AGE DISCRIMINATION AT TEXAS ROADHOUSE, INC.

**Teaching Note**

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**Critical Incident Overview**

This critical incident details the history and issues leading up to the lawsuit filed against the Texas Roadhouse restaurant chain by the U.S. Equal Employment Opportunity Commission (EEOC) in September, 2011 charging “a nationwide pattern or practice of age discrimination” in hiring practices for front of the house employees (EEOC, 2011, para.1).

According to the EEOC, many complaints of older applicants being rejected by Roadhouse restaurants had been made to the agency and conciliation attempts had failed (EEOC, 2011). The company denied discriminating.

Students must evaluate the evidence and decide whether the corporation is guilty of discrimination. An important part of the discussion is whether the chain’s unique and successful business model that includes servers who regularly line dance for patrons is a legitimate reason for turning away older applicants.

The incident can be used as an application of the process of establishing illegal discrimination, and the employer defenses against charges (using questions 1 through 5). Management and organizational applications include how corporate policies and interviewing behavior can lead to discrimination charges, as well as the need for corporate monitoring of employment practices in decentralized organizations (particularly questions 2, 8, & 9). Several broader societal issues can be addressed: the role of government agencies like the EEOC in remedying social problems, its controversial use of systemic discrimination lawsuits to remedy these problems, and the fairness issues that arise when older workers seek jobs historically held by younger people (questions 6 in particular).

It is suitable for courses in Organizational Behavior, Human Resource Management, Business and Society, and Legal Ethics.

**Research Method**

The case was researched using only public, secondary information. There are existing published interviews with Texas Roadhouse executives and investors about the business model and the chain’s image, and information from the EEOC lawsuit and other events in public documents. The chain’s Code of Business Ethics is available on the corporate website.

**Learning Objectives**

The incident can be used with the questions or can be approached as an open-ended discussion or written assignment. The students should be able to:

LO 1: Evaluate the actions of Texas Roadhouse and the EEOC within the framework of the Age Discrimination in Employment Act (ADEA).

LO2: Analyze the evidence to determine whether illegal discrimination has taken place.

LO3: Consider competing claims of groups having a stake in the outcome of this conflict.

LO4: Generate solutions that would allow Texas Roadhouse to maintain its business culture while abiding by U.S. employment laws and regulations in the future.

**Questions**

1. How do you define age discrimination? Is your definition different than the definition in the ADEA? (LO1)

2. List the actions of Texas Roadhouse corporate and local management that led to the discrimination lawsuit filed by the EEOC. What alternative actions might have prevented the EEOC filing? (LO1)

3. How can employers defend themselves against systemic discrimination charges under the ADEA? (LO1)

4. How could Texas Roadhouse use either BFOQ or reasonable factor other than age (RFOA) to explain why they hire fewer older workers than other companies in their industry? (LO1)

5. Did Texas Roadhouse illegally discriminate? Justify your answer.(LO2)

6. Is it fair for older workers to displace younger workers from jobs typically held by young people? Explain your reasoning. (LO3)

7. Are there possible compromises that would allow Texas Roadhouse to keep their unique entertainment that would satisfy the EEOC ? Describe. (LO4)

8. What practices could Texas Roadhouse adopt in the future to ensure that their hiring practices do not violate laws and regulations? (LO4)

**Answers to Questions**

**1. How do you define age discrimination? Is your definition different than the definition in the ADEA? (LO1)**

This is a fruitful question, because many students consider it unfair that the ADEA only protects those over the age of 40. It may help to give an example of age discrimination that is not protected: for example, a 21 year old financial planner who is turned down for a job because the employer wants someone “more mature.” It can be pointed out that an employer discriminates each time they choose one applicant over another. Choosing one person instead of another by basing the decision on job-related factors is fair to both applicants, and results in better organizational outcomes in the future (Dessler, 2012). By this definition, discriminating against a qualified young person on the basis of age is harmful to the organization as well as being unfair to the applicant.

