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of North Carolina.

100TH CONGRESS
2D SESSION

H. R. 5112

To modify the authority of the Equal Employment Opportunity Commission to investigate and determine discrimination claims made by Federal employees against the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1988

Mr. LANTOS (for himself, Mr. FRANK, Mr. DIOGUARDI, and Mr. NIELSON of Utah) introduced the following bill; which was referred jointly to the Committees on Education and Labor and Post Office and Civil Service

A BILL

To modify the authority of the Equal Employment Opportunity Commission to investigate and determine discrimination claims made by Federal employees against the Federal Government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Federal Employee Dis-
5 crimination Complaint Procedures Act of 1988".

6 SEC. 2. AMENDMENTS.

7 (a) DEFINITIONS.—Section 701 of the Civil Rights Act
8 of 1964 (42 U.S.C. 2000e) is amended—

1 (1) in paragraph (f) by striking "The term" and
2 inserting "Except when it appears as part of the term
3 'Federal employee', the term ", and

4 (2) by adding at the end the following:

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5 "(l) The term 'Commission' means the Equal Employ-
6 ment Opportunity Commission.

7 "(m) The term 'entity of the Federal Government'
8 means an entity to which section 717(a) applies, except that
9 such term does not include the Library of Congress.

10 "(n) The term 'Federal employee' means an individual
11 who is employed by an entity of the Federal Government.

12 "(o) The term 'Federal employment' means employment
13 by an entity of the Federal Government.

14 "(p) The terms 'government', 'government agency', and
15 'political subdivision' do not include any entity of the Federal
16 Government."

17 (b) EEOC AND JUDICIAL DETERMINATION OF DIS-
18 CRIMINATION CLAIMS RELATING TO FEDERAL EMPLOY-
19 MENT.—Section 717 of the Civil Rights Act of 1964 (42
20 U.S.C. 2000e-16) is amended—

21 (1) by redesignating subsection (e) as subsection
22 (j), and

23 (2) by striking subsections (c) and (d) and inserting
24 the following:

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3

1 “(c)(1) Whenever a charge is filed timely by or on behalf
2 of an individual, or by a member of the Commission, alleging
3 that an entity of the Federal Government has engaged in
4 discrimination based on race, color, religion, sex, or national
5 origin, the Commission shall—

6 “(A) serve a notice of the charge (including the
7 date, place, and circumstances of the alleged discrimi-
8 nation) on the head of such entity not later than 10
9 days after the charge is filed; and

10 “(B) make an investigation of the charge.

11 “(2)(A) A charge filed under this section shall be in
12 writing under oath or affirmation and shall contain—

13 “(i) such information and be in such form as the
14 Commission requires; and

15 “(ii) a certification that, not less than 30 days
16 before the charge is filed, such individual—

17 “(I) notified such entity of the specific nature
18 of such charge and the intent to file such charge;
19 and

20 “(II) was reasonably available for counseling
21 by such entity regarding such charge.

22 “(B) A charge arising under this section shall be filed
23 with the Commission not later than 180 days after the al-
24 leged discrimination occurs.

1 “(3)(A) Whenever a charge is filed under this section
2 with the Commission and the Commission concludes on the
3 basis of a preliminary investigation that prompt judicial
4 action is necessary to carry out the purposes of this section,
5 the Commission may bring a civil action in an appropriate
6 district court of the United States for appropriate temporary
7 or preliminary relief pending final disposition of the charge.

8 “(B) Any temporary restraining order or other order
9 granting preliminary or temporary relief shall be issued in
10 accordance with rule 65 of the Federal Rules of Civil Proce-
11 dure, except that any such order may be issued by the court
12 if the Commission shows that—

13 “(i) there is a substantial likelihood that the indi-
14 vidual aggrieved by the unlawful discrimination alleged
15 in such charge will prevail on the merits of such
16 charge; and

17 “(ii) undue hardship to such individual will result
18 if the court does not issue such order.

19 “(4)(A) Not later than 60 days after a charge is timely
20 filed, the Commission shall determine whether there is rea-
21 sonable cause to believe that the charge is true.

22 “(B) The Commission shall promptly notify the individ-
23 ual aggrieved by the alleged discrimination and the respond-
24 ent of its determination under subparagraph (A).

1 “(5)(A) If the Commission determines after such investi-
2 gation that there is reasonable cause to believe that the
3 charge is true, the Commission shall endeavor to eliminate
4 the alleged unlawful discrimination by informal methods of
5 conference, conciliation, and persuasion.

6 “(B) If the Commission—

7 “(i) does not comply with subparagraph (A); or

8 “(ii) determines that there is reasonable cause to
9 believe that the charge is true and is unable to secure,
10 within the 90-day period beginning on the date the
11 charge is filed, from the respondent a conciliation
12 agreement acceptable to the individual aggrieved by
13 the alleged discrimination;

14 then such individual, not later than 120 days after the charge
15 is filed, either may file a request with the Commission that
16 such charge be adjudicated by an administrative law judge of
17 the Commission or may commence a civil action in an appro-
18 priate district court of the United States based on the claim
19 with respect to which the charge is filed. Such civil action
20 shall be dismissed if such individual timely files such a re-
21 quest with the Commission.

22 “(C) If the Commission determines timely that there is
23 no reasonable cause to believe that the charge is true—

24 “(i) the Commission shall immediately dismiss the
25 charge; and

1 “(ii) such individual, not later than 120 days after
2 the charge is filed, may commence a civil action in an
3 appropriate district court of the United States based on
4 the claim with respect to which the charge is filed.

5 “(D) The standards and procedures applicable to deter-
6 mining under section 706(b) whether there is reasonable
7 cause to believe that a charge is true shall apply with respect
8 to determining under this subsection whether there is reason-
9 able cause to believe that a charge is true.

10 “(6)(A)(i) If the Commission receives under paragraph
11 (5)(B) a timely request that the charge be adjudicated by an
12 administrative law judge of the Commission, an administra-
13 tive law judge shall determine the charge in accordance with
14 section 554 of title 5 of the United States Code, notwith-
15 standing subsection (a)(2) of such section, after an opportuni-
16 ty for a hearing on the record. Such hearing, if any, shall be
17 concluded not later than 180 days after the Commission re-
18 ceives such timely request. Not later than 90 days after the
19 conclusion of such hearing, the administrative law judge shall
20 determine the charge in accordance with such section.

21 “(ii) For purposes of making such determination, the
22 Commission shall issue subpoenas in accordance with section
23 555(d) of title 5, United States Code.

24 “(B)(i) If a preponderance of the evidence received dem-
25 onstrates that the charge is true, then the administrative law

1 judge shall issue, and cause to be served on the head of such
2 entity, an order requiring such entity—

3 “(I) to cease and desist from engaging in the un-
4 lawful discrimination alleged in the charge;

5 “(II) to take such affirmative action as may be
6 appropriate; and

7 “(III) to provide any appropriate relief of a kind
8 described in subsection (d)(2)(A).

9 “(ii) If a preponderance of the evidence fails to demon-
10 strate that the charge is true, then the administrative law
11 judge shall issue an order dismissing the charge.

12 “(C)(i) Not later than 30 days after an administrative
13 law judge issues an order under subparagraph (B), an individ-
14 ual or entity of the Federal Government aggrieved by such
15 order may appeal such order to the Commission.

16 “(ii) Not later than 90 days after such order is appealed
17 to the Commission, the Commission shall affirm, reverse, or
18 modify such order.

19 “(iii) An individual who is aggrieved by—

20 “(I) such order and does not appeal such order to
21 the Commission;

22 “(II) a determination made under clause (ii) by
23 the Commission; or

24 “(III) by the failure of the Commission to comply
25 with clause (ii);

1 may commence a civil action, not later than 30 days after
2 such determination is timely made, or 120 days after such
3 order is issued under subparagraph (B), whichever occurs
4 earlier, for judicial review in the United States Court of Ap-
5 peals for the District of Columbia Circuit or in the United
6 States Court of Appeals for the circuit in which the unlawful
7 discrimination is alleged to have occurred, for the circuit in
8 which the employment records relevant to such discrimina-
9 tion are maintained and administered, or for the circuit in
10 which such individual would have worked but for the alleged
11 discrimination in violation of subsection (a).

12 “(iv) If an individual with respect to whom a charge is
13 filed under this section prevails under this section with re-
14 spect to unlawful discrimination alleged in the charge, the
15 entity that engaged in such unlawful discrimination shall pro-
16 vide to the individual all the relief—

17 “(I) that is awarded under this section to such in-
18 dividual; and

19 “(II) with respect to which a timely appeal is not
20 taken under this section or under title 28 of the United
21 States Code.

22 “(v) The Commission may commence a civil action, in
23 any court of appeals of the United States referred to in clause
24 (iii), to enforce—

1 “(I) an order issued under subparagraph (B) by an
2 administrative law judge if an appeal from such order
3 is not taken timely under clause (i) or (iii); or

4 “(II) an order issued under clause (ii) by the Com-
5 mission if a civil action to review such order is not
6 commenced timely under clause (iii).

7 “(vi) To enforce an order referred to in clause (v), the
8 Commission may order that any employee charged with com-
9 plying with such order shall not be entitled to receive pay-
10 ment for service as an employee during any period that such
11 order has not been complied with. The Commission shall cer-
12 tify to the Comptroller General of the United States that an
13 order has been issued under this clause. No payment shall be
14 made out of the Treasury of the United States for any service
15 specified in the order issued under this clause by the Commis-
16 sion.

17 “(7)(i) Upon commencement of a civil action under para-
18 graph (6)(C), the Commission shall file with the court of ap-
19 peals the record in accordance with section 2112 of title 28,
20 United States Code.

21 “(ii) Upon commencement of a civil action under para-
22 graph (6)(C), the court shall cause notice of the action to be
23 served on the parties involved.

24 “(iii) The commencement of a civil action under para-
25 graph (6)(C) shall not operate as a stay of the order with

1 respect to which the action is commenced, but the court in its
2 discretion, may suspend the operation of such order pending a
3 determination of the action.

4 “(iv)(I) Review by the court of appeals of an order
5 issued under paragraph (6)(B), including any determination
6 made under paragraph (6)(C)(ii) by the Commission, shall be
7 on the record in accordance with section 706 of title 5,
8 United States Code.

9 “(II) No objection that has not been urged before the
10 administrative law judge or the Commission, as the case may
11 be, may be considered by the court unless the failure to urge
12 such objection is excused by extraordinary circumstances.

13 “(III) The findings of the administrative law judge or
14 the Commission, as the case may be, with respect to ques-
15 tions of fact shall be conclusive if supported by a preponder-
16 ance of the evidence on the record considered as a whole.

17 “(IV) If the individual or the entity of the Federal Gov-
18 ernment with respect to which such order applies requests
19 leave to adduce additional evidence and shows to the satisfac-
20 tion of the court that the additional evidence is material and
21 that there were reasonable grounds for the failure to adduce
22 the additional evidence before the administrative law judge or
23 the Commission, as the case may be, then the court may
24 order the additional evidence to be taken before the Commis-
25 sion, or its designee, and to be made a part of the record.

1 “(V) The administrative law judge or the Commission,
2 as the case may be, may modify its findings as to the facts, or
3 may make new findings, by reason of additional evidence so
4 taken and filed. The administrative law judge or the Commis-
5 sion shall file any modified or new findings, which shall be
6 conclusive with respect to questions of fact if supported by a
7 preponderance of the evidence on the record considered as a
8 whole. The administrative law judge or the Commission shall
9 file recommendations, if any, for the modification or setting
10 aside of the order, including any determination made under
11 paragraph (6)(C)(ii) by the Commission.

12 “(VI) On the filing of the record with the court, the
13 jurisdiction of the court shall be exclusive and its judgment
14 shall be final, except that the judgment shall be subject to
15 review by the Supreme Court of the United States upon writ
16 of certiorari or certification as provided in section 1254 of
17 title 28.

18 “(8) The courts of appeals of the United States (other
19 than the United States Court of Appeals for the Federal Cir-
20 cuit) shall have jurisdiction to review orders issued under this
21 section by administrative law judges, including any determi-
22 nation made under paragraph (6)(C)(ii) by the Commission.

23 “(d)(1)(A) The district courts of the United States shall
24 have jurisdiction of actions commenced under this section,
25 other than subsection (c)(6)(C).

1 “(B) With respect to a claim arising under this section,
2 an action may be commenced in the United States District
3 Court for the District of Columbia or in any judicial district in
4 which the unlawful discrimination is alleged to have oc-
5 curred, in the judicial district in which the employment
6 records relevant to such discrimination are maintained and
7 administered, or in the judicial district in which the aggrieved
8 individual would have worked but for the alleged unlawful
9 discrimination.

10 “(2)(A) If the district court finds that an entity of the
11 Federal Government intentionally engaged in, or is intention-
12 ally engaging in, unlawful discrimination in violation of sub-
13 section (a), the court may enjoin such entity and the head of
14 such entity from engaging in such unlawful discrimination,
15 and order such affirmative action as may be appropriate,
16 which may include reinstatement or hiring of employees (with
17 or without backpay) or such other equitable relief as the court
18 deems appropriate.

