituted to clarify that intent.

It should be emphasized that the appropriate course for further

clarification and guidance on the meaning of § 604.11(a)(3) is through future Commission decisions which will deal with specific fact situations. Since sexual harassment allegations are reviewed on a case-by-case basis, any further questions will be answered through Commission decisions which will be fact specific.

A fair number of comments were received on § 1604.11(d) which defined employer liability with respect to acts of persons other than supervisors or agents. Again, as in § 1604.11(c), the traditional Title VII concept prevails regarding employer liability with respect to those people other than agents and supervisory employees. Many commentators asked the Commission to clarify the meaning of "others." As a result, § 1604.11(d) has been separated into two subsections. The new § 1604.11(d) refers to sexual harassment among fellow employees and the liability of an employer in such a situation.

The new § 1604.11(e) refers to the possible liability of employers for acts of non-employees towards employees. Such liability will be determined on a case-by-case basis, taking all facts into consideration, including whether the employer knew or should have known of the conduct, the extent of the employer's control and other legal responsibility with respect to such individuals.

A number of people also raised the question of what an "appropriate action" might be under § 1604.11(d). What is considered to be "appropriate" will be seen in the context of specific cases through Commission decisions.

Section 1604.11(e) of the interim Guidelines, which sets out suggestions for programs to be developed by employers to prevent sexual harassment, now becomes § 1604.11(f). The Commission has received many comments which state that this section is not specific enough. The Commission has decided that the provisions of this section should illustrate several kinds of action which might be appropriate, depending on the employer's circumstances. The emphasis is on preventing sexual harassment, and § 1604.11(f) intends only to offer illustrative suggestions with respect to possible components of a prevention program. Since each workplace requires its own individualized program to prevent sexual harassment, the specific steps to be included in the program should be developed by each employer.

Several commentators raised the question of whether a third party who was denied an employment benefit would have a charge cognizable under Title VII where the benefit was received



by a person who was granting sexual favors to their mutual supervisor. Even though the Commission does not consider this to be an issue of sexual harassment in the strict sense, the Commission does recognize it as a related issue which would be governed by general Title VII principles. Subsection (g) has been added to recognize this as a Title VII issue.

After carefully considering the numerous comments it received, the EEOC made the above changes to the Interim Guidelines and, at its meeting of September 23, 1980, adopted them as the Final Guidelines on sexual harassment, subject to formal interagency coordination. Formal interagency coordination has been completed, and none of the affected agencies had additional comments. Therefore, these Guidelines become final as adopted at the Commission meeting of September 23, 1980.

Signed at Washington, D.C., this 3rd day of November 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, 29 CFR Chapter XIV, Part 1604 is amended by adding § 1604.11 to read as follows:

**PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX**

**§ 1604.11 Sexual harassment.**

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.<sup>1</sup> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

<sup>1</sup> The principles involved here continue to apply to race, color, religion or national origin.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively advising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

(Title VII, Pub. L. 96-352, 78 Stat. 253 (42 U.S.C. 2000e et seq.))  
 IFR Doc. 80-24501 Filed 11-7-80 8:48 am  
 BILLING CODE 5570-08-M

# NOTES

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# Learning Experience 1

## EEO Overview and Definitions

### OVERVIEW

#### COMPETENCY

Define Equality of Employment Opportunity (EEO) and define and give examples for related terms: affected classes, affirmative action, business/operational necessity, enforcement/compliance agencies, equity strategies, job relatedness, protected classes, protective labor laws, overt and systemic employment discrimination.

#### READING

Read Competency 1 on page 7.

#### INDIVIDUAL LEARNING OBJECTIVE

Given a worksheet on equality of employment opportunity terminology, write a definition for equal employment opportunity and match definitions for related terms.

#### INDIVIDUAL ACTIVITY

Complete an exercise designed to help you recall equality of employment opportunity definitions.

#### INDIVIDUAL FEEDBACK

Compare your answers with those provided.

#### GROUP LEARNING OBJECTIVE

Define equal employment opportunity, affected classes, affirmative action, business/operational necessity, enforcement/compliance agencies, equity strategies, job relatedness, protected classes, protective labor laws, overt and systemic employment discrimination. In addition, brainstorm examples of equal employment discriminatory practices that occur in the work place.

#### GROUP ACTIVITY

Review definitions for equality of employment opportunity and related terms, and given a topical outline, brainstorm types of employment discriminatory practices that may occur.

## INDIVIDUAL ACTIVITY

Complete an exercise designed to help you recall equality of employment opportunity definitions.

Review the reading for Competency 1 on page 7. Then, complete the following exercise

- 1 Define equality of employment opportunity: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2 For the following list of terms, match the corresponding definition by placing the letter next to the term.

Affected Classes	A. Identifiable groups who are guarded against employment discrimination by specific statutes (laws).
Affirmative Action	B. The use of employment practices and policies that contribute to the greater utilization of members of affected and protected classes.
Business/Operational Necessity	C. An employment practice, policy, or procedure that may appear benign in intent but by analysis can be shown to have a negative effect on a particular group of people.
Enforcement/Compliance Agencies	D. Groups who continue to suffer the effects of past discrimination and whose status must be determined by court action or by analysis.
Equity Strategies	E. The choice of an employment practice or policy that is blatantly discriminatory.
Job Relatedness	F. Criteria used to determine hiring, firing, training, transfer, or promotion of persons must be related to the specific job content.
Overt Employment Discrimination	G. Processes and actions initiated for the general purpose of furthering equal employment opportunities.
Protected Classes	H. State and federal sources of help for individuals with equality of employment opportunity complaints.
Protective Labor Laws	I. When an employment practice or standard that adversely affects a group is legally condoned.
Systemic Employment Discrimination	J. State statutes that originally were designed to guard working women but now violate Title VII's sex discrimination requirements

## INDIVIDUAL FEEDBACK

Compare your answers with those provided.

- 1 Definition of Equality of Employment Opportunity: EEO is the right of all persons to be hired, to work, and to advance on the basis of individual merit, ability, and potential.
- 2 **D** Affected Classes
  - B** Affirmative Action
  - I** Business/Operational Necessity
  - H** Enforcement/Compliance Agencies
  - G** Equity Strategies
  - F** Job Relatedness
  - E** Overt Employment Discrimination
  - A** Protected Classes
  - J** Protective Labor Laws
  - C** Systemic Employment Discrimination

## GROUP ACTIVITY

Review definitions for equality of employment opportunity and related terms, and given a topical outline, brainstorm types of discriminatory practices that may occur.

**Note:** This outline is to be used by the workshop facilitator.

Facilitator's Outline	Notes
<b>A</b> Introduction <ol style="list-style-type: none"><li>1 Explain that a quick review of key concepts from Competency 1 readings will lay the groundwork for the remainder of the module.</li></ol>	

Facilitator's Outline	Notes
<p>2. Explain that following the review of the key concepts, you will be asking them to brainstorm some sample discriminatory employment practices and the adverse effects of those practices.</p> <p><b>B. Process</b></p> <ol style="list-style-type: none"> <li>1. Review the definition of EEO.</li> <li>2. Review the 10 concepts and definitions covered in the Individual Activity with participants. "Let's quickly review 10 concepts from the reading. I will read a definition and let's see if someone can recall the name of the concept covered in the reading." An alternative would be to use the worksheet from the Individual Activity section.</li> <li>3. Ask several questions to verify that participants understand the concepts. <ul style="list-style-type: none"> <li>• For example, what is the difference between equality of employment opportunity and affirmative action?</li> </ul> <p>Answer: EEO is nondiscrimination in employment. Affirmative action is when employers take action to improve the employment opportunities of protected or affected classes.</p> <ul style="list-style-type: none"> <li>• What is the difference between an affected class and a protected class?</li> </ul> <p>Answer: A protected class is one that has a history of employment discrimination and has been legally identified via an analysis (typically an international workforce analysis or utilization analysis) of an employment practice, policy, or procedure that has had an impact on them.</p> </li> </ol>	<p>You might want to have this already written on the chalkboard or on a large sheet of paper.</p> <p>As individuals name the concept, you might wish to write it on the board or chart paper (e.g., Job Relatedness, Protected Class, etc.)</p>

Facilitator's Outline	Notes
<p>Examples: Minorities are members of a protected class under the legal provisions of Title VII of the Civil Rights Act of 1964. If organization A is discriminating against minorities in midmanagement levels, an analysis can be performed to verify who constitutes the affected class. All minorities are members of a protected class, but only minorities in midmanagement may constitute the affected class in organization A. Affected classes, it should be noted, are not always part of protected classes, as shown in this example.</p> <p>4. Invite participants to share examples and experiences they are aware of that relate to the seven areas of potential employment discrimination covered in the reading. As participants give examples, be sure they indicate the category in which they would place the example.</p> <ul style="list-style-type: none"> <li>• If you are uncertain if an example is a discriminatory one, share your uncertainty and elicit opinions from others in the group. There are few "experts" on this topic.</li> </ul> <p>5. After examples have been shared, review the fact that "adverse or disparate effect" can be defined as employment standards or practices that operate to exclude specific individuals or groups (both protected and affected classes are examples). Invite participants to brainstorm a list of groups that have experienced the "adverse effect" of various employment practices and standards over the years.</p> <p>6. Once the group has a list generated, point out that guidance workers serve many, if not all, of these groups in some way and therefore, how important it is that guidance workers are knowledgeable about equality of employment opportunity.</p>	<p>List seven areas on the chalkboard or on a large sheet of paper: Recruitment, Hiring Practices, Employee Benefits and Wages, Training and Education, Harassment, Promotion, Dismissal.</p> <p>Try to pull out examples for each area.</p> <p>If you need examples, the following are typical: minorities, women, youth, older Americans, persons with a poor credit rating, handicapped, limited English speaking, veterans, nonreaders, persons with an arrest record, persons with particular religious backgrounds, persons with non-USA national origins.</p>

# NOTES

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# Learning Experience 2

## EEO Laws and Executive Orders

### OVERVIEW

#### COMPETENCY

Analyze major federal laws and executive orders related to equality of employment opportunity.

#### READING

Read Competency 2 on page 12.

#### INDIVIDUAL LEARNING OBJECTIVE

Given an open-ended list of the major laws and executive orders covered, summarize each law.

#### INDIVIDUAL LEARNING ACTIVITY

Complete an exercise designed to help you summarize major concepts for EEO laws and executive orders.

#### INDIVIDUAL FEEDBACK

Compare your summaries with the information in the reading.

#### GROUP LEARNING OBJECTIVE

Given a list of clients and concerns, identify the applicable employment laws or executive orders and the appropriate enforcement/compliance agency for that concern.

#### GROUP ACTIVITY

In small groups, identify laws and enforcement/compliance agencies that might be applicable to those scenarios.

## **INDIVIDUAL ACTIVITY**

Complete an exercise designed to help you summarize major concepts for EEO laws and executive orders.

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Review the reading for Competency 2 on page 12. Then, summarize each of the laws and executive orders listed below.

### **I Laws that Prohibit Discrimination by Employers**

A *Equal Pay Act of 1963, as amended*

Summary:

B *Civil Rights Act of 1964, Title VII, as amended*

Summary

C *Age Discrimination in Employment Act of 1967, as amended*

Summary:

D. *Equal Employment Opportunity Act of 1972*

Summary

### **II Laws and Executive Orders that Prohibit Discrimination as a Condition of Federal Financial Assistance**

A. *Executive Order 11246, as amended*

Summary

**B. *Rehabilitation Act of 1973, as amended***

Summary. Section 503:

Summary Section 504:

**C. *Vietnam Era Veterans' Readjustment Act of 1974***

Summary:

**III. *Laws and Regulations that Prohibit Discrimination in Specific Federally Funded Programs***

**A. *Title IX of the Educational Amendments of 1972***

Summary:

**IV. *Executive Orders and Regulations that Govern Nondiscrimination for Federal Employees***

**A. *Equal Employment Opportunity Act of 1972***

Summary:

**B. *Reorganization Plan No. 1 of 1978***

Summary:

**C. *Executive Order 12067***

Summary:

## INDIVIDUAL FEEDBACK

Compare your summaries with the information in the reading.

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After you have completed the Individual Activity, compare your summaries to those provided in the reading. Correct your answers if necessary.

## GROUP ACTIVITY

In small groups, identify laws and enforcement/compliance agencies that might be applicable to those scenarios.

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**Note:** This outline is to be used by the workshop facilitator.

Facilitator's Outline	Notes
<p>A. Introduction</p> <ol style="list-style-type: none"><li>1 Explain that the purpose of the exercise is to provide an impetus for applying the information in the reading for Competency 2.</li><li>2 Have participants review the reading for Competency 2 on page 12</li></ol> <p>B. Process</p> <ol style="list-style-type: none"><li>1. Break the large group into small groups of four members each.</li><li>2 Ask the small groups to complete the worksheet for the ten scenarios.</li></ol> <p>For each scenario:</p> <ul style="list-style-type: none"><li>• Is it legal or illegal?</li><li>• If illegal, which law(s) apply?</li><li>• Which enforcement/compliance agency is involved?</li></ul> <p>C. Large Group Summary</p> <ol style="list-style-type: none"><li>1 After the small groups have completed the worksheet, initiate a large group discussion.</li></ol>	<p>Allow 45 minutes for this exercise.</p> <p>A client's first step usually is to contact a state office that provides assistance in selecting appropriate investigative procedures for the specific concern. Because many states have enacted state employment laws, particularly ones paralleling Title VII, it also would be appropriate to use a state-level enforcement agency.</p>

Facilitator's Outline	Notes
2. Ask small groups to report their findings for each scenario.	It would be helpful to prepare a format on a chalkboard or a large sheet of paper for recording the small group information reported.
3. Discuss those scenarios where differences between ratings exist.	Typically, there will be varied interpretations that support the different views, e.g., "We thought the professor was tenured/ untenured."

