



Age Discrimination

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Background

Age **DISCRIMINATION** occurs when an older person is pressured in the workplace to leave. Under the law a person's career cannot be jeopardized solely because of age. Unfortunately, many employers resort to subtler but equally damaging tactics to thin the ranks of older workers. Today, "older worker" can mean anyone over the age of 40. Employees who fall into this group need to understand their rights under the law; this way, if they suspect discrimination, they can take appropriate action.

Until the early twentieth century discrimination based on age was not a clear-cut issue in most professions. Most people worked until they reached an age at which they were no longer able to be productive. For the remainder of their lives they would be taken care of by their families.

With the rise in industrialization and in unions, specific guidelines were set in place for how long people should stay on the job. The introduction of **PENSION** programs allowed workers the opportunity to stop working when they reached old age, secure in the knowledge that they would be able to take care of themselves financially. Later, government initiatives such as Social Security made it still easier for people to retire.

Beginning after World War II, dramatic changes in the workplace created a shift in policies and attitudes. Technology had made many jobs obsolete, and employees had to learn more and learn faster. As the postwar "baby boom" generation came of age, a growing emphasis on youth pervaded an increasingly crowded workplace. People who had reached old or even middle age began to face increasing pressure to leave the workforce. Sometimes they were simply forced out. Older workers who happen to be women or members of a minority group have to be particularly diligent, since they could be subject to discrimination on additional factors.

Discrimination of any kind is determined by either direct or indirect **EVIDENCE** under the law. Direct evidence can include outright statements an employer makes about a particular job candidate that shows intent to exclude. Indirect evidence can be when an employer makes job qualifications vague enough to exclude certain people even though everything looks legal and ethical. In age discrimination cases, direct evidence would be an employer telling an older worker, "You're doing that job much more slowly than the others," or "I don't think you'll be able to learn our new computer system." Indirect evidence would be when a potential employer turns down a qualified older job applicant in favor of someone younger. Of course, if the younger employee is demonstrably better qualified, it may not be a case of discrimination. But if, for example, a

qualified older worker is passed over for a job and the employer continues to interview other candidates, the employer may be deliberately excluding the older candidate.

Discrimination in the Twentieth Century

Changing Attitudes

The "baby boom" that began at the end of World War II in 1945 and lasted until the early 1960s generated an enormous number of new employees in the 1970s and 1980s. Interestingly, many companies saw the baby boomers as detrimental to productivity. To be sure, the youthful boomers lacked the experience of mature workers. But they were also the victims of stereotypes. Companies believed that these young people, born in the heady days of the postwar economy, would be less willing to work their way up from the bottom, as their parents had done. The younger workers would probably be spoiled and arrogant, and, consequently, less productive.

At the same time, rapid advances in technology meant that workers needed to be able to adapt to new ways of doing their jobs. Many companies that had prided themselves on a policy of "lifetime employment" began to see their longtime workforce as a drain on productivity. The reasoning had less to do with any belief that older workers would be unable to master new skills than it did with the fear that the older workers had grown complacent in their jobs. Moreover, older workers commanded the highest salaries and were the most likely to incur high health care costs. As the number of baby boomers in the market increased, companies began to shift their commitment from experience to a younger, less expensive workforce that could be trained (and whose jobs were made easier by technology).

Retirement Plans

While there are many older workers who want to continue in the jobs because they enjoy their work, many others continue to work because they cannot afford to retire. Thanks in large part to unions, many employees are guaranteed a good pension from their company after a set number of years, regardless of their age at retirement. Known as "30-and-Out" programs (based on a United Auto Workers deal with Chrysler in 1973), they allow workers to put in their 30 or however many years and retire with full pension benefits instead of having to wait until age 65 (when people can collect their full Social Security benefits).

Many companies offer some sort of early retirement package for employees, in part to make room for younger workers but also in part to cut down on the number of top-salaried people on the payroll. Such offers are not illegal and in fact can be beneficial to both the company and the employee. The issue takes a different turn when the employee is being pressured to accept an early retirement plan.

