

We are concerned, however, that this proposed legislation goes beyond matters related to the hiring and discharging of older workers and would affect the terms, conditions and privileges of their employment. As presently written the legislation could be disruptive of traditional and legitimate underwriting practices in accident and health insurance, life insurance, and welfare and pension plans. Specifically, we suggest that the legislation be amended to make it clear that it would not affect the establishment or operation of the terms or conditions of any bona fide retirement, pension, employee benefit or insurance plan. This would be accomplished by substituting for Section 4(f)(2) as introduced, the following language:

"To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as retirement, pension, or insurance plan, which is not a subterfuge to evade the purpose of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual or . . ."

We understand that such an amendment to companion bill, S. 830, has been approved by the Labor Subcommittee of the Senate.

Similar exemptions have been adopted in most of the states which have laws prohibiting discrimination in employment on the basis of age. A summary of these statutory provisions is attached for your information.

The age of employees is a necessary and important factor in the design and underwriting of all insurance and pension plans. The age at which a worker enters a pension plan affects the cost of providing a given pension benefit because it governs the duration of time over which contributions, including interest, can be accumulated to fund his pension. The age distribution of the covered employees also governs the premium rate of group life insurance just as it does with individual life insurance.

In accident and health insurance the age-related cost factors are less substantial but nevertheless real. Demonstrable increases in morbidity inherent with advancing age are partially, but not fully, offset by decreasing maternity benefit costs. A slower rate of recuperation for older individuals also tends to increase costs.

These inherent age-related factors in employee benefit plans, have, over the years, led to a variety of practices designed to produced equitable treatment among the various employees and to help stabilize costs whether paid by the employer or employee. In pension plans, contributions by older employees may be increased for those hired after a certain age; normal retirement age may vary with age of entry. Similarly, for employee life insurance plans, benefits are generally reduced after a particular age. Although this is usually related to the normal retirement age it can occur prior to age 65. In group life insurance plans the waiver-of-premium provision for disabled employees is usually effective only for disabilities occurring prior to age 60.

In the accident and health insurance field there are various age-related terms and conditions. For example, since the advent of Medicare, medical and hospital coverage under an employee benefit plan is generally adjusted to the Medicare benefits to which an employee and his spouse become entitled.

In brief, virtually all employee benefit plans involve numerous age-related provisions. These provisions vary greatly dependent upon many factors including: the benefits provided, whether the plan is contributory or entirely financed by the employer, whether the plan is negotiated with a union or unilaterally developed by the employer, whether the plan or portions of it are insured or uninsured, the age structure of the group and the nature of the employment.

These differentiations related to age are accepted practices and procedures. If enacted without appropriate exemptions, the bills under consideration could deter the establishment or continuance of some employee benefit plans due to the uncertainty as to which age-related provisions could be held to be discriminatory. Or alternatively, since age-related differences can be eliminated in either of two ways, cost pressures might lead to less liberal provisions for all.

These problems would be particularly troublesome to the small firm. Moreover, the small firm traditionally lacks the expertise to rearrange its fringe benefits so as to accommodate a new set of government requirements and would therefore seek to avoid the problems by not employing the older workers.

In summary, we believe it is extremely important that employers and labor organizations be allowed to continue to make differentiations based on age in the broad spectrum of employee benefit programs. Without an exemption for pensions and insurance programs, the proposed legislation will tend to be self-defeating and additionally will be disruptive of the fringe benefit programs which are becoming increasingly important each year to the maintenance of income for