# NOTES

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## Worksheet

Scenario	Is This Legal or Illegal?	If Illegal, Applicable Law(s)	Enforcement/ Compliance Agency
<p>1 A retired 62-year-old man informs you that a local restaurant is advertising for waiters and waitresses between the ages of 16 and 21. He would like to apply since the restaurant is close to his home. What should he know?</p> <p>2 A 52-year-old woman informs you that she recently was fired from a private business where she had worked for 4 years. Two weeks after she was fired, the company began advertising for her former position. What should she know?</p> <p>3. A student informs you that he applied for a job and is certain that he was not hired because he is Jewish. On the job application, he had to list his mother's maiden name, which was "Segal." Although he indicated his availability to work Friday nights and Saturdays, the employer did not seem to believe him. What should he know?</p> <p>4. Your friend's grandmother informs you that she is sure she is being paid less than a fellow worker who has less job experience and years with the company but is the father of four children. What should she know?</p> <p>5 A Vietnam veteran is angry that she was not hired for a position for which she was well qualified; instead, the firm hired another woman. What should she know?</p> <p>6 A wheelchair-bound, 26-year-old man tells you he is frustrated and about to quit his job or get fired because he cannot complete his work, since he does not have a desk that accommodates his wheelchair. Although the man has informed his employer of his discomfort with the current desk and its effect on the quantity of work he is producing, the employer does not seem to care and has told him he should quit the job. What should this man know?</p>			

Scenario	Is This Legal or Illegal?	If Illegal, Applicable Law(s)	Enforcement/ Compliance Agency
<p>7. A state government worker complains that his supervisor has had three opportunities to recommend him for advanced training, which most likely would lead to a job promotion. He feels the supervisor is not recommending him because he is a member of a minority group. What should this man know?</p> <p>8. A female professor from a state university tells you that when she informed her department chairperson that she was pregnant, she was told that she would not be issued another teaching contract and would be "let go." What should she know?</p> <p>9. A woman informs you that her supervisor is upsetting her by making lewd comments and physical advances when they are alone together in the office. What should she know?</p> <p>10. Two minority high school students apply for jobs with a local construction company that is a subcontractor for a federally funded highway project. They inform you that the contractor would not allow them to fill out applications even though several Caucasian youths were doing so at the time. What should they know?</p>			



# Learning Experience 3

EEO Guidelines

## OVERVIEW

**COMPETENCY** Analyze major federal guidelines related to equality of employment opportunity.

**READING** Read Competency 3 on page 17.

**INDIVIDUAL LEARNING OBJECTIVE** Research guidelines for laws and executive orders that affect the clients you assist.

**INDIVIDUAL ACTIVITY** Write letters requesting information on guidelines, laws, and laws and executive orders that relate to your clients.

**INDIVIDUAL FEEDBACK** Review the results of the correspondence you initiate.

**GROUP LEARNING OBJECTIVE** Identify the equity issues affecting clients you typically serve and identify information and guidelines you wish to obtain on those topics.

**GROUP ACTIVITY** Receive feedback on the guidelines you have selected in small groups.

## INDIVIDUAL ACTIVITY

Write letters requesting information on guidelines issued for laws and executive orders that relate to your clients.

Review the reading for Competency 3 on page 17. Then, list the types of clients you serve and related equality of employment concerns.

Clients/Concerns	Laws/Executive Orders that Apply
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

Next, check the laws, executive orders related to your clients' needs on which you want more information and guidelines.

Law/Executive Order	Compliance/ Enforcement Agency	Check (✓)
1 P.L. 88-38: Equal Pay Act of 1963, as amended	EEOC	
2 P.L. 88-352: The Civil Rights Act of 1964, Title VII, as amended	EEOC	
3 E.O. 11246 of 1965, as amended by E.O. 11375 of 1967	OFCCP	
4 P.L. 95-256: Age Discrimination Employment Act of 1967, as amended	EEOC	
5 P.L. 92-261: Equal Employment Opportunity Act of 1972	EEOC	
6 P.L. 92-318: Title IX, The Educational Amendments Act of 1972.	U.S. Department of Education	
7 P.L. 93-112: Rehabilitation Act of 1973 Section 503 Section 504	OFCCP U.S. Department of Education	
8 P.L. 93-508: Vietnam Era Veterans' Readjustment Act of 1974	OFCCP	
9 E.O. 12067 of 1978	EEOC	

Write a letter to each of the enforcement/compliance agencies responsible for the laws/executive orders that are appropriate for your clients. The letters should request information about the guidelines.

**Addresses:**

- 1 Equal Employment Opportunity Commission  
Office of Public Affairs  
2401 E Street, NW  
Washington, DC 20506
- 2 U.S. Department of Education  
Office for Civil Rights  
Washington, DC 20202
- 3 U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
Employment Standards Administration  
Washington, DC 20210
- 4 Your state enforcement/compliance agency (listed in appendix A)

## **INDIVIDUAL FEEDBACK**

**Review the results of the correspondence you initiate.**

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After you received responses to your letters, review them to determine if you obtained the requested information

## **GROUP ACTIVITY**

**Receive feedback on the guidelines you have selected in small groups.**

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**Note:** This outline is to be used by the workshop facilitator.

Facilitator's Outline	Notes
<p>A. Introduction</p> <ol style="list-style-type: none"><li>1. Explain that the purpose of this activity is to assist them to begin planning "back home" strategies for obtaining more information and guidelines on topics (religion, sex, handicapped, etc.) of concern to the clients they serve. First, they will individually analyze what additional information they need and then they will share information and receive feedback in small groups.</li><li>2. Indicate to participants that the purposes of "guidelines" in conjunction with legislation and executive orders are--<ul style="list-style-type: none"><li>• to aid employers in interpreting and implementing the law/ executive order.</li><li>• to facilitate uniform interpretation of the law/executive order for litigation purposes, and</li><li>• to serve as a means of issuing amendments to existing guidelines</li></ul></li></ol>	

Facilitator's Outline	Notes
<p><b>B. Process</b></p> <ol style="list-style-type: none"> <li>1. Ask participants to sit in groups of three.</li> <li>2. Ask participants to individually fill out the "Group Activity Worksheet."</li> <li>3. Tell participants that once everyone in the trio has completed the worksheet, they should share their summary statements.</li> <li>4. Reconvene participants into a large group. Ask participants to summarize major points discussed in trios. Ask individuals to share some of their next steps.</li> <li>5. Remind participants that it is one thing to understand employment laws and to assist clients with EEO concerns, but it is quite another to plan and implement equity strategies in one's own work setting. Points for discussion might include: <ul style="list-style-type: none"> <li>• What EEO-related concerns do you have about your own work setting?</li> <li>• What equity strategies can you think of to help to combat the EEO issues in your work setting?</li> </ul> </li> </ol>	<p>Allow about 10 minutes. Encourage participants to be specific in their "Next Steps." Example: "I will meet with my state enforcement agency representative to learn more about how I can use that agency's services."</p> <p>Allow about 30 minutes.</p> <p>Allow 30 minutes.</p>

## Group Activity Worksheet

My clients and their employment concerns:

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### ANALYZING MY NEEDS

	<i>Equal Pay Act of 1963 as amended</i>	<i>The Civil Rights Act of 1964, Title VII, as amended</i>	<i>E.O. 11246 of 1965, as amended by E.O. 11375 of 1967</i>	<i>Age Discrimination Employment Act of 1967, as amended</i>	<i>Equal Employment Opportunity Act of 1972</i>	<i>Title IX The Educational Amendments Act of 1972.</i>	<i>Rehabilitation Act of 1973 Section 503</i>	<i>Rehabilitation Act of 1973, Section 504</i>	<i>Vietnam Era Veterans' Readjustment Act of 1974</i>	<i>E.O. 12067 of 1978</i>
1. Can I summarize this law/E.O.?										
2. Do I have clients affected by this law/E.O.?										
3. Do I need to request more information or guidelines on this law/E.O.?										
4. Can I name the compliance agency for this law/E.O.?										
5. Do I know a state/local office or resource to obtain more information on this law/E.O.?										

**A Where Am I Now?**

With regard to EEO, what do I know? What are my attitudes and beliefs about EEO? What are my strengths in helping clients with EEO concerns?

**B Where Would I Like To Be?**

What do I have yet to learn? In what ways do I need to change? How would I like to better assist my clients with EEO concerns?

**C. How Will I Get There?**

What do I need to do to accomplish what I listed in Section B? What "next steps" do I need to take.

# NOTES

Lined area for notes, consisting of approximately 25 horizontal lines.



## Enforcement/Compliance Agencies

- EEOC
- U.S. Department of Education

# NOTES

[Faint, illegible text, possibly bleed-through from the reverse side of the page]

## U.S. Equal Employment Opportunity Commission District and Area Offices

EEOC has 22 district and 27 area offices. The district offices handle the procedures of (1) rapid charge processing, (2) backlog charge processing, and (3) Commission-initiated systemic cases. The area offices typically handle (1) rapid charge processing, (2) charge intake, and (3) face-to-face fact-finding and early resolutions. In some instances, area offices offer backlog charge processing services also.

### Locations\*

Albuquerque, NM  
\*Atlanta, GA  
\*Baltimore, MD  
\*Birmingham, AL  
Boston, MA  
Buffalo, NY  
\*Charlotte, NC  
\*Chicago, IL  
Cincinnati, OH  
\*Cleveland, OH  
Dallas, TX  
Dayton, OH  
\*Denver, CO  
\*Detroit, MI  
El Paso, TX  
Fresno, CA  
Greensboro, NC  
Greenville, SC  
\*Houston, TX  
\*Indianapolis, IN  
Jackson, MS  
Kansas City, MO  
Little Rock, AR  
\*Los Angeles, CA

Louisville, KY  
\*Memphis, TN  
\*Miami, FL  
\*Milwaukee, WI  
Minneapolis, MN  
Nashville, TN  
Newark, NJ  
\*New Orleans, LA  
\*New York, NY  
Norfolk, VA  
Oakland, CA  
Oklahoma City, OK  
\*Philadelphia, PA  
\*Phoenix, AR  
Pittsburgh, PA  
Raleigh, NC  
Richmond, VA  
San Antonio, TX  
San Diego, CA  
\*San Francisco, CA  
San Jose, CA  
\*Seattle, WA  
\*St. Louis, MO  
Tampa, FL  
Washington, DC

\*Indicates district offices

# U.S. Department of Education

## Regional Offices of Civil Rights

### Region I

(Connecticut, Maine, Massachusetts,  
New Hampshire, Rhode Island, Vermont):

14th Floor  
140 Federal Street  
Boston, Massachusetts 02110  
(617) 223-6397

### Region II

(New Jersey, New York, Puerto Rico,  
Virgin Islands):

26 Federal Plaza  
New York, New York 10007  
(212) 264-4633

### Region III

(Delaware, D.C., Maryland, Pennsylvania,  
Virginia, West Virginia):

Gateway Building  
3535 Market Street  
Post Office Box 13716  
Philadelphia, Pennsylvania 19101  
(215) 596-6772

### Region IV

(Alabama, Florida, Georgia, Kentucky,  
Mississippi, North Carolina, South Carolina,  
Tennessee):

101 Marietta Street  
27th Floor - Suite 2906  
Atlanta, Georgia 30323  
(404) 221-2954

### Region V

(Illinois, Indiana, Minnesota, Michigan, Ohio,  
Wisconsin):

300 South Wacker Drive  
Chicago, Illinois 60606  
(312) 353-2521

### Region VI

(Arkansas, Louisiana, New Mexico, Oklahoma,  
Texas):

1200 Main Tower Building  
Dallas, Texas 75202  
(214) 655-3951

### Region VII

(Iowa, Kansas, Missouri, Nebraska):

Twelve Grand Building  
1150 Grand Avenue  
Kansas City, Missouri 64106  
(816) 374-2474

### Region VIII

(Colorado, Montana, North Dakota,  
South Dakota, Utah, Wyoming):

Federal Building  
1961 Stout Street  
Denver, Colorado 80294  
(303) 837-2025

### Region IX

(Arizona, California, Hawaii, Nevada):

14th Floor  
1275 Market Street  
San Francisco, California 94103  
(415) 556-8586

### Region X

(Alaska, Idaho, Oregon, Washington):

1321 Second Avenue - MS 723  
Seattle, Washington 98101  
(202) 442-2990

Note: The Office of Civil Rights (OCR) suggests that any person who has a complaint of discrimination covered by the U.S. Department of Education, OCR, notify the closest regional office. Letters should contain as much background information as possible. If needed, citizens may ask the regional offices for help in writing a complaint.

### Laws and Executive Orders

- Equal Pay Act of 1963, as amended
- Title VII of the Civil Rights Act of 1964, as amended
- Age Discrimination in Employment Act of 1967, as amended
- Executive Order 11246, as amended
- Rehabilitation Act of 1973, as amended (Sections 503 and 504)
- Vietnam Era Veterans' Readjustment Act of 1974
- Women's Educational Equity Act of 1978
- Reorganization Plan No. 1 of 1978
- Executive Order 12067, as amended

# NOTES

**THE EQUAL PAY ACT OF 1963 (29 U.S.C. Sec. 206(d))**  
**THE FAIR LABOR STANDARDS ACT OF 1938,**  
**AS AMENDED<sup>1</sup> (29 U.S.C. Sec. 201, et seq.)**

**An Act**

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes

be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938."

**FINDING AND DECLARATION OF POLICY**

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair

method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. The Congress further finds that the employment of persons in domestic service in households affects commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning powers.<sup>2</sup>

**DEFINITIONS**

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the

<sup>1</sup> This publication contains the original text of the Fair Labor Standards Act of 1938 as set forth in 52 Stat. 1060, revised to reflect the changes effected by the amendments listed in this footnote, which may be found in official text at the cited pages of the Statutes at Large. This publication contains 52 Stat. 1060 as amended by:

1. The Act of August 9, 1939	53 Stat. 1266
2. Section 301 of Resignation Plan No. 11 of 1939	53 Stat. 1436
3. Sections 401-411 of the Act of June 26, 1940	54 Stat. 611
4. The Act of October 29, 1941	55 Stat. 756
5. Resignation Plan No. 2 of 1946	60 Stat. 1091
6. The Portal-to-Portal Act of 1947	61 Stat. 84
7. The Act of July 26, 1949	63 Stat. 446
8. The Fair Labor Standards Amendments of 1949	63 Stat. 810
9. Resignation Plan No. 6 of 1949	64 Stat. 1263
10. The Fair Labor Standards Amendments of 1955	69 Stat. 711
11. The Amendments in Labor Standards Amendments of 1956	70 Stat. 1119
12. The Act of August 30, 1957	71 Stat. 514
13. The Act of August 27, 1958	72 Stat. 844
14. Section 12 of the Act of August 29, 1958	72 Stat. 948
15. The Act of July 12, 1960	74 Stat. 417
16. The Fair Labor Standards Amendments of 1961	75 Stat. 65
17. The Equal Pay Act of 1963	77 Stat. 56
18. The Fair Labor Standards Amendments of 1965	80 Stat. 830
19. Section 5 of the Department of Transportation Act	80 Stat. 911
20. The Act of September 11, 1967 amending Title 5 of the U.S.C.	81 Stat. 722
21. Section 908 of the Education Amendments of 1972	86 Stat. 235
22. The Fair Labor Standards of 1974	88 Stat. 55
23. The Fair Labor Standards of 1977	91 Stat. 1245

<sup>2</sup> The language of the Fair Labor Standards Act of 1938, as revised by the amendments through 1960, is set in the "Century" type face. Added or amended language as enacted by subsequent amendments is presented by several different type faces as follows:

Amendments	Typeface Used	Public Law	Date Enacted	Statute Citation
The 1961	Century			
1961	Century Boldface	87-30	5/5/61	75 Stat. 65
1965	Century Italic	89-601	9/23/66	80 Stat. 830
1972	Century Boldface Italic	92-318	6/23/72	86 Stat. 235 at 276
1974	Century Boldface Italic	93-159	4/8/74	88 Stat. 55
1977	Century Boldface	95-151	11/1/77	91 Stat. 1245

Whenever a change of typeface is made to provisions in the case of the gradual phase-out of exemptions, the changes are shown immediately following the provision to which they apply.