Setting a mandatory retirement age is illegal in most professions, although there are exceptions. Federal law recognizes ADEA exemptions in the case of such employees as air traffic controllers, federal police officers, airline pilots, and firefighters. In 1996 Congress passed legislation that allowed state and local governments to set retirement ages for these and similar employees to as young as 55. State and local judges are often required to step down at a certain age as well. In addition to mandatory retirement ages, many public safety jobs also have mandatory hiring ages, thus closing the door to potentially otherwise qualified people. The argument against mandatory retirement claims that it would be fairer to all employees to rely on periodic fitness testing, since some older workers may be just as able (or perhaps more so) to carry out their duties as younger ones.

Subtle Discrimination

Blatant discrimination is deplorable, but it is easy to spot and usually easy to determine accountability. More ambiguous, and thus more dangerous to older workers, is subtle discrimination. This can take many forms, and by its nature it is probably more pervasive than most people realize. Some examples are as follows:

- A longtime employee's supervisor makes comments in his or her presence about the benefits of retirement
- An employee whose company "restructures," and who subsequently ends up with a smaller office down a little-used corridor
- An employee who gets passed over for promotions, always in favor of younger staffers
- A worker who is reassigned to a job with fewer responsibilities, even if the assignment is considered a lateral move
- An employee who is no longer sent on business trips, provided membership in professional associations, or encouraged to take job-related courses

What makes subtle discrimination so much more dangerous than blatant discrimination in the minds of many experts is that it is harder to prove. Perhaps the supervisor is making comments about retirement because he or she is looking forward to being retired. Maybe the employee who was passed over for promotions has never asked to be promoted and thus is considered to be lacking in leadership initiative. Subtle forms of age discrimination may make older workers uncomfortable or unhappy enough that they will retire, even though they may not be able to pinpoint actual discrimination as their reason for leaving. The bottom line, however, is that subtle discrimination is no more acceptable in the workplace than blatant actions directed at older workers. Determining the difference between innocent remarks or coincidence and true discrimination may be difficult, but an older worker who suspects discrimination should know that taking action is a viable option.

Legal Protection

Older workers have legal protection from age discrimination. The Age Discrimination in Employment Act (ADEA) was passed by Congress in 1967. The ADEA extends the law as spelled out in the **CIVIL RIGHTS** Act of 1964, which prohibits discrimination based on race, sex, creed, color, religion, or ethnic origin. (Title VII of the Civil Rights Act is important to older workers who could suffer discrimination based on any of those factors as well.) Under the ADEA, workers age 40 and above are protected from discrimination in recruitment, hiring, training, promotions, pay and benefits, **DISMISSAL** and layoffs, and retirement. The Older Workers Benefit Protection Act (OWBPA), passed in 1990, guarantees protection against discrimination in benefits packages. For example, OWBPA sets strict guidelines prohibiting companies from converting their pension plans in a way that would provide fewer pension dollars to older workers.

While the ADEA has been a critical factor in guarding against age discrimination, certain decisions by the U. S. Supreme Court have made it somewhat less effective. Part of the reason is that the Civil Rights Act of 1991, which amended Title VII of the 1964 Civil Rights Act, did not similarly amend the ADEA. Thus, although Title VII allows victims to recover compensatory and **PUNITIVE DAMAGES** since the 1991 amendment, the ADEA does not. Recent Supreme Court actions have suggested that using pension eligibility or high salaries as a basis for layoff decisions (a practice that generally has the greatest impact on older workers) may not be discriminatory.

In 2000, the Supreme Court ruled in *Kimel v. Florida Board of Regents* that states are protected from ADEA suits by individuals. Legislation was introduced in the U.S. Senate in 2001 that would require states agencies to waive their **IMMUNITY** from ADEA suits or else **FORFEIT** federal funding.

