

Some of the statutes specifically provide that an employer may lawfully refuse to hire or may discharge an employee on the basis of age where age is a bona fide occupational qualification. The agencies administering the statutes in the different States may or may not determine, as to a particular position, that age is a bona fide occupational qualification. Thus, an airline might find an age regulation applicable to a given flight crew member valid in some states where it operates and invalid in other States for the same employee during occasional duty in the latter States, or while temporarily located there by virtue of bidding or company assignment.

Similarly, some States specifically provide exemptions for certain types of retirement plans which qualify under their age statutes. An airline could find a reassignment or retirement plan valid in one State where it operates but invalid in another as to similarly circumstanced employees. The employees' rights would thus be subject to change depending upon changes in base or route assignments.

Further problems arise from the different ages in State statutes and the uncertainty as to the territorial scope of their applicability. Does a State law apply only to persons hired, residing, working, or terminated within a State? Can they or do they constitutionally apply to nonresident employees flying in and out of the State? How much of a person's working time must be within a State to make its law and rulings applicable to that employee? Does the law of one State follow the traveling employee into another State, and if so, for what purposes and for how long? Is a carrier subject to liability for treating an employee one way in one State and like employees differently in a second or third or fourth State.

Suppose an airline has a rule for reasons of safety or economics that a flight engineer on jet aircraft will not be retrained to qualify as a pilot after age 42. Should that rule be valid in all the States that have no age statutes or whose statutes only apply to higher ages and possibly invalid in other States, depending on the bona fide occupational qualification determination of the State involved?

Suppose an airline has a rule that stewardesses shall uniformly be reassigned to ground services at a specified age with no loss of pay. Should that rule be valid in all the States that have no age statutes or whose statutes only apply to higher ages? Should it possibly be invalid in various other States, depending on the bona fide occupational qualification or retirement plan determination of the State involved?

Suppose an airline adopts a rule for reasons of safety or economics that a pilot will not, after a certain age, be trained for service on new equipment such as the coming supersonic transport. Should that rule be valid in all States that have no age statutes, or whose statutes apply only to higher ages? Should it be invalid in various other States depending on the bona fide occupational qualification determination of the State involved? Must an airline having such a rule secure a bona fide occupational determination in every State in which it operates? Would a Federal ruling be binding nationwide? Can a New York decision bind the airline in California or employees flying back and forth between them?

Would the law of the base State, or the residence State, or the assignment State, apply to the flight engineer or pilot? Or the law of the State where he might choose to put in his request? Or all? Or none?