



# CITY OF SACRAMENTO

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DEPARTMENT OF PERSONNEL  
801 NINTH STREET, ROOM 201  
SACRAMENTO, CALIF. 95814  
TELEPHONE (916) 449-5270

**FILED**  
By the City Council  
Office of the City Clerk

DONNA L. GILES  
DIRECTOR OF PERSONNEL

June 1, 1980

**JUN 1 0 1980**

City Council  
Sacramento, California

Honorable Members in Session:

Subject: Bona Fide Occupational Qualification (B.F.O.Q.) for the  
Mandatory Retirement of Police Officers and Firefighters.

## SUMMARY

The Personnel and Public Employees Committee has requested that staff report to the full City Council on the mandatory retirement age for Police Officers and Firefighters. This report is in response to the Committee's request.

## BACKGROUND INFORMATION

Prior to April 6, 1978, the City of Sacramento mandatorily retired its Police Officers and Firefighters when they reached 60 years of age. The mandatory retirement age was (and is) stipulated in the City Charter, and in the contracts with the Public Employment Retirement System.

In 1978, the Age Discrimination in Employment Act of 1967 was amended to, among other things, prohibit discrimination in employment against individuals between 40 and 70 years of age. (Prior to the 1978 amendments, the protected age group was 40 to 65 years of age.) The City of Sacramento responded accordingly and raised the mandatory retirement age for Police Officers and Firefighters to 65 years of age on April 6, 1978, and to 70 years of age on January 1, 1979.

At the August 15, 1978 meeting of the City Council, a report prepared by the City Attorney's Office on the Age Discrimination Act Amendments, was referred to the Personnel and Public Employees Committee. (Attachment A). That report gave two options for the Council to consider in lieu of raising the mandatory retirement age.

1. Applying for a BFOQ exemption with the Secretary of Labor.
2. Waiting to see if the Secretary of Labor would "exempt" police officer and firefighter classifications from the Act's provisions.

The P & PE Committee chose the first option, i.e., to apply for a BFOQ exemption.

City Council  
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By May 1979, when the Personnel and Public Employees Committee again considered this issue, the data needed for a BFOQ exemption had not yet been developed. Although the Committee was notified that the mandatory retirement age for police officers and firefighters had been raised to 70, the Committee continued to request a BFOQ exemption from the Act.

In January 1980, the Personnel and Public Employees Committee was informed of the Reorganization Plan No. 1 of 1978, which had shifted the responsibility for enforcement of the Act's provisions from the Department of Labor to the Equal Employment Opportunities Commission. When the enforcement shift occurred, the BFOQ exemption process also changed. Unlike the Department of Labor, the Equal Employment Opportunities Commission did not have a formal exemption process. Entities who wished an exemption from the Act exempted themselves based on their own information. In other words, the City of Sacramento could have used a lower mandatory retirement age if the City thought that a lower mandatory retirement age was a Bonafide Occupational Qualification.

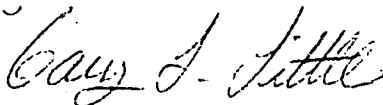
While developing data to determine whether sufficient data was available to justify a lower mandatory retirement age, staff was informed that the original sponsors of the BFOQ request, the Sacramento Area Firefighters, Local 522, had withdrawn their request for a BFOQ exemption (Attachment B). Similarly, the Police Department, Fire Department, and the Sacramento Police Officers Association had also indicated that they were not interested in pursuing the matter at that time. It was therefore doubtful that staff could have justified the need for a lower mandatory retirement age without the above groups' sponsorship and support.

When informed of the above action and determination, the Personnel and Public Employees Committee requested staff to prepare this informational report for the Council.

RECOMMENDED ACTION

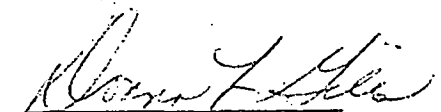
Receive and file.

Respectfully submitted,



Gary L. Little  
Affirmative Action Officer

APPROVED:



Donna L. Giles  
Director of Personnel

Attachments

GLL:mm



# CITY OF SACRAMENTO

RECEIVED

MAY 22 1978

PERSONNEL DEPT.

## DEPARTMENT OF LAW

812 TENTH ST.

SACRAMENTO, CALIF. 95814

SUITE 201

TELEPHONE (916) 449-5346

May 19, 1978

JAMES P. JACKSON  
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THEODORE H. KOBEY, JR.  
ASSISTANT CITY ATTORNEY

LELIAND J. SAVAGE

ELIZABETH HASSARD SILVER

S. RUSSELL SELIX, JR.

GARLAND E. BURRELL, JR.

DAVID BENJAMIN

DEPUTY CITY ATTORNEYS

### MEMORANDUM

TO: WILLIAM DANIELSON, Director of Personnel  
DUNBAR HEINS, Employee Services Administrator  
JUNE KUNIEDA, Retirement System Supervisor

FROM: ELIZABETH HASSARD SILVER, Deputy City Attorney

RE: "AGE DISCRIMINATION IN EMPLOYMENT ACT AMENDMENTS  
OF 1978"

Attached is a copy of the Act amending the Age Discrimination in Employment Act of 1967. The salient provisions of the 1978 amendments are:

1. No person may be involuntarily retired because of his age. ("... no . . . employee benefit plan shall require or permit the involuntary retirement of any individual . . . because of the age of such individual."). (Sec. 2 of Act; 29 USC §623(f)(2)). This provision is effective April 6, 1978. (Sec. 2(b) of Act).
2. Persons protected by the federal law are those persons at least 40 but less than 70 years of age. (Sec. 3(a) of Act; 29 USC §631). The extension of the Act to persons up to age 70 (from the present protection to age 65) will become effective January 1, 1979. (Sec. 3(b) of Act).
3. Persons employed in an executive or high policy making position may be retired at age 65 if their pension amounts to at least \$27,000. (Sec. 3(a) of Act; 29 USC §631). I would assume that this would affect only a few city employees. This section is also effective January 1, 1979.
4. Various changes in enforcement procedures have been made, e.g., trial by jury is specified, the statute of limitations is tolled during conciliation. (Sec. 4 of Act).