Section 10 of the Fair Labor Standards Act of 1938, as amended, provides that the Secretary of Labor may, in his discretion, exempt any employer or class of employers from the provisions of the Act. The provisions of the Act which are set in Helvetica type are those which have been exempted.

This publication is being prepared in the 1977 edition of the Statutes at Large, U.S. Department of Labor, Office of Information Services, Fair Labor Standards Amendments of 1977.



several States or between any State and any place outside thereof.<sup>3</sup>

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency,<sup>4</sup> but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(v) in the Library of Congress;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level, or

(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.<sup>5</sup>

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.<sup>6</sup>

<sup>3</sup> Similar language was added to the Act by the Fair Labor Standards Amendments of 1966. These amendments also excluded from the definition of employee "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year." These individuals are now included.

<sup>4</sup> As amended by section 311 of the Fair Labor Standards Amendments of 1949.

<sup>5</sup> As amended by section 311 of the Fair Labor Standards Amendments of 1949. This language was originally added to the Act to coverage until the Fair Labor Standards Amendments of 1949, when it was extended to "employees of a State or a political subdivision thereof employed (1) in a hospital, institution, or other institution in the last sentence of subsection (e) of this section, or (2) in the operation of a railway or carrier referred to in such sentence."



THE EQUAL PAY ACT OF 1963  
THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor,<sup>13</sup> to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. *In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.*

[Effective January 1, 1979, section 3(m) is amended by striking out "50 per centum" and inserting in lieu thereof "45 per centum".

[Effective January 1, 1980, section 3(m) is amended by striking out "45 per centum" and inserting in lieu thereof "40 per centum".]

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction,

repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.<sup>14</sup>

(o) Hours worked.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.<sup>14</sup>

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. *For purposes of this subsection, the activities performed by any person or persons—*

*(1) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or*

<sup>13</sup> See provided by Reorganization Plan No. 6 of 1950 set out under section (f)(1)

<sup>14</sup> Section 3(d) of the Fair Labor Standards Amendments of 1963. (The original language of section 3(d) was restored by the Fair Labor Standards Amendments of 1966.)

gifted children, a preschool,<sup>15</sup> elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit), or

(2) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a state or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(3) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which—

(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated)<sup>16</sup> or is a gasoline service establishment whose annual gross volume of sales is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in paragraph (2), whose annual gross volume of sales made or business done is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated);

(2) is an enterprise which is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross

volume of sales made or business done is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1978, whose annual gross volume of sales made or business done is not less than \$275,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1980, whose annual gross volume of sales made or business done is not less than \$325,000 (exclusive of excise taxes at the retail level which are separately stated), and after December 31, 1981, whose annual gross volume of sales made or business done is not less than \$362,500 (exclusive of excise taxes at the retail level which are separately stated);<sup>17</sup>

(3) is engaged in laundering, cleaning, or repairing clothing or fabrics;<sup>18</sup>

(4) is engaged in the business of construction or reconstruction, or both;<sup>19</sup>

(5) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool,<sup>20</sup> elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit);<sup>21</sup> or

(6) is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for

<sup>15</sup> As added by section 9(a) of the Fair Labor Standards Amendments of 1977 (effective November 1, 1977). Prior to those amendments, paragraphs (5), (1), (2), and (6) of section 13(s) were numbered (2), (3), (4), and (5), respectively.

<sup>16</sup> Prior to the Fair Labor Standards Amendments of 1966, the Act's minimum wage and overtime requirements did not generally apply to employees of laundries or dry cleaning establishments, even if such establishments were part of a covered enterprise, because of the language in section 13(b)(3) (since repealed) which exempted "any employee employed by an establishment engaged in laundering, cleaning or repairing clothing or fabrics, more than 50 per centum of which establishment's annual dollar volume of sales of such services is made within the State in which the establishment is located. Provided that 75 per centum of such establishment's annual dollar volume of sales of such services is made to customers who are not engaged in a mining, manufacturing, transportation or communication business."

<sup>17</sup> See footnote 16.

<sup>18</sup> See footnote 16.

<sup>19</sup> Prior to the Fair Labor Standards Amendments of 1966, the Act's minimum wage and overtime requirements did not apply to most of the establishments listed in this subsection because section 13(b)(3) (as it then read) exempted employees of a hospital or an institution which is primarily engaged in the care of the sick, the aged, the mentally ill or defective, residing on the premises of such institution, or a school for physically or mentally handicapped or gifted children. Public schools were also exempt by virtue of the Act's definition of the word "employer" which prior to 1966, excluded States and their political subdivisions.

the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection. The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Notwithstanding paragraph (2), an enterprise which is comprised of one or more retail or service establishments, which on June 30, 1978, was subject to section 6(a)(1), and which because of a change in the dollar volume standard in such paragraph prescribed by the Fair Labor Standards Amendments of 1977 is not subject to such section, shall, if its annual gross volume of sales made or business done is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated), pay its employees not less than the minimum wage in effect under such section on the day before such change takes effect and shall pay its employees in accordance with section 7. A violation of the preceding sentence shall be considered a violation of section 6 or 7, as the case may be.

(i) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.<sup>22</sup>

(ii) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(iii) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(iv) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(v) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

#### ADMINISTRATION<sup>23</sup>

SEC. 4 (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administra-

<sup>22</sup> As amended by section 5a of the Fair Labor Standards Amendments of 1977, Public Law 95-135. Prior to January 1, 1978, the dollar amount was \$20.

<sup>23</sup> The division established in this Act was made by Reorganization Plan No. 6 of 1950.

tor"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$36,000<sup>24</sup> a year.

*Excerpts From Reorganization Plan No. 6 of 1950, 64 Stat. 1263*

"Except as otherwise provided [with respect to hearing examiners], there are hereby transferred to the Secretary of Labor all functions of all other officers of the Department of Labor and all functions of all agencies and employees of such Department . . . . The Secretary of Labor may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Labor of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan."

(b) The Secretary of Labor<sup>25</sup> may, subject to the civil service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1949<sup>26</sup> as amended. The Secretary<sup>27</sup> may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Secretary<sup>28</sup> in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Secretary,<sup>29</sup> no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Secretary<sup>30</sup> shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d)(1) The Secretary<sup>31</sup> shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further

<sup>24</sup> Executive Order 11811 of October 7, 1974.

<sup>25</sup> As amended by section 40a of Reorganization Plan No. 11 of 1950 (64 Stat. 1436) and by Reorganization Plan No. 6 of 1950 (64 Stat. 1263).

<sup>26</sup> As amended by section 1194 of the Act of October 23, 1949 (61 Stat. 872).

<sup>27</sup> See footnote 25.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> As amended by Reorganization Plan No. 6 of 1950.

<sup>31</sup> *Ibid.*

legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent.<sup>32</sup> Such report shall also include a summary of the special certificates issued under section 14(b).

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate.) The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 14 of this Act.

(c) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete

report of his findings and determinations to the President and to the Congress: *Provided:* That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.

#### MINIMUM WAGES

SEC. 6. (a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than \$2.65 an hour during the year beginning January 1, 1978, not less than \$2.90 an hour during the year beginning January 1, 1979, not less than \$3.10 an hour during the year beginning January 1, 1980, and not less than \$3.35 an hour after December 31, 1980, except as otherwise provided in this section;

(d)<sup>33</sup> (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant

<sup>32</sup>Section 2 of the Fair Labor Standards Amendments of 1965

<sup>33</sup>Subsection (d) added by Equal Pay Act of 1963, 77 Stat. 56, effective on and after June 11, 1964 except for employees covered by collective bargaining agreements in certain cases.

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to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

ATTENDANCE OF WITNESSES

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor<sup>74</sup> and the industry committees.

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOME-  
WORK REGULATIONS

SEC. 11. (a) The Secretary of Labor<sup>75</sup> or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as

he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Secretary<sup>76</sup> shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary<sup>77</sup> shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Secretary of Labor<sup>78</sup> may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Secretary<sup>79</sup> as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

EXEMPTIONS

SEC. 13.<sup>84</sup> (a) The provisions of sections 6 (*except section 6(d) in the case of paragraph (1) of this subsection*)<sup>85</sup> and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (*including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools*), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act,

<sup>74</sup> *Ibid*

<sup>75</sup> *Ibid*

<sup>76</sup> See footnote 9 and 30

<sup>77</sup> See footnote 30

<sup>78</sup> Section 13 is amended by section 11 of the Fair Labor Standards Amendments of 1949 by Reorganization Plan No. 6 of 1950, and as further amended by the Fair Labor Standards Amendments of 1961, 1966, 1974, and 1977

<sup>79</sup> As amended by the Education Amendments of 1972, 86 Stat. 235 at 375, effective July 1, 1972

<sup>84</sup> As amended by Reorganization Plan No. 6 of 1950

<sup>85</sup> *Ibid*

except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(5)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s).<sup>86</sup> A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry;<sup>87</sup> or

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center,<sup>88</sup> if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 6 and 7 provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the national Wildlife Refuge System, under a contract with the

Secretary of the Interior or the Secretary of Agriculture,<sup>89</sup> or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells; *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or

<sup>86</sup>Effective January 1, 1977, the Fair Labor Standards Amendments of 1974 deleted a clause at the end of this sentence which had read "no such establishment has an annual dollar volume of sales which is less than \$200,000 (exclusive of excise taxes at the retail level) (such are separately stated). The \$200,000 test was in effect during calendar year 1972. A \$100,000 test was in effect during calendar year 1973. Prior to January 1, 1975, a \$50,000 test was in effect.

<sup>87</sup>See section 13(g) which makes additional limitations on the applicability of the section 13(a)(2) and section 13(a)(3) exemptions to certain conglomerates.

<sup>88</sup>Added by section 11 of the Fair Labor Standards Amendments of 1972, effective November 1, 1972.

<sup>89</sup>The last clause of section 13(a)(3) of the Act was added by section 10(a) of the Fair Labor Standards Amendments of 1967, effective January 1, 1967. See also section 13(b)(2)(i) of the Act, as added by the 1977 Amendments.

person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock;<sup>90</sup> or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 11; or

(8)<sup>91</sup> any employee employed in connection with the publication of any weekly, semi-weekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) \* \* \* (Repealed)

[Note: Section 13(a)(9) (relating to motion picture theater employees) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(27).]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) \* \* \* (Repealed)

[Note: Section 13(a)(11) (relating to telegraph agency employees) was repealed by section 10 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption from the overtime provisions only in section 13(b)(23), which was repealed effective May 1, 1976.]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13) \* \* \* (Repealed)

[Note: Section 13(a)(13) (relating to small logging crews) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in Section 13(b)(28).]

(14) \* \* \* (Repealed)

[Note: Section 13(a)(14) (relating to employees employed in growing and harvesting of shade grown tobacco) was repealed by section 9 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for certain tobacco pro-

ducing employees from the overtime provisions only in section 13(b)(22). The section 13(b)(22) exemption was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

(15) any employee employed on a casual basis in domestic service employment to provide baby-sitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(g) The exemption from section 6 provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 6 provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) if it were in an enterprise described in section 3(s).

#### LEARNERS, APPRENTICES, STUDENTS, AND HANDICAPPED WORKERS

SEC. 14.<sup>117</sup> (a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

<sup>90</sup> This section of the Fair Labor Standards Act Amendments of 1966 (the section 13(a)(8) exemption) was included in a bill which originally applied to the entire United States. For additional changes made by the Fair Labor Standards Act Amendments of 1974, see footnote 87.

<sup>91</sup> As amended by the Fair Labor Standards Amendments of 1966 (which deleted the words "or not" and which formerly provided the words "Published").

<sup>117</sup> As amended by section 24 of the Fair Labor Standards Amendments of 1974.

(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than \$1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this Act before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment, whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total

hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment, whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than \$1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than \$1.60 an



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hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(e)), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B)<sup>118</sup> If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed six, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed six—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time

students by institutions of higher education; except that if the Secretary determines that a institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D)<sup>119</sup> To minimize paperwork for, and to encourage, small business to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

(i) a listing of the name, address, and business of the applicant employer,

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons other than persons employed under special certificates.

(c)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of —

<sup>118</sup>As amended by section 12 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977. The 1977 amendments substituted "six" for "four."

<sup>119</sup>Added by section 12 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

(A) *handicapped workers engaged in work which is incidental to training or evaluation programs, and*

(B) *multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,*

*at wages which are less than those required by this subsection and which are related to the worker's productivity.*

(3)(A) *The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.*

(B) *For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.*

(d) *The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.*

#### PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Secretary of Labor<sup>120</sup> issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced

by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful.<sup>121</sup>

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Secretary<sup>122</sup> issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.<sup>123</sup>

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

#### PENALTIES<sup>124</sup>

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the

<sup>120</sup>As amended by section 12(a) of the Fair Labor Standards Amendments of 1949

<sup>121</sup>See footnote 71

<sup>122</sup>As amended by section 12(b) of the Fair Labor Standards Amendments of 1949

<sup>123</sup>The Partial to Partial Act of 1947 relieves employers from certain liabilities and punishments under this Act in circumstances specified in that Act.

