

The ADEA: What You Should Know

Before the Age Discrimination Employment Act (ADEA) was enacted in 1967, many large companies would not hire workers older than 40 and most required retirement at age 65. The act, designed to help overcome the effects of ageism on the careers of older persons, provides guidelines in the areas of recruiting, hiring, selection, promotion, and termination. The act has had a favorable impact on older workers, with minor negative side effects for others.

Major Provisions of the Act

The ADEA as amended, is intended to:

- Protect workers over age 40 (about half the workforce) from discrimination
- Promote employment opportunities for older workers capable of meeting job requirements
- Protect nearly all employees from forced retirement at any age

It covers private employers of 20 or more persons, labor organizations, employment agencies, and all government employees.

In 2005 the Supreme Court expanded the rights of older employees to sue employers for age bias. Previously employees had to show intentional discrimination. Now they only must show that a company policy, practice, test, rule, or role is having an adverse effect on older employees—even if such policies don't mention age. Companies can defend themselves against such claims if they can show good business reasons for adopting a policy.

Providing for Valid Assessments

The major exception to age requirements occurs when an age requirement is a bona fide occupation qualification (BFOQ), reasonably necessary to the normal operations of a business. Also, differential treatment of employees based on reasonable factors other than age, such as physical fitness, is permitted. The ADEA does not preclude the discharge or discipline of an older worker for good cause. For example, an employer might defend a personnel decision on the grounds that the older employee could not meet performance standards or that his declining functional abilities represented a potential threat to the public safety. Careful documentation of such actions is critical if an age discrimination suit is filed. The EEOC is responsible for enforcing the ADEA.

Ending Recruitment Discrimination

An example of recruitment discrimination is the practice of focusing on college graduates. Since age tends to be highly correlated with college graduation, the policy of recruiting future managers only from the ranks of college seniors potentially discriminates against older employees with comparable credentials. A corporation would be especially vulnerable to charges of age discrimination if admission to its executive training programs were limited *exclusively* to recent college graduates.

On the other hand, if you as manager have concluded that an older applicant is over-qualified for a particular job opening, you are not required to interview or hire such workers in order to avoid an age discrimination charge (Court 1995).

Suppose you find yourself with an older worker who feels that she is discriminated against by her supervisor and who also thinks she is over-qualified for her job. Research indicates that such employees have an intensified tendency to withdraw into non-productive behavior patterns and to experience physical stress-related symptoms. Managers can counsel with such employees to find ways to expand their jobs, provide more growth opportunities, and enable them to learn new skills (Erdogan 2009).

Ending Selection Discrimination

Job application forms can no longer require applicants to state their age, nor can interviewers legally inquire about age. The issue is whether an applicant is capable of performing the job. An age limit is a BFOQ only when it can be shown that all, or almost all, persons over that age cannot meet the requirements of a specific job. A construction firm might be able to show that virtually no one over age 70 can meet the physical requirements for carrying 60-pound loads up a ladder. However, a restaurant chain or airline will have a difficult time showing that organization image, or even customer preferences for attractive young hostesses, is sufficient justification for rejecting an otherwise qualified over-40 job applicant.

Age limits are likely to be upheld as a BFOQ in jobs with stringent physical demands that also involve public safety. Accordingly, it is not uncommon to find age limits governing the selection and retirement of airline pilots, air traffic controllers, police officers, firefighters. These are jobs requiring strenuous physical exertion or work under stressful conditions, where even a slight decline in reaction time could endanger others' lives and where public safety is involved. Even in these instances, it is wise for companies to have statistical or medical data to back up decisions about physical incapacities associated with aging.

Ending Promotion Discrimination

Organizations most often get in trouble with age discrimination suits concerning promotion when they follow inconsistent promotion policies and then try to justify their decisions after an employee files a complaint. Personnel actions are more defensible when they are based on a systematic, objective, and job-related performance appraisal system.

Ending Termination Discrimination

Decisions to terminate older workers are almost always difficult because motivations for such termination can be subject to many interpretations. Perhaps the best defense against a charge of age bias is the ability to show that the decision was based on the employee's substandard performance or some similar legitimate business reason. Managers must be prepared to demonstrate that the employee's behavior was measured fairly and objectively and that the employee was given a reasonable opportunity to bring her performance up to standard. Managers should also be prepared to show that they didn't harass the employee in an attempt to "run her off."

Ending Mandatory Retirement

The ADEA includes protection of older workers from employers who want to make them retire just because they reach a certain age. The original Act stated that workers could not be required to retire before age 65, later extended to age 70. Effective in 1987 Congress eliminated mandatory retirement by striking all references to upper age limitations. The purpose was to ensure that people who are willing and competent to continue working are not denied the basic human right to earn a living.

People who opposed the elimination of mandatory retirement pointed to the possibility that retaining older workers would delay the promotion of some younger workers. It could also block the progress of women and minorities who entered promotion pipelines only after affirmative action programs were in place for several years. These workers are often just waiting for employees in higher positions to retire so they can move up and into their jobs. Researcher Benson Rosen (1988) found that ten years after passing laws to end mandatory retirement, only about 4% of these younger workers had been affected, so the concerns appear unfounded.