

29 C.F.R. § 1625.9

Prohibition of involuntary retirement.

(a)

(1) As originally enacted in 1967, section 4(f)(2) of the Act provided:

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

The Department of Labor interpreted the provision as “Authoriz[ing] involuntary retirement irrespective of age: *Provided*, That such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2).” See 34 FR 9709 (June 21, 1969). The Department took the position that in order to meet the requirements of section 4(f)(2), the involuntary retirement provision had to be (i) contained in a bona fide pension or retirement plan, (ii) required by the terms of the plan and not optional, and (iii) essential to the plan's economic survival or to some other legitimate business purpose—i.e., the provision was not in the plan as the result of arbitrary discrimination on the basis of age.

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