19 “(B) Back pay liability shall not accrue from a date oc-
20 ccurring more than 2 years before the filing of the charge with
21 the Commission.

22 “(C) No order of a district court shall require the hiring,
23 reinstatement, or promotion of an individual as an employee
24 or the payment to an individual of any back pay if the indi-
25 vidual was refused employment, was refused advancement, or

1 was suspended or discharged for any reason other than dis-
2 crimination on account of race, color, religion, sex, or nation-
3 al origin or in violation of subsection (a).

4 “(e) The provisions of the Act entitled “An Act to
5 amend the Judicial Code and to define and limit the jurisdic-
6 tion of courts sitting in equity, and for other purposes”, ap-
7 proved March 23, 1932 (29 U.S.C. 101-115), shall not apply
8 with respect to actions commenced under this section.

9 “(f) If an entity of the Federal Government or the head
10 of such entity fails to comply with an order of a court issued
11 in an action commenced under this section, the Commission
12 or the prevailing party may commence a proceeding to
13 compel compliance with such order.

14 “(g) Any action or proceeding commenced under this
15 section, in a district court of the United States shall be sub-
16 ject to appeal as provided in sections 1291 and 1292 of title
17 28, United States Code.

18 “(h) In any action or proceeding commenced under this
19 section, the court, in its discretion, may allow the prevailing
20 party, other than the Commission or an entity of the Federal
21 Government (including the head of such entity), a reasonable
22 attorney's fee as part of the costs. An entity of the Federal
23 Government shall be liable for costs and interest the same as
24 a private person.

1 “(i) If an individual with respect to whom a charge is
 2 filed under this section prevails under this section with re-
 3 spect to unlawful discrimination alleged in the charge, the
 4 entity that engaged in such unlawful discrimination shall pay
 5 interest on any monetary relief awarded to such individual.
 6 Interest shall be paid under this subsection at the rate deter-
 7 mined under section 1961(a) of title 28, United States Code,
 8 and shall run from the date the charge is filed to the date
 9 such relief is paid or the date from which interest begins to
 10 accrue under section 1961 of such title, whichever occurs
 11 earlier.

9. — 12 “(j) Any amount (including an attorney’s fee, costs, and
 13 interest) awarded under this section shall be paid by the Fed-
 14 eral entity that violated subsection (a) from any funds made
 15 available to such entity by appropriation or otherwise.

16 “(k) This section, as in effect immediately before the
 17 effective date of the Federal Employee Discrimination Com-
 18 plaint Procedures Act of 1988, shall apply with respect to
 19 employment in the Library of Congress.”

20 SEC. 3. EEOC AUTHORITY TO CONDUCT LITIGATION.

21 Section 705(b) of the Civil Rights Act of 1964 (42
 22 U.S.C. 2000e-4(b)) is amended—

23 (1) in paragraph (2) by striking “Attorneys” and
 24 inserting “Subject to the requirement specified in para-
 25 graph (3), attorneys”, and

1 (2) by adding at the end the following:

→ 2 “(3) Notwithstanding sections 516, 517, 518, and 519
3 of title 28, United States Code, and paragraph (2) of this
4 subsection, attorneys appointed under this section shall
5 appear for and represent the Commission in any case in court
6 with respect to a claim arising under section 717 against an
7 entity of the Federal Government.”.

8 SEC. 4. TECHNICAL AMENDMENTS.

9 Section 717(b) of the Civil Rights Act of 1964 (42
10 U.S.C. 2000e-16(b)) is amended by striking “Civil Service
11 Commission” each place it appears and inserting “Commis-
12 sion”.

13 SEC. 5. TRANSFERS OF PERSONNEL AND RECORDS.

14 (a) PERSONNEL REQUIRED TO BE TRANSFERRED.—
15 Civilian personnel who are employed on the effective date of
16 this Act by an entity of the Federal Government (as defined
17 in section 701(m) of the Civil Rights Act of 1964, as added
18 by section 2(a)(2)) in permanent positions the full-time duties
19 of which are—

✓ 20 (1) investigating charges filed under section 717
21 of such Act against such entity,

22 (2) recommending to the Equal Employment Op-
23 portunity Commission the disposition of such charges,
24 or

1 (3) a combination of the activities specified in
2 paragraphs (1) and (2),
3 shall be transferred in accordance with subsection (b) to the
4 Commission.

5 (b) TIME OF TRANSFER.—The Director of the Office of
6 Management and Budget shall determine a schedule for the
7 orderly transfer required by subsection (a) of personnel from
8 the various entities of the Federal Government. Such sched-
9 ule shall take into consideration the needs of each entity of
10 the Federal Government to retain sufficient skilled personnel
11 to complete administrative action on those charges filed
12 under section 717 of the Civil Rights Act of 1964 (42 U.S.C.
13 2000e-16)—

14 (1) that are pending before such entity, and
15 (2) to which the amendments made by this Act do
16 not apply.

17 (c) EFFECT ON TRANSFERRED PERSONNEL.—The
18 transfer in accordance with this section of any Federal em-
19 ployee shall not cause such employee to be separated from
20 service, or reduced in grade or compensation, in the 1-year
21 period beginning on the date such employee is transferred.

22 (d) RECORDS.—Not later than 10 days after the effec-
23 tive date of this Act, the head of each entity of the Federal
24 Government shall transfer to the Equal Employment Oppor-
25 tunity Commission all records relating to charges arising

1 under section 717 of the Civil Rights Act of 1964 (42 U.S.C.
2 2000e-16)—

3 (1) that are filed against such entity, and
4 (2) with respect to which such entity does not
5 issue to the individuals by or on whose behalf such
6 charges are filed proposed dispositions of such charges,
7 before the effective date of this Act.

8 (e) EFFECT ON ADMINISTRATIVE JUDGES OF
9 EEOC.—The amendments made by this Act, and the imple-
10 mentation of such amendments, shall not cause any individual
11 who on the effective date of this Act is an administrative
12 judge of the Equal Employment Opportunity Commission to
13 be separated from service, or reduced in grade or compensa-
14 tion, in the 1-year period beginning on such effective date.
15 SEC. 6. RULES OF CONSTRUCTION.

16 (a) EFFECT ON FEDERAL GRIEVANCES PROCEDURE.—
17 The amendments made by this Act shall not be construed to
18 supersede or modify the operation of section 7121(d) of title
19 5, United States Code.

20 (b) REFERENCES IN OTHER LAWS.—Any reference in
21 any law (other than title VII of the Civil Rights Act of 1964)
22 to any provision of title VII of the Civil Rights Act of 1964
23 amended by this Act shall be deemed to be a reference to
24 such provision as amended by this Act.

1 **SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

2 (a) **EFFECTIVE DATE.**—This Act and the amendments
3 made by this Act shall take effect—

4 (1) 1 year after the date of the enactment of this
5 Act, or

6 (2) on the first day of the first fiscal year begin-
7 ning after the date of the enactment of this Act,
8 whichever occurs later.

9 (b) **APPLICATION OF AMENDMENTS.**—Except as pro-
10 vided in section 6(b), the amendments made by this Act shall
11 apply only with respect to—

12 (1) charges filed under section 717 of the Civil
13 Rights Act of 1964 (42 U.S.C. 2000e-16) on or after
14 the effective date of this Act, and

15 (2) charges filed under such section before such
16 effective date if, as of such effective date, the entities
17 of the Federal Government (as defined in section
18 701(m) of the Civil Rights Act of 1964, as added by
19 section 2(a)(2)) against whom such charges are filed
20 have not issued to the aggrieved individuals proposed
21 dispositions of such charges.

22 (c) **COMPUTATION OF TIME WITH RESPECT TO CER-**
23 **TAIN PENDING CHARGES.**—For purposes of section 717 of
24 the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), as
25 amended by section 2(b)(2), charges described in subsection

1 (b)(2) of this section that are timely filed before the effective
2 date of this Act shall be considered to be—
3 (1) timely filed under such section 717 as so
4 amended, and
5 (2) filed with the Equal Employment Opportunity
6 Commission immediately after such effective date.

○

HEALTH & WELFARE

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COMMUNITY RELATIONS SERVICE—
Continued

other agencies; conciliation assistance without publicity; information as to condition on performance of investigative or actions; violations and penalties.

MISCELLANEOUS PROVISIONS

proceedings: trial by jury, criminal proceedings, intent; civil contempt proceedings.

specific crimes and criminal contempts. Attorney General; denial of equal protection of race, color, religion, sex or national

provisions not to affect authority of Attorney to institute or intervene in actions or

provisions not to exclude operation of State to validate consistent State laws.

appropriations.

visions.

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CIVIL RIGHTS

42 § 2000e

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or

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their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor

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the aggregate number of the members (organization) is (A) twenty-five or more after March 24, 1972, or (B) fifteen or more in a labor organization—

and representative of employees under the National Labor Relations Act, as amended; or labor Act, as amended;

certified, is a national or international labor organization recognized as representative of employees of an employer engaged in an industry affecting commerce;

a local labor organization or subsidiary organization representing or actively seeking to represent employees within the meaning of paragraph

entered by a labor organization representing to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate organization in which such employees may enjoy membership or affiliation with such labor organization;

the general committee, joint or system of subordinate to a national or international organization, which includes a labor organization in an industry affecting commerce within the meaning of the preceding paragraphs of this subsection.

"employee" means an individual employed by an employer; the term "employee" shall not include any individual who is an officer or political subdivision of a State or political subdivision thereof, or any person who is on such officer's personal staff, or who is in a making level or an immediate adviser of the constitutional or legal power of the State or political subdivision thereof, or any person set forth in the preceding sentence as employees subject to the civil service laws of the State, government agency or political subdivision thereof.

"commerce" means trade, traffic, commerce, or communication among the several States and any place outside thereof; or in the District of Columbia, or a possession of the United States, or in the same State but through a medium of interstate commerce.

"affecting commerce" means any activity or transaction in commerce or in which a labor

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dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

Pub.L. 88-352, Title VII, § 701, July 2, 1964, 78 Stat. 253; Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub.L. 92-261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub.L. 95-555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub.L. 95-598, Title III, § 330, Nov. 6, 1978, 92 Stat. 2679.

Historical Note

References in Text. The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is Act July 3, 1935, c. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (section 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables volume.

The Railway Labor Act, as amended, referred to in subsec. (e)(1), is Act May 20, 1926, c. 347, 44 Stat. 577, as amended, which is classified principally to chapter

8 (section 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub.L. 86-257, Sept. 14, 1959, 73 Stat. 519, which is classified principally to chapter 11 (section 401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables volume.

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orders granting a limited preference at the entry level to members of groups that have previously been discriminated against. *Prate v. Freedman*, D.C.N.Y. 1977, 430 F.Supp. 1373, affirmed 573 F.2d 1204, 1300, certiorari denied 98 S.Ct. 2274, 438 U.S. 922, 56 L.Ed.2d 765.

Absent congressional indication that a necessary remedy in dealing with racial discrimination in employment should be a federal common-law action for tortious interference with the affirmative action and nondiscrimination covenants in government contracts, building and construction trades council and unions which were voluntary, unincorporated associations lacking capacity to sue or be sued under Missouri law could not be sued by government for tortious interference with performance of such covenants. *U. S. v. Building and Const. Trades Council of St. Louis, Mo.*, AFL-CIO, D.C.Mo.1966, 271 F.Supp. 447.

University's remedies for contractor's alleged noncompliance with equal opportunity clause in contract to construct residence hall were not limited to cancellation of contract and declaration that contractor be declared ineligible for further government contracts, or such other sanctions as could be imposed and remedies invoked as provided by Ex.Ord.No.11246, set out as a note under this section, requiring equal opportunity in federal employment. *Trustees of Tufts College v. Volpe Const. Co.*, 1970, 264 N.E.2d 676, 358 Mass. 331, 44 A.L.R.3d 1272.

65. — Injunctions

In suit for relief for violation of this subchapter and for interference with implementation of Ex.Ord.No.11246, set out as a note under this section, and section 140 of Title 23, in light of historical exclusion of blacks from the locals reinforced by nepotism and hiring hall "jump-up" referrals and militant opposition to plan for recruitment, placement and training of minority group members in highway construction industry and to the equal employment opportunities which the plan was striving to achieve, it was immaterial whether defendant locals were signatories to the plan and United States was entitled to appropriate affirmative relief, including permanent injunction prohibiting discriminatory practices. *U. S. v. United Broth. of Carpenters and Joiners of America, Local 100*, C.A.III. 1972, 457 F.2d 210, certiorari denied 93 S.Ct. 63, 409 U.S. 851, 34 L.Ed.2d 84.

Government contractor, which because of its mandatory maternity leave policy for pregnant flight attendants had been determined to be subject to denial without hearing of two future unrelated con-

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tracts, which had shown requisite probability of success on merits for its claim that it had suffered de facto "debarment" or at the very least had established presence of sufficiently serious questions going to merits to make them fair grounds for litigation, which would suffer irreparable injury because of "passover" on one contract and which represented public interest in assuring that government agencies comply with laws or executive orders, was entitled to preliminary injunction enjoining Secretary of Labor and other officials from "passing over" contractor without a hearing. *Pan American World Airways, Inc. v. Marshall*, D.C.N.Y.1977, 439 F.Supp. 487.