The ADEA’s purpose includes the goal of prohibiting “arbitrary discrimination based on age” instead of basing decisions on “ability not age” (EEOC, 2014). The difference between this definition and the broad definition of age discrimination is that the ADEA definition only protects those 40 or older. The reason for the limitation is that, like other civil rights provisions, the ADEA is based on historical problems. Because older workers have been discriminated against in the workplace more frequently, they are protected. The management practices that prevent illegal discrimination and encourage fair and productive choices by management also benefit young workers.

**2. List the actions of Texas Roadhouse corporate and local management that led to the discrimination lawsuit filed by the EEOC. What alternative actions might have prevented the EEOC filing? (LO1)**

Discrimination complaints to the EEOC by individuals may result from several causes: corporate policies that encourage discrimination that are transmitted to hiring managers, discrimination by hiring managers caused by stereotyping or misunderstanding of selection criteria, misunderstanding of comments made during the interview by applicants, and finally, complaints that are unrelated to any action of management. It is difficult to imagine that so many individuals at different locations would file unsubstantiated complaints against a single employer. The statistical evidence offered by the EEOC suggests differences in the hiring of older workers by the Roadhouse when compared to others in its industry. Students must decide which of the remaining explanations best fit the description of the events.

Some things are known: the training material, although not explicit, suggested that suitable employees are young. This may be the result of a corporate directive, as alleged, or may just be an unfortunate choice of photographs showing only young employees. If not intended, that vagueness may have resulted in misinterpretation by local managers who either did not have a clear idea of the needed competencies for the front of house jobs, or who held a stereotype of older workers. It is alleged that statements suggesting discrimination were made to applicants by hiring managers. If true, managers were injudicious in their comments. Finally, it is known that Texas Roadhouse passed up the opportunity to settle the charges by agreeing to changes in their business practices and some compensation to those filing complaints.

Alternative actions that might have prevented the lawsuit include: clear corporate directives, job descriptions and specifications that focused on performance-related factors rather than traits like “energy”, and interviewer training for those hiring. Training that included appropriate ways to question applicants when evaluating qualifications, and clear communication of the job requirements to potential applicants might have resulted in fewer unqualified persons applying for the jobs, and less resentment when applicants were turned down. (Dessler, 2012). If the Roadhouse had agreed to a settlement before the 2011 filing it would have limited the negative publicity and possible greater liability incurred by the chain.

**3. How can employers defend themselves against systemic discrimination charges under the ADEA? (LO1)** Discrimination is of two types: disparate treatment and disparate impact. Employers who are guilty of discrimination by disparate treatment intentionally discriminate; that is, they treat an individual “protected” by an employment law differently than others not protected. Systemic discrimination is a “pattern or practice, policy and/or class case where the alleged discrimination has a broad impact on an industry, profession, company, or geographic location.” Since 2009, The ADEA has a higher threshold of proof than other employment laws. To prove disparate treatment under the ADEA, the plaintiff must show not only that age was a factor in the employer’s decision, but that no reasonable factor other than age (RFOA) existed. For example, if an employer admits that age was a factor in the discharge of an older employee when a younger employee was hired, and the employer can show that the employee hired has better job-related computer skills, no age discrimination exists. Because age must be the only factor, it is now more difficult to prove disparate treatment age discrimination (Croskery-Roberts, 2014).

Another way to defend against discrimination charges is for the employer to admit discriminating based on age, but to argue that the discrimination is necessary because age is a bona fide occupational qualification (BFOQ). BFOQ defenses have allowed airlines and bus companies to restrict the ages of pilots and bus drivers, because passenger safety is considered an essential requirement of the business, and statistics suggest that aging reduces the effectiveness of drivers and pilots. The courts have interpreted the BFOQ very narrowly. For example, customer preference is not considered an adequate reason to discriminate (Dessler, 2012).

