



# COMMONWEALTH OF VIRGINIA

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The Honorable Frederick M. Quayle  
Member, Senate of Virginia  
P.O. Box 368  
Suffolk, Virginia 23439

Dear Senator Quayle:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## **Issue Presented**

You ask whether the distinction in eligibility under the Virginia Law Officers Retirement System and the State Police Officers' Retirement System for an annual allowance constitutes age discrimination.

## **Response**

It is my opinion that the distinction in age for eligibility for an annual allowance under the Virginia Law Officers Retirement System and the State Police Officers' Retirement System does not constitute impermissible age discrimination.

## **Background**

You note that the General Assembly has established two separate retirement systems for its law enforcement officers: (1) the State Police Officers' Retirement System<sup>1</sup> ("SPORS") and the Virginia Law Officers Retirement System<sup>2</sup> ("VaLORS"). You relate that retirees under VaLORS and SPORS receive an annual allowance, which is the same for both systems. You note, however, that there are differences in the ages for eligibility for these annual supplements. Thus, you state that SPORS retirees can receive more payments than VaLORS retirees because the retirement age under the Social Security Act occurs later than age sixty-five. Therefore, you inquire whether the different age requirements for eligibility results in age-related discrimination.

## **Applicable Law and Discussion**

Retirees under VaLORS receive an annual allowance, initially in the amount of \$9,264, which is thereafter adjusted biennially by the Board of Trustees of the Virginia Retirement System.<sup>3</sup> Retirees

<sup>1</sup> See VA. CODE ANN. tit. 51.1, ch. 2, §§ 51.1-200 to 51.1-210 (2009).

<sup>2</sup> See tit. 51.1, ch. 2.1, §§ 51.1-211 to 51.1-221 (2009).

<sup>3</sup> See § 51.1-217(B).

under SPORS receive the same amount.<sup>4</sup> A VaLORS retiree, however, receives this annual supplement “from the date of his retirement until his sixty-fifth birthday.”<sup>5</sup> In contrast, a SPORS retiree receives the annual supplement “from the date of his retirement until his retirement age, as such term is defined under the Social Security Act.”<sup>6</sup> The Social Security Act provides several definitions of “retirement age.”<sup>7</sup> For example, for employees “who attain[] early retirement age<sup>[8]</sup> after December 31, 2004, and before January 1, 2017,” the “retirement age” for purposes of the Social Security Act is “66 years of age” or older.<sup>9</sup>

The federal Age Discrimination in Employment Act of 1967<sup>10</sup> (“ADEA”) prohibits an employer, including states, from discriminating on the basis of age.<sup>11</sup> The Congress of the United States specifically has exempted “an employee pension benefit plan” that “provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits” from the scope of ADEA.<sup>12</sup> Therefore, under the plain language of ADEA, there is no viable claim for age discrimination based on the differences in the annual supplements under SPORS and VaLORS.

### Conclusion

Accordingly, it is my opinion that the distinction in age for eligibility for an annual allowance under the Virginia Law Officers Retirement System and the State Police Officers’ Retirement System does not constitute impermissible age discrimination.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

1:435; 1:941/10-013

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<sup>4</sup> See § 51.1-206(B).

<sup>5</sup> Section 51.1-217(B).

<sup>6</sup> Section 51.1-206(B).

<sup>7</sup> See 42 U.S.C.S. § 416(l) (LexisNexis 1999) (defining “retirement age”).

<sup>8</sup> See *id.* § 416(l)(2) (defining “early retirement age”).

<sup>9</sup> *Id.* § 416(l)(1)(C).

<sup>10</sup> See 29 U.S.C.S. §§ 621 to 634 (LexisNexis 2002 & Supp. 2009).

<sup>11</sup> See *id.* §§ 621(b), 623(a) (2002).

<sup>12</sup> See *id.* § 623(l)(1)(A)(i) (Supp. 2009).