<sup>124</sup>See footnote 10

conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 15(a)(3) of the Act shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 15(a)(3) including without limitation employment, reinstatement, promotion, and the payment of wages and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.<sup>125</sup> The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 15(a)(3).<sup>126</sup>

(c) The Secretary<sup>127</sup> is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment

shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of *the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages.*<sup>128</sup> *The right provided by subsection (b) to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary.* Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary under this subsection for the purposes of the *statutes*<sup>129</sup> of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.<sup>130</sup>

(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 or on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in

<sup>125</sup> The Act of 1963, as amended by section 6(a) of the Portal-to-Portal Act of 1947 and section 14 of the Fair Labor Standards Amendments of 1949, amended subsection (b) of this section to read: "The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor as authorized to bring such an action under subsection 15(a)(3)." (Section 6(a) of the Act of 1963, as amended.)

<sup>126</sup> The provision for liquidated damages was added by the Fair Labor Standards Amendments of 1944. Those Amendments also deleted the prior requirements that section 16(c) could be brought only on the written request of the employee and if the case did not involve any issue of law which had not been finally settled by the courts.

<sup>127</sup> Amended by section 6(d) of the Fair Labor Standards Amendments of 1956.

<sup>128</sup> Section 14 of the Fair Labor Standards Amendments of 1949, as amended by the Reorganization Plan No. 6 of 1950 and the Fair Labor Standards Amendments of 1966.

a workplace to which the exemption in section 13(f) is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 6(a)(3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.<sup>131</sup>

#### INJUNCTION PROCEEDINGS

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).<sup>132</sup>

#### RELATION TO OTHER LAWS

SEC. 18. (a) No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

#### SEPARABILITY OF PROVISIONS

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act and the

application of such provision to other persons or circumstances shall not be affected thereby.

Approved, June 25, 1938.<sup>133</sup>

#### PART IV—MISCELLANEOUS

SEC. 6. STATUTE OF LIMITATIONS.—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, *except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;*<sup>1</sup>

SEC. 7. DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS.—In determining when an action is commenced for the purposes of section 6, an action commenced on or after the date of the enactment of this Act under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent

<sup>131</sup>The Fair Labor Standards Amendments of 1949 were approved October 26, 1949; the Fair Labor Standards Amendments of 1955 were approved August 12, 1955; the American Union Labor Standards Amendments were approved August 8, 1956; the Fair Labor Standards Amendments of 1961 were approved May 3, 1961; the Fair Labor Standards Amendments of 1966 were approved September 23, 1966; the Fair Labor Standards Amendments of 1974 were approved April 8, 1974; and the Fair Labor Standards Amendments of 1977 were approved November 1, 1977.

<sup>132</sup>As amended by section 601 of the Fair Labor Standards Amendments of 1966, 80 Stat. 830.

<sup>133</sup>Section 4 of the American Union Labor Standards Amendments of 1956, as amended by section 12 of the Act of August 30, 1957 (71 Stat. 514), effective November 27, 1957.

<sup>134</sup>As amended by section 12 of the Fair Labor Standards Amendments of 1961.

date on which such written consent is filed in the court in which the action was commenced.

SEC. 10. RELIANCE IN FUTURE ON ADMINISTRATIVE REGULATIONS, ETC. (a) 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 for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act of omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be—

(1) in the case of the Fair Labor Standards Act of 1938, as amended—the Secretary of Labor;

SEC. 11. LIQUIDATED DAMAGES.—In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16<sup>1</sup> of such Act.

<sup>1</sup>As amended by Executive Order No. 11761, 30 Stat. 1261. <sup>2</sup>The Fair Labor Standards Act, as amended, at 29 U.S.C. (1962) section 16<sup>1</sup>.

SEC. 13. DEFINITIONS.—(a) When the terms "employer", "employee", and "wage" are used in this Act in relation to the Fair Labor Standards Act of 1938, as amended, they shall have the same meaning as when used in such Act of 1938.

SEC. 14. SEPARABILITY.—If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 15. SHORT TITLE.—This Act may be cited as the "Portal-to-Portal Act of 1947".

Approved May 14, 1947.

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

(77 Stat. 66)

[PUBLIC LAW 88-38]

[88TH CONGRESS, S. 1409]

[JUNE 10, 1963]

An Act

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963".

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

- (1) depresses wages and living standards for employees necessary for their health and efficiency;
- (2) prevents the maximum utilization of the available labor resources;
- (3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
- (4) burdens commerce and the free flow of goods in commerce; and
- (5) constitutes an unfair method of competition.



(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

[Section 3 of the Equal Pay Act of 1963 amends section 6 of the Fair Labor Standards Act by adding a new subsection (d). The amendment is incorporated in the revised text of the Fair Labor Standards Act.]

**EFFECTIVE DATE**

SEC. 4. The amendments made by this Act shall take effect upon the expiration of one year from the

date of its enactment: *Provided*, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act, entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended), the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Approved June 10, 1963, 12 m.

*Prepared by the*  
**Office of Public Affairs  
Equal Employment Opportunity Commission  
2401 E Street, N.W.  
Washington, D.C. 20506  
January 1981**

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# NOTES

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# TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED

## An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964"

## TITLE VII EQUAL EMPLOYMENT OPPORTUNITY<sup>1</sup>

### DEFINITIONS

Sec. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has *fifteen* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, persons having fewer than *twenty-five* employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer, or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) *twenty-five* or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, or (B) *fifteen* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the

meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

#### EXEMPTION

Sec. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State; or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

#### DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

Sec. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or applicants for membership or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other education institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement im-

posed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, or shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or

other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

#### OTHER UNLAWFUL EMPLOYMENT PRACTICES

Sec. 704 (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on the job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on the job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sec. 705 (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with

the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 5371 of title 5, United States Code.

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall confer with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title.

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all

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the powers of the Commission and three members thereof shall constitute a quorum.

(d) The Commission shall have an official seal which shall be judicially noticed.

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to interfere in a civil action brought under section 206 by an aggrieved party against a respondent other than a government, governmental agency, or political subdivision.

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of

section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) *The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.*

(b) *Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as*

*practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) from the date upon which the Commission is authorized to take action with respect to the charge.*

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be

served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has notified a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought

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against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and

1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(6) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to

amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under *this section*, the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under *this section* and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

Sec. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the

duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

*(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9, of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsection (a) and (b) of this section.*

*(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.*



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(c) *Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act.*

### EFFECT ON STATE LAWS

SEC. 705. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

### INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from proceeding with a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such

agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with

those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency, charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.

#### INVESTIGATORY POWERS

Sec. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply.

#### NOTICES TO BE POSTED

Sec. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

#### VETERANS' PREFERENCE

Sec. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

#### RULES AND REGULATIONS

Sec. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under the section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice 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 interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

#### FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

Sec. 714. The provisions of sections 111 and 1114 title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

#### EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

Sec. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council)

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composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

### EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

### NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard

to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall

include, but not be limited to--

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex, or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 706(f) through (k), as applicable, shall govern civil actions brought hereunder

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

#### SPECIAL PROVISIONS WITH RESPECT TO DENIAL, TERMINATION, AND SUSPENSION OF GOVERNMENT CONTRACTS

SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld,

terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

#### PROVISIONS OF EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 WHICH RELATE TO BUT DO NOT AMEND THE CIVIL RIGHTS ACT OF 1964

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(111) General Counsel of the Equal Employment Opportunity Commission."

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by--

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter."

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**TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED**

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*may place an additional ten positions in the Equal Employment Opportunity Commission in GS-16, GS-17, and GS-18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."*

*Sec. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.*

# NOTES

Lined area for notes, consisting of approximately 25 horizontal lines.

**THE AGE DISCRIMINATION IN EMPLOYMENT  
ACT OF 1967, AS AMENDED**

*Prepared by the*  
Office of Public Affairs  
Equal Employment Opportunity Commission  
2401 E Street, N.W.  
Washington, D.C. 20506  
January 1981

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## TRANSFER OF AUTHORITY

Administration and enforcement of the Age Discrimination in Employment Act of 1967, as amended, was transferred to the Equal Employment Opportunity Commission from the Wage and Hour Division, U.S. Department of Labor, effective July 1, 1979, under the President's Reorganization Plan No. 1 of 1978.

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# THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED\* (29 U.S.C. 621, et seq.)

## An Act

To prohibit age discrimination in employment

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Age Discrimination in Employment Act of 1967".*

### STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

It is therefore the purpose of this Act to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in the employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

### EDUCATION AND RESEARCH PROGRAM

SEC. 3. (a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this

Act, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this Act, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 12.

### PROHIBITION OF AGE DISCRIMINATION

SEC. 4. (a) It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this Act.

(b) It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

\* This Act is the Age Discrimination in Employment Act of 1967 as set in the Century 1967 edition. Added or amended language as enacted by subsequent amendments to this Act is indicated by the following:

Version	Type of Law	Public Law	Date Enacted	Statute Citation
1967	Original	90-269	12/31/67	41 Stat. 1402
1971	Century Boldface	93-199	12/21/71	88 Stat. 45
1975	Century Boldface	94-142	3/6/75	89 Stat. 102



(c) it shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age,

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment because of such individual's age;

(3) to cause or attempt to cause an employee to discriminate against an individual in violation of this section.

(d) It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this Act.

(e) It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

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

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;

(2) to observe the terms of a bona fide seniority system or 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 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,<sup>1</sup> or

(3) to discharge or otherwise discipline an individual for good cause.

STUDY BY SECRETARY OF LABOR

SEC. 5. (a)(1) The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include—

(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 limitations;

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

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

ADMINISTRATION

SEC. 6. The Secretary shall have the power—

(a) to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems

<sup>1</sup> As amended by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978. The effective date of the amendments set forth in section 3(b) of the Act is as follows: The amendments shall be subject to the following schedule: (1) the amendments of this Act except that in the case of amendments (a) and (b) of section 12(a) shall take effect on September 1, 1977, which date shall be extended only by a later amendment as defined by section 101 of the Fair Labor Standards Act of 1938, as amended, which shall be published in the amendment table of the Federal Register; (2) the amendments of section 12(c) shall take effect upon the termination of such amendments, which date shall be ascertained by the Secretary of Labor; (3) the amendments of section 12(d) shall take effect on January 1, 1981. The revision of section 12 of the Act by the amendments made by section 3(a) of this Act referred to in the previous sentence.

## THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED

necessary to assist him in the performance of his functions under this Act;

(b) to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act.

### RECORDKEEPING, INVESTIGATION, AND ENFORCEMENT

SEC. 7. (a) The Secretary shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this Act in accordance with the powers and procedures provided in sections 9 and 11 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 209 and 211).

(b) The provisions of this Act shall be enforced in accordance with the powers, remedies, and procedures provided in sections 11(b), 16 (except for subsection (a) thereof), and 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 211(b), 216, 217), and subsection (c) of this section. Any act prohibited under section 4 of this Act shall be deemed to be a prohibited act under section 15 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 215). Amounts owing to a person as a result of a violation of this Act shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 16 and 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216, 217): *Provided*, That liquidated damages shall be payable only in cases of willful violations of this Act. In any action brought to enforce this Act the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Secretary shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with requirements of this Act through informal methods of conciliation, conference, and persuasion.

(c) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act. *Provided*, That the right of any person to bring such action shall terminate upon the commencement of an action by the Secretary to enforce the right of such employee under this Act.

(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.<sup>2</sup>

(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

(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.

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.<sup>3</sup>

(e)(1) Sections 6 and 10 of the Portal-to-Portal Act of 1947 shall apply to actions under this Act.

(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.<sup>4</sup>

### NOTICE TO BE POSTED

SEC. 8. Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Secretary setting forth information as the Secretary deems appropriate to effectuate the purposes of this Act.

### RULES AND REGULATIONS

SEC. 9. In accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, the Secretary of Labor may issue such rules and regulations as he may consider necessary or appropriate for carrying out this Act, and may establish

<sup>1</sup> Effective as to retroactive effect, in whole after April 6, 1978.  
<sup>2</sup> Effective as to retroactive effect, in whole after April 1, 1978. Prior to the Age Discrimination in Employment Act of 1967, section 7 did not, as it does now, require that a required element of a civil action be, rather than a charge alleging unlawful discrimination.  
<sup>3</sup> Effective as to retroactive effect, in whole after the Secretary of Labor after April 1, 1978.

such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest.

CRIMINAL PENALTIES

Sec. 10. Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Secretary while he is engaged in the performance of duties under this Act shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or both: *Provided, however,* That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

DEFINITIONS

Sec. 11. for the purposes of this Act--

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.

(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: *Provided,* That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (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, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States."

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in

part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization--

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative or employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's

1. Public Law 85-2, Title I, Sec. 101 and 102, Amendments of 1917, introduced Senate, June 26, 1917, and House, May 1, 1917.  
2. Public Law 85-2, Title I, Sec. 101 and 102, Amendments of 1917, the Act's definition of an employment agency included an agency of a State or political subdivision of a State except that the term "State" includes the United States, Employment Service and the system of State and local employment agencies, administered by Federal assistance.

## THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED

personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

### 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.*

*(c) 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, if such employee, for the 2-year period immediately before retirement, is employed in a bona fide executive or a bona fide 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.*

*(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).*

### ANNUAL REPORT

*SEC. 13. The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the effect of the minimum and maximum ages established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the general age level of the population, the effect of the Act upon workers not covered by its provisions, and such other factors as he may deem pertinent.*

### FEDERAL-STATE RELATIONSHIP

*SEC. 14. (a) Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this Act such action shall supersede any State action.*

*(b) In the case of an alleged unlawful practice occurring in a State which has a law prohibiting*

1. The Act is amended by the Age Discrimination in Employment Act of 1975, Public Law 94-143, 90 Stat. 1317, which is effective July 1, 1975. The amendments made by the Act of 1975 are indicated by an asterisk (\*) in the text of this Act.

2. The Act is amended by the Age Discrimination in Employment Act of 1978, Public Law 95-292, 92 Stat. 781, which is effective July 1, 1978. The amendments made by the Act of 1978 are indicated by an asterisk (\*) in the text of this Act.