**4. How could Texas Roadhouse use either BFOQ or RFOA to explain why they hire fewer older workers than other companies in their industry? (LO1**)

Age discrimination may be justified by BFOQ if the employer can demonstrate that the age limit is reasonably necessary to normal business operations. If Texas Roadhouse had a clear policy that it did not hire older servers, or admitted discriminating, it could argue that either the strenuous activity of hourly dancing or the need for attractive young people to draw customers was a BFOQ.

If Texas Roadhouse does not admit policymaking to limit age discrimination, it could defend itself by offering evidence that they turned down applicants for a job-related reason that qualifies as a reasonable factor other than age. To successfully use this defense, the Roadhouse would need to show that something like dancing ability or outgoing personality was a factor evaluated in the selection process that resulted in hiring younger workers.

**5. Did Texas Roadhouse illegally discriminate? Justify your answer.**

To win their case, the Roadhouse needs either to argue that they do not hire older workers because of a BFOQ, or else that the lower percentages of older workers hired is the result of a selection process that evaluates applicants’ abilities in order to achieve their unique business concept and that older applicants lacked these characteristics. . Roadhouse will have a hard time explaining away the statements allegedly made by those hiring, so they are unlikely to make the case that age was not at all a factor in the decisions.

The BFOQ defense is difficult, given the failures of Hooters, Heartland Inn, the airlines, and other defendants arguing that attractive employees qualify as part of a unique business model. The sole exception would be Playboy getting an exception for a BFOQ for Playboy Bunnies. An RFOA might be justified if Roadhouse can demonstrate that the selection process included some evaluation of factors lacking in many older applicants that was necessary to the job. The EEOC will need to show that Roadhouse did have a policy to discriminate, and that this policy was a standard operating procedure (Croskery-Roberts, 2014).

**6. Is it fair for older workers to displace younger workers from jobs typically held by young people? Explain your reasoning. (LO3)**

Equal employment laws often result in outcomes that may seem unfair to those not selected. One way to evaluate this is to consider the comparative costs to society. In this case, the cost to society of long term unemployment for older unemployed workers whose rate of unemployment is twice the rate of those younger is a factor. These employees are more likely to have families and other dependents also impacted by the discrimination. Young workers at Roadhouse, many of whom are students, may more easily find other similar jobs and are less likely to have dependents. Is being displaced by older workers the greatest risk for young workers? In economic downturns, many organizations trim the workforce, and part-time and less-skilled workers are more likely to be those affected, so older workers entering the market is not the only pressure on young people being displaced.

Another approach is to ask why the Roadhouse tries to hire only young people when bartenders and greeters do not dance. The clientele of the Roadhouses include people of all ages. It may be that young people are preferred because they will work for less. Because the turnover is high as college students graduate and move away, new employees can be hired at the entry-level wage and there is little pressure on the employer to raise wages.

The values expressed in the statement by the General Counsel of the EEOC are relevant to the discussion of fairness as well. He referred to the reasoning behind the establishment of the ADEA mentioning “our nation's commitment to the principle of nondiscrimination in the workplace, to ensure that hiring decisions are based on abilities, not age.” (EEOC, 2011). Everyone benefits by hiring decisions being based on abilities. Young people, not protected by ADEA, have parents and friends who may benefit, and in the long run, these young people will be over 40, and may also benefit from the protection provided.

**6. Are there possible compromises that would allow Texas Roadhouse to keep their unique entertainment that would satisfy the EEOC? Describe. (LO4)**

If Texas Roadhouse were to settle with the EEOC, settlement would include monetary compensation, and an agreement to ensure no further discrimination exists. The Hooters model might be a possibility, where the Roadhouse could continue to hire young dancing servers but would have to consider older applicants for greeters, bartenders, and other positions.