Where evidentiary hearing was necessary to establish facts which were critical to determination of affirmative action plan's constitutional validity, preliminary injunction of operation of plan was denied. *Percy v. Brennan*, D.C.N.Y.1974, 384 F.Supp. 800.

Even though federal compliance agency after institution of action to require it to disapprove affirmative action programs not complying with Ex.Ord.No.11246, set out as a note under this section, requiring equal employment on part of federal contractors and regulations setting forth requirements of programs realized that its prior approvals of some programs were erroneous and launched a review of approved programs, where there was clear danger that illegal and improper approvals of noncomplying programs would continue unless agency was restrained from repetition of past unlawful review of programs and there was no remedy at law or remedy that could cor-

rect agency's actions, injunction would lie to require agency to disapprove any noncomplying program and to restrain agency from approving in the future any noncomplying programs. *Legal Aid Soc. of Alameda County v. Brennan*, D.C.Cal. 1974, 381 F.Supp. 125.

Requested injunction against racial discrimination by building and construction trades council and unions with regard to union membership, apprenticeship, and training programs and against attempting to cause any employer to discriminate would do no more than eliminate alleged discrimination by the council and unions and would not violate this subchapter prohibiting preferential treatment. *U. S. v. Building and Const. Trades Council of St. Louis, Mo.*, AFL-CIO, D.C.Mo.1966, 271 F.Supp. 447.

66. Review

Contention that Congress acted unconstitutionally in extending coverage of this subchapter to state governments which was not raised in the district court could not be raised on appeal. *Donthard v. Rawlinson*, Ala.1977, 97 S.Ct. 2720, 433 U.S. 321, 53 L.Ed.2d 788.

Imposition of sanctions on contractor who was unable to meet minority persons hiring goals set by "Revised Philadelphia Plan" of Department of Labor but who has exhibited good faith would be improper and would be subject to judicial review. *Contractors Ass'n of Eastern Pa. v. Secretary of Labor*, D.C.Pa.1970, 311 F.Supp. 1002, affirmed 442 F.2d 150, certiorari denied 92 S.Ct. 98, 404 U.S. 854, 30 L.Ed.2d 95.

§ 2000e-1. Subchapter not applicable to employment of aliens outside State and individuals for performance of activities of religious corporations, associations, educational institutions, or societies

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

Pub.L. 88-352, Title VII, § 702, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 3, Mar. 24, 1972, 86 Stat. 103.

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Note 8

8. — Publishing

Under this subchapter, Commission had jurisdiction over charges of sexually based discrimination by employee of non-profit corporation which was affiliated with a church and which operated as a public publishing house engaged in business of publishing, printing, advertising and selling religious and religiously oriented materials for purpose of carrying out church denomination's work. Equal Employment Opportunity Commission (U. S. A.) v. Pacific Press Pub. Ass'n, D.C. Cal. 1979, 482 F.Supp. 1291.

discrimination occurring prior to effective date of amendment removing exemption for private universities from this subchapter an invidiously motivated refusal to reconsider her termination after the faculty senate hearing panel had issued a report was sufficient to make this subchapter applicable to the alleged discrimination. *Weise v. Syracuse University*, C.A.N.Y. 1975, 522 F.2d 397.

As amended, this subchapter proscribes discriminatory preference on the basis of sex by institutions of higher learning in their hiring, compensation, promotion and termination practices with respect to faculty members. *Equal Employment Opportunity Commission v. Tufts Ins. of Learning*, D.C. Mass. 1975, 421 F.Supp. 152.

9. Nonreligious educational institutions

University teacher who was not rehired allegedly as a result of sex discrimination, who alleged, in addition to acts of

§ 2000e-2. Unlawful employment practices

Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Employment agency practices

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer

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discrimination occurring prior to effective date of amendment removing exemption for private universities from this subchapter an invidiously motivated refusal to reconsider her termination after the faculty senate hearing panel had issued a report was sufficient to make this subchapter applicable to the alleged discrimination. *Weise v. Syracuse University*, C.A.N.Y.1975, 522 F.2d 397.

As amended, this subchapter proscribes discriminatory preference on the basis of sex by institutions of higher learning in their hiring, compensation, promotion and termination practices with respect to faculty members. *Equal Employment Opportunity Commission v. Tufts Ins. of Learning*, D.C.Mass.1975, 421 F.Supp. 152.

Employment practices

practices

Employment practice for an employer—

or to discharge any individual, or not any individual with respect to conditions, or privileges of employment, because of such individual's race, color, religion, sex, or

to classify his employees or apply any way which would deprive or tend to deprive employment opportunities or otherwise as an employee, because of such race, color, religion, sex, or national origin.

practices

Employment practice for an employer for employment, or otherwise because of his race, color, religion, sex, or national origin, to classify or refer for employment

practices

Employment practice for a labor or

from its membership, or otherwise to classify an individual because of his race, color, religion, sex, or national origin;

to classify its membership or apply any way which would deprive or tend to deprive employment opportunities or otherwise as an employee, because of such race, color, religion, sex, or national origin.

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for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Training programs

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

Members of Communist Party or Communist-action or Communist-front organizations

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a

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member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

National security

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

Businesses or enterprises extending preferential treatment to Indians

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to

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of the United States or of any other person as a Communist-action or Communist-influenced organization, or as a member of the Subversive Activities Control Administration, or as a member of the Subversive Activities Control

national security

er provision of this subchapter, it shall be unlawful for an employer to discriminate against any individual for any position, or for any individual from any position, or for any individual to fail or refuse to refer any individual for employment in any position, if—
a position, or access to the premises of the duties of such position is permitted, is subject to any requirement imposed by the national security of the United States or any Executive Order in effect pursuant to or

not fulfilled or has ceased to fulfill

quantity or quality of production; or on basis of sex and authorized wage provisions

er provision of this subchapter, it shall be unlawful for an employer to discriminate against any individual for any position, or for any individual from any position, or for any individual to fail or refuse to refer any individual for employment in any position, if—
a position, or access to the premises of the duties of such position is permitted, is subject to any requirement imposed by the national security of the United States or any Executive Order in effect pursuant to or
not fulfilled or has ceased to fulfill

ing preferential treatment to Indians

subchapter shall apply to any business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

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any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

Preferential treatment not to be granted on account of existing number or percentage imbalance

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area. Pub.L. 88-352, Title VII, § 703, July 2, 1964, 78 Stat. 255; Pub.L. 92-261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109.

Historical Note

References in Text. The Subversive Activities Control Act of 1950, referred to in subsec. (f), is Act Sept. 23, 1950, c. 1024, Title I, 64 Stat. 987, which is classified principally to subchapter I (section 781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title of Subchapter note set out under section 781 of Title 50, War and National Defense, and Tables volume.

1972 Amendment. Subsec. (a)(2). Pub.L. 92-261, § 8(a), added "or applicants for employment" following "his employees".

Subsec. (c)(2). Pub.L. 92-261, § 8(b), added "or applicants for membership" following "membership".

Effective Date. Section effective one year after July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S. Code Cong. and Adm. News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm. News, p. 2137.

Library References

Civil Rights §§ 9.10 to 9.14, 1964
C.J.S. Civil Rights § 50 et seq., 61, 65, 68, 69, 71 to 73.

Code of Federal Regulations

Guidelines of Equal Employment Opportunity Commission.
Affirmative action, see 29 CFR 1608.1 et seq.
Employee selection procedures, see 29 CFR 1607.1 et seq.
National origin, see 29 CFR 1606.1.
Religion, see 29 CFR 1605.1.
Sex, see 29 CFR 1604.1 et seq.
Loan services, applicability, see 12 CFR 328.1 et seq.

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cluding permitting continuation of regular work assignment while not paying union dues or equivalent. *Cooper v. General Dynamics, Convair Aerospace Division, Ft. Worth Operation, C.A.Tex. 533 F.2d 163*, rehearing denied *533 F.2d 1143*, certiorari denied *97 S.Ct. 2372*, *U.S. 908*, *53 L.Ed.2d 1001*.

Where only response of union to employee's request that she not be required to pay union dues due to her membership in Seventh-Day Adventist Church was to allow employee to pay dues while foregoing actual membership, this response could not be called accommodation, since union was obligated to extend such consideration to employees, where union rejected even employee's request for two-week delay in employee's termination, union would be liable to employee under this section for discrimination against her because of religious beliefs. *McDaniel v. Essex Intern., Inc.*, *D.C.Mich.1981*, *509 F.Supp. 1055*.

Employer and union failed to make reasonable effort to accommodate religious beliefs of Seventh Day Adventist employee against supporting or contributing to labor organizations when they failed to accept employee's offer to donate amount of union dues to nonreligious charity in return for waiver of union security clause in collective bargaining agreement. *Nottelson v. A. O. Smith Corp.*, *D.C.Wis.1980*, *489 F.Supp. 94*.

Discharged employee established prima facie case of unlawful discrimination by his former employer and union by showing that, as Seventh Day Adventist, he held sincere belief opposing membership in and contributions to unions and similar organizations, that he notified defendants that such belief prevented him from complying with labor agreement's security clause regarding union membership and payment of dues, and that he offered to contribute sum equal to amount of union dues to nonreligious charity but was discharged from employment due to his refusal to comply with security agreement. *Nottelson v. A. O. Smith Corp.*, *D.C.Wis.1979*, *481 F.Supp. 756*, reconsideration denied and clarified *489 F.Supp. 94*.

672. — Other employees affected

Union had no duty to modify seniority rules with respect to shift preference provisions of collective bargaining agreement in order to permit employee to work day shift and thereby observe his religion's Sabbath, such a modification would have been in derogation of contractual rights of other union members, and union's refusal to make such modification neither constituted discrimination

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against employee nor caused such discrimination by employer. *Huston v. Local No. 93, Intern. Union, United Auto., Aerospace and Agr. Implement Workers of America (U.A.W.)*, *C.A.Mo.1977*, *559 F.2d 477*.

673. — Grievance procedures

Where union promptly filed and properly pursued grievances filed by employee, as far as was possible, and employee did not tell union personnel that he believed his discharge to be the result of religious discrimination, union's failure to assert religious discrimination as a ground for the grievance did not amount to a breach of duty the union owed to employee. *Blakely v. Chrysler Corp.*, *D.C.Mo.1975*, *407 F.Supp. 1227*.

674. — Representation of members

Union was required to fairly represent member when it became aware of fact that he was facing difficulty in scheduling days off for his sabbath and was in danger of disciplinary action by employer as a result. *Hardison v. Trans World Airlines*, *D.C.Mo.1974*, *375 F.Supp. 877*, af-

firmed *537 F.2d 33*, reversed on other grounds *97 S.Ct. 2264*, *432 U.S. 63*, *53 L.Ed.2d 113*.

675. Sex discrimination

This subchapter places an affirmative duty upon a labor organization to alleviate sex discrimination in employment; that action must be initiated by the union whether or not a female employee complains to the union of discriminatory conduct. *Chrapliwy v. Uniroyal, Inc.*, *D.C.Ind.1977*, *458 F.Supp. 252*.

Women union members failed to prove their charge that union had caused employer to discriminate against them in violation of this subchapter because they were women. *Tuma v. American Can Co.*, *D.C.N.J.1974*, *373 F.Supp. 218*.

Labor union is under no legal obligation to challenge validity of state laws and regulations regarding employment of women by initiating suit to determine validity of such laws, and failure of union to do so does not constitute violation of this section. *Ridinger v. General Motors Corp.*, *D.C.Ohio 1971*, *325 F.Supp. 1089*, reversed on other grounds *474 F.2d 949*.

§ 2000e-3. Other unlawful employment practices

Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or

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relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

Pub.L. 88-352, Title VII, § 704, July 2, 1964, 78 Stat. 257; Pub.L. 92-261, § 8(c), Mar. 24, 1972, 86 Stat. 109.

Historical Note

1972 Amendment. Subsec. (a). Pub.L. 92-261, § 8(c)(1), added provision making it an unlawful employment practice for a joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against the specified individuals.

Subsec. (b). Pub.L. 92-261, § 8(c)(2), added provisions making prohibitions applicable to joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, and notices or advertisements of such joint labor-management committees relating to admission

to, or employment in, any program established to provide apprenticeship or other training.

Effective Date. Section effective one year after July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm.News, p. 2137.

Library References

Civil Rights § 9.10 to 9.14.
Labor Relations § 7.

C.J.S. Civil Rights § 59 et seq., 61, 63, 68, 69, 71 to 73.
C.J.S. Labor Relations § 2 et seq.

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defendant's action. *Womack v. Munson*,
C.A.Ark.1980, 619 F.2d 1292.

Because agricultural extension service agent was under no obligation to work in another county after he was "run out" of one county for racial reasons, subsequent action of the state agricultural extension service in firing the agent when he declined to work in another county was in retaliation for his having asserted his right to work free of employment discrimination even though the agricultural extension service had requested the county to raise the agent's salary and had fought termination of county funding. *Wells v. Hutchinson*, D.C.Tex.1980, 499 F.Supp. 174.

