

## **AGE DISCRIMINATION**

The Age Discrimination in Employment Act covers private employers of 20 or more persons as well as state and local governments, employment agencies serving covered employers, and labor unions with 25 or more members. Age Discrimination in Employment Act of 1967 ' 2 et seq., 29 U.S.C.A. ' 621 et seq. Under ADEA, employers are forbidden to:

1. Fail or refuse to hire, to discharge, or other discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's age;
2. Limit, segregate, or classify an employee in any way that would deprive the employee of job opportunities or adversely affect employment status because of age;
3. Reduce the wage rate of an employee in order to comply with the Act;
4. Indicate any preference, limitation, specification, or discrimination based on age in any notices or advertisements for employment; and
5. Operate a senior system or employee benefit plan that requires or permits involuntary retirement.

An employer can defend itself against an age discrimination charge by showing that age is a bona fide occupational qualification for a particular job.

## **HELP WANTED NOTICES**

Help wanted notices or advertisements that contain terms that deter the employment of older persons are prohibited. Examples of such terms or phrases include: **A**ge 25-35,**A**young,**A** college student,**A** recent college graduate,**A**boy**A** or **A**girl.**A** Other phrases such as **A**40-50,**A**age over 65,**A**retired person,**A** or **A**supplement your pension**A** discriminate against others in the protected age group, i.e., 40 or older, and are therefore not permissible either.

## **EMPLOYMENT APPLICATIONS**

Asking for date of birth or age on a job application form does not, by itself, violate ADEA. But, as in the case of help wanted ads, such a request could deter older persons from

applying, and therefore will be closely scrutinized to insure a lawful purpose. An employer should make clear on the job application that the purpose for requesting the information is not prohibited under the law. For example, the application could state: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age, or some similar phrase indicating that age information will not be used unlawfully.

### **UNLAWFUL DISCHARGES**

Employees age 40 and over are protected by ADEA from adverse personnel actions and are based on age rather than performance. Moreover, an employer's cost-cutting moderm is not, in itself, a justifiable reason for discharging or demoting an older worker. For example, a discharged employee in the protected age group is entitled to recover under ADEA if the worker's age made "a difference" in the employer's termination decision, the U.S. Court of Appeals at San Francisco decided, upholding a \$2.3 million age discrimination jury award. The court concluded that there may more than one factor in a decision to terminate an older worker, but the employer has violated ADEA if age is a factor that made a difference in the employment decision. Cancellier v. Federated Department Stores, 28 FEP 1151, cert. denied, 31 FEP 704.

Cost-cutting is not a legitimate, non-discriminatory reason for discharging an older employee while retaining younger, lower paid employees. Metz v. Transit Mix, 44 FEP 1339. However, employment decisions during a reorganization and cutback in part based on high salary are not necessarily age bias. The court reasoned that high salary and age may be related, but so long as the employer's decision views each employee individually, no general rule that disparately impacts on older workers is imposed, and decisions are based solely on financial considerations, ADEA is not violated. Bay v. Times Mirror Magazines, 56 FEP 407.

### **LAYOFFS AND SEVERANCE PAY**

In paying severance benefits to employees when layoffs occur, employers must face the problem of how to handle employees who are eligible for pensions without violating ADEA.

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