

LEXSTAT 5 USC 8425

UNITED STATES CODE SERVICE
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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III. EMPLOYEES
SUBPART G. INSURANCE AND ANNUITIES
CHAPTER 84. FEDERAL EMPLOYEES' RETIREMENT SYSTEM
SUBCHAPTER II. BASIC ANNUITY

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

5 USCS § 8425 (2005)

§ 8425. Mandatory separation

(a) An air traffic controller who is otherwise eligible for immediate retirement under section 8412(e) [5 USCS § 8412(e)] shall be separated from the service on the last day of the month in which that air traffic controller becomes 56 years of age or completes 20 years of service if then over that age. The Secretary, under such regulations as the Secretary may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires. For purposes of this subsection, the term "air traffic controller" or "controller" has the meaning given to it under section 8401(35)(A) [5 USCS § 8401(35)(A)].

(b) (1) A law enforcement officer, firefighter, or nuclear materials courier who is otherwise eligible for immediate retirement under section 8412(d) [5 USCS § 8412(d)] shall be separated from the service on the last day of the month in which that law enforcement officer, firefighter, or nuclear materials courier, as the case may be, becomes 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting "65 years of age" for "60 years of age". The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007.

(c) A member of the Capitol Police who is otherwise eligible for immediate retirement under section 8412(d) [5 USCS § 8412(d)] shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Capitol Police Board, when in its judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Board shall notify the member in writing of the date of separation at least 60 days before that date. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

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(d) A member of the Supreme Court Police who is otherwise eligible for immediate retirement under section 8412(d) [5 USCS § 8412(d)] shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Marshal of the Supreme Court of the United States, when in his judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Marshal shall notify the member in writing of the date of separation at least 60 days before the date. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(e) The President, by Executive order, may exempt an employee (other than a member of the Capitol Police or Supreme Court Police) from automatic separation under this section if the President determines the public interest so requires.

HISTORY:

(Added June 6, 1986, P.L. 99-335, Title I, § 101(a) in part, 100 Stat. 540; Oct. 15, 1990, P.L. 101-428, § 3(b)(1)(A), (2), 104 Stat. 929, 930; Nov. 5, 1990, P.L. 101-509, Title V [Title IV, § 409(b)], 104 Stat. 1468; Oct. 2, 1992, P.L. 102-378, § 2(67), 106 Stat. 1354; July 22, 1994, P.L. 103-283, Title III, § 307(b)(1), 108 Stat. 1441; Oct. 17, 1998, P.L. 105-261, Div C, Title XXXI, Subtitle D, § 3154(k), 112 Stat. 2256.)

(As amended Dec. 21, 2000, P.L. 106-553, § 1(a)(2), 114 Stat. 2762; Aug. 20, 2001, P.L. 107-27, § 2(b), 115 Stat. 207; Dec. 12, 2003, P.L. 108-176, Title II, Subtitle B, § 226(a)(3)(B), 117 Stat. 2529; Dec. 8, 2004, P.L. 108-447, Div B, Title I, § 112(b), 118 Stat. 2868; Dec. 17, 2004, P.L. 108-458, Title II, § 2005(b), 118 Stat. 3704.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The amendments made by § 1(a)(2) of Act Dec. 21, 2000, P.L. 106-553, are based on § 308(c)(5) of Title III of H.R. 5548 (114 Stat. 2762A-87), as introduced on Oct. 25, 2000, which was enacted into law by such § 1(a)(2).

Effective date of section:

This section took effect on January 1, 1987, pursuant to § 702(a) of Act June 6, 1986, P.L. 99-335, which appears as 5 USCS § 8401 note.

Amendments:

1990. Act Oct. 15, 1990, in subsec. (b), substituted "officer, member of the Capitol Police," for "officer" in two places; and, in subsec. (c), inserted "(other than a member of the Capitol Police)".

Act Nov. 5, 1990 (effective on enactment as provided by § 409(c) of such Act, which appears as 5 USCS § 8335 note), in subsec. (b), purported to delete "law enforcement officer or" preceding "firefighter" wherever appearing; however, in light of the amendment made by Act Oct. 15, 1990, "law enforcement officer," was deleted preceding "member of the Capitol Police" instead.

Such Act further (effective as above) inserted the sentence beginning "A law enforcement officer who . . .".

1992. Act Oct. 2, 1992 (effective as of Nov. 5, 1990, as provided by § 9(b)(6) of such Act, which appears as 5 USCS § 6303 note), in subsec (b), substituted the sentence which begins "A member of the Capitol Police or . . ." for one which read: "A member of the Capitol Police, or firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that member of the Capitol Police, or firefighter becomes 55 years of age or completes 20 years of service if then over that age." and substituted "becomes" for "become" preceding "57 years".