Evidence that plaintiff was discharged from employment with city shortly after employer learned of his protected activities under this subchapter, that city disregarded its established procedures for termination and in fact fabricated the reasons specified for discharge, that employee's calling supervisor a liar occurred privately during heated debate initiated by the supervisor concerning employee's decision to engage in protected activity, and that subordination was not advanced contemporaneously as a reason for discharge established that plaintiff was wrongfully discharged in that his filing of Commission charges was causally related thereto and that legitimate nondiscriminatory reasons for discharge advanced by employer were pretextual. *Goodwin v. City of Pittsburgh*, D.C.Pa.1979, 450 F.Supp. 627, affirmed 624 F.2d 1000.

Even if original charge of racial discrimination in denial of a promotion was without merit, if black faculty member was terminated because of her participation in filing a discrimination charge with the Commission, she was entitled to relief under this subchapter. *U. S. v. University of Maryland*, D.C.Md.1977, 638 F.Supp. 742.

Employee who had engaged in protected activities when she filed charges of sex discrimination with the Commission and state agency and who later brought civil action to prosecute claim of sex discrimination, as well as other administrative proceedings, and complained about academic evaluation, and who was given notice of discharge within 6 months of settlement of the civil action and dismissal of the administrative proceedings and about one month after said complaint made out a prima facie case of retaliatory discriminatory discharge. *Hochstadt v. Worcester Foundation for Experimental Biology, Inc.*, D.C.Mass.1978, 425 F.Supp. 318, affirmed 545 F.2d 222.

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Evidence in action to recover damages from state employer supported determination that employee was dismissed as result of having filed a sex and age discrimination complaint with the Commission. *Strong v. State*, Mont.1979, 600 P.2d 291.

42. Suspension of employees

Ten-day suspension of black railroad employee was not because of racial discrimination or in retaliation against the employee for having filed a charge with the Commission in September of 1967, as the railroad official who investigated train collision and assessed the suspension was not aware that plaintiff had filed a charge, as the company, if it had been "out to get" plaintiff because of the charge would not have waited two and a half years to do so, and as plaintiff's retaliation claim was not reasonably reconcilable with the fact that a white employee received a 15-day suspension in connection with the same collision. *Wilkes v. Woodward Iron Co.*, D.C.Ala.1973, 342 F.Supp. 886.

43. Defamation of employees

Employer's filing of defamation suit against former employee based solely on employee's having filed a sex discrimination charge against employer was impermissible retaliation. *Equal Employment Opportunity Commission v. Virginia Carolina Veneer Corp.*, D.C.Va.1980, 495 F.Supp. 773.

44. Remedies

Remedial provisions of this section afforded relief to caucasians whom com-

munity college decided not to offer part-time employment in retaliation for the caucasians' actions in bringing "reverse discrimination" action in connection with denial of full-time appointments; fact that underlying charge of racial discrimination was decided in favor of the community college was of no consequence to the retaliation claim. *Cohen v. Community College of Philadelphia*, D.C.Pa.1980, 484 F.Supp. 411.

The fact that this section which prohibits employer retaliation against employees who oppose discriminatory practices does not protect strikes by union members in violation of an existing collective bargaining agreement does not affect the substantive right to be free from employment discrimination; an employee who believes he has been discriminated against retains a number of effective remedies, including filing charges with the Commission and utilizing existing grievance and arbitration machinery to resolve his charges. *Kling v. Illinois Bell Tel. Co.*, D.C.Ill.1978, 478 F.Supp. 495.

This section is an independent remedy and is not confined by procedural or substantive limitations of this subchapter. *Hearn v. R. E. Donnelley & Sons Co.*, D.C.Ill.1978, 460 F.Supp. 546.

45. Sanctions against employers

The filing of charge of discrimination with the Commission is a protected activity and employers must be prevented from interfering with such activity through the use of economic or emotional sanctions. *Kinard v. National Supermarkets, Inc.*, D.C.Ala.1978, 458 F.Supp. 106.

§ 2000e-4. Equal Employment Opportunity Commission

Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

(a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of

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the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5.

**General Counsel; appointment; term; duties; representation
by attorneys and Attorney General**

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

Exercise of powers during vacancy; quorum

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

Seal; judicial notice

(d) The Commission shall have an official seal which shall be judicially noticed.

Reports to Congress and President

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

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in which such nomination was submitted. The Commission shall appoint one member to serve as Chairman and one member to serve as Vice Chairman. The Chairman shall be the member of the Commission for the District of Columbia, and, except as provided in this section, shall appoint, in accordance with the provisions of this section, the 5 governing appointments in the Commission, agents, attorneys, administrative law judges, and such other personnel as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 5 of the General Schedule of pay rates, removal, and compensation of all shall be in accordance with sections 3105 and 3106 of title 5.

Appointment; term; duties; representation
Attorneys and Attorney General

The General Counsel of the Commission shall be appointed by and with the advice and consent of the Commission for a term of 5 years. The General Counsel shall have the right to conduct litigation as provided in sections 3105 and 3106 of title 5. The General Counsel shall have the right to represent the Commission in any civil action. The Commission may prescribe or as may be determined by the Chairman of the Commission and the supervision of regional attorneys. The Commission on the effective date of this Act shall perform the functions specified in this section and its successor is appointed and qualified.

Under this section may, at the direction of the Commission, for and represent the Commission in any civil action. The Attorney General shall conduct all litigation in which the Commission is a party in the Supreme Court.

Members during vacancy; quorum

The Commission shall not impair the right of the members to exercise all the powers of the Commission. The Commission shall constitute a quorum.

Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

At the close of each fiscal year, the Commission shall report to the President concerning the action it has taken to eliminate discrimination and the means of eliminating discrimination and further legislation as may appear desirable.

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Principal and other offices

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

Powers of Commission

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

Cooperation with other departments and agencies in performance of educational or promotional activities

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

Personnel subject to political activity restrictions

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5, notwithstanding any exemption contained in such section. Pub.L. 88-352, Title VII, § 705(a)-(d), (f)-(j), July 2, 1964, 78 Stat. 258, 259; Pub.L. 92-261, § 8(d)-(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub.L. 93-608, § 3(1), Jan. 2, 1975, 88 Stat. 1972; Pub.L. 95-251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183.

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Note 11

11. Memorandum of understanding

Fact that pursuant to memorandum of understanding for sharing of information between Commission and Department of Labor's Office of Federal Contract Compliance Programs complaints filed with the Office are to be deemed charges filed with Commission, such does not mean that the Office relinquishes authority over such cases. *Emerson Elec. Co. v. Schlesinger*, C.A.No.1979, 609 F.2d 898.

12. Actions against Commission

Reinstatement claim of discharged member of Commission was within jurisdiction of grant of this section in view of fact that member relied upon statutory provisions setting forth term of office of members of the Commission and in view of fact that member was bringing action against officers of the United States. *Lewis v. Carter*, D.C.D.C.1977, 436 F.Supp. 958.

District court was without jurisdiction of suit brought against the Commission and one of its agents by labor union local and its business manager, seeking revocation of subpoena duces tecum; plaintiffs had no remedy but to wait for the Commission to file suit against them, should it choose to do so, to enforce the subpoena. *Foreman v. Thalmayer*, D.C. Tex.1975, 393 F.Supp. 1396.

13. Disclosure

Government contractor's affirmative action programs and related information required to be furnished the contracting agency were not protected from disclosure to Commission by a qualified privilege for self-evaluative documents since such reports were not prepared solely for internal use or even for external use of only the Defense Supply Agency and Office of Federal Contract Compliance Programs, which had agreed to exchange information with Commission concerning employers' compliance with antidiscrimination laws; applicable regulation put contractor on notice that required reports also would be used for administration of this subchapter enforcement of which is vested in Commission. *Reynolds Metals Co. v. Rumsfeld*, C.A.Va.1977, 564 F.2d 663, certiorari denied 98 S.Ct. 1646, 435 U.S. 995, 56 L.Ed.2d 84.

14. Injunction

In action in which former member of Commission sought reinstatement, former member failed to sufficiently demonstrate that Commission had necessary legislative or judicial functions to be immune from President's removal power, and therefore probability of success on the merits was not so certain as to render less important the remaining factors to be considered on motion for preliminary injunction. *Lewis v. Carter*, D.C.D.C.1977, 436 F.Supp. 958.

§ 2000e-5. Enforcement provisions

Power of Commission to prevent unlawful employment practices

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such em-

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13. Disclosure

Government contractor's affirmative action program and related information required to be furnished to the contracting agency were not protected from disclosure to Commission by a qualified privilege for self-evaluative documents, since such reports were not prepared solely for internal use or even for external use. Only the Defense Supply Agency and Office of Federal Contract Compliance Programs, which had agreed to exchange information with Commission concerning employers' compliance with antidiscrimination laws; applicable regulation of contractor on notice that required reports also would be used for administration of this subchapter enforcement of which is vested in Commission. *Reynolds Metals Co. v. Rumsfeld*, C.A.Va.1977, 564 F.2d 983, certiorari denied 98 S.Ct. 1044, 438 U.S. 995, 56 L.Ed.2d 84.

14. Injunction

In action in which former member of Commission sought reinstatement, former member failed to sufficiently demonstrate that Commission had necessary legislative or judicial functions to be immune from President's removal power, and therefore probability of success on the merits was not so certain as to render less important the remaining factors to be considered on motion for preliminary injunction. *Lois v. Carter*, D.C.D.C.1977, 436 F.Supp. 954.

provisions

unlawful employment practices

covered, as hereinafter provided, to filing in any unlawful employment

0e-2 or 2000e-3 of this title.

number of Commission of unlawful employment, etc.; filing; allegations; notice of investigation by Commission; contents of charges; determination of reasonableness, and persuasion for elimination of disclosure of informal endeavors to evidence in subsequent proceedings; time for determination of reasonable

by or on behalf of a person claiming member of the Commission, alleging agency, labor organization, or joint controlling apprenticeship or other on-the-job training programs, has present practice, the Commission shall including the date, place and circumstances of employment practice) on such em-

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Employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been com-

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menced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of ref-

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subsection at the time such state
the appropriate State or local

notification of State or local
on charges by Commission

filed by a member of the Commission
ment practice occurring in a State
which has a State or local law
and establishing or authorizing
or seek relief from such practice
with respect thereto upon receiving
all, before taking any action with
the appropriate State or local offi-
a reasonable time, but not less
such sixty-day period shall be
y days during the first year after
local law), unless a shorter period
State or local law to remedy the

for service of notice of charge
charge by Commission with
local agency

shall be filed within one hundred
unlawful employment practice oc-
(including the date, place and cir-
cumsstances of the alleged unlaw-
ful employment practice) shall be
whom such charge is made within
in a case of an unlawful employ-
ment practice which the person ag-
grieved has in a State or local agency with an
interest in such practice or to institute
an action thereunder upon receiving notice
by or on behalf of the person ag-
grieved within thirty days after receiving notice
that the proceedings have been terminated
whichever is earlier, and a copy of
the charge shall be filed with the Commission
with the State or local

General, or person aggrieved; process
of attorney; payment of fees, costs,
and expenses; federal proceedings; action for ap-
propriate relief pending final disposition of
the United States courts; designation of
case; assignment of case for hearing
master

after a charge is filed with the Com-
mission, the expiration of any period of ref-

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reference under subsection (c) or (d) of this section, the Commission
has been unable to secure from the respondent a conciliation agree-
ment acceptable to the Commission, the Commission may bring a
civil action against any respondent not a government, governmental
agency, or political subdivision named in the charge. In the case of
a respondent which is a government, governmental agency, or politi-
cal subdivision, if the Commission has been unable to secure from
the respondent a conciliation agreement acceptable to the Commis-
sion, the Commission shall take no further action and shall refer the
case to the Attorney General who may bring a civil action against
such respondent in the appropriate United States district court.
The person or persons aggrieved shall have the right to intervene in
a civil action brought by the Commission or the Attorney General in
a case involving a government, governmental agency, or political
subdivision. If a charge filed with the Commission pursuant to
subsection (b) of this section is dismissed by the Commission, or if
within one hundred and eighty days from the filing of such charge
or the expiration of any period of reference under subsection (c) or
(d) of this section, whichever is later, the Commission has not filed
a civil action under this section or the Attorney General has not
filed a civil action in a case involving a government, governmental
agency, or political subdivision, or the Commission has not entered
into a conciliation agreement to which the person aggrieved is a
party, the Commission, or the Attorney General in a case involving
a government, governmental agency, or political subdivision, shall
so notify the person aggrieved and within ninety days after the giv-
ing of such notice a civil action may be brought against the respon-
dent named in the charge (A) by the person claiming to be ag-
grieved or (B) if such charge was filed by a member of the Commis-
sion, by any person whom the charge alleges was aggrieved by the
alleged unlawful employment practice. Upon application by the
complainant and in such circumstances as the court may deem just,
the court may appoint an attorney for such complainant and may
authorize the commencement of the action without the payment of
fees, costs, or security. Upon timely application, the court may, in
its discretion, permit the Commission, or the Attorney General in a
case involving a government, governmental agency, or political sub-
division, to intervene in such civil action upon certification that the
case is of general public importance. Upon request, the court may,
in its discretion, stay further proceedings for not more than sixty
days pending the termination of State or local proceedings de-
scribed in subsection (c) or (d) of this section or further efforts
of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the
Commission concludes on the basis of a preliminary investigation
that prompt judicial action is necessary to carry out the purposes of
this Act, the Commission, or the Attorney General in a case involv-
ing a government, governmental agency, or political subdivision,
may bring an action for appropriate temporary or preliminary relief

