

Equal Employment Opportunity Comm.

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(c) *Restitution, recoupment, or setoff.*

(1) Where an employee successfully challenges a waiver agreement, covenant not to sue, or other equivalent arrangement, and prevails on the merits of an ADEA claim, courts have the discretion to determine whether an employer is entitled to restitution, recoupment or setoff (hereinafter, “reduction”) against the employee’s monetary award. A reduction never can exceed the amount recovered by the employee, or the consideration the employee received for signing the waiver agreement, covenant not to sue, or other equivalent arrangement, whichever is less.

(2) In a case involving more than one plaintiff, any reduction must be applied on a plaintiff-by-plaintiff basis. No individual’s award can be reduced based on the consideration received by any other person.

(d) No employer may abrogate its duties to any signatory under a waiver agreement, covenant not to sue, or other equivalent arrangement, even if one or more of the signatories or the EEOC successfully challenges the validity of that agreement under the ADEA.

[65 FR 77446, Dec. 11, 2000]

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

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AUTHORITY: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

SOURCE: 48 FR 140, Jan. 3, 1983, unless otherwise noted.

§ 1626.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of the Age Discrimination in Employment Act of 1967, as amended.

§ 1626.2 Terms defined in the Age Discrimination in Employment Act of 1967, as amended.

The terms *person*, *employer*, *employment agency*, *labor organization*, *employee*, *commerce*, *industry affecting commerce*, and *State* as used herein shall have the meanings set forth in section 11 of the Age Discrimination in Employment Act, as amended.

§ 1626.3 Other definitions.

For purpose of this part, the term *the Act* shall mean the Age Discrimination in Employment Act of 1967, as amended; the *Commission* shall mean the Equal Employment Opportunity Commission or any of its designated representatives; *charge* shall mean a statement filed with the Commission by or on behalf of an aggrieved person which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the Act; *complaint* shall mean information received from any source, that is not a charge, which alleges that a named prospective defendant has engaged in or is about to engage in actions in violation of the Act; *charging party* means the person filing a charge; *complainant* means the person filing a complaint; and *respondent* means the person named as a prospective defendant in a charge

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or complaint, or as a result of a Commission-initiated investigation.

§ 1626.4 Information concerning alleged violations of the Act.

The Commission may, on its own initiative, conduct investigations of employers, employment agencies and labor organizations, in accordance with the powers vested in it pursuant to sections 6 and 7 of the Act. The Commission shall also receive information concerning alleged violations of the Act, including charges and complaints, from any source. Where the information discloses a possible violation, the appropriate Commission office may render assistance in the filing of a charge. The identity of a complainant, confidential witness, or aggrieved person on whose behalf a charge was filed will ordinarily not be disclosed without prior written consent, unless necessary in a court proceeding.

§ 1626.5 Where to submit complaints and charges.

Complaints and charges may be submitted in person, by telephone, or by mail to any office of the Commission or to any designated representative of the Commission. The addresses of the Commission's offices appear at §1610.4.

[71 FR 26831, May 9, 2006]

§ 1626.6 Form of charge.

A charge shall be in writing and shall name the prospective respondent and shall generally allege the discriminatory act(s). Charges received in person or by telephone shall be reduced to writing.

§ 1626.7 Timeliness of charge.

(a) Potential charging parties will be advised that, pursuant to section 7(d) (1) and (2) of the Act, no civil suit may be commenced by an individual until 60 days after a charge has been filed on the subject matter of the suit, and such charge shall be filed with the Commission or its designated agent within 180 days of the alleged discriminatory action, or, in a case where the alleged discriminatory action occurs in a State which has its own age discrimination law and authority administering that law, within 300 days of the alleged discriminatory action, or 30 days after re-

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ceipt of notice of termination of State proceedings, whichever is earlier.

(b) For purposes of determining the date of filing with the Commission, the following applies:

(1) Charges filed by mail:

(i) Date of postmark, if legible,

(ii) Date of letter, if postmark is illegible,

(iii) Date of receipt by Commission, or its designated agent, if postmark and letter date are illegible and/or cannot be accurately affixed;

(2) Written charges filed in person: Date of receipt;

(3) Oral charges filed in person or by telephone, as reduced to writing: Date of oral communication received by Commission.

[48 FR 140, Jan. 3, 1983, as amended at 68 FR 70152, Dec. 17, 2003]

§ 1626.8 Contents of charge; amendment of charge.

(a) In addition to the requirements of §1626.6, each charge should contain the following:

(1) The full name, address and telephone number of the person making the charge;

(2) The full name and address of the person against whom the charge is made;

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices;

(4) If known, the approximate number of employees of the prospective defendant employer or members of the prospective defendant labor organization.

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge either a written statement or information reduced to writing by the Commission that conforms to the requirements of §1626.6.