3. The Act is amended by the Age Discrimination in Employment Act of 1983, Public Law 98-271, 97 Stat. 1328, which is effective July 1, 1983. The amendments made by the Act of 1983 are indicated by an asterisk (\*) in the text of this Act.

discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 7 of this Act before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT

Sec. 15. (a) All personnel actions affecting employees or applicants for employment *who are at least 40 years of age* (except personnel actions with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at

least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a);

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

(d) When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by an individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

(f) Any personnel action of any department, agen-

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THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED

cy, 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.

(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.

(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.

<sup>10</sup>Section 4 of Act of 1968.

The effective date of the provisions added by the Fair Labor Standards Amendments of 1964, as shown in bold type, was May 1, 1964. See section 20 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201. The effective dates of the provisions added by the Fair Labor Standards Act Amendments of 1973, which are shown in italic type, are: (a) 12/31/73; (b) 12/31/74.

EFFECTIVE DATE <sup>13</sup>

SEC. 16. This Act shall become effective one hundred and eighty days after enactment, except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions.

APPROPRIATIONS

SEC. 17. There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act.<sup>14</sup>

Approved December 15, 1967.

<sup>14</sup>Section 7 of the Age Discrimination in Employment Act Amendments of 1978 amended this section by eliminating the \$5 million authorization ceiling on appropriation.

# ADDITIONAL PROVISIONS OF THE AGE DISCRIMINATION IN EMPLOYMENT ACT AMENDMENTS OF 1978 (92 Stat. 189)

[PUBLIC LAW 95-256]  
[95TH CONGRESS, 2D SESSION]

## 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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Age Discrimination in Employment Act Amendments of 1978".

[Sections 2 through 4, 5(a), 6 and 7 of the Age Discrimination in Employment Act Amendments of 1978 amend the Age Discrimination in Employment Act of 1967, and are incorporated in their proper place in the Act. Where the effective dates of these amendments are not part of the Act proper, they are noted in footnotes. Section 5(b), (c) and (d) of the 1978 Amendments amend title 5 of the United States Code, and are set forth below.]

### FEDERAL GOVERNMENT EMPLOYMENT

Sec. 5.<sup>15</sup> \* \* \*

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

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

The amendments in sections 5(b), (c), and (d) take effect on September 30, 1978.

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

(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 officer 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".

(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)".



**Equal Employment Opportunity  
Executive Order 11246 As Amended  
By Executive Order 11375**



U. S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance Programs

OS-COP-4  
November 1975

Under and by virtue of the authority vested in me as President of the United States, it is ordered as follows:

**PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT<sup>1</sup>**

**PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT  
CONTRACTORS AND SUBCONTRACTORS**

**Subpart A—Duties of the Secretary of Labor**

SEC. 201. The Secretary of Labor shall be responsible for the administration of parts II and III of this order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

**Subpart B—Contractors' Agreements**

SEC. 202. Except in contracts exempted in accordance with section 204 of this order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.<sup>2</sup>

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.<sup>3</sup>

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

<sup>1</sup> Secs. 101 through 105 of pt. I of Executive Order 11246 dealing with discrimination in Federal employment were superseded by Executive Order 11478, Executive Order 11478, which is concerned exclusively with Government employment, expanded considerably the obligation of the Government itself to undertake equal employment opportunity within its own organization. Executive Order 11478 was signed by President Richard Nixon on Aug. 8, 1969.

<sup>2</sup> Sec. 202, paragraphs (1) and (2) and sec. 203, subsec. (d) were amended by Executive Order 11375 to encompass sex discrimination. Executive Order 11375 was signed by President Lyndon B. Johnson on Sept. 24, 1969.

<sup>3</sup> Ibid.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**SEC. 203. (a)** Each contractor having a contract containing the provisions prescribed in section 202 shall file, and shall cause each of his subcontractors to file, compliance reports with the contracting agency or the Secretary of Labor as may be directed. Compliance reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this order, or any preceding similar executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, compliance reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its compliance report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his compliance report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's

practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency, shall refuse to execute such a statement, the compliance report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of section 202 of this order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders: (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this order.

#### **Subpart C—Powers and Duties of the Secretary of Labor and the Contracting Agencies**

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in section 202 of this order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in section 202 of this order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Titles VI or VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with subsection (a) of this section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this order. No order for debarment of any contractor from further Government contracts under section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

#### Subpart D—Sanctions and Penalties

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in section 202 of this order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VI of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to

the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this section, or before a contract shall be cancelled or terminated in whole or part under subsection (a)(5) of this section for failure of a contractor or subcontractor to comply with the contract provisions of this order.

SEC. 210. Any contracting agency taking any action authorized by this subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under section 209(a)(6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

#### Subpart E—Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a U.S. Government certificate of merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this order.

**SEC. 214.** Any certificate of merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this order.

**SEC. 215.** The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this order if such employer, labor union, or other agency has been awarded a certificate of merit which has not been suspended or revoked.

### **PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**

**SEC. 301.** Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by section 202 of this order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree: (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary; (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance; (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to part II, subpart D, of this order; and (4) to refrain from entering into any contract subject to this order, or extension or other modification of such a contract with a contractor debarred from Government contracts under part II, subpart D, of this order.

**SEC. 302. (a)** "Construction contract" as used in this order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of part II of this order shall apply to such construction contracts, and for purposes of such application, the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

**SEC. 303 (a)** Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to subsection (b) shall be taken in conformity with section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing before the administering department or agency.

**SEC. 304.** Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in section 602 thereof and the regulations of the administering department or agency issued thereunder.

#### **PART IV — MISCELLANEOUS**

**SEC. 401.** The Secretary of Labor may delegate to any officer, agency, or employee in the executive branch of the Government, any function or duty of the Secretary under parts II and III of this order, except authority to promulgate rules and regulations of a general nature.

**SEC. 402.** The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans of Progress."

**SEC. 403. (a)** Executive Orders Nos. 10590 (Jan. 18, 1955), 10722 (Aug. 5, 1957), 10925 (Mar. 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any executive order superseded by this order. All rules, regulations, orders, instructions, designe-

tions, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the executive orders superseded by this order, shall, to the extent that they are not inconsistent with this order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This order shall become effective 30 days after the date of this order.

LYNDON B. JOHNSON

THE WHITE HOUSE  
September 24, 1965



**§ 503. Employment under Federal contracts**

(a) Amount of contracts or subcontracts; provision for employment and advancement of qualified handicapped individuals; regulations

Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 706(6) of this title. The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

(b) Administrative enforcement; complaints; investigations; departmental action

If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) Waiver by President; national interest special circumstances for waiver of particular agreements

The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination.

Pub. L. 93-112, title V, § 503, Sept. 26, 1973, 87 Stat. 393.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 721 of this title

**§ 504. Nondiscrimination under Federal grants**

No otherwise qualified handicapped individual in the United States, as defined in section 706(6) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Pub. L. 93-112, title V, § 504, Sept. 26, 1973, 87 Stat. 394.

**EX. ORD. NO. 11914. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS**

Ex. Ord. No. 11914, Apr. 26, 1976, 41 F.R. 17671, promulgated by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 301 of title 3 of the United States

Code [section 301 of Title 3, The President], and as President of the United States, and in order to provide for consistent implementation within the Federal Government of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) [this section], it is hereby ordered as follows:

Section 1. The Secretary of Health, Education, and Welfare shall coordinate the implementation of section 504 of the Rehabilitation Act of 1973, as amended [this section], hereinafter referred to as section 504 [this section], by all Federal departments and agencies empowered to extend Federal financial assistance to any program or activity. The Secretary shall establish standards for determining who are handicapped individuals and guidelines for determining what are discriminatory practices, within the meaning of section 504 [this section]. The Secretary shall assist Federal departments and agencies to coordinate their programs and activities and shall consult with such departments and agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of section 504 [this section].

Sec. 2. In order to implement the provisions of section 504 [this section], each Federal department and agency empowered to provide Federal financial assistance shall issue rules, regulations, and directives, consistent with the standards and procedures established by the Secretary of Health, Education, and Welfare.

Sec. 3. (a) Whenever the appropriate department or agency determines, upon all the information available to it, that any recipient of, or applicant for, Federal financial assistance is in noncompliance with the requirements adopted pursuant to this order, steps to secure voluntary compliance shall be carried out in accordance with standards and procedures established pursuant to this order.

(b) If voluntary compliance cannot be secured by informal means, compliance with section 504 [this section] may be effected by the suspension or termination of, or refusal to award or continue, Federal financial assistance or by other appropriate means authorized by law, in accordance with standards and procedures established pursuant to this order.

(c) No such suspension or termination of, or refusal to award or continue, Federal financial assistance shall become effective unless there has been an express finding, after opportunity for a hearing, of a failure by the recipient of, or applicant for, Federal financial assistance to comply with the requirements adopted pursuant to this order; however, such suspension or termination of, or refusal to award or continue, Federal financial assistance shall be limited in its effect to the particular program or activity or part thereof with respect to which there has been such a finding of noncompliance.

Sec. 4. Each Federal department and agency shall furnish the Secretary of Health, Education, and Welfare such reports and information as the Secretary requests and shall cooperate with the Secretary in the implementation of section 504 [this section].

Sec. 5. The Secretary of Health, Education, and Welfare may adopt rules and regulations and issue orders which he deems are necessary to carry out his responsibilities under this order. The Secretary shall ensure that such rules, regulations, and orders are not inconsistent with, or duplicative of, other Federal Government policies relating to the handicapped, including those policies adopted in accordance with sections 501, 502, and 503 of the Rehabilitation Act of 1973, as amended [sections 791, 792, and 793 of this title], or the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) [section 4151 et seq. of Title 42, The Public Health and Welfare].

GERALD R. FORD.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in title 31 section 1242.

ment of Housing and Urban Development pursuant to the Architectural Barriers Act of 1968.

Subsec. (b)(2). Pub. L. 95-602, § 118(b)(2), inserted "communication," preceding "and attitudinal" and "telecommunication devices." Preceding "Public buildings".

Subsec. (b)(7), (8). Pub. L. 95-602, § 118(b)(3), added pars (7) and (8).

Subsec. (d). Pub. L. 95-602, § 118(c), designated existing provision as par. (1), and in par. (1) as so designated, substituted "public or private nonprofit organizations or contracts with private nonprofit or for-profit organizations" for "or contracts with public or private nonprofit organizations", "Except as provided in paragraph (3) of subsection (e) of this section, provisions" for "The provisions", "building or public conveyance or rolling stock found" for "building found", and "enforced under this section" for "prescribed pursuant to the Acts cited in subsection (b) of this section". Inserted provision permitting a complainant or participant in a proceeding under this subsection to obtain review of a final order pursuant to chapter 7 of title 5, and added pars. (2) and (3).

Subsec. (e). Pub. L. 95-602, § 118(d), designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" wherever appearing.

Subsec. (h). Pub. L. 95-602, § 118(e), added subsec. (h). Former subsec. (h), which authorized appropriations for carrying out the duties and functions of the Board of \$1,000,000 for each of the fiscal years ending June 30, 1974 and June 30, 1975, \$1,500,000 for the fiscal year ending June 30, 1976, and \$1,500,000 for each of the fiscal years ending Sept. 30, 1977 and Sept. 30, 1978, was struck out.

Subsec. (i). Pub. L. 95-602, § 118(e), added subsec. (i).

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-374 effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96-374, set out as an Effective Date note under section 1001 of Title 20, Education.

#### TRANSFER OF FUNCTIONS

"Department of Education" was substituted for "Department of Health, Education, and Welfare" in subsec. (d)(3) pursuant to sections 301(a)(4)(A) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(4)(A) and 3507 of Title 20, Education.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 776, 794b of this title; title 42 section 4157.

#### § 793. Employment under Federal contracts

(a) Amount of contracts or subcontracts; provision for employment and advancement of qualified handicapped individuals; regulations

Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 706(7) of this title. The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

(See main edition for text of (b) and (c))

(As amended Pub. L. 95-602, title I, § 122(d)(1), Nov. 6, 1978, 92 Stat. 2987.)

#### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-602 substituted "section 706(7) of this title" for "section 706(6) of this title".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 721 of this title.

#### § 794. Nondiscrimination under federal grants and programs; promulgation of rules and regulations

No otherwise qualified handicapped individual in the United States, as defined in section 708(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(As amended Pub. L. 95-602, title I, §§ 118, 122(d)(2), Nov. 6, 1978, 92 Stat. 2982, 2987.)

#### REFERENCES IN TEXT

The amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, referred to in text, mean the amendments made by Pub. L. 95-602. See 1978 Amendments note below.

#### AMENDMENTS

1978—Pub. L. 95-602 substituted "section 706(7) of this title" for "section 706(6) of this title" and inserted provision prohibiting discrimination under any program or activity conducted by any Executive agency or by the United States Postal Service and requiring the heads of these agencies to promulgate regulations prohibiting discrimination.

#### COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this section by the Attorney General, see section 1-201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d-1 of Title 42, The Public Health and Welfare.

#### EXECUTIVE ORDER NO. 11914

Ex. Ord. No. 11914, Apr. 28, 1976, 41 F.R. 17871, set out as a note under this section, which related to nondiscrimination in federally assisted programs, was revoked by Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d-1 of Title 42, The Public Health and Welfare.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 775, 794a, 876 of this title; title 5 section 3102; title 20 sections 1132a, 1232e, 3142; title 25 section 2005; title 31 section 1242; title 42 sections 5057, 6727.

## § 791a. Remedies and attorney fees

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(Pub. L. 93-112, title V, § 505, as added Pub. L. 95-602, title I, § 120, Nov. 6, 1978, 92 Stat. 2982.)

## REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (a)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3905; title 31 section 52-2.

## § 791b. Removal of architectural, transportation, or communication barriers; technical and financial assistance; compensation of experts or consultants; authorization of appropriations

(1) The Secretary may provide directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, technical assistance—

(A) to persons operating rehabilitation facilities; and

(B) with the concurrence of the Board established by section 792 of this title, to any public or nonprofit agency, institution, or organization;

for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of

the Board under this paragraph shall reflect its consideration of the cost studies carried out by States under section 792(c)(1) of this title.