**7. What practices could Texas Roadhouse adopt in the future to ensure that their hiring practices do not violate laws and regulations? (LO4)**

Organizational good practices would include job analysis to develop non-discriminatory job descriptions and job specifications, clear policies to direct managers to considering performance-related capabilities rather than appearance, and good interviewing training to ensure that managers in every location understand illegal and inadvisable interview questions. Effective interviews are not only non-discriminatory, but do not create a perception of discrimination by ill-conceived comments. A good solution for the Roadhouse would be to develop a structured interview guide and to train managers to use it (Dessler, 2012). Diversity training might be another corporate initiative that could prevent future problems. Good human resources practices would pay off for the Roadhouse in other ways by preventing a haphazard selection process by poorly-trained managers from creating other kinds of discriminatory actions. Finally, the corporate office needs to monitor closely the hiring done by the managing partners so that they are aware of any potential patterns of discrimination and can take action before the EEOC questions it.

**General Discussion**

Although this incident concerns age discrimination, it is really an illustration of how any form of widespread discrimination in business occurs, as it traces the process of finding remedies through agency action and the courts. The incident has been tested in both undergraduate and graduate (M.B.A.) Human Resources classes and in an undergraduate Organizational Behavior class. In the Human Resources classes, the incident was introduced followed discussion of the major employment laws and employer defenses for exceptions so little preparatory material was necessary. Adding the incident to a similar unit in Business Law or Legal Ethics courses could be done by fitting it into an employment law unit.

To use the incident in Organizational Behavior, Management, or Business and Society courses, some preparation may be helpful. An outline of basic employment law, and a list of cases settled using BFOQ defenses is included in Additional Pedagogical Material. In the classroom tests, Hooters Restaurant was mentioned by students in two of the undergraduate classes as an example of why the Roadhouse wanted attractive “chipper” Roadies. Neither of them was aware that Hooters had settled a similar lawsuit in 1997 when they were allowed to keep the Hooters Girls, but were required to add males in other front of house positions.

The incident can be used in a course with little specific knowledge of employment law as a discussion of fairness, and the interaction of social and business issues. Students are often shocked to discover that young people are not protected against age discrimination. Question 1 is especially fruitful for discussion when the ADEA is introduced. It leads naturally into a discussion of how employment laws are developed, and why certain groups are “protected” and others are not.

Additional information is provided for instructors who want more background. In particular, systemic discrimination charges have been a top priority since 2006 for the EEOC, but the focus on large-scale cases is controversial. In 2011, when the Roadhouse was charged, the EEOC filed a record number of cases, and lost several major cases. Critics charged that the cases were poorly managed. Another criticism has been that the high number of systemic charges against large companies has lessened pressure on small businesses discriminating. Perhaps as a result of the poor showing, fewer cases were filed in 2012, in a move one observer described as “rebooting”. (Allen, 2014).

Another recent article classifies recent systemic cases, and describes best practices for organizations to monitor and respond to signals that might lead to being targeted for a systemic discrimination claim (Stanton, 2014).

**Epilogue**

Since charges were filed in 2011, Texas Roadhouse has continued to grow and thrive (Texas Roadhouse, 2014). Texas Roadhouse now has over 400 locations in 48 states and two foreign countries. The corporation announced several recent honors on its website. Glassdoor named the chain to the 50 Best Places to Work in 2013 based on employee surveys. In April 2014, Roadhouse was named to Forbes 100 Most Trustworthy Companies. Consumer Reports named the Roadhouse “The Noisiest Restaurant in America” based on customer surveys in 2012. Though Consumer Reports did not consider it an honor, Roadhouse CEO Taylor commented “We are proud to be loud.” (Texas Roadhouse, 2012).

**Additional Pedagogical Materials**

If the class is not familiar with Texas Roadhouse, it is best to begin with one of the You Tube video clips listed. Because the Roadhouse does no national advertising, instructors may be unaware that there is a Roadhouse nearby. If students are familiar with it, it is helpful to get their perceptions of it before getting into the case. After reading the case, it may be helpful to take an initial vote about whether Roadhouse is guilty of age discrimination before discussing the issue, and then retake the vote at the end.

Role play could be effective with teams speaking on behalf of the EEOC and the Roadhouse and the remainder of the class acting as the jury.