*Attachment*

May 19, 1978

I would suggest that department heads be notified that the Act is effective beginning January 1, 1979, inasmuch as it has received widespread publicity. The City is subject to the new federal law.

No Charter change is necessary to conform to the federal law (although it would be advisable to amend §409 of the Charter the next time the Charter is amended).

We wish to emphasize that the 1978 amendments do not exempt police or fire fighters. Thus, the City may not mandatorily retire police and fire employees, effective April 6, 1978. Until January 1, 1979, the persons protected by this new provision are police and fire employees less than 65 years of age; beginning January 1, 1979, persons protected are all employees less than 70 years of age. In other words, until January 1, 1979, the City can mandatorily retire persons at age 65 and after January 1, 1979, the mandatory retirement age will be 70.

There are two ways that an exemption from the mandatory retirement provisions of the Act may be obtained for, e.g., police and fire employees. First, the City could apply for a "BFOQ"; this means that the Secretary of Labor would determine that age is a bona fide occupational qualification reasonably necessary to the normal operation of the City's business (29 USC §623(f)(1)). To date, the Secretary of Labor has not granted any BFOQ's for police or fire employees. Second, the Secretary of Labor may exempt certain classes of employees if he deems it in the public interest ("... the Secretary of Labor . . . may establish such reasonable exemptions to and from any or all provisions of this chapter as he may find necessary and proper in the public interest.") (29 USC §628.) The only exemption granted under this provision to date is for airline pilots. If the City desired to seek an exemption under this provision we can advise you of the procedures to follow:



ELIZABETH HASSARD SILVER  
Deputy City Attorney

EHS:GD

cc: Don Fausset  
Bill Woska



# Sacramento Area Fire Fighters

LOCAL 522, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO

Affiliated with

CALIFORNIA LABOR FEDERATION, AFL-CIO • FEDERATED FIRE FIGHTERS OF CALIFORNIA  
SACRAMENTO CENTRAL LABOR COUNCIL



901 F STREET, SUITE 100 • SACRAMENTO, CALIFORNIA 95814  
Telephone (916) 441-7202

February 19, 1980

Tom Hoeber, Chairman  
Personnel & Public Employee Committee  
Sacramento City Council  
1617 10th Street  
Sacramento, Calif. 95814

Chairman and Members of the Committee:

Since the time of our initial request to the committee, to file for a B.F.O.Q. exemption for firefighters, Local 522 has had an opportunity to re-examine our position on the question.

At the time of our request our intent was and has always been to have such an exemption applicable only to fire suppression personnel required to respond to emergency situations. It was never our intent to have an exemption apply to other departments. Nor, for that matter, to fire department employees whose sole employment consisted of sitting behind a desk or performing work of a non-emergency nature.

We still feel strongly that persons who have attained the age of sixty should not be required to respond to emergency situations. Particularly where there is a possibility of multi-alarm fires requiring long arduous hours at the scene. To our minds the reasons stated in our initial request, along with the data submitted in support thereof, still remain valid. Most prominently, the safety of the employee, his co-workers and the citizens we are sworn to protect.

Upon further deliberations, during and subsequent to meetings with Gary Little of the personnel staff, we have taken a different perspective based on the following findings of fact.

*Attachment B*

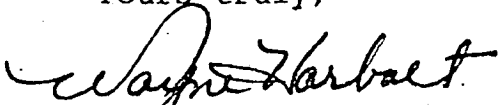
Tom Hoerber, Chairman  
February 19, 1980  
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Under present Charter language there exists no requirement which mandates a sworn fire department employee to remain on the job beyond the age of sixty years. In fact, should the employee become disabled to the point where they cannot perform the duties of a firefighter there is a provision in the Charter to transfer to another job within the City. Predicated upon the employees request and such transfer being authorized by the City Manager. At the risk of being presumptuous, we would assume that should an employee become incapacitated to the point where they cannot perform as a firefighter, the City would move to take corrective measures. In any case, we can find no evidence that employees are exercising any rights to stay on the job beyond age sixty or asking for transfers to other jobs.

However well meaning our intent, we feel that Local 522 may have inadvertantly raised a "straw man". We perceive the issue of raising the limitation to age seventy to be on a collision course with P.E.R.S. and C.E.R.S. If we are correct, at some point in the not too distant future, the retirement systems will move to resolve the issue in litigation before the courts. We feel this is the proper forum in which to resolve the question.

Therefore, in view of the reasons stated above, Fire Fighters Local 522 is hereby withdrawing its request for the exemption and at this time will not pursue the matter further before the Council.

Yours truly,



Wayne Harbolt, President  
Local 522

WH:dg

cc: Val Scheile, S.P.O.A.  
Garland Rasauero, Local 39  
Jack Kearns, Chief, Police Dept.  
Bill Powell, Chief, Fire Dept.  
Gary Little, Affirmative Action Officer