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pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for

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such charge. Any temporary restraining preliminary or temporary relief with rule 65 of the Federal Rules of duty of a court having jurisdiction to assign cases for hearing at to cause such cases to be in every

at court and each United States jurisdiction of the United States brought under this subchapter, any judicial district in the State practice is alleged to have been in which the employment records obtained and administered, or in therieved person would have worked payment practice, but if the respon- district, such an action may be t in which the respondent has his sections 1404 and 1406 of Title 28, respondent has his principal office district in which the action might

the chief judge of the district (or in judge) in which the case is pending in such district to hear and deter- no judge in the district is availa- se, the chief judge of the district, ase may be, shall certify this fact r in his absence, the acting chief district or circuit judge of the se.

judge designated pursuant to this hearing at the earliest practicable in every way expedited. If such e for trial within one hundred and n joined, that judge may appoint a ne Federal Rules of Civil Procedure.

ve action; equitable relief; accrual of pay; limitations on judicial orders

the respondent has intentionally en- gaging in an unlawful employment int, the court may enjoin the respon- lawful employment practice, and or- may be appropriate, which may in- reinstatement or hiring of employees, yable by the employer, employment as the case may be, responsible for

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the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

Provisions of sections 101 to 115 of Title 29 not applicable to civil actions for prevention of unlawful practices

(h) The provisions of sections 101 to 115 of Title 29 shall not apply with respect to civil actions brought under this section.

Proceedings by Commission to compel compliance with judicial orders

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

Appeals

(j) Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

Attorney's fee; liability of Commission and United States for costs

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

Pub.L. 88-352, Title VII, § 706, July 2, 1964, 78 Stat. 259; Pub.L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104.

Historical Note

References in Text. "This Act", referred to in subsec. (f)(2), means Pub.L. 88-352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (section 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables volume.

Sections 111 and 112, included within the reference to sections 101 to 115 of Title 29, referred to in subsec. (h), are sections 11 and 12 of Act Mar. 23, 1932, c. 90,

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47 Stat. 72, and were repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862. The provisions of section 111 are now covered by section 3692 of Title 18, Crimes and Criminal Procedure, and the provisions of section 112 are now covered by rule 42, Federal Rules of Criminal Procedure, Title 18.

Codification. Subsection (b) of this section, referred to in subsec. (c), was in the original a reference to subsection (a) of this section, and has been editorially changed to subsection (b) of this section to conform to the redesignation of subsection (a) by Pub.L. 92-261.

1972 Amendment. Subsec. (a). Pub.L. 92-261, § 4(a), added subsec. (a). Former subsec. (a) was redesignated (b) and amended.

Subsec. (b). Pub.L. 92-261, § 4(a), redesignated former subsec. (a) as (b) and, as so redesignated, modified the procedure for the filing and consideration of charges by the Commission, subjected to coverage unlawful employment practices of joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, required the Commission to accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law in its determination of reasonable cause, and added the provision setting forth the time period, after charges have been filed, allowed to the Commission to determine reasonable cause. Former subsec. (b) was redesignated (c).

Subsec. (c). Pub.L. 92-261, § 4(a), redesignated former subsec. (b) as (c). Former subsec. (c) was redesignated (d).

Subsec. (d). Pub.L. 92-261, § 4(a), redesignated former subsec. (c) as (d). Former subsec. (d) was redesignated (e).

Subsec. (e). Pub.L. 92-261, § 4(a), redesignated former subsec. (d) as (e) and, as so redesignated, extended from ninety to one hundred and eighty days after the occurrence of the alleged unlawful employment practice the time for filing charges under this section and from two hundred and ten to three hundred days the time for filing such charges where the person aggrieved initially instituted proceedings with a State or local agency, and added the requirement that notice of

the charge be served on the respondent within ten days after filing. Former subsec. (e) was redesignated (f)(1).

Subsec. (f). Pub.L. 92-261, § 4(a), redesignated former subsec. (e) as par. (1) and, as so redesignated, substituted provisions setting forth the procedure for civil actions where the Commission was unable to secure from the respondents a conciliation agreement to prevent further unlawful employment practices for provisions setting forth the procedure for civil actions where the Commission was unable to obtain voluntary compliance with this subchapter and added provisions setting forth the procedure for civil action where the respondent is a government, governmental agency, or political subdivision and the Commission could not secure a conciliation agreement, added par. (2), redesignated former subsec. (f) as par. (3), and, as so redesignated, substituted "aggrieved person" for "plaintiff", and added pars. (4) and (5).

Subsec. (g). Pub.L. 92-261, § 4(a), added provisions which authorized the court to order affirmative action not limited solely to the enumerated affirmative acts and such other equitable relief as deemed appropriate, and provisions which set forth the accrual date for back pay.

Subsec. (i). Pub.L. 92-261, § 4(b)(1), substituted "this section" for "subsection (e) of this section".

Subsec. (j). Pub.L. 92-261, § 4(b)(2), substituted "this section" for "subsection (e) of this section".

Effective Date of 1972 Amendment. Section 14 of Pub.L. 92-261 provided that: "The amendments made by this Act to section 706 of the Civil Rights Act of 1964 [this section] shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act [Mar. 24, 1972] and all charges filed thereafter."

Effective Date. Section effective one year after July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S. Code Cong. and Adm. News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm. News, p. 2137.

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Civil Rights  31 et seq.

C.J.S. Civil Rights    173, 185.

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42 § 2000e-6

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 discrimination against him and other
 persons-Americans in employment and
 action. *Sias v. City Demonstration*
Agency, C.A.Cal.1978, 588 F.2d 692.

in civil rights class action for employ-
 ment discrimination brought by black
 employees, the 104-week limitation on the
 plaintiff's red circling remedy had to be re-
 leased, since the court made no findings
 that this period was sufficient to allow a
 reasonably diligent and capable employee
 to advance to pay group eight from most
 entry level jobs in most departments;
 rather, the court's time limitation had to
 be long enough to allow reasonably dili-
 gent and capable class members a fair
 and reasonable opportunity to reach their
 present pay group level in the depart-
 ments from which blacks had tradition-
 ally been excluded. *Pettway v. American*
Cast Iron Pipe Co., C.A.Ala.1978, 576 F.2d
 1157, rehearing denied 581 F.2d 267, certio-

rari denied 99 S.Ct. 1020, 439 U.S. 1115,
 59 L.Ed.2d 74.

Where finding of district court that
 plaintiff in employment discrimination
 action failed to establish prima facie case
 of employment discrimination was clearly
 erroneous and where district court ap-
 plied improper test in determining that
 plaintiff failed to establish prima facie
 case, case would be reversed and remand-
 ed to district court with directions to
 grant plaintiff back pay, attorney fees,
 and costs in district court action and
 plaintiff would be allowed costs as well
 as reasonable attorney fees on appeal
 upon plaintiff's filing of appropriate affi-
 davit supporting and detailing time spent
 upon appeal. *Meyer v. Missouri State*
Highway Commission, C.A.Mo.1977, 567
 F.2d 804, certiorari denied 98 S.Ct. 1888,
 435 U.S. 1013, 56 L.Ed.2d 395.

§ 2000e-6. Civil actions by Attorney General

Complaint

(a) Whenever the Attorney General has reasonable cause to be-
 lieve that any person or group of persons is engaged in a pattern or
 practice of resistance to the full enjoyment of any of the rights se-
 cured by this subchapter, and that the pattern or practice is of such
 a nature and is intended to deny the full exercise of the rights here-
 in described, the Attorney General may bring a civil action in the
 appropriate district court of the United States by filing with it a
 complaint (1) signed by him (or in his absence the Acting Attorney
 General), (2) setting forth facts pertaining to such pattern or prac-
 tice, and (3) requesting such relief, including an application for a
 permanent or temporary injunction, restraining order or other order
 against the person or persons responsible for such pattern or prac-
 tice, as he deems necessary to insure the full enjoyment of the
 rights herein described.

Jurisdiction; three-judge district court for cases of general public impor-
 tance; hearing, determination, expedition of action, review by Supreme
 Court; single-judge district court: hearing, determination, expedition of
 action

(b) The district courts of the United States shall have and shall
 exercise jurisdiction of proceedings instituted pursuant to this sec-
 tion, and in any such proceeding the Attorney General may file with
 the clerk of such court a request that a court of three judges be
 convened to hear and determine the case. Such request by the At-
 torney General shall be accompanied by a certificate that, in his
 opinion, the case is of general public importance. A copy of the
 certificate and request for a three-judge court shall be immediately
 furnished by such clerk to the chief judge of the circuit (or in his

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absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

(c) Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

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Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

(c) Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.

Pub.L. 88-352, Title VII, § 707, July 2, 1964, 78 Stat. 261; Pub.L. 92-261, § 5, Mar. 24, 1972, 86 Stat. 107.

Historical Note

1972 Amendment. Subsecs. (c) to (e). Pub.L. 92-261 added subsec. (c) to (e).

Effective Date. Section effective one year after July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Transfer of Functions. Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under this section, and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, were transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with this subchapter, and with the Attorney General authorized to delegate any function under this section to any officer or employee of the Department of Justice, by Reorg. Plan No. 1 of 1978, § 5, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e-4 of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S. Code Cong. and Adm. News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm. News, p. 2157.

EXECUTIVE ORDER NO. 12068

June 30, 1978, 43 F.R. 28971

TRANSFER OF CERTAIN FUNCTIONS TO ATTORNEY GENERAL

By virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 F.R. 19807) [set out as a note under section 2000e-4 of this title], in order to clarify the Attorney General's authority to initiate public sector litigation under Section 707 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-6) [this section], it is ordered as follows:

1-1. Section 707 Functions of the Attorney General.

1-101. Section 5 of Reorganization Plan Number 1 of 1978 (43 F.R. 19807) [set out

as a note under section 2000e-4 of this title] shall become effective on July 1, 1978.

1-102. The functions transferred to the Attorney General by Section 5 of Reorganization Plan Number 1 of 1978 [set out as a note under section 2000e-4 of this title] shall, consistent with Section 707 of Title VII of the Civil Rights Act of 1964, as amended [this section], be performed in accordance with Department of Justice procedures heretofore followed under Section 707.

JIMMY CARTER

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Civil Rights 13.18.

C.J.S. Civil Rights §§ 175, 176.

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Key General's functions had been transferred to Commission so that his authority to bring the suit had ceased. U. S. v. Stat. of N. C., C.A.N.C.1978, 587 F.2d 625, certiorari denied 99 S.Ct. 2820, 442 U.S. 909, 61 L.Ed.2d 274.

59. Remand

In suit under this subchapter, district court on remand should immediately en-

join present policies and practices which were discriminatory or which, no matter how neutral in appearance, perpetuated effects of past discrimination and should promptly formulate effective affirmative injunctive relief to extent that it found present effects of past discrimination. 708 S. by Clark v. Dillon Supply Co., C.A.N.C.1970, 429 F.2d 800.

§ 2000e-7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

Pub.L. 88-352, Title VII, § 708, July 2, 1964, 78 Stat. 262.

Historical Note

Effective Date. Section effective July 2, 1964, see section 716 of Pub.L. 88-352, history and purpose of Pub.L. 88-352, see set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2335.

Library References

Civil Rights 4-2.
States 4-14.

C.J.S. Civil Rights §§ 2, 4 et seq., 17, 198.

C.J.S. States § 24.

Notes of Decisions

Generally 2
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Validity of particular state laws 3

1. Purpose

In enacting this subchapter, Congress disclaimed any general preemptive intent and Ark.Stats. § 81-601 requiring overtime pay to female employees who worked in excess of eight hours per day could be declared invalid only if it was in conflict with this subchapter. Hays v. Potlatch Forests, Inc., C.A.Ark.1972, 465 F.2d 1081.

Neither this subchapter nor Fair Labor Standards Act of 1938, section 201 et seq. of Title 29, have preempted state regulation or imposition of state remedies for employment practice violations arising out of same circumstances. Davis v. Jobs For Progress, Inc., D.C.Ariz.1976, 427 F.Supp. 479.

This section is intended to save those state laws which aim at preventing employment discrimination and not state laws which purport to require what is an unlawful employment practice under this subchapter. LeBlanc v. Southern Bell Tel. & Tel. Co., D.C.La.1971, 333 F.Supp. 602, affirmed 460 F.2d 1228, certiorari denied 93 S.Ct. 320, 409 U.S. 990, 34 L.Ed.2d 257.

