

Federal Protections for America's Aging Workforce

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As the American workforce ages, it becomes increasingly important for employees and employers to recognize the signs of age discrimination that violates the Age Discrimination in Employment Act (ADEA) and to understand their rights under the Act.

In the 20 or so years following the Second World War, the United States saw a significant uptick in birth rates. The children of that generation, commonly known as the Baby Boomers, have reached or are approaching traditional retirement age. However, due to improved healthcare and life expectancy, as well as challenging economic times, Baby Boomers are remaining in the workforce longer than their predecessors. As a result, the American workforce is older today than it has ever been. Americans of all ages should understand the employment protections afforded by the ADEA.

What Is the ADEA?

The ADEA, initially passed in 1967, protects most workers over the age of 40 from employment discrimination based on their age. The Act covers discrimination in hiring, firing, demoting, denying promotion, compensation, and other terms, privileges, and conditions of employment. ([Click here for a more thorough discussion of the protections and remedies under the ADEA, as well as relevant exceptions.](#)) Notably, the ADEA does not protect those under the age of 40, whether those individuals face discrimination for being too old or whether they face discrimination for being too young.

What Challenges Do Older Workers Face?

Older workers face a number of unique challenges in the employment. Age-based stereotypes about older workers can create unfair assumptions about their abilities, for example, and can result in the denial of opportunities for advancement. Older workers can also face discrimination due to their professional longevity. Higher experience levels mean that older employees are often compensated at higher rates than their younger, less experienced colleagues, making their salaries a higher burden on the employer. When employers are seeking to cut costs, they will often seek to replace an older, highly compensated employee with a younger employee who is willing to work for less money. This pattern is unique to age discrimination, as membership in [other protected classes](#), such as those based on race, sex and disability, does not generally correlate with higher costs to the employer. In the face of age-based bias and economic incentives to exclude or terminate older employees, the ADEA plays an important role in preventing discrimination.

How Do You Prove Age Discrimination?

When a job applicant or employee suffers an adverse action based on his or her age, it is rare that an employer openly states that they are engaging in age discrimination. Even without direct evidence of age-based bias, however, plaintiffs can use evidence such as age-related comments not directly tied to the adverse action or patterns of personnel decisions within an organization to prove that the action was unlawful. For example, if a manager has made numerous derogatory comments about an older worker's graying hair, and then proceeds to terminate that employee without any legitimate

basis, the derogatory comments about the older worker's hair can be used as evidence to show age discrimination. Likewise, if a company demonstrates a pattern of firing workers of a certain age and replacing them with younger workers, an inference of age discrimination may be drawn.

An understanding of the protections granted to older workers is crucial both for preventing discrimination and for remedying it when it occurs. As the share of our workforce that is over the age of 40 increases, this awareness becomes more important to ensure equal opportunity for all.