

## **Age Discrimination in the Workplace**

**By Sally McRae**

Age discrimination is something that the average worker knows very little about. Although, anyone who lives to be middle aged will have a good chance of experiencing an age bias act, age discrimination is a non-issue to most people. This attitude is reflected in the literature that is available on the subject. There is very little information about age discrimination. Most of the information is about workers' legal rights and it is accompanied by much advertising of available legal services.

Manifestations of age discrimination can be subtle or blatant. Typical actions might include refusing to hire or promote older workers, curtailing their employee benefits, limiting their training opportunities or limiting their job responsibilities and duties. Older workers may be targeted in reductions of the work force; they may be encouraged to retire. Exit incentive programs may deny valuable additional benefits to an older worker and early retirement incentives may pressure older workers to retire prematurely. Incentive benefits may be reduced for people who continue working beyond "normal" retirement age. All of these actions reinforce a stereotype of older workers as the most dispensable in the workforce.

Various words and phrases may be used to disguise an age bias. Some examples of this are saying that a worker costs too much, has been with the company too long, lacks versatility, is unable to adapt to new methods or technologies, lacks energy or has failed to be a forward enough thinker. In addition, decisions that are not directly based on age may have a disparate effect on older workers such as policies related to length of service or years of seniority.

Some of the thoughts behind age biased actions are that older workers should move aside to make room for younger workers who need to support families, that they are less competent, and that there's no point in training them for new jobs. There is also an idea that younger managers do not really want to work with older workers no matter how good their skills.

The Age Discrimination in Employment Act of 1967 (ADEA) was passed by Congress to make it unlawful for an employer to base employment decisions on a worker's age. It was designed to combat ageism based on unfounded stereotypes about the diminished abilities of older individuals by forcing employers to judge older workers on their merits, not age-based myths, prejudices or stereotypes. The ADEA covers workers age 40 and older. The ADEA was amended by Older Workers' Benefit Protection Act (OWBPA) in 1990 and 1998 to give workers increased protection.

Title VII of the Civil Rights Act of 1964 is also important to older workers because its interpretation influences the interpretation of the ADEA and because older female workers and older minority workers are often subject to double or multiple discrimination. Of the employment discrimination claims that are filed with the Equal Employment Opportunities Commission (EEOC) a relatively small number are age discrimination cases. In 2000, 8.6 percent of the EEOC lawsuits were age discrimination cases, and in 2001 the number was 8.1 percent. (American Association of Retired Persons, 2002) Most states also have legislation concerning/dealing with age discrimination.

The law does allow for age-based employment decisions that are justified as a bona fide occupational qualification (BFOQ). These are circumstances where it is believed that an individual's age can affect job performance. BFOQs are primarily used in positions involving public safety such as a police officer or an airline pilot. To be a BFOQ an age-based policy has to be reasonably necessary to the essence of the employer's business and it has to have no reasonable choice but to rely on age-based criterion. An employer needs to be able to show that all or nearly all of the workers above a certain age lack the qualifications for the job or show that it is highly impractical for the employer to test individually to determine whether each individual possesses the necessary qualifications for the position. BFOQs are often expressed as a maximum hiring age or a mandatory retirement age. Currently mandatory retirement ages may be set as low as 55.

The American Association of Retired Persons (AARP) is against maximum hiring ages and mandatory retirement for all types of workers. They feel that employment decisions should be based on ability and that mental and physical testing is a feasible method for assessing an individual's suitability for a particular position. The elimination of mandatory retirement is one of AARP's legislative priorities. Another priority for them is to make sure that workers do not have to waive their rights to sue in exchange for an offer of early retirement benefits. They want to make sure that older workers' pension benefits are treated the same as others.

As employers and as workers, it is important for all of us to be aware of the subtle way in which age biased prejudices can influence our thinking. These stereotypical thoughts and actions

reduce both the incomes and the self-confidence of millions of workers. An individual's ability, not their age, should determine their qualifications for getting and keeping a job.

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