Congress by passage of this subchapter intended to supersede all provisions of state law which require or permit doing of an act which constitutes unlawful employment practice under this subchapter or which are inconsistent with any purpose of this subchapter. Ridinger v. General Motors Corp., D.C. Ohio 1971, 325 F.Supp. 1089, reversed on other grounds 474 F.2d 949.

Purpose of this section is to insure preservation of state laws which parallel this subchapter in prohibiting employment discrimination. Local 246, Utility Workers Union of America, AFL-CIO v.

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S. by Clark v. Dillon
C.1970, 429 F.2d 800.

State laws

shall be deemed to exempt
duty, penalty, or punishment
of any State or political subdivision
law which purports to require
which would be an unlawful employment

July 2, 1964, 78 Stat. 262

Historical Note

Legislative History. For
history and purpose of Pub. L.
1964 U.S. Code Cong. and Admin.
2355.

References

C.J.S. Civil Rights § 2, 4 et seq.
198.
C.J.S. States § 24.

of Decisions

This section is intended to cover
state laws which aim at preventing
employment discrimination and laws
which purport to require unlawful
employment practices under this
subchapter. *LeBlanc v. Southern
Tel. & Tel. Co.*, D.C.La.1971, 333 F.
602, affirmed 460 F.2d 1228, certiorari
denied 93 S.Ct. 320, 400 U.S. 900, 34
257.

Congress by passage of this subchapter
intended to supersede all provisions
of state law which require or permit
of an act which constitutes unlawful
employment practice under this subchapter
or which are inconsistent with the
purpose of this subchapter. *Eldridge
General Motors Corp.*, D.C.Ohio 1971,
F.Supp. 1069, reversed on other grounds
474 F.2d 949.

Purpose of this section is to preserve
preservation of state laws which permit
this subchapter in prohibiting employment
discrimination. *Local 944, United
Workers Union of America, AFL-CIO*

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Southern California Edison Co., D.C.Cal.
320 F.Supp. 1262.

This subchapter was not intended to
justify or limit application of state pro-
hibitive legislation. *Weeks v. Southern
Tel. & Tel. Co.*, D.C.Ga.1967, 277 F.
117, affirmed in part, reversed in
part on other grounds 408 F.2d 228.

This section specifying that nothing in
this subchapter shall be deemed to ex-
empt or relieve any person from any li-
ability, duty, penalty or punishment pro-
vided by state law other than a law pur-
porting to require or permit the doing of
any act which would be an unlawful em-
ployment practice under this subchapter
was designed to preserve effectiveness of
state antidiscrimination laws and was not
intended to preserve female protective
laws. *Jones Metal Products Co. v. Walk-
er*, 1972, 281 N.E.2d 1, 29 Ohio St.2d 173.

2. Generally

This subchapter envisions coexistence
of state and federal remedies when the
two are compatible; while deferral to
state authority is authorized by this sub-
chapter in certain employment discrimi-
nation cases, State's generalized concern
for prevention of torts and its provision
of judicial remedies simply to that end
warrants neither preliminary deferral nor
displacement of this subchapter coverage.
*Shehadeh v. Chesapeake and Potomac Tel.
Co. of Maryland*, 1978, 595 F.2d 711, 193
U.S.App.D.C. 328.

State protective statute does not
present a per se exception to the pre-
sumption that retroactive relief in the
form of back pay should be paid to vic-
tims of unlawful discrimination but is a
factor to weigh in the decision. *Kreitner
v. Bendix Corp.*, D.C.Mich.1980, 501 F.
Supp. 415.

Section 2000e-5 of this title giving dis-
trict courts jurisdiction over actions
brought by aggrieved persons alleging
employment discrimination does not es-
tablish district court jurisdiction over
suits to declare state statutes invalid un-
der the preemption provision. *Wiggins
Inc. v. Fruchtman*, D.C.N.Y.1979, 482 F.
Supp. 661, affirmed 628 F.2d 1346.

Although United States Supreme Court
has construed federal antidiscrimination
law as not requiring inclusion of preg-
nancy-related disabilities in a disability
plan, giving a contrary interpretation to
similar state statutes would not require
the doing of any act which would be an
unlawful employment practice under fed-
eral law. *Massachusetts Elec. Co. v. Mas-
sachusetts Commission Against Discrimi-
nation*, Mass.1978, 375 N.E.2d 1192.

Though federal court decisions under
this subchapter are not controlling in
construing state's acts against discrimi-
nation, such decisions are of persuasive
precedential value. *McCabe v. Johnson
County, Bd. of County Com'rs*, Kan.App.
1980, 615 P.2d 780.

3. Validity of particular state laws

Michigan female protective statute pro-
vides no defense to an action under this
subchapter. *Kreitner v. Bendix Corp.*,
D.C.Mich.1980, 501 F.Supp. 415.

Employer would be immune from lia-
bility under this subchapter for back pay
for denial of rights of women to equal
opportunity with men to earn overtime
pay during period that state statute lim-
ited working hours of women in manu-
facturing or mechanical establishments, if
employer made bona fide decision to
comply with state statute in reliance on
interpretation of Commission that state
protective laws regarding women were
unaffected by and constituted exceptions
to federal law. *Stryker v. Register Pub.
Co.*, D.C.Conn.1976, 423 F.Supp. 476.

West's Ann.Cal.Labor Code, §§ 1197.5,
1350, 1350.5, relating to maximum hours
and overtime pay for female employees,
and California Industrial Welfare Com-
mission's order regulating employment
and compensation of women are in con-
flict with this section and are therefore
invalid. *Homemakers, Inc., of Los Ange-
les v. Division of Indus. Welfare*, D.C.
Cal.1973, 356 F.Supp. 1111, affirmed 509
F.2d 20, certiorari denied 96 S.Ct. 803, 423
U.S. 1063, 46 L.Ed.2d 655.

State regulation requiring rest breaks
for women was contrary to objectives of
this subchapter and was preempted by
provisions of this subchapter by virtue of
U.S.C.A.Const. Art. 6, cl. 2. *Burns v.
Bohr Corp.*, D.C.Cal.1972, 346 F.Supp. 994.

V.A.M.S. § 290.040 limiting working
hours of female employees in certain in-
dustries, including transportation and
common carrier industries, to nine hours
per day and 54 hours per week violated
provisions of this subchapter. *Vogel v.
Trans World Airlines*, D.C.Mo.1971, 346
F.Supp. 805.

To extent that R.C. §§ 4107.43, 4107.46
restricting and regulating employment of
females in workshops and factories of
state were in conflict with this subchap-
ter, they conflicted with and were su-
perceded by this subchapter and, by vir-
tue of U.S.C.A.Const. Art. 6, cl. 2, were
void and of no force and effect. *Eldridge
General Motors Corp.*, D.C.Ohio
1971, 325 F.Supp. 1069, reversed on other
grounds 474 F.2d 949.

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43 P.S. §§ 103 et seq., 951 et seq., insofar as they regulate hours of employment of females, conflict with this subchapter and, under U.S.C.A. Const. Art. 6, cl. 2, this subchapter prevails; thus, failure to hire or promote females, to positions for which they are otherwise qualified, on basis of sex is a violation of this subchapter, despite any provision of Pennsylvania law regulating hours of work of women. *Kober v. Westinghouse Elec. Corp.*, D.C.Pa.1971, 325 F.Supp. 467, affirmed 480 F.2d 240.

West's Ann.Labor Code, § 1251, against requesting or permitting any female employee to lift over 50 pounds is not valid under section 2000e-2 of this title since sex was not a bona fide occupational qualification for weight-lifting restriction within exception to that section's general prohibition against discrimination on the basis of sex, and such section 1251 was invalid under U.S.C.A. Const. Art. 6, cl. 2. *Local 246, Utility Workers Union of America, AFL-CIO v. Southern California Edison Co.*, D.C.Cal.1970, 320 F.Supp. 1202.

Ark.Stats. § 81-601 forbidding hiring of workman for particular job or under certain conditions cannot stand in face of section 2000e-2 of this title providing that she must be hired for that job or in those conditions if she is otherwise qualified and wants to do the work. *Potlatch Forests, Inc. v. Hays*, D.C.Ark.1970, 318 F.Supp. 1368, affirmed 465 F.2d 1061.

S.H.A. ch. 48, § 5-8.1, was repugnant to this subchapter and void of no force and effect as to each of the plaintiff employers where such section 5-8.1 required each employer to discriminate against individual employees with respect to compensation, terms, conditions and privileges of employment because of their sex, where it also required each employer to limit, segregate and classify its employees so as to deprive such employees of employment opportunities because of their sex, and where, in addition such section 5-8.1 set unreasonably low standards for employment of women. *Caterpillar Tractor Co. v. Grabiec*, D.C.Ill.1970, 317 F.Supp. 1304.

West's Ann.Bus. & Prof.Code, § 25656, regulating an incident of the retail sale of liquor, namely, sex of persons mix-

ing and selling it, by making it a misdemeanor to employ certain female bartenders falls within exclusive powers of states to regulate distribution and sale of liquor within their borders, insulated by U.S.C.A. Const. Amend. 21 from restrictions of U.S.C.A. Const. Art. 1, § 8, cl. 2, and, therefore, cannot be invalidated by this subchapter, assuming a conflict with same. *Krauss v. Sacramento Inn*, D.C.Cal.1970, 314 F.Supp. 171.

West's Ann.Labor Code, §§ 1250-1253, limiting hours of work for women does not violate this subchapter if there is rational basis dependent upon other factors than sex for treating women differently than men. *Mengelkoch v. Industrial Welfare Commission*, D.C.Cal.1968, 284 F.Supp. 956, appeal dismissed 89 S.Ct. 60, 393 U.S. 83, 21 L.Ed.2d 215, rehearing denied 89 S.Ct. 443, 393 U.S. 993, 21 L.Ed.2d 458.

Enforcement of R.C. §§ 4107.42, 4107.43, 4107.46, requiring employers to provide seats, lunchroom facilities and meal periods for female employees and compelling employers to refuse to employ a female at specified occupations or in excess of specified number of hours against an employer engaged in industry affecting interstate commerce who employs 25 or more employees for each working day in each of 20 or more calendar weeks is inconsistent with principle of nondiscrimination contained in section 2000e-2 of this title; thus, R.C. §§ 4107.42, 4107.43, 4107.46 are preempted by virtue of U.S.C.A. Const. Art. 6, cl. 2, and implementing and penalty provisions of R.C. §§ 4107.48, 4107.49 are of no further force and effect. *Jones Metal Products Co. v. Walker*, 1972, 281 N.E.2d 1, 29 Ohio St.2d 173.

4. Mandamus

Whether this subchapter or section 206 of Title 29, requires employers to bring male employees up to minimum standards which state law fixes for female workers is interpretive and enforcement problem for federal agencies and not for court in mandamus action to compel enforcement of orders of Industrial Welfare Commission. *Rivera v. Division of Industrial Welfare*, 1968, 71 Cal.Rptr. 739, 265 C.A.2d 576.

§ 2000e-8. Investigations

Examination and copying of evidence related to unlawful employment practices

(a) In connection with any investigation of a charge filed under section 2000e-5 of this title, the Commission or its designated repre-

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(b) T charged laws and carrying within t purpose, projects the serv standing ment su sist the ance of written agreeme shall rel specifie relieve requirer scind ar ment no subchap

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of evidence related to unlawful
ment practices

Investigation of a charge filed under
Commission or its designated representative

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ing and selling it, by making
meanor to employ certain fem-
ers falls within exclusive
states to regulate distribution
liquor within their borders.
U.S.C.A. Const. Amend. 21
tions of U.S.C.A. Const. Art. I
and, therefore, cannot be
this subchapter, assuming a
same. *Krauss v. Sacramento*
Cal. 1970, 314 F.Supp. 171.

West's Ann. Labor Code, § 111
limiting hours of work for
not violate this subchapter if
tional basis dependent upon
than sex for treating women
than men. *Mengelkoch v. Indus-*
fare Commission, D.C. Cal. 1968,
Supp. 958, appeal dismissed 393
393 U.S. 83, 21 L.Ed.2d 215, rehear-
ined 80 S.Ct. 443, 393 U.S. 363, 21 L.
458.

Enforcement of R.C. §§ 4107.42,
4107.46, requiring employers to
seats, lunchroom facilities and
ods for female employees and com-
employers to refuse to employ a
specified occupations or in
specified number of hours against
employer engaged in industry affecting
terstate commerce who employs
more employees for each working
each of 20 or more calendar weeks
consistent with principle of non-
nation contained in section 2000e-3
title; thus, R.C. §§ 4107.42, 4107.43,
are preempted by virtue of U.S.C.A.
Art. 6, cl. 2, and implementing and
ty provisions of R.C. §§ 4107.42, 4107.43
are of no further force and effect.
Metal Products Co. v. Walker, 1970
N.E.2d 1, 29 Ohio St.2d 173.