1994. Act July 22, 1994, in subsec. (b), deleted "member of the Capitol Police or" preceding "firefighter who" and deleted "member or" preceding "firefighter becomes"; redesignated subsec. (c) as subsec. (d); and added new subsec. (c).

1998. Act Oct. 17, 1998 (effective 1 year after enactment, as provided by § 3154(n) of such Act, which appears as 5 USCS § 8331 note), in subsec. (b), inserted "or nuclear materials courier" in two places.

2000. Act Dec. 21, 2000 (effective and applicable as provided by § 308(i), (j) of H.R. 5548, as enacted into law by such Act, which appears as 5 USCS § 8331 note), redesignated subsec. (d) as subsec. (e); inserted new subsec. (d); and, in subsec. (e) as redesignated, substituted "Police or Supreme Court Police)" for "Police)".

2001. Act Aug. 20, 2001, in subsec. (b), deleted "A firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that age." preceding "A law enforcement", inserted ", firefighter," in two places, and substituted "courier, as the case may be," for "courier".

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2003. Act Dec. 12, 2003 (effective and applicable as provided by § 226(c) of such Act, which appears as 5 USCS § 8401 note), in subsec. (a), added the sentence beginning "For purposes . . .".

2004. Act Dec. 8, 2004, in subsec. (b), designated the existing provisions as para. (1), and added para. (2).

Act Dec. 17, 2004 purported to amend subsec. (b) by designating the existing provisions as para. (1), and adding para. (2); however, because of prior amendments, these amendments were executed by substituting para. (2) for one which read: "(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009." in order to effectuate the probable intent of Congress.

Other provisions:

Automatic separation of members of the Capitol Police not required before Oct. 15, 1992. Act Oct. 15, 1990, P.L. 101-428, § 3(b)(1)(B), 104 Stat. 929, provides: "Nothing in section 8425(b) of title 5, United States Code, as amended by subparagraph (A) [substituting "officer, member of the Capitol Police," for "officer"], shall require the automatic separation of any member of the Capitol Police before the end of the 2-year period beginning on the date of enactment of this Act."

NOTES:

Related Statutes & Rules:

This section is referred to in 5 USCS § 8415.

Research Guide:

Am Jur:

60A Am Jur 2d, Pensions and Retirement Funds § 1110.

Interpretive Notes and Decisions:

Since Congress explicitly authorized both CSRS and FERS mandatory retirement programs for air traffic controllers, they are outside scope of Age Discrimination in *Employment Act*. *Dungan v Slater* (2001, CA3 Pa) 252 F3d 670, 86 BNA FEP Cas 438, 80 CCH EPD P 40541.

Prohibition against age discrimination in Government Employee Rights Act of 1991 (2 USCS § 1202(2)) does not repeal mandatory retirement provisions of 5 USCS § § 8335(d) and 8425(b). *Riggin v Office of Senate Fair Employment Practices* (1995, CA FC) 61 F3d 1563, 68 BNA FEP Cas 679, 66 CCH EPD P 43649, cert den (1996) 516 US 1072, 133 L Ed 2d 726, 116 S Ct 773, 69 BNA FEP Cas 1504.

Government Employee Rights Act (GERA; 2 USCS § 1202), prohibiting age discrimination, did not effectively repeal mandatory retirement provisions of Capitol Police Retirement Act (5 USCS § 8345) since latter is identical to mandatory retirement scheme for executive branch law enforcement officers and specific age discrimination prohibition applicable to two groups (29 USCS § 633a) is same and it would make no sense to hold that mandatory retirement scheme for one group can coexist with federal age discrimination law while other cannot, and amendment of CPRA after enactment of GERA, to raise mandatory retirement age to 57, is flatly inconsistent with any suggestion that Congress intended to outlaw mandatory retirement for Capitol Police by enacting GERA. *Riggin v Office of Senate Fair Employment Practices* (1995, CA FC) 61 F3d 1563, 68 BNA FEP Cas 679, 66 CCH EPD P 43649, cert den (1996) 516 US 1072, 133 L Ed 2d 726, 116 S Ct 773, 69 BNA FEP Cas 1504.

No adverse employment action occurred to support female police officer's reprisal claim, even though she claims her paycheck was withheld while she was on stress-related sick leave, and she was forced into retirement, because police department complied with mandatory retirement provisions of 5 USCS § 8425. *Raymond v United States Capitol Police Bd.* (2001, DC Dist Col) 157 F Supp 2d 50.

