

JAN 29 1993
ATTEST: ROBERT M. TRUE, CLERK
FAYETTE CIRCUIT COURT
DEPUTY
PLAINTIFF

DR. TAE-SANG CHUNG

V. DEFENDANTS' REPLY/MEMORANDUM TO PLAINTIFF'S
RESPONSE TO DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

DEAN THOMAS W. LESTER;
DR. JIMMIE J. CATHEY;
and BOARD OF TRUSTEES
OF THE UNIVERSITY OF KENTUCKY

DEFENDANTS

Defendants, Dean Thomas W. Lester, Dr. Jimmie J. Cathey, and the Board of Trustees
of the University of Kentucky, (hereinafter "UK") by and through Counsel, file their Reply
Memorandum to Plaintiff's Response to Defendant's Motion to Dismiss for Lack of Subject

Thus, although funds received by UK from sources other than the state do not necessarily pass
through the state treasury, all monies received are clearly "state funds."

The Board of Trustees must limit disbursements "to the amounts and for the purposes for
which statute appropriations have been made, or for which other monies have been received".
KRS 164A.560(2)(b). The statutes set out, among other things, the precise type of accounting
system UK must use (KRS 164A.565); that an annual audit must be performed according to
parameters set by the Secretary of Finance and Administration and delivered to the Governor, the
Secretary of Finance and Administration, the Secretary of the Department of Finance, and the
Auditor of Public Accounts (KRS 164A.570); and, that bonds may be issued pursuant to state
bonding statutes, but only after approval by the State Property and Building Commission, (KRS
164A.605). Finally, the statutory scheme makes it clear that all general laws relating to bonding,
the Model Procurement Code, and equal employment opportunities apply to UK. KRS 164A.630.

Under the foregoing statutes, two items are abundantly clear: First, the state controls with

Fed. Equal Employment Opportunity Laws
on Recordskeeping § 1627.3

Equal Employment Opportunity Comm.

29 CFR Ch. XIV (7-1-91 Edition)

PART 1627—RECORDS TO BE MADE
OR KEPT RELATING TO AGE; NO-
TICES TO BE POSTED; ADMINIS-
TRATIVE EXEMPTIONS

Subpart A—General

Sec.
1627.1 Purpose and scope.

Subpart B—Records to be Made or Kept
Relating to Age; Notices To Be Posted

1627.2 Forms of records.
1627.3 Records to be kept by employers.
1627.4 Records to be kept by employment
agencies.
1627.5 Records to be kept by labor organi-
zations.
1627.6 Availability of records for inspec-
tion.
1627.7 Transcription and reports.
1627.8—1627.9 [Reserved]
1627.10 Notices to be posted.
1627.11 Petitions for recordkeeping excep-
tions.
posts of the exemption in section
12(c)(1) of the Act.
[44 FR 38459, July 2, 1979, as amended at 44
FR 66797, Nov. 21, 1979]

Subpart B—Records To Be Made or
Kept Relating to Age; Notices To
Be Posted

§ 1627.2 Forms of records.

No particular order or form of
records is required by the regulations
in this part 1627. It is required only
that the records contain in some form
the information specified. If the infor-
mation required is available in records
kept for other purposes, or can be ob-
tained readily by recomputing or exten-
ding data recorded in some other
form, no further records are required
to be made or kept on a routine basis
by this part 1627.

§ 1627.3 Records to be kept by employers.

(a) Every employer shall make and
keep for 3 years payroll or other
records for each of his employees
which contain:

- (1) Name;
- (2) Address;
- (3) Date of birth;

(4) Occupation;
(5) Rate of pay, and
(6) Compensation earned each week.
(b)(1) Every employer who in the
regular course of his business makes
copies of any personnel or em-
ployment records related to the 10-
years shall, except as provided in
paragraphs (b) (3) and (4) of this sec-
tion, keep them for a period of 1 year
from the date of the personnel action
to which any records relate:

(i) Job applications, resumes, or any
other form of employment inquiry
whenever submitted to the employer
in response to his advertisement or
other notice of existing or anticipated
job openings, including records per-
taining to the failure or refusal to hire
any individual.

(ii) Promotion, demotion, transfer,
selection for training, layoff, recall, or
discharge of any employee.

(iii) Job orders submitted by the em-
ployer to an employment agency or
labor organization for recruitment of
personnel for job openings.

(iv) Test papers completed by appli-
cants or candidates for any position
which disclose the results of any em-
ployer-administered aptitude or other
employment test considered by the
employer in connection with any per-
sonnel action.

(v) The results of any physical ex-
amination where such examination is
considered by the employer in connec-
tion with any personnel action.

(vi) Any advertisements or notices to
the public or to employees relating to
job openings, promotions, training
programs, or opportunities for over-
time work.

(2) Every employer shall keep on file
any employee benefit plans such as
pension and insurance plans, as well as
copies of any seniority systems and
merit systems which are in writing, for
the full period the plan or system is in
effect, and for at least 1 year after its
termination. If the plan or system is
not in writing, a memorandum fully
outlining the terms of such plan or
system and the manner in which it has
been communicated to the affected
employees, together with notations re-
lating to any changes or revisions
made, shall be kept on file for a like
period.