

it to a single life annuity (without ancillary benefits) commencing at the age of actual retirement. The appropriate conversion factor depends upon the age of retirement. In accordance with Rev. Rul. 76-47, 1976-2 C.B. 109, the following conversion factors shall be used with respect to the specified retirement ages:

Retirement age	Conversion factor per cent
65 through 66 .....	10
67 through 68 .....	11
69 .....	12

*Example:* An employee is scheduled to receive a pension from a defined benefit plan of \$50,000 per year. Over the years he has contributed \$150,000 to the plan, and at age 65 this amount, when contributions have been compounded at appropriate annual interest rates, is equal to \$240,000. In accordance with Rev. Rul. 76-47, 10 percent is an appropriate conversion factor. When the \$240,000 is multiplied by this conversion factor, the product is \$24,000, which represents that part of the \$50,000 annual pension payment which is attributable to employee contributions. The difference—\$26,000—represents the employer's contribution, which is too low to meet the test in the exemption.

(3) *Contributions of prior employers.* Amounts attributable to contributions of prior employers must be excluded.

(i) *Current employer distinguished from prior employers.* Under the section 12(c) exemption, for purposes of excluding contributions of prior employers, a prior employer is every previous employer of the employee except those previous employers which are members of a "controlled group of corporations" with, or "under common control" with, the employer which forces the employee to retire, as those terms are used in sections 414 (b) and 414(c) of the Internal Revenue Code, as modified by section 414(h) (26 U.S.C. 414(b), (c) and (h)).

(ii) *Benefits attributable to current employer and to prior employers.* Where the current employer maintains or contributes to a plan which is separate from plans maintained or contributed to by prior employers, the amount of the employee's benefit attributable to those prior employers can be readily determined. However, where the current employer maintains or contributes to the same plan as prior employers, the fol-

lowing rule shall apply. The benefit attributable to the current employer shall be the total benefit received by the employee, reduced by the benefit that the employee would have received from the plan if he or she had never worked for the current employer. For purposes of this calculation, it shall be assumed that all benefits have always been vested, even if benefits accrued as a result of service with a prior employer had not in fact been vested.

(4) *Rollover contributions.* Amounts attributable to rollover contributions must be excluded. For purposes of §1627.17(e), a rollover contribution (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3) and 409(b)(3)(C) of the Internal Revenue Code) shall be treated as an employee contribution. These amounts have already been excluded as a result of the computations set forth in §1627.17(e)(2). Accordingly, no separate calculation is necessary to comply with this requirement.

(Sec. 12(c)(1) of the Age Discrimination In Employment Act of 1967, as amended by sec. 802(c)(1) of the Older Americans Act Amendments of 1984, Pub. L. 98-459, 98 Stat. 1792)

[44 FR 66797, Nov. 21, 1979, as amended at 50 FR 2544, Jan. 17, 1985; 53 FR 5973, Feb. 29, 1988]

**PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT**

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APPENDIX TO PART 1630—INTERPRETIVE GUIDANCE ON TITLE I OF THE AMERICANS WITH DISABILITIES ACT

AUTHORITY: 42 U.S.C. 12116.

SOURCE: 56 FR 35734, July 26, 1991, unless otherwise noted.

### § 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to “covered entities” as defined at § 1630.2(b).

(c) *Construction*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

### § 1630.2 Definitions.

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section

701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(e) *Employer*—(1) *In general.* The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26, 1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

(2) *Exceptions.* The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) *Employee* means an individual employed by an employer.

(g) *Disability* means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment;

or

(3) Being regarded as having such an impairment.

(See § 1630.3 for exceptions to this definition).

(h) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or