



STATE OF WASHINGTON

DEPARTMENT OF RETIREMENT SYSTEMS

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March 24, 1983

M E M O R A N D U M

To: All LEOFF Employers DRS Notice No. 83-001
From: Robert L. Hollister, Jr. *Robert L. Hollister, Jr.*
Director
Re: LEOFF Mandatory Retirement Age

As you are aware, those LEOFF I members hired after March 1, 1970 and before October 1, 1977, are subject to mandatory retirement at age 60 under RCW 41.26.090(3).

I wish to bring to your attention a recent decision of the U.S. Supreme Court in the case of EEOC vs. Wyoming. The Court held that the Federal Age Discrimination in Employment Act (ADEA) applies to state and local government. The ADEA prohibits involuntary retirement for service at any age less than 70. As far as I can determine, there have only been three instances since Chapter 41.26 came into existence in which involuntary retirement was made for persons reaching age 60.

The Court further noted that employers continue to be free to determine that employees are not able to continue service. The matter is essentially a civil service/employment issue rather than a retirement issue.

The Court further noted that retirement prior to age 70 by virtue of reaching a specified age may still be legal provided that the employer can convincingly demonstrate that simply as a matter of reaching that age an employee is no longer competent to perform his/her assigned duties. Frankly, we simply do not believe that any employer can produce such proof.

In addition to the Supreme Court decision, the Federal District Court for the Western District of Missouri recently held in the case of EEOC vs. Missouri State Highway Patrol that: "The evidence did not convince the Court that substantially all persons over that age (60) were unable to safely and efficiently perform the duties of a patrolman." The Missouri State Police had an age 60 mandatory retirement law.

Therefore, until such time as we are able to have the mandatory retirement age removed from the statute, we do not intend to enforce this provision unless the employer concerned is willing to bear all costs of defending such an action and can provide convincing proof that the member cannot perform solely as a result of attaining age 60.

RLH:crs