

the social goal, can effectively reduce the very job opportunities it seeks to create by diverting energies which would otherwise be devoted to the maintenance of full production.

COMMENTS ON SPECIFIC PROPOSED LEGISLATION

Now let us look briefly at the kind of problems which H.R. 3651 would raise. Employment and layoff should be entirely without regard to age, except in those situations recognized in H.R. 3651 where age is a bona fide occupational qualification or all employees are covered by a bona fide retirement policy.

It is imperative, however, that there be no conflict with either new or established retirement policies. Pension plans and insurance plans should be excluded from the coverage of this proposed legislation; otherwise, the measure could create havoc with such private plans. Any law should specify clearly that bona fide pension and insurance plans, and similar types of employee benefits, are *not* to be considered "terms or conditions of employment" with respect to which it is unlawful to include differentiations based on age. Because of the far-reaching implications, any such significant revision of pension and insurance plans in this country should be accomplished knowingly and intentionally, not inadvertently by legislation designed to resolve an entirely different matter.

Further, we believe it is undesirable to include criminal penalties in such a proposed law. This is, at best, a very difficult area in which to enact intelligent and workable legislation. The addition of criminal sanctions, even for second offenders, can obstruct rather than assist in the resolution of the sensitive social problem which this legislation seeks to reach. The various ability and skill factors which have to be assessed in interviewing and placing an applicant make the problem one which should not be subject to the threat of criminal penalties. The very existence of criminal sanctions could militate against success of the "informal methods of conference, conciliation, and persuasion" envisioned by H.R. 3651.

Nor should such prohibitions be enforced by an administrative determination of guilt as provided by the bill. Individuals responsible for day-to-day administration of a particular statute tend to become advocates of the cause which the statute seeks to promote. They soon become less than objective when individual cases are presented to them. These provisions will be susceptible to sharply varying interpretations.

Enforcement must be objective and impartial; it must not unduly hamper an honest employer just because his judgment and evaluation of the ability and skill factors involved happen to differ from those of Department of Labor employees. A better procedure than administrative hearings would be for matters in dispute to be resolved by a new trial of the issues in a United States district court.

In order to avoid a further increase in the number of administrative agencies within the executive department of the federal government, we strongly support the view that this measure, if enacted, be administered by the Wage and Hour Division rather than by an entirely new agency. The Wage and Hour Division, which presently enforces the age provisions of the child labor laws and the wage discrimination provisions of the Equal Pay Act, would doubtless have the staff and experience to deal with the problems of age discrimination.

Finally, in order for the act not to discriminate in favor of workers in any particular age bracket, such as 45-65, it should contain the exception "where the differentiation is based on reasonable factors other than age" and the exception of a "bona fide occupational qualification reasonably necessary to the normal operation of the particular business," both of which are proposed in H.R. 3651.

SUMMARY

Voluntary efforts offer the best means for continued advancement against arbitrary age discrimination in employment.

No matter with what skill the proposed bills may be improved, legislation will not resolve the problem of arbitrary age discrimination. But voluntary efforts *can*. With the cooperation of employers and employees alike, great strides can be made against whatever barriers still exist.

In furtherance of its long-standing policy, NAM will continue its efforts to encourage manufacturers to avail themselves of the skills and experience of older people who have so much to offer as employees. We continue to believe that more significant progress can be made through voluntary efforts, at both the national, state, and local levels, than by national edict.