

The traditional enforcement pattern of the Fair Labor Standards Act gives investigatory power to the Labor Department, but provides for enforcement by the Secretary of Labor, or a private party, through suit on an alleged discriminatory practice in a U.S. district court with jurisdiction to make its own findings of fact in accordance with usual judicial rules subject to far more adequate judicial review.

There are several advantages to the recommended amendment:

First, it would permit enforcement by the Wage and Hour Division of the Department of Labor, thereby making it unnecessary to establish a whole new bureau just to enforce age discrimination legislation. The Wage and Hour Division already has a complete staff of investigators, regional offices, and regional attorneys, fully capable of enforcing this legislation in addition to its already existing jurisdiction.

Second, the amendment would separate the rulemaking and prosecution functions from the responsibility for adjudication subject to full judicial review. This would enhance the objectivity and impartiality of the decisionmaking process.

Third, the amendment would provide an enforcement procedure which is already familiar to labor, to management, and to the regional offices of the Wage and Hour Division, thereby expediting effective enforcement of any age discrimination statute.

Further, in connection with the mechanics of enforcement, it is recommended that a time limit be established for filing complaints of age discrimination. It is also recommended that provisions be made for the confidentiality of any conciliation discussions.

Time Limits for Filing Complaints

H.R. 3651, and others, as drafted, contain no time limit on the filing of discrimination complaints. Any alleged unlawful age discrimination in employment is apparent at the time it is committed and should be protested immediately if at all. In order to expeditiously resolve the issues in the interest of avoiding undue employment turmoil, it is recommended that this omission be rectified by requiring that any charge of unlawful discrimination in employment because of age must be filed within 90 days of its alleged occurrence.

Confidentiality of Conciliation Efforts

In attacking the problems of unacceptable discrimination, conference, conciliation, and persuasion have always played a paramount part. To promote to the utmost the effectiveness of such procedures, it is recommended that any age discrimination legislation contain a provision that nothing said or done in the conciliation process should be permitted to be used as evidence in a subsequent enforcement proceeding. Failure to provide such a safeguard could destroy the usefulness of the entire conciliation process by causing the parties to adopt rigid positions. True conciliation requires flexibility and confidentiality in order to fully explore the possibilities for settlement, not only of the particular complaint at hand, but perhaps also of more far-reaching employment policies.

CONCLUSION

In his 1965 report, entitled, "The Older American Worker—Age Discrimination in Employment" a report required by the Congress