(2) Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily equivalent of the rate of basic pay payable for grade GS-18 of the General Schedule, under section 5332 of title 5, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(3) The Secretary, with the concurrence of the Board and the President may provide, directly or by contract, financial assistance to any public or nonprofit agency, institution, or organization for the purpose of removing architectural, transportation, and communication barriers. No assistance may be provided under this paragraph until a study demonstrating the need for such assistance has been conducted and submitted under section 792(h)(2) of this title.

(4) In order to carry out this section, there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 93-112, title V, § 506, as added Pub. L. 95-602, title I, § 120, Nov. 6, 1978, 92 Stat. 2983.)

## § 794c. Interagency Coordinating Council; membership; duties; annual report to President and Congress

There shall be established an Interagency Coordinating Council (hereinafter referred to in this section as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Attorney General, the Director of the Office of Personnel Management, the Chairman of the Equal Employment Opportunity Commission, and the Chairman of the Architectural and Transportation Barriers Compliance Board. The Council shall have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this subchapter, and the regulations prescribed thereunder. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section. Nothing in this section shall impair any responsibilities assigned by any Executive Order to any Federal department, agency, or instrumentality to act as a lead Federal agency with respect to any provisions of this subchapter.

(Pub. L. 93-112, title V, § 507, as added Pub. L. 95-602, title I, § 120, Nov. 6, 1978, 92 Stat. 2983, and amended 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96-88, title V, § 508(m)(2), Oct. 17, 1979, 93 Stat. 694.)

#### AMENDMENTS

1979—Pub. L. 96-88 substituted requirement that the Secretaries of Education and Health and Human Services be members of the Council for requirement that the Secretary of Health, Education, and Welfare be a member.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

#### TRANSFER OF FUNCTIONS

Director of the Office of Personnel Management" was substituted for "Chairman of the United States Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions created by statute in the chairman of the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 5057.

### CHAPTER VI—EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED INDIVIDUALS (NEW)

#### PART A—COMMUNITY SERVICE EMPLOYMENT PILOT PROGRAMS FOR HANDICAPPED INDIVIDUALS

##### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 702 of this title.

#### (29) Pilot programs

##### (a) Establishment

In order to promote useful opportunities in community service activities for handicapped individuals who have poor employment prospects, the Secretary of Labor (hereinafter in this part referred to as the "Secretary") is authorized to establish a community service employment pilot program for handicapped individuals. For purposes of this part, the term "eligible individuals" means persons who are handicapped individuals (as defined in section 507 of this title) who are referred to programs under this part by designated State officials.

(b) Agreements; factors determining eligibility for cost payments; rate of pay; certificate of exemption by Department of Labor

(1) The Secretary may enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to carry out the pilot program re-

ferred to in subsection (a) of this section. Such agreements may include provisions consistent with subsection (c) of this section for the payment of the costs of projects developed by such organizations and agencies in cooperation with the Secretary. No payment shall be made by the Secretary toward the cost of any such project unless the Secretary determines that:

(A) Such project will provide employment only for eligible individuals, except that if eligible individuals are not available to serve as technical, administrative, or supervisory personnel for a project then such personnel may be recruited from among other individuals.

(B) Such project will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities.

(C) Such project will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations, other than political parties, exempt from taxation under section 501(c)(3) of title 26, except for projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship.

(D) Such project will contribute to the general welfare of the community in which eligible individuals are employed under such project.

(E) Such project (i) will result in an increase in employment opportunities over those opportunities which would otherwise be available, (ii) will not result in any displacement of currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work or wages or employment benefits), and (iii) will not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.

(F) Such project will not employ any eligible individual to perform work which is the same or substantially the same as that performed by any other person who is on layoff from employment with the agency or organization sponsoring such project.

(G) Such project will utilize methods of recruitment and selection (including the listing of job vacancies with the State agency units designated under section 721(a)(2)(A) of this title to administer vocational rehabilitation services under this chapter) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project.

(H) Such project will provide for (i) such training as may be necessary to make the most effective use of the skills and talents of individuals who are participating in the project, and (ii) during the period of such training, a reasonable subsistence allowance for such individuals and the payment of any other reasonable expenses related to such training.

(I) Such project will provide safe and healthy working conditions for any eligible

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set out as a "Repeal of Predecessor Programs: Availability of Unexpended Appropriations" note under section 801 of Title 29, Labor. For complete classification of the Act to the Code prior to its repeal, see Tables volume.

**PRIOR PROVISIONS**

A prior section 2013 was renumbered section 2004 by Pub. L. 87-675, § 1(a), Sept. 19, 1962, 76 Stat. 558.

**EFFECTIVE DATE**

Section effective 90 days after Oct. 24, 1972, see section 601(b) of Pub. L. 92-540, set out as an Effective Date of 1972 Amendment note under section 2001 of this title.

**§ 2014. Employment within the Federal Government**

(a) It is the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era.

(b) To further this policy, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Civil Service Commission shall prescribe, for veterans readjustment appointments up to and including the level GS-5, as specified in subchapter II of chapter 51 of title 5, and subsequent career-conditional appointments, under the terms and conditions specified in Executive Order Numbered 11521 (March 26, 1970), except that in applying the one-year period of eligibility specified in section 2(a) of such order to a veteran or disabled veteran who enrolls, within one year following separation from the Armed Forces or following release from hospitalization or treatment immediately following separation from the Armed Forces, in a program of education (as defined in section 1652 of this title) on more than a half-time basis (as defined in section 1788 of this title), the time spent in such program of education (including customary periods of vacation and permissible absences) shall not be counted. The eligibility of such a veteran for a readjustment appointment shall continue for not less than six months after such veteran first ceases to be enrolled therein on more than a half-time basis. No veterans readjustment appointment may be made under authority of this subsection after June 30, 1978.

(c) Each department, agency, and instrumentality in the executive branch shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality as required by section 501(b) of Public Law 93-112 (87 Stat. 391), a separate specification of plans (in accordance with regulations which the Civil Service Commission shall prescribe in consultation with the Administrator, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

<sup>1</sup>So in original. Probably should be "as specified in subchapter III of chapter 53 of title 5".

(d) The Civil Service Commission shall be responsible for the review and evaluation of the implementation of this section and the activities of each such department, agency, and instrumentality to carry out the purpose and provisions of this section. The Commission shall periodically obtain and publish (on at least a semiannual basis) reports on such implementation and activities from each such department, agency, and instrumentality, including specification of the use and extent of appointments made under subsection (b) of this section and the results of the plans required under subsection (c) thereof.

(e) The Civil Service Commission shall submit to the Congress annually a report on activities carried out under this section, except that, with respect to subsection (c) of this section, the Commission may include a report of such activities separately in the report required to be submitted by section 501(d) of such Public Law 93-112, regarding the employment of handicapped individuals by each department, agency, and instrumentality.

(f) Notwithstanding section 2011 of this title, the terms "veteran" and "disabled veteran" as used in this section shall have the meaning provided for under generally applicable civil service law and regulations.

(Added Pub. L. 93-508, title IV, § 403(a), Dec. 3, 1974, 88 Stat. 1593.)

**REFERENCES IN TEXT**

Executive Order Numbered 11521 (March 26, 1970), referred to in subsec. (b), is set out as a note under section 3302 of Title 5, Government Organization and Employees.

Section 501(b) of Pub. L. 93-112 (87 Stat. 391), referred to in subsec. (c), is section 791(b) of Title 29, Labor.

"Such Act", referred to in subsec. (c), means Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, popularly known as the Rehabilitation Act of 1973, which is classified principally to chapter 10 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables volume.

Section 501(d) of such Pub. L. 93-112, referred to in subsec. (e), is section 791(d) of Title 29.

The civil service law, referred to in subsec. (f), is set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

**PRIOR PROVISIONS**

A prior section 2014 was renumbered section 2005 by Pub. L. 87-675, § 1(a), Sept. 19, 1962, 76 Stat. 558.

**EFFECTIVE DATE**

Section effective Dec. 3, 1974, see section 503 of Pub. L. 93-508, set out as an Effective Date of 1974 Amendment note under section 1652 of this title.

**CHAPTER 43—VETERANS' REEMPLOYMENT RIGHTS**

- Sec.
2021. Right to reemployment of inducted persons; benefits protected.
  2022. Enforcement procedures.
  2023. Reemployment by the United States, territory, possession, or the District of Columbia.
  2024. Rights of persons who enlist or are called to active duty; Reserves.
  2025. Assistance in obtaining reemployment.
  2026. Prior rights for reemployment.

days, any part of which occurred during the Vietnam era, and was discharged or released with other than a dishonorable discharge, or was discharged or released for a service-connected disability if any part of the active duty was performed during the Vietnam era, and who was discharged or released within the 48 months preceding the person's application for employment covered under this chapter, in the provisions defining term "disabled veteran" substituted reference to compensation under laws administered by the Veterans' Administration for reference to disability compensation under such laws for a disability rated at 30 per centum or more and reference to a service-connected disability for reference to a disability incurred or aggravated in the line of duty, and in provisions defining term "department or agency" substituted reference to any agency of the Federal Government or the District of Columbia, including any Executive agency defined in section 105 of title 5, for reference to any department or agency of the Federal Government or any federally owned corporation.

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-466 effective Oct. 1, 1980, see section 802(e) of Pub. L. 96-466, set out as an Effective Date of 1980 Amendment note under section 2001 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-502, effective Dec. 1, 1976, see section 703(c) of Pub. L. 94-502, set out as an Effective Date note under section 1793 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2001, 2014 of this title; title 15 section 1022a; title 29 section 802; title 42 section 6706.

**§ 2012. Veterans' employment emphasis under Federal contracts**

(a) Any contract in the amount of \$10,000 or more entered into by any department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall implement the provisions of this section by promulgating regulations which shall require that (1) each such contractor undertake in such contract to list immediately with the appropriate local employment service office all of its suitable employment openings, and (2) each such local office shall give such veterans priority in referral to such employment openings.

(b) If any special disabled veteran or veteran of the Vietnam era believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly

investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

[See main edition for text of (c)]

(As amended Pub. L. 95-520, § 6(a), Oct. 26, 1978, 92 Stat. 1821; Pub. L. 96-466, title V, § 509, title VIII, § 801(j), Oct. 17, 1980, 94 Stat. 2206, 2217.)

**AMENDMENTS**

1980—Subsec. (a), Pub. L. 96-466, § 801(j), inserted "special" following "qualified" and substituted "regulations which shall require" for "regulations within 60 days after the date of enactment of this section, which regulations shall require".

Subsec. (b), Pub. L. 96-466, § 509, among other changes, substituted reference to a special disabled veteran for reference to a disabled veteran, struck out provisions relating to the filing of a complaint by any veteran entitled to disability compensation who believed that a contractor had discriminated against such veteran because such veteran was a handicapped individual within the meaning of section 706(6) of title 29, and substituted provisions relating to the filing of a complaint with the Secretary of Labor for provisions relating to the filing of a complaint with the Veterans' Employment Service of the Department of Labor and prompt referral of the complaint to the Secretary.

1978—Subsec. (b), Pub. L. 95-520 authorized filing of a complaint by a veteran entitled to disability compensation under laws administered by the Veterans' Administration based on a contractor's discrimination against the veteran because the veteran is handicapped.

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by section 801(j) of Pub. L. 96-466 effective Oct. 1, 1980, see section 802(h) of Pub. L. 96-466, set out as an Effective Date of 1980 Amendment note under section 1652 of this title.

Amendment by section 509 of Pub. L. 96-466 effective Oct. 1, 1980, see section 802(e) of Pub. L. 96-466, set out as an Effective Date of 1980 Amendment note under section 2001 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-502, effective Dec. 1, 1976, see section 703(c) of Pub. L. 94-502, set out as an Effective Date note under section 1793 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1516 of this title; title 29 sections 815, 880.

**§ 2013. Eligibility requirements for veterans under Federal employment and training programs**

Any (1) amounts received as pay or allowances by any person while serving on active duty, (2) period of time during which such person served on such active duty, and (3) amounts received under chapters 11, 13, 31, 34, 35, and 36 of this title by an eligible veteran, and any amounts received by an eligible person under chapters 13 and 35 of such title, shall be disregarded in determining the needs or qualifications of participants in any public service employment program, any emergency employment program, any job training program assisted under the Economic Opportunity Act of 1964, any employment or training program assisted under the Comprehensive Employment and Training Act, or any other employment or

training (or related) program financed in whole or in part with Federal funds.

(As amended Pub. L. 96-466, title VIII, § 801(k)(1), (2)(A), Oct. 17, 1980, 94 Stat. 2217.)

#### REFERENCES IN TEXT

The Comprehensive Employment and Training Act, referred to in text, is Pub. L. 93-203, Dec. 26, 1973, 87 Stat. 839, as amended, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

#### AMENDMENTS

1980—Pub. L. 96-466 in section catchline substituted "Federal employment and" for "certain Federal manpower"; and in text substituted "an eligible veteran" for "a veteran (as defined in section 101(2) of this title) who served on active duty for a period of more than 180 days or was discharged or released from active duty for a service-connected disability" and "any employment or training program assisted under the Comprehensive Employment and Training Act, or any other employment or" for "any manpower training program assisted under the Manpower Development and Training Act of 1962, or any other manpower".

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-466 effective Oct. 1, 1980, see section 802(h) of Pub. L. 96-466, set out as an Effective Date of 1980 Amendment note under section 1652 of this title.

#### § 2014. Employment within the Federal Government

(See main edition for text of (a))

(b)(1) To further the policy stated in subsection (a) of this section, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe, for veterans readjustment appointments, and for subsequent career-conditional appointments, under the terms and conditions specified in Executive Order Numbered 11521 (March 26, 1970), except that—

(A) such an appointment may be made up to and including the level GS-7 or its equivalent;

(B) a veteran of the Vietnam era shall be eligible for such an appointment without any time limitation with respect to eligibility for such an appointment; and

(C) a veteran of the Vietnam era who is entitled to disability compensation under the law administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty shall be eligible for such an appointment without regard to the number of years of education completed by such veteran.

(2) No veterans readjustment appointment may be made under authority of this subsection after September 30, 1981.