Encyclopedia of Everyday Law: Age Discrimination

Most ADEA suits are based on charges brought before the Equal Employment Opportunity Commission (EEOC). The EEOC is responsible for investigating charges of age discrimination and seeking remedies. Rarely does it file actual lawsuits (in fact EEOC [LITIGATION](#) across the board dropped through the 1990s and into the twenty-first century), but individuals are allowed to sue on their own.

In 1995 the EEOC conducted a comprehensive review of its procedures and developed new National and Local Enforcement Plans. These plans provide guidelines for dealing with discrimination issues against older workers.

The EEOC has long suffered from inadequate funding, which limits its ability to investigate charges as quickly as it would like. As a result, EEOC chooses its lawsuits carefully to ensure maximum impact.

Bona Fide Occupational Qualifications

Under the law, not all age-related job exclusions are discriminatory. In fact, both Title VII and the ADEA recognize exclusions known as bona fide occupational qualifications (BFOQs) as legitimate. For example, a kosher meat market can legitimately require that it can hire only Jewish butchers. An employer seeking an BFOQ exclusion must be able to prove that those from within an excluded group would not be able to perform the job effectively. Thus, a moving company might be able to exclude a 75-year-old as a mover because moving requires heavy lifting and driving long distances. An accounting firm would be unable to make a similar claim in trying to force a 75-year-old bookkeeper to retire solely based on age.

Finding Answers

Age discrimination has a twofold negative effect on older workers. The [TANGIBLE](#) effect is loss of a job or limited employment opportunities. Not only is it harder for an older worker to keep a job, it becomes harder for an older worker to find a new job. (Economic realities often dictate that early retirees may have to supplement their pensions before they turn 65 and collect their full Social Security benefits.) The psychological effect is that older workers become frustrated by their situation. If they are working, this could affect their productivity, which could feed the stereotypes about older workers. If they are looking for work, they may simply give up, believing that they are unemployable.

Individuals who think they are victims of age discrimination can turn to the local office of the EEOC for assistance. The EEOC will provide information about how to file charges at the state and federal levels. It is also useful to contact the state office of civil rights.

Older workers have a strong ally and resource in the form of AARP (formerly known as the American Association of Retired Persons). Founded in 1958, AARP had 35 million members across the country in 2001. AARP acts as an information clearinghouse for legislation and other materials, and it also serves as a powerful [LOBBYING](#) force at the federal and state level. Through its lobbying network, AARP seeks to get Congress to enact new laws, enforce existing laws, and revise flawed legislation. AARP is headquartered in Washington, D.C., but it has regional offices to serve at the local level. Its leadership works actively to combat all discrimination.

Additional Resources

Aging and Competition: Rebuilding the U. S. Workforce. Auerbach, James A., and Joyce C. Welsh, editors, National Planning Association, 1994.

Encyclopedia of Everyday Law: Age Discrimination

The Aging of the American Work Force. Bluestone, Irving, Rhonda J. V. Montgomery, and John D. Owen, editors, Wayne State University Press, 1990.

American Bar Association Guide to Workplace Law. White, Charles, Series Editor, Times Books, 1997.

Organizations

AARP

601 E Street NW

Washington, DC 20049 USA

Phone: (202) 434-2257

Fax: (202) 434-2588

URL: <http://www.aarp.org> Primary Contact: William Novelli, Chief Executive Officer

Equal Employment Opportunity Council (EEOC)

1801 L Street NW

Washington, DC 20507 USA

Phone: (202) 663-4900

Fax: (202) 376-6219

URL: <http://www.eeoc.gov> Primary Contact: Cari M. Dominguez, Chairperson

National Council on the Aging

409 Third Street, Suite 200

Washington, DC 20024 USA Phone: (202) 479-1200

Fax: (202) 479-0735

URL: <http://www.ncoa.org> Primary Contact: James P. Firman, President and CEO

U. S. Department of Health and Human Services, Administration on Aging

330 Independence Avenue SW

Washington, DC 20201 USA

Phone: (202) 619-0724

Fax: (202) 260-1012

URL: <http://www.aoa.gov> Primary Contact: Josefina G. Carbonell, Assistant Secretary for Aging

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