

DISPATCH



Age Discrimination in Employment Act (ADEA)

PUBLIC SAFETY EXEMPTION

The federal Age Discrimination in Employment Act (ADEA) permanently exempts fire fighters, emergency medical personnel, and police officers from the federal ban on age limits and employment. The new law authorizes state and local governments to establish mandatory retirement ages of at least 55, as well as maximum hiring ages. It is also retroactive to January 1, 1994, to cover municipalities whose age limits became illegal when the ADEA took affect for public safety personnel.

Application of the ADEA to Public Safety Agencies

Any state or local government may have a maximum entry age limit for public safety officers.

Any state or local government that *did not* have a mandatory retirement age during the previous ADEA Public Safety Exemption (1986-93) may establish one—except that the retirement age may not be lower than 55 (which is the federal government’s mandatory retirement age for fire fighters).

Any state or local government that *did* have a mandatory retirement age during the previous exemption may continue to use that age limit—regardless of whether or not it is below age 55. If such a jurisdiction wants to change their retirement age, the new retirement age could not be lower than 55.

Effective Date

Provisions of the act affecting public safety agencies that utilized age limits during the previous exemption are effective retroactive to January 1, 1994. All other provisions are effective on the date of enactment.

Development of Wellness Guidelines and Job Performance Tests

As part of the legislation, Congress authorized the National Institute for Occupational Safety and Health (NIOSH) to address job fitness tests and fire department wellness/fitness programs.

- Two years after the date of enactment, NIOSH will issue guidelines on the use of wellness programs.
- Three years after the date of enactment, NIOSH will publish the results of a study into job performance fitness tests. The study will examine whether such tests are valid, safe and in full compliance with civil rights laws.
- Four years after the date of enactment, NIOSH will issue guidelines on the use of job performance fitness tests.

However, Congress never appropriated any funds to initiate and complete these programs and the timeframes were never met.

Exception to the Exemption Test

As part of the legislation, Congress authorized the National Institute for Occupational Safety and Health (NIOSH) to identify a valid job performance test that individuals could use to seek exemption to the mandatory retirement age.

- Following publication of the guidelines on the use of job performance fitness tests, NIOSH shall identify one or more job performance fitness tests that meet the criteria described in their study.
- Following such NIOSH identification of valid, job performance tests, any public safety agency that wishes to utilize a mandatory retirement age must provide public safety officers who attain the retirement age the opportunity to demonstrate their fitness to continue performing their duties by passing the NIOSH-approved test. The test will be given on an annual basis to any public safety officer above the mandatory retirement age.

Again, Congress never appropriated funds to address the job performance exemption issue. Therefore, tests have not been developed that would allow individuals to seek exemption to their jurisdiction's mandatory retirement age.