(c) Each department, agency, and instrumentality in the executive branch shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality as required by section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)), a separate

specification of plans (in accordance with regulations which the Office of Personnel Management shall prescribe in consultation with the Administrator, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

(d) The Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this section and the activities of each such department, agency, and instrumentality to carry out the purpose and provisions of this section. The Office shall periodically obtain and publish (on at least a semiannual basis) reports on such implementation and activities from each such department, agency, and instrumentality, including specification of the use and extent of appointments made under subsection (b) of this section and the results of the plans required under subsection (c) of this section. Each report under the preceding sentence shall include in the specification of the use and extent of appointments made under subsection (b) of this section the following information (shown for all veterans and separately for veterans described in subsection (b)(1)(C) of this section and other veterans):

(1) The number of appointments made under such subsection since the last such report and the grade levels in which such appointments were made.

(2) The number of individuals receiving appointments under such subsection whose appointments were converted to career conditional appointments, or whose employment under such an appointment has terminated, since the last such report, together with a complete listing of categories of causes of appointment terminations and the number of such individuals whose employment has terminated falling into each such category.

(3) The number of such terminations since the last such report that were initiated by the department, agency, or instrumentality involved and the number of such terminations since the last such report that were initiated by the individual involved.

(4) A description of the education and training programs in which individuals appointed under such subsection are participating at the time of such report.

(e) The Office of Personnel Management shall submit to the Congress annually a report on activities carried out under this section, except that, with respect to subsection (c) of this section, the Office may include a report of such activities separately in the report required to be submitted by section 501(d) of the Rehabilitation Act of 1973 (29 U.S.C. 791(d)), regarding the employment of handicapped individuals by each department, agency, and instrumentality.

(f) Notwithstanding section 2011 of this title, the terms "veteran" and "disabled veteran" as used in subsection (a) of this section shall have

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## PART C—WOMEN'S EDUCATIONAL EQUITY

### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3489, 3611, 3641, 3683 of this title.

#### § 3341. General provisions

##### (a) Short title

This part may be cited as the "Women's Educational Equity Act of 1978".

##### (b) Declaration of findings; purpose

(1) The Congress finds and declares that educational programs in the United States, as presently conducted, are frequently inequitable as such programs relate to women and frequently limit the full participation of all individuals in American society.

(2) It is the purpose of this part to provide educational equity for women in the United States and to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

##### (c) Definition

As used in this part, the term "Council" means the National Advisory Council on Women's Educational Programs.

(Pub. L. 89-10, title IX, § 931, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2298.)

#### REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (b)(2), is Pub. L. 92-319, June 23, 1972, 86 Stat. 215, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (1681 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of this title and Tables.

#### PRIOR PROVISIONS

Provisions similar to this section were contained in section 408(a) to (c) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 664, which was classified to section 1866(a) to (c) of this title prior to the repeal of that section by Pub. L. 95-561, title III, § 301(b)(1)(C), Nov. 1, 1978, 92 Stat. 2278.

#### § 3342. Granting and contracting authority; funding requirements

(a) The Secretary is authorized to make grants to, and enter into contracts with, public agencies, private nonprofit agencies, organizations, and institutions, including student and community groups, and individuals, for activities designed to achieve the purpose of this part at all levels of education, including preschool, elementary and secondary education, higher education, and adult education. The activities may include—

(1) demonstration, developmental, and dissemination activities of national, statewide, or general significance, including—

(A) the development and evaluation of curricula, textbooks, and other educational materials related to educational equity;

(B) model preservice and inservice training programs for educational personnel with special emphasis on programs and activities designed to provide educational equity;

(C) research and development activities designed to advance educational equity;

(D) guidance and counseling activities, including the development of nondiscriminatory tests, designed to insure educational equity;

(E) educational activities to increase opportunities for adult women, including continuing educational activities and programs for underemployed and unemployed women; and

(F) the expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration; and

(2) assistance to eligible entities to pay a portion of the costs of the establishment and operation, for a period of not to exceed two years, of special programs and projects of local significance to provide equal opportunities for both sexes, including activities listed in paragraph (1), activities incident to achieving compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and other special activities designed to achieve the purposes of this part.

Not less than 75 per centum of funds used to support activities covered by paragraph (2) shall be used for awards to local educational agencies.

(b) For each fiscal year, the Secretary shall use \$15,000,000 from the funds available under this part to support activities described in paragraph (1) of subsection (a) of this section. Any funds in excess of \$15,000,000 available under this part shall be used to support activities described in paragraph (2) of subsection (a) of this section.

(Pub. L. 89-10, title IX, § 932, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2298, and amended Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

## REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(2), is Pub. L. 92-318, June 23, 1972, 86 Stat. 238, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 12.3) et seq. of this title. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of this title and Tables.

## PRIOR PROVISIONS

Provisions similar to this section were contained in section 408(d)(1) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 554, which was classified to section 1866(d)(1) of this title prior to the repeal of that section by Pub. L. 95-561, title III, § 301(b)(1)(C), Nov. 1, 1978, 92 Stat. 2228.

## TRANSFER OF FUNCTIONS

"Secretary", meaning the Secretary of Education, was substituted for "Commissioner" in subsecs. (a) and (b) pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred all functions of the Commissioner of Education to the Secretary of Education.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3344 of this title.

## § 3343. Application; participation

(a) A grant may be made, and a contract may be entered into, under this part only upon application to the Secretary, at such time, in such form, and containing or accompanied by such information as the Secretary may prescribe. Each such application shall—

(1) provide that the program or activity for which assistance is sought will be administered by or under the supervision of the applicant.

(2) describe a program for carrying out one or more of the purposes set forth in section 3342(a) of this title which holds promise of making a substantial contribution toward attaining such purposes; and

(3) set forth policies and procedures which insure adequate evaluation of the activities intended to be carried out under the application;

(b) Nothing in this part shall be construed as prohibiting men and boys from participating in any programs or activities assisted under this part.

(Pub. L. 89-10, title IX, § 933, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2299, and amended Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

## PRIOR PROVISIONS

Provisions similar to this section were contained in section 408(d)(2), (3) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 554, which was classified to section 1866(d)(2), (3) of this title prior to the repeal of that

section by Pub. L. 95-561, title III, § 301(b)(1)(C), Nov. 1, 1978, 92 Stat. 2228.

## TRANSFER OF FUNCTIONS

"Secretary", meaning the Secretary of Education, was substituted for "Commissioner" in subsec. (a) pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred all functions of the Commissioner of Education to the Secretary of Education.

## § 3344. Small grants

In addition to the authority of the Secretary under section 3342 of this title, the Secretary shall carry out a program of small grants (as part of the grant program administered under section 3342(a)(1) of this title), not to exceed \$25,000 each, in order to support innovative approaches to achieving the purposes of this part; and for that purpose the Secretary is authorized to make grants to public and private non-profit agencies and to individuals.

(Pub. L. 89-10, title IX, § 934, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2299, and amended Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

## PRIOR PROVISIONS

Provisions similar to this section were contained in section 408(e) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 554, which was classified to section 1866(e) of this title prior to the repeal of that section by Pub. L. 95-561, title III, § 301(b)(1)(C), Nov. 1, 1978, 92 Stat. 2228.

## TRANSFER OF FUNCTIONS

"Secretary", meaning the Secretary of Education, was substituted for "Commissioner" in text pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred all functions of the Commissioner of Education to the Secretary of Education.

## § 3345. Criteria and priorities

The Secretary shall establish criteria and priorities for awards under this part to insure that available funds are used for programs that most effectively will achieve the purposes of this part. Those criteria and priorities shall be promulgated in accordance with section 1232 of this title.

(Pub. L. 89-10, title IX, § 935, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2299, and amended Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

## TRANSFER OF FUNCTIONS

"Secretary", meaning the Secretary of Education, was substituted for "Commissioner" in text pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred all functions of the Commissioner of Education to the Secretary of Education.

**§ 3346. National Advisory Council on Women's Educational Programs**

**(a) Establishment; composition; Chairperson**

There is established in the Department of Education a National Advisory Council on Women's Educational Programs. The Council shall be composed of--

(1) seventeen individuals, some of whom shall be students, and who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals, broadly representative of the general public who, by virtue of their knowledge or experience, are versed in the role and status of women in American society;

(2) the staff Director of the Civil Rights Commission;

(3) the Director of the Women's Bureau of the Department of Labor; and

(4) the Director of the Women's Action Program of the Department of Health and Human Services.

The Council shall elect its own Chairperson from among the members described in paragraph (1).

**(b) Terms of office of members**

The term of office of each member of the Council appointed under paragraph (1) of subsection (a) of this section shall be three years, except that--

(1) the members first appointed under such clause shall serve as designated by the President, six for a term of one year, five for a term of two years, and six for a term of three years; and

(2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term.

**(c) Functions**

The Council shall--

(1) advise the Secretary on matters relating to equal educational opportunities for women and policy matters relating to the administration of this part;

(2) make recommendations to the Secretary with respect to the allocation of any funds available to this part, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation;

(3) recommend criteria for the establishment of program priorities;

(4) make such reports as the Council determines appropriate to the President and the Congress on the activities of the Council; and

(5) disseminate information concerning the activities of the Council under this part.

**(d) Applicability of other Federal statutory provisions**

The provisions of part D of the General Education Provisions Act (20 U.S.C. 1233 et seq.) shall apply with respect to the Council established under this subsection.

(Pub. L. 89-10, title IX, § 936, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2300, and amended Pub. L. 96-88, title III, § 301(a)(1), (b)(2), title V, §§ 507, 509(b), Oct. 17, 1979, 93 Stat. 677, 678, 692, 696.)

**REFERENCES IN TEXT**

The General Education Provisions Act, referred to in subsec. (d), is title IV of Pub. L. 90-247, Jan. 2, 1968, 81 Stat. 614, as amended. Part D of the General Education Provisions Act is classified generally to subchapter IV (§ 1233 et seq.) of chapter 31 of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

**PRIOR PROVISIONS**

Provisions similar to this section were contained in section 404(f) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 554, which was classified to section 1866(f) of this title prior to the repeal of that section by Pub. L. 95-561, title III, § 301(b)(1)(C), Nov. 1, 1978, 92 Stat. 2226.

**CHANGE OF NAME**

"Department of Health and Human Services" was substituted for "Department of Health, Education, and Welfare" in subsec. (a)(4) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3509(b) of this title.

**TRANSFER OF FUNCTIONS**

"Department of Education" was substituted for "Office of Education" in subsec. (a), and "Secretary", meaning the Secretary of Education, was substituted for "Secretary, Assistant Secretary, and the Commissioner" in subsec. (c)(1) and for "Commissioner" in subsec. (c)(2), pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96-88, which are classified to sections 111(a)(1), (b)(2) and 3507 of this title and which transferred the Office of Education to the Department of Education and transferred all functions of the Assistant Secretary for Education and the Commissioner of Education to the Secretary of Education.

**TERMINATION OF ADVISORY COUNCILS**

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

**§ 3347. Reports**

The Secretary is directed, not later than September 30, 1980, 1982, and 1984, to submit to

the President and the Congress and to the Council a report setting forth the programs and activities assisted under this part, and to provide for the distribution of this report to all interested groups and individuals, including the Congress, from funds authorized under this part. After receiving the report from the Secretary, the Council shall evaluate the program and projects assisted under this part and include such evaluation in its annual report.

(Pub. L. 89-10, title IX, § 937, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2300, and amended Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

#### PRIOR PROVISIONS

Provisions similar to this section were contained in section 408(k) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 554, which was classified to section 1866(k) of this title prior to the repeal of that section by Pub. L. 95-561, title III, § 301(b)(1)(C), Nov. 1, 1978, 92 Stat. 2328.

#### TRANSFER OF FUNCTIONS

"Secretary", meaning the Secretary of Education, was substituted for "Commissioner" in text pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 344(a)(1) and 3507 of this

title and which transferred all functions of the Commissioner of Education to the Secretary of Education.

#### § 2344. Authorization of appropriations

For the purpose of carrying out this part there are authorized to be appropriated \$80,000,000 for fiscal year 1980, and each of the three succeeding fiscal years.

(Pub. L. 89-10, title IX, § 938, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2301.)

#### PRIOR PROVISIONS

Provisions similar to this section were contained in section 408(h) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 554, which was classified to section 1866(h) of this title prior to the repeal of that section by Pub. L. 95-561, title III, § 301(b)(1)(C), Nov. 1, 1978, 92 Stat. 2328.

#### LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-36, title V, § 513(IN3), Aug. 13, 1981, 95 Stat. 445, provided that: "The total amount of appropriations to carry out part C of title IX of such Act [this part] shall not exceed \$6,000,000 for each of the fiscal years 1982, 1983, and 1984."

## PRESIDENTIAL DOCUMENTS

### Title 3—The President

#### REORGANIZATION PLAN NO. 1 OF 1978

*Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.*

#### Equal Employment Opportunity

##### SECTION 1. *Transfer of Equal Pay Enforcement Functions*

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11 (a), (b), and (c); 16 (b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211 (a), (b), and (c); 216 (b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

##### SECTION 2. *Transfer of Age Discrimination Enforcement Functions*

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

##### SECTION 3. *Transfer of Equal Opportunity in Federal Employment Enforcement Functions.*

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16 (b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

##### SECTION 4. *Transfer of Federal Employment of Handicapped Individuals Enforcement Functions*

All Federal employment of handicapped individuals enforcement functions and

related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

**SECTION 5. *Transfer of Public Sector 707 Functions***

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

**SECTION 6. *Transfer of Functions and Abolition of the Equal Employment Opportunity Coordinating Council***

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

**SECTION 7. *Savings Provision***

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

**SECTION 8. *Incidental Transfers***

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

**SECTION 9. *Effective Date***

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

[FR Doc. 78-12759 Filed 5-5-78; 8:45 am]

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**LEGISLATIVE HISTORY**

**WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS.**

Vol. 14, No. 8: Feb. 23. Presidential message transmitting Reorganization Plan No. 1 of 1978 to Congress.

**HOUSE REPORT** No. 95-1069 accompanying H. Res. 1049 (Comm. on Government Operations).

**SENATE REPORT** No. 95-750 accompanying S. Res. 404 (Comm. on Governmental Affairs).

**CONGRESSIONAL RECORD, Vol. 124 (1978):**

Feb. 24. H. Res. 1049. resolution of disapproval, introduced in House and referred to Committee on Government Operations.

S. Res. 404. resolution of disapproval, introduced in Senate and referred to Committee on Governmental Affairs

Apr. 25. H. Res. 1049 rejected by House.