4. Mandamus

Whether this subchapter or section
of Title 29, requires employers to
male employees up to minimum
ards which state law fixes for
workers is interpretive and enforce-
problem for federal agencies and
court in mandamus action to compel
enforcement of orders of Industrial
Commission. *Rivera v. Division of*
dustrial Welfare, 1968, 71 Cal.Rptr.
265 C.A.2d 576.

entative shall at all reasonable times have access to, for the pur-
poses of examination, and the right to copy any evidence of any per-
son being investigated or proceeded against that relates to unlawful
employment practices covered by this subchapter and is relevant to
the charge under investigation.

Cooperation with State and local agencies administering State fair employ-
ment practices laws; participation in and contribution to research and
other projects; utilization of services; payment in advance or reim-
bursement; agreements and rescission of agreements

(b) The Commission may cooperate with State and local agencies
charged with the administration of State fair employment practices
laws and, with the consent of such agencies, may, for the purpose of
carrying out its functions and duties under this subchapter and
within the limitation of funds appropriated specifically for such
purpose, engage in and contribute to the cost of research and other
projects of mutual interest undertaken by such agencies, and utilize
the services of such agencies and their employees, and, notwith-
standing any other provision of law, pay by advance or reimburse-
ment such agencies and their employees for services rendered to as-
sist the Commission in carrying out this subchapter. In further-
ance of such cooperative efforts, the Commission may enter into
written agreements with such State or local agencies and such
agreements may include provisions under which the Commission
shall refrain from processing a charge in any cases or class of cases
specified in such agreements or under which the Commission shall
relieve any person or class of persons in such State or locality from
requirements imposed under this section. The Commission shall re-
scind any such agreement whenever it determines that the agree-
ment no longer serves the interest of effective enforcement of this
subchapter.

Execution, retention, and preservation of records; reports to Commission;
training program records; appropriate relief from regulation or order
for undue hardship; procedure for exemption; judicial action to compel
compliance

(c) Every employer, employment agency, and labor organization
subject to this subchapter shall (1) make and keep such records rel-
evant to the determinations of whether unlawful employment prac-
tices have been or are being committed, (2) preserve such records
for such periods, and (3) make such reports therefrom as the Com-
mission shall prescribe by regulation or order, after public hearing,
as reasonable, necessary, or appropriate for the enforcement of this
subchapter or the regulations or orders thereunder. The Commis-
sion shall, by regulation, require each employer, labor organization,
and joint labor-management committee subject to this subchapter
which controls an apprenticeship or other training program to main-
tain such records as are reasonably necessary to carry out the pur-
poses of this subchapter, including, but not limited to, a list of ap-
plicants who wish to participate in such program, including the
chronological order in which applications were received, and to fur-

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nish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

Prohibited disclosures; penalties

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misde-

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Pub.L. 88-
92-261, § 6

1972 Amend
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Subsec. (c)
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Civil Right

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Complaint

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request, a detailed description of the person selected to participate in the program. Any employer, employer or joint labor-management committee, or any person who is subject to it of any regulation, shall result in undue hardship may be exempted from the application of such application for an exemption to the United States district court. If the Commission finds that the application of the regulation to the employment agency, or labor organization, or any person, would result in an undue hardship, the Commission, at its discretion, may grant appropriate relief with the provisions of this subsection. The United States district court, if it is found, resides, or transacts business with the Commission, or the Attorney General, government, governmental agency, or any person, shall have jurisdiction to issue to such person an order.

between Commission and interested State or local agency recordkeeping and reporting requirements furnished pursuant to recordkeeping and reporting requirements on availability.

persons pursuant to subsection (c) shall consult with other interested persons and shall endeavor to coordinate the activities of such agencies. The Commission shall, without cost to any State or local agency, administer a fair employment program pursuant to subsection (c) of this section. Any employment agency, labor organization, or any person, shall be subject to the jurisdiction of the Commission. The Commission shall be furnished on condition of the recipient agency prior to the institution of any proceeding under this subsection. If a recipient agency, the Commission shall, without cost to any State or local agency, administer a fair employment program pursuant to subsection (c) of this section.

any officer or employee of the Commission, in any manner whatever any information, shall be guilty of a misdemeanor. Any officer or employee of the Commission, in any manner whatever any information, shall be guilty of a misdemeanor. Any officer or employee of the Commission, in any manner whatever any information, shall be guilty of a misdemeanor.

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meanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.

Pub.L. 88-352, Title VII, § 709, July 2, 1964, 78 Stat. 262; Pub.L. 92-261, § 6, Mar. 24, 1972, 86 Stat. 107.

Historical Note

1972 Amendment. Subsec. (b). Pub.L. 92-261 added provisions authorizing the Commission to engage in and contribute to the cost of research and other projects undertaken by State and local agencies and provisions authorizing the Commission to make advance payments to State and local agencies and their employees for services rendered to the Commission, and struck out provisions relating to agreements between the Commission and State and local agencies prohibiting private civil actions under section 2000e-5 of this title in specified cases.

Subsec. (c). Pub.L. 92-261 struck out "Except as provided in subsection (d) of this section," preceding "every employer, employment agency, and labor organization subject to this subchapter shall (1)", required the party seeking an exemption to bring an action in the district court only after the Commission denied the application for the exemption, and added provision which authorized the Commission, or the Attorney General in a case involving a government, etc., to apply for a court order compelling compliance with the recordkeeping and reporting obligations set out in this subsection.

Subsec. (d). Pub.L. 92-261 substituted provisions requiring consultation and co-

ordination between Federal and State agencies in prescribing recordkeeping and reporting requirements pursuant to subsec. (c) of this section, and authorizing the Commission to furnish information obtained pursuant to subsec. (c) of this section to interested State and local agencies, for provisions exempting from recordkeeping and reporting requirements employers, etc., required to keep records and make reports under State or local fair employment practice laws, except for the maintenance of notations by such employers, etc., which reflect the differences in coverage or enforcement between State or local laws and the provisions of this subchapter, and dispensing with recordkeeping and reporting requirements where the employer reports under some Executive Order prescribing fair employment practices for Government contractors or subcontractors.

Effective Date. Section effective July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S. Code Cong. and Adm. News, p. 2335. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm. News, p. 2137.

Library References

Civil Rights § 34.

C.J.S. Civil Rights § 180, 182, 183.

West's Federal Forms

Proceedings to compel discovery, see § 3581 et seq.

Production of documents, request, motion and order, see §§ 3581 to 3591.

Code of Federal Regulations

Availability of records, see 29 CFR 1610.1 et seq., 1611.1 et seq.

Recordkeeping and reporting requirements, see 29 CFR 1602.1 et seq.

Uniformity of employee selection procedures, see 29 CFR 1607.1 et seq.

Notes of Decisions

Compilation or preparation of information 6

Complaint 8

Constitutionality 1

Construction 2

Costs 12

Defenses 9

Disclosure of information 10

Discovery and inspection

Generally 11

Subpoenas 12

Nature of remedy 4

Persons entitled to maintain action 7

Persons within section 5

Purpose 3

Standing to sue 7

Subpoenas, discovery and inspection 12

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1979, *Cidental Life Ins. Co. of Cal.* 1976, 535 F.2d 831, 1976, 2447, 432 U.S. 83, 53 L.Ed.2d 101.

Union was subject to discovery with respect to investigation to unlawful employment practices, employer notwithstanding named in charge filed with Equal Employment Opportunity Commission v. MacMillan, Inc., C.A. Ohio 1974, 503 F.2d 101.

In its investigatory role, Commission is entitled to require party to disclose relevant information concerning the discriminatory practice. *Circle Inc. v. Equal Employment Opportunity Commission*, C.A.N.M. 1972, 501 F.2d 101.

Under this subchapter, the Commission has a right to obtain any evidence person being investigated that is any matter under investigation. *Donnell Douglas Corp. v. Marshall*, Mo. 1978, 465 F.Supp. 22.

12. — Subpoenas

In employment sex discrimination proceeding brought by Commission, court properly refused to enforce Commission investigative subpoena requiring employer to produce its current "Report" where such report was in Commission's possession. *Equal Employment Opportunity Commission v. Packard Elec. Division, General Corp.*, C.A. Miss. 1978, 560 F.2d 315.

Reasonable cause for finding of this section need not be established before administrative subpoena is validly issued; rather, it is function of such investigative subpoenas to establish whether reasonable cause to bring discrimination charge exists. *Equal Employment Opportunity Commission v. Chrysler Corp.*, C.A. Mo. 1977, 587 F.2d 101.

Prohibition against searches and seizures under U.S. Const. Amend. 4, did not preclude enforcement of commission subpoena directing university to produce records, papers, involving personal, private, confidential matters, in investigation charge of discrimination against professor pursuant to provisions of section proscribing any action of employee of commission from making any information obtained in investigation. *Equal Employment Opportunity Commission v. University of New Mexico*, Albuquerque, New Mexico, C.A.N.M. 504 F.2d 1296.

The cost to university of compliance with subpoena issued by the Commission

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In connection with investigation of charge of unlawful discrimination against female faculty employees was not such as to excuse compliance with subpoenas as burdensome as long as information requested was relevant and material. *Equal Employment Opportunity v. University of Pittsburgh*, D.C. Pa. 1980, 487 F. Supp. 1071.

Commission, in subpoena issued in support of proceedings against employer on employee's allegation of employment discrimination through retaliatory references, was entitled to require production of documents concerning sex and race discrimination; such information was relevant for purpose of showing whether employer had practice of retaliating against any person who filed employment discrimination charge. *Equal Employ-*

ment Opportunity Com'n v. U. S. Fidelity & Guaranty Co., D.C. Md. 1976, 414 F.Supp. 227.

13. Costs

Even though this subchapter did not explicitly provide for awarding of costs when United States was prevailing party, inasmuch as it did not prohibit such an award, court did not err in awarding costs to United States which successfully sued state to enforce compliance with statutes and regulations of Commission relating to filing reports furnishing race, national origin, and sex of employees in various job categories. *U. S. v. State of N. H.*, C.A.N.H. 1978, 539 F.2d 277, certiorari denied 97 S.Ct. 641, 429 U.S. 1023, 50 L.Ed.2d 625.

§ 2000e-9. Conduct of hearings and investigations pursuant to section 161 of Title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 shall apply.

Pub.L. 88-352, Title VII, § 710, July 2, 1964, 78 Stat. 264; Pub.L. 92-261, § 7, Mar. 24, 1972, 86 Stat. 109.

Historical Note

1972 Amendment. Pub.L. 92-261 substituted provisions making applicable section 161 of Title 29 to all hearings and investigations conducted by the Commission or its authorized agents or agencies, for provisions enumerating the investigatory powers of the Commission and the procedure for their enforcement.

Effective Date. Section effective July 2, 1964, see section 716 of Pub.L. 88-352.

set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S. Code Cong. and Adm. News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm. News, p. 2137.

Library References

Civil Rights — 34.

C.J.S. Civil Rights §§ 180, 182, 183.

West's Federal Forms

Administrative subpoenas, enforcement of, see § 6004 et seq.
Contempt proceedings, see § 5651 et seq.
Service of process, see § 1301 et seq.

Notes of Decisions

Breadth and scope, demand for access to evidence 13
Construction Generally 1
With other laws 2
Costs and fees 22
Defenses, enforcement proceedings 17

Demand for access to evidence Generally 11
Breadth and scope 13
Power of Commission to issue 12
Setting aside or modifying 14
Departmental scope of investigation 8
Discovery, enforcement proceedings 15

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U. that enforcement of
Com- abuse of process,
Sys- Equal Employment
Supp. sion, D.C.N.D.1971, 588
firm 468 F.2d 21, aff'd
versed in part on other
1147, certiorari denied
U.S. 939, 37 L.Ed.2d 383.

20. Order
Rights of manager of
employment Security Commission
S.C.A. Const. Amend. 8
in federal court order
disclose the contents of
ords, notwithstanding fact
Mississippi Employment Security
Miss.1942, §§ 7411, 7412, pro
formation thus obtained
confidential and shall not
or be opened to public
provided penalties for
sure. Fears v. Burris, M
Miss.1971, 436 F.2d 1357.

Court's order which required
to supply Commission testing
employment information in from
employees at plant where charge
and which was limited to five
od and nonsupervisory personnel
overly broad. Georgia v. Equal
Equal Employment Opportunity
sion, C.A.Ga.1969, 412 F.2d 462.

Whether motion of Commission
der requiring compliance with
for access to evidence is to be
depends upon the showing made
district court by the Commission
site Transp. Co. v. Equal
Opportunity Commission, C.A.Ca.
F.2d 308.

Private settlement between
complaining of employment discrimination
and employer rendered issues
any pending charge employee
had with the Commission and
the Commission was not entitled
order for enforcement of a
duces tacum which required the
to produce evidence to be used
the Commission's investigation of
employee's charge. Equal Employment
portunity Commission v. Bi-State
opment Agency, D.C.Mo.1969, 389 F.
317.

21. Injunctions
Where this subchapter prescribes
civil or criminal penalties for
noncompliance with reporting provisions
of section 2000e-8 of this title, injunction
was only effective remedy for
refusal to obey law. Equal Employment
Opportunity Commission v. Rogers Bros.
Inc., C.A.Tex.1972, 470 F.2d 965.