Additional information about the ADEA and employer exceptions is provided here that could be provided to the class, particularly if they have had less experience with employment law. A few notable cases employing BFOQ defenses are included to help students evaluate defense options for the Roadhouse.

**Videos**

Texas Roadhouse Line Dancing Video.wmv http://youtu.be/MQ50l03O-pU

This is an excellent introduction to the restaurant and the line dancing roadies. Watch the first five minutes for a restaurant tour and two dances.

**Texas Roadhouse, Inc. (2011) Undercover\_Hoss.mov. http://youtu.be/JdTjzGM9BQw**

This video commercial spoofs the television show “Undercover Boss” and shows the Roadhouse CEO in Willie Nelson braids visiting a Texas Roadhouse with the mascot Andy Armadillo. It is a good introduction to the food and décor and includes the statement “the potatoes are as loaded as the patrons at a Willie Nelson concert.

**Texas Roadhouse Line Dance Save a Horse Ride a Cowboy http://youtu.be/iGogbjegLgY**

Legendary line dancer Renee teaches the line dance to Save a Horse Ride a Cowboy.

**Texas Roadhouse Line Dance Kuwait http://youtu.be/cxD\_U2x4XSE**

W. KentTaylor insisted that the line dancing be part of the global locations. These dancers are the roadies in Kuwait.

**EEOC General Counsel Announces Texas Roadhouse Lawsuit**

Video clip of General Counsel David Lopez announcing the charges against Texas Roadhouse. Embedded in the Oct. 13, 2011 press release announcement of the lawsuit on the EEOC website.

**Supplemental Information for Students**

**Notable BFOQ Defenses**

**Pan Am World Airways, 1971** Pan Am refused to hire male flight attendants claiming that being female was a BFOQ. Pan Am lost. Diaz v. Pan Am.World Airways, Inc., 442 F.2d 385, 388 (5th Cir. 1971).

**Playboy, 1971** Playboy refused to hire men as Playboy Bunnies. Playboy won the case, because the ruling was the primary job was not serving drinks but sexually enticing men, and that being female was a necessity of the job.St. Cross v. Playboy Club, Appeal No. 773, Case No. CFS 22618-70 (New York Human Rights Appeal Board, 1971).

**Hooters, 1997** Hooters was sued by three males who were denied employment for front of house positions, including the servers known as Hooters Girls. Hooters claimed being attractive and female was a BFOQ because Hooters Girls were necessary to the business concept. Hooters settled the lawsuit for $3.75 million and agreed to hire men as bartenders and hosts, but was permitted to hire only women for server positions. (New York Times, 1997).

**Heartland Inns of America, 2010** Heartland Inns was sued by a desk clerk fired because she lacked the “Midwestern girl look”. The hotel chain did not convince the court that this was a reasonably necessary part of the business.

**Age Discrimination Fact Sheet**

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA’s protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training (EEOC).

**Types of Discrimination:**

1. **disparate treatment**: individual is treated differently than others because of race, color, religion, sex, national origin, age, or disability status (intentional discrimination)
2. **disparate impact:** an employer engages in an employment practice or policy that has a greater adverse impact (effect) on a protected group than on others, regardless of intent.
3. **systemic discrimination or “pattern and practice”:** cases where the alleged discrimination has a broad impact on an industry, profession, company, or geographic location.

**Employer Defenses (Exceptions) for Age Discrimination:**

1. **bona fide occupational qualification (BFOQ)**: a job qualification based on age that an employer asserts is necessary for the job. Example: Airlines legally discriminate based on age because the Federal Aviation Agency requires compulsory retirement for pilots at age 65 due to the centrality of passenger safety. Courts interpret BFOQ very narrowly. Customer preference does not establish business necessity.
2. **reasonable factor other than** age (RFOA): Since 2009 U.S. Supreme Court decision, if age was one factor in an employment decision, but some other job-related factor was also present, illegal discrimination did not occur. Example: older applicant is not hired for an office job because a younger applicant had better computer skills that were job-relevant.

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