[3195-01]

Executive Order 12067

June 30, 1978

**Providing for Coordination of Federal Equal Employment Opportunity Programs**

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807), it is ordered as follows:

**1-1. Implementation of Reorganization Plan.**

1-101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807), shall be effective on July 1, 1978.

**1-2. Responsibilities of Equal Employment Opportunity Commission.**

1-201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1-202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1-203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

**1-3. Specific Responsibilities.**

1-301. To implement its responsibilities under Section 1-2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1-302. The Equal Employment Opportunity Commission shall assist the Civil Service Commission, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1-303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1-304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1-305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1-306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1-307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

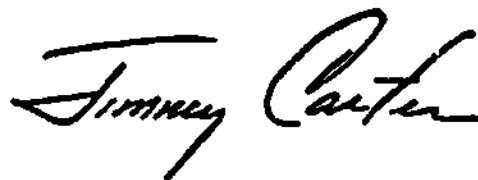
#### 1-4. Annual Report.

1-401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

#### 1-5. General Provisions.

1-501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1-502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.



THE WHITE HOUSE,  
June 30, 1978

[CFR Doc. 78-18886 Filed 6-30-78; 4:23 pm]

FEDERAL REGISTER, VOL. 43, NO. 129—WEDNESDAY, JULY 3, 1978

# NOTES

Lined area for notes, consisting of multiple horizontal lines across the page.

# EVALUATION

## PARTICIPANT SELF-ASSESSMENT QUESTIONNAIRE

1 Name (Optional) \_\_\_\_\_

3 Date \_\_\_\_\_

2 Position Title \_\_\_\_\_

4 Module Number \_\_\_\_\_

### Agency Setting (Circle the appropriate number)

6 Elementary School

10 JTPA

14 Youth Services

18 Municipal Office

7 Secondary School

11 Veterans

15 Business/Industry

19 Service Organization

8 Postsecondary School

12 Church

Management

20 State Government

9 College/University

13 Corrections

16 Business/Industry Labor

21 Other

17 Parent Group

Workshop Topics	PREWORKSHOP NEED FOR TRAINING <i>Degree of Need</i> (circle one for each workshop topic).					POSTWORKSHOP MASTERY OF TOPICS <i>Degree of Mastery</i> (circle one for each workshop topic).				
	None	Slight	Some	Much	Very Much	Not Taught	Little	Some	Good	Outstanding
1. Overview of need for equality of employment opportunity.	0	1	2	3	4	0	1	2	3	4
2. Review of overt and systemic forms of discrimination.	0	1	2	3	4	0	1	2	3	4
3. Definition and examples for affected and protected classes.	0	1	2	3	4	0	1	2	3	4
4. Review of the range of discriminatory practices and sample court decisions and interpretations.	0	1	2	3	4	0	1	2	3	4
5. Overview of the affirmative action compensatory justice concept.	0	1	2	3	4	0	1	2	3	4
6. Review of major enforcement/compliance agencies.	0	1	2	3	4	0	1	2	3	4
7. Identification of laws that prohibit discrimination by employers.	0	1	2	3	4	0	1	2	3	4
8. Identification of laws that prohibit discrimination as a condition of federal financial assistance.	0	1	2	3	4	0	1	2	3	4
9. Identification of laws that prohibit discrimination in specific federally funded programs.	0	1	2	3	4	0	1	2	3	4
10. Identification of laws that govern non-discrimination for federal employees.	0	1	2	3	4	0	1	2	3	4

**Workshop Topics**

**PRE WORKSHOP NEED FOR TRAINING** *Degree of Need* (circle one for each workshop topic)

**POSTWORKSHOP MASTERY OF TOPICS** *Degree of Mastery* (circle one for each workshop topic)

None    Slight    Some    Much    Very Much

Not Taught  
Little    Some    Good    Outstanding

11. Review of the use of guidelines to facilitate uniform interpretation of employment laws.

0   1   2   3   4

0   1   2   3   4

12. Participant identification of their clients' needs.

0   1   2   3   4

0   1   2   3   4

**Overall Assessment on Topic of Assisting Clients with Equity Rights and Responsibilities**

0   1   2   3   4

0   1   2   3   4

**Comments:**

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## Trainer's Assessment Questionnaire

Trainer: \_\_\_\_\_ Date: \_\_\_\_\_ Module Number: \_\_\_\_\_

Title of Module: \_\_\_\_\_

Training Time to Complete Workshop: \_\_\_\_\_ hrs. \_\_\_\_\_ min.

### Participant Characteristics

Number in Group \_\_\_\_\_ Number of Males \_\_\_\_\_ Number of Females \_\_\_\_\_

### Distribution by Position

_____ Elementary School	_____ Youth Services
_____ Secondary School	_____ Business/Industry Management
_____ Postsecondary School	_____ Business/Industry Labor
_____ College/University	_____ Parent Group
_____ JTPA	_____ Municipal Office
_____ Veterans	_____ Service Organization
_____ Church	_____ State Government
_____ Corrections	_____ Other

## PART I

**WORKSHOP CHARACTERISTICS—Instructions:** Please provide any comments on the methods and materials used, both those contained in the module and others that are not listed. Also provide any comments concerning your overall reaction to the materials, learners' participation or any other positive or negative factors that could have affected the achievement of the module's purpose.

1. *Methods:* (Compare to those suggested in Facilitator's Outline)

2. *Materials:* (Compare to those suggested in Facilitator's Outline)

3. *Reaction:* (Participant reaction to content and activities)

## PART II

**WORKSHOP IMPACT—Instructions:** Use Performance Indicators to judge degree of mastery. (Complete responses for all activities. Those that you did not teach would receive 0.)

### Group's Degree of Mastery

Not Taught	Little (25% or less)	Some (26%-50%)	Good (51%-75%)	Outstanding (over 75%)
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Note: Circle the number that best reflects your opinion of group mastery.

<b>Learning Experience 1</b>					
Group	0	1	2	3	4
Individual	0	1	2	3	4
<b>Learning Experience 2</b>					
Group	0	1	2	3	4
Individual	0	1	2	3	4
<b>Learning Experience 3</b>					
Group	0	1	2	3	4
Individual	0	1	2	3	4

**Code:**

**Little:** With no concern for time or circumstances within training setting if it appears that less than 25% of the learners achieved what was intended to be achieved

**Some:** With no concern for time or circumstances within the training setting if it appears that less than close to half of the learners achieved the learning experience.

**Good:** With no concern for time or circumstances within the training setting if it appears that 50%-75% have achieved as expected

**Outstanding:** If more than 75% of learners mastered the content as expected



### PART III

**SUMMARY DATA SHEET—Instructions:** In order to gain an overall idea as to mastery impact achieved across the Learning Experiences taught, complete the following tabulation. Transfer the number for the degree of mastery on each Learning Experience (i.e., group and individual) from the Workshop Impact form to the columns below. Add the subtotals to obtain your total module score.

<b>GROUP</b>		<b>INDIVIDUAL</b>	
Learning Experience		Learning Experience	
1 = score (1-4)	_____	1 = score (1-4)	_____
2 = score (1-4)	_____	2 = score (1-4)	_____
3 = score (1-4)	_____	3 = score (1-4)	_____
Total (add up)	_____	Total (add up)	_____

Total of the GROUP learning experience scores and INDIVIDUAL learning experience scores = \_\_\_\_\_ Actual Total Score \_\_\_\_\_ Compared to Maximum Total\* \_\_\_\_\_.

\*Maximum total is the number of learning experiences taught times four (4).



## Performance indicators

As you conduct the workshop component of this training module, the facilitator's outline will suggest individual or group activities that require written or oral responses. The following list of **performance indicators** will assist you in assessing the quality of the participants' work:

Module Title: *Assist Clients with Equity Rights and Responsibilities*

Module Number: CG C-18

<b>Group Learning Activity</b>	<b>Performance Indicators to Be Used for Learner Assessment</b>
<b>Group Activity Number 1:</b> Brainstorm EEO definitions and types of discriminatory practices in employment.	<ol style="list-style-type: none"><li>1. Was the group able to define the ten concepts and understand the differences between them?</li><li>2. Could the group differentiate between EEO and affirmative action?</li><li>3. Was the group able to give examples for the seven employment phases?</li></ol>
<b>Group Activity Number 2:</b> Understand EEO laws covered in reading.	<ol style="list-style-type: none"><li>1. Could the small group identify applicable laws and enforcement/compliance agencies for the "illegal" scenarios?</li></ol>
<b>Group Activity Number 3:</b> Analyze EEO concerns of clients in back home settings.	<ol style="list-style-type: none"><li>1. Were individuals able to identify client EEO concerns and laws/executive orders that might apply?</li><li>2. Did individuals identify specific laws for which they planned on obtaining more information?</li><li>3. Were individuals able to share their analysis of needs (from chart) in small groups as well as their list of "next steps"?</li><li>4. In the final discussion, did participants demonstrate an awareness that they can combat EEO discrimination on many fronts--with clients, with employers, and in their own work setting?</li></ol>







# KEY PROJECT STAFF

The Competency-Based Career Guidance Module Series was developed by a consortium of agencies. The following list represents key staff in each agency that worked on the project over a five-year period.

## The National Center for Research in Vocational Education

Harry N. Drier ..... Consortium Director  
 Robert E. Campbell ..... Project Director  
 Linda A. Plister ..... Former Project Director  
 Robert Bhaerman ..... Research Specialist  
 Karen Kimmel Boyle ..... Program Associate  
 Fred Williams ..... Program Associate

## American Institutes for Research

G. Brien Jones ..... Project Director  
 Linda Phillips-Jones ..... Associate Project Director  
 Jack Hamilton ..... Associate Project Director

## University of Missouri-Columbia

Norman C. Gysbers ..... Project Director

## American Association for Counseling and Development

Jane Howard Jesper ..... Former Project Director

## American Vocational Association

Wayne LeRoy ..... Former Project Director  
 Roni Posner ..... Former Project Director

## U.S. Department of Education, Office of Adult and Vocational Education

David Pritchard ..... Project Officer  
 Holli Condon ..... Project Officer

A number of national leaders representing a variety of agencies and organizations added their expertise to the project as members of national panels of experts. These leaders were--

Ms. Grace Bessinger  
 Past President  
 National Parent-Teacher  
 Association

Dr. Frank Bowe  
 Former Executive Director

Ms. Jane Razeghi  
 Education Coordinator  
 American Coalition of Citizens  
 with Disabilities

Mr. Robert L. Craig  
 Vice President  
 Government and Public Affairs  
 American Society for Training  
 and Development

Dr. Walter Davis  
 Director of Education  
 AFL-CIO

Dr. Richard DiEugenio  
 Senior Legislative Associate  
 (representing Congressman Bill  
 Goodling)  
 House Education and Labor  
 Committee

Mr. Oscar Gjernes  
 Administrator (Retired)  
 U.S. Department of Labor  
 Division of Employment and  
 Training

Dr. Robert W. Glover  
 Director and Chairperson  
 Federal Committee on  
 Apprenticeship  
 The University of Texas at Austin

Dr. Jo Hayship  
 Director of Planning and  
 Development in Vocational  
 Rehabilitation  
 New Hampshire State Department  
 of Education

Mrs. Madeleine Hemmings  
 National Alliance for Business

Dr. Edwin Herr  
 Counselor Educator  
 Pennsylvania State University

Dr. Elaine House  
 Professor Emeritus  
 Rutgers University

Dr. David Lacey  
 Vice President  
 Personnel Planning and Business  
 Integration  
 CIGNA Corporation

Dr. Howard A. Matthews  
 Assistant Staff Director  
 Education (representing Senator  
 Orrin G. Hatch)  
 Committee on Labor and Human  
 Resources

Dr. Lee McMurrin  
 Superintendent  
 Milwaukee Public Schools

Ms. Nanine Merklejohn  
 Assistant Director of Legislation  
 American Federation of State,  
 County and Municipal Employees

Dr. Joseph D. Mills  
 State Director of Vocational  
 Education  
 Florida Department of Education

Dr. Jack Myers  
 Director of Health Policy Study and  
 Private Sector Initiative Study  
 American Enterprise Institute

Mr. Reid Rundell  
 Director of Personnel Development  
 General Motors Corporation

Mrs. Dorothy Shields  
 Education  
 American Federation of Labor/  
 Congress of Industrial  
 Organizations

Dr. Barbara Thompson  
 Former State Superintendent  
 Wisconsin Department of Public  
 Instruction

Ms. Joan Wills  
 Director  
 Employment and Training Division  
 National Governors' Association

Honorable Chalmers P. Wylie  
 Congressman/Ohio  
 U.S. Congress

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## Competency-Based Career Guidance Modules

### CATEGORY A: GUIDANCE PROGRAM PLANNING

- A-1 Identify and Plan for Guidance Program Change
- A-2 Organize Guidance Program Development Team
- A-3 Collaborate with the Community
- A-4 Establish a Career Development Theory
- A-5 Build a Guidance Program Planning Model
- A-6 Determine Client and Environmental Needs

### CATEGORY B: SUPPORTING

- B-1 Influence Legislation
- B-2 Write Proposals
- B-3 Improve Public Relations and Community Involvement
- B-4 Conduct Staff Development Activities
- B-5 Use and Comply with Administrative Mechanisms

### CATEGORY C: IMPLEMENTING

- C-1 Counsel Individuals and Groups
- C-2 Tutor Clients
- C-3 Conduct Computerized Guidance
- C-4 Infuse Curriculum-Based Guidance
- C-5 Coordinate Career Resource Centers
- C-6 Promote Home-Based Guidance

- C-7 Develop a Work Experience Program
- C-8 Provide for Employability Skill Development
- C-9 Provide for the Basic Skills
- C-10 Conduct Placement and Referral Activities
- C-11 Facilitate Follow-through and Follow-up
- C-12 Create and Use an Individual Career Development Plan
- C-13 Provide Career Guidance to Girls and Women
- C-14 Enhance Understanding of Individuals with Disabilities
- C-15 Help Ethnic Minorities with Career Guidance
- C-16 Meet Initial Guidance Needs of Older Adults
- C-17 Promote Equity and Client Advocacy
- C-18 Assist Clients with Equity Rights and Responsibilities
- C-19 Develop Ethical and Legal Standards

### CATEGORY D: OPERATING

- D-1 Ensure Program Operations
- D-2 Aid Professional Growth

### CATEGORY E: EVALUATING

- E-1 Evaluate Guidance Activities
- E-2 Communicate and Use Evaluation-Based Decisions

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