Costs and fees

Where Commission's demand for access
employer's documentary evidence was
side effort to seek information, and
substantial controversy surrounded
information sought, there was
thing to indicate that demand for ac-
was brought to harass, embarrass,
abuse either employer or enforcement
agencies, and Commission's action was not
warranted, meritorious, frivolous or vexa-
tiously brought, attorneys' fees were de-
U.S. Steel Corp. v. U. S., D.C.Pa.
1974, 385 F.Supp. 348.

Stay of production pending appeal

Where court was convinced that em-
ployer could not prevail in any appeal
from court's order for production of re-
cords for examination by Commission and
employer had not made case of irrepara-
ble injury if records were produced and
where six months had already elapsed
since filing of original charge and public
interest would best be served by requir-
ing immediate production, production
would not be stayed pending appeal.

Cameron Iron Works, Inc. v. Equal Em-
ployment Opportunity Commission, D.C.
Tex.1970, 320 F.Supp. 1191.

24. Review

Appeal by Commission from trial
court's denial of Commission's demand
that employer, charged with racial dis-
crimination in employment, produce cer-
tain documents was not defective because
the appeal was taken from the memoran-
dum opinion instead of the judgment
where the provisions of the order incor-
porated in the opinion had the same de-
gree of finality as provisions of the or-
der. Joslin Dry Goods Co. v. Equal Em-
ployment Opportunity Commission, C.A.
Colo.1973, 483 F.2d 178.

District Court's setting aside of Com-
mission's request for evidence from union
was final judgment and appealable. In-
ternational Broth. of Elec. Workers, Lo-
cal Union No. 5 v. U. S. Equal Em-
ployment Opportunity Commission, C.A.Pa.
1968, 398 F.2d 248, certiorari denied 89 S.
Ct. 628, 393 U.S. 1021, 21 L.Ed.2d 565.

§ 2000e-10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization,
as the case may be, shall post and keep posted in conspicuous places
upon its premises where notices to employees, applicants for em-
ployment, and members are customarily posted a notice to be pre-
pared or approved by the Commission setting forth excerpts from or
summaries of, the pertinent provisions of this subchapter and infor-
mation pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a
fine of not more than \$100 for each separate offense.

Pub.L. 88-352, Title VII, § 711, July 2, 1964, 78 Stat. 265.

Historical Note

Effective Date. Section effective July
2, 1964, see section 716 of Pub.L. 88-352,
set out as an Effective Date note under
section 2000e of this title.

Legislative History. For legislative
history and purpose of Pub.L. 88-352, see
1964 U.S. Code Cong. and Adm. News, p.
2355.

Library References

Civil Rights § 9.10, 14.

C.J.S. Civil Rights § 59 et seq., 103.

Code of Federal Regulations

Notices to be posted, see 29 CFR 1601.30.

Notes of Decisions

1. Generally

This subchapter does not require union
to take any affirmative action other than
posting of notices; it is not required to
run a school to advance skill of any
group discriminated against prior to ef-

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fective date of law; it is not required to seek out individuals in that group who may be competent for referral; nor is it required to seek out individuals who may become competent to become members. *Dobbins v. Intern. Broth. of Elec. Workers, AFL-CIO, D.C. Ohio 1968, 292 F.Supp. 413.*

§ 2000e-11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

Pub.L. 88-352, Title VII, § 712, July 2, 1964, 78 Stat. 265.

Historical Note

Effective Date. Section effective July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S. Code Cong. and Adm. News, p. 2355.

Library References

Armed Services § 101.
Civil Rights § 2.

C.J.S. Armed Services §§ 251, 264 to 267.
C.J.S. Civil Rights §§ 2, 4 et seq., 17, 188.

Notes of Decisions

Agency action 2
Scope of section 1

1. **Scope of section**
Plaintiffs in civil rights action under this subchapter were precluded from attacking veterans' preference in view of provision in this section that it should not be construed to repeal or modify federal, state, or local laws creating special rights or preferences for veterans. *Bannerman v. Department of Youth Authority, D.C. Cal. 1977, 436 F.Supp. 1273.*

2. **Agency action**
While the administrator of the Veterans Administration claimed that this sub-

chapter was inapplicable to his policy of only submitting names of veterans for appointment as members of the Board of Veterans Appeals since this subchapter applies only to agencies and he was acting pursuant to presidential, not agency, policy, the unsettled nature of the claimed presidential directives under which the administrator acted was apparent, and his actions in appointing Board members therefore had to be viewed on the merits as agency action without regard to the so-called presidential policy. *Krenzer v. Ford, D.C.D.C. 1977, 429 F.Supp. 499.*

§ 2000e-12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or pun-

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July 2, 1964, 78 Stat. 265.

Historical Note

ly Legislative History. For
 12, history and purpose of Pub.L.
 er 1964 U.S. Code Cong. and Adm.
 2355.

References

C.J.S. Armed Services § 231
 C.J.S. Civil Rights § 2, 4
 198.

Notes of Decisions

chapter was inapplicable to him,
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 policy, the unsettled nature
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 Krenser v. Ford, D.C.D.C. 1977
 Supp. 490.

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Note 1

Amendment for or on account of (1) the commission by such person of
 an unlawful employment practice if he pleads and proves that the
 act or omission complained of was in good faith, in conformity with,
 and in reliance on any written interpretation or opinion of the Com-
 mission, or (2) the failure of such person to publish and file any in-
 formation required by any provision of this subchapter if he pleads
 and proves that he failed to publish and file such information in
 good faith, in conformity with the instructions of the Commission
 issued under this subchapter regarding the filing of such informa-
 tion. Such a defense, if established, shall be a bar to the action or
 proceeding, notwithstanding that (A) after such act or omission,
 such interpretation or opinion is modified or rescinded or is deter-
 mined by judicial authority to be invalid or of no legal effect, or
 (B) after publishing or filing the description and annual reports,
 such publication or filing is determined by judicial authority not to
 be in conformity with the requirements of this subchapter.

Pub.L. 88-352, Title VII, § 713, July 2, 1964, 78 Stat. 265.

Historical Note

Codification. "Subchapter II of chapter
 8 of Title 5" was substituted for "the
 Administrative Procedure Act" in subsec.
 (a) on authority of section 7(b) of Pub.
 L. 88-352, Sept. 6, 1964, 80 Stat. 631, sec-
 tion 1 of which enacted Title 5, Govern-
 ment Organization and Employees.

Effective Date. Section effective July
 2, 1964, see section 716 of Pub.L. 88-352.

Library References

Administrative Law and Procedure C.J.S. Public Administrative Bodies and
 Procedure § 92.
 Civil Rights § 31. C.J.S. Civil Rights §§ 178, 185.

Code of Federal Regulations

Affirmative action guidelines, see 29 CFR 1608.1 et seq.
 Interpretations and opinions, see 29 CFR 1601.31 to 1601.33.
 Sunshine Act provisions, compliance, see 29 CFR 1612.1 et seq.

Notes of Decisions

Amendment of pleadings 7
 Disqualification of member 8
 Guidelines 1
 Injunctions 8
 Interpretations or opinions 2
 Liability or punishment 4
 Regulations 3
 Rulings 5

1. Guidelines

Fact that Congress, in enacting this
 subchapter, did not confer upon the Com-
 mission authority to promulgate rules or
 regulations pursuant to this subchapter
 does not mean that Commission guide-

lines are not entitled to consideration in
 determining legislative intent, but it does
 mean that courts properly may accord
 less weight to such guidelines than to
 administrative regulations which Con-
 gress has declared shall have force of
 law, or to regulations which under ena-
 bling statute may themselves supply ba-
 sis for imposition of liability. General
 Elec. Co. v. Gilbert, Va. 1976, 97 S.Ct. 401,
 429 U.S. 125, 50 L.Ed.2d 343, rehearing de-
 nied 97 S.Ct. 825, 429 U.S. 1079, 50 L.Ed.
 2d 799.

Although Commission guidelines for
 employers seeking to determine, through
 professional validation studies, whether

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§ 2000e-13. Application to personnel of Commission of sections 111 and 1114 of Title 18; punishment for violation of section 1114 of Title 18

The provisions of sections 111 and 1114, Title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life. Pub.L. 88-352, Title VII, § 714, July 2, 1964, 78 Stat. 265; Pub.L. 92-261, § 8(g), Mar. 24, 1972, 86 Stat. 110.

Historical Note

References in Text. "This Act", referred to in text, means Pub.L. 88-352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (section 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables volume.

1972 Amendment. Pub.L. 92-261 added provisions which made section 1114 of Title 18 applicable to officers, etc., of the

Commission and set forth punishment for violation of such section 1114.

Effective Date. Section effective July 2, 1964, see section 716 of PubL. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm.News, p. 2137.

Code of Federal Regulations

Indictment, see § 7102.
Sentence and fine, see § 7531 et seq.

§ 2000e-14. Coordination of efforts and elimination of competition among Federal departments, agencies, etc. in implementation and enforcement of equal employment opportunity legislation, orders, and policies; report to President and Congress

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activi-

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together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

Pub.L. 88-352, Title VII, § 715, July 2, 1964, 78 Stat. 265; Pub.L. 92-261, § 10, Mar. 24, 1972, 86 Stat. 111; Pub.L. 94-273, § 3(24), Apr. 21, 1976, 90 Stat. 377; 1978 Reorg. Plan No. 1, § 6, 43 F.R. 19807, 92 Stat. 3782.

Historical Note

Codification. Provisions which established the Equal Employment Opportunity Coordinating Council composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates, were omitted in view of the abolition of the Equal Employment Opportunity Coordinating Council and the transfer of its functions to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 6, 43 F.R. 19807, 92 Stat. 3782, set out as a note under section 2000e-4 of this title.

1976 Amendment. Pub.L. 94-273 substituted "October" for "July".

1972 Amendment. Pub.L. 92-261 substituted provisions which established the Equal Employment Opportunity Coordinating Council and set forth the composition, powers, and duties of the Council for provisions which directed the Secre-

tary of Labor to make a report to the Congress not later than June 30, 1965 concerning discrimination in employment because of age.

Submission of Specific Legislative Recommendations to Congress by January 1, 1967, to Implement Report on Age Discrimination. Pub.L. 89-601, Title VI, § 606, Sept. 23, 1966, 80 Stat. 845, directed the Secretary of Labor to submit to the Congress not later than January 1, 1967 his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to provisions of this section prior to its amendment in 1972.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S. Code Cong. and Adm. News, p. 2355. See, also, Pub.L. 92-261, 1972 U.S. Code Cong. and Adm. News, p. 2137; Pub.L. 94-273, 1976 U.S. Code Cong. and Adm. News, p. 690.

Library References

Civil Rights — 31.

C.J.S. Civil Rights § 178, 185.

Code of Federal Regulations

Interagency coordination procedures, see 29 CFR 1690.101 et seq.

§ 2000e-15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity,

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late remedies, including reinstatement or hiring of employees with without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it seems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agen-

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(2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

Pub.L. 88-352, Title VII, § 716(c), July 2, 1964, 78 Stat. 266.

Historical Note

Effective Date. Section effective July 2, 1964, see section 716 of Pub.L. 88-352, set out as an Effective Date note under section 2000e of this title.

Legislative History. For legislative history and purpose of Pub.L. 88-352, see 1964 U.S.Code Cong. and Adm.News, p. 2355.

EXECUTIVE ORDER NO. 11197

Ex.Ord.No.11197, Feb. 5, 1965, 30 F.R. 1721, formerly set out as a note under this section, which established the President's Council on Equal Opportunity,

was revoked by Ex.Ord.No.11247, Sept. 24, 1965, 30 F.R. 12327, set out as a note under section 2000d-1 of this title.

Library References

Civil Rights 4-31.

C.J.S. Civil Rights §§ 178, 185.

§ 2000e-16. Employment by Federal Government

Discriminatory practices prohibited; employees or applicants for employment subject to coverage

(a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

Enforcement powers of Commission; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

(b) Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appro-

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cy, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

Section 2000e-5(f) through (k) of this title applicable to civil actions

(d) The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder.

Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

Pub.L. 88-352, Title VII, § 717, as added Pub.L. 92-261, § 11, Mar. 24, 1972, 86 Stat. 111, and amended 1978 Reorg. Plan No. 1, § 3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub.L. 96-191, § 8(g), Feb. 15, 1980, 94 Stat. 34.

Historical Note

References in Text. "This Act", referred to in subsec. (e), means Pub.L. 88-352, July 2, 1964, 78 Stat. 241, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (section 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables volume.

Executive Order 11478, as amended, referred to in subsec. (c) and (e), is set out as a note under section 2000e of this title.

1980 Amendment. Subsec. (a). Pub.L. 96-191 struck out "(other than the General Accounting Office)" following "in executive agencies".

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-191 effective Oct. 1, 1980, see section 10(a) of Pub.L. 96-191, set out as an Effective Date note

under section 52-1 of Title 31, Money and Finance.

Transfer of Functions. All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to subsecs. (b) and (c) of this section were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 3, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e-4 of this title, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 23, 1978, 44 F.R. 1053, set out as a note under section 2000e-4 of this title, with the Equal Employment Opportunity Commission authorized to delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a