

Help managers understand the Age Discrimination in Employment Act

At first glance, the federal Age Discrimination in Employment Act (ADEA) appears rather straightforward: It protects people age 40 and older from employment discrimination based on their age. But the law isn't that simple. It can affect just about anything managers do, from asking questions in job interviews to assigning job duties.

Here's a description of the law and some key problem areas to watch for.

How the ADEA works

The ADEA was created in 1967 to promote employment of older people on the basis of their ability, rather than their age. The law applies to employers with 20 or more employees, plus federal, state and local governments. (Some states have their own age discrimination laws that push the employee threshold much lower.)

Essentially, the ADEA makes it illegal to discriminate against people age 40 and older, applicants and employees alike. That applies to all employment practices, including hiring, terminations, pay, promotions, benefits and any other terms of employment.

It's also illegal to retaliate against employees who speak out against an employment practice that discriminates based on age. Nor can you retaliate against people for filing ADEA complaints or for participating in an ADEA investigation.

Employers covered by the ADEA must post notices explaining the law.

The EEOC enforces the ADEA. For more information, see www.eeoc.gov/types/age.html.

Potential legal pitfalls

Managers need to be aware that they could encounter age discrimination problems in these areas:

Job advertisements: You know that you can't specify a certain age for a position. But also realize that certain phrases in ads can imply age-based

The ADEA at a glance

- **The ADEA protects applicants and employees** who are age 40 or older from age-related discrimination in hiring, firing, compensation, benefits, promotions and other terms of employment.
- **It also prohibits retaliating** against employees who file ADEA complaints.
- **The law applies** to private employers with 20 or more employees.

needs. For that reason, avoid phrases such as "recent college grad" or "young aggressive types."

Job interviews: When interviewing job candidates, you shouldn't initiate discussions that could relate to age. While the ADEA doesn't specifically prohibit you from asking an applicant's age or date of birth, it will be difficult to prove that age wasn't a hiring factor if age was discussed in the interview.

Instead, stick to performance-based questions centered on how well the candidate can perform the job.

Even asking questions such as when somebody graduated from college could be dicey. *Whether* the applicant graduated is job-related, but *when* the person did is not.

Also, remember that just because an applicant brings up the topic of age doesn't give hiring managers the green light to pursue that path further. Instead, simply say something like, "We don't base this position on any age factor, so we don't need to discuss that."

Job assignments: Courts frown on employers that take the view that certain types of jobs should go only to younger people because older ones don't have the energy or "image" for a specific job. That's why it's best to judge applicants and employees on their own abilities, not on the perceived abilities of the age group to

which they belong.

Courts have approved some age-based job limits, but only in limited circumstances and usually related to public safety. *Example:* the age cut-off limit for commercial pilots and some police officers.

Apprenticeship programs: It's generally unlawful for apprenticeship programs to discriminate on the basis of a person's age. Age limits in apprenticeship programs are valid only if they fall within certain exceptions cited under the ADEA, or if the EEOC grants an exception.

Harassment: Sexual harassment grabs all the headlines, but managers need to realize that other types of illegal harassment exist. That includes age-based harassment.

If supervisors tolerate "old guy" jokes and oral abuse aimed at over-40 employees, such banter could provide grounds for a harassment lawsuit. Keep age out of any and all discussions, and encourage others to do the same.

Benefits and training: The ADEA specifically prohibits denying benefits to older employees. That doesn't mean just health and life insurance. For example, managers must make sure older employees aren't squeezed out of training opportunities because of their perceived place in their careers.

Layoffs/downsizing: When planning layoffs, employers must ensure that there's no disproportionate impact on older employees.

Because performance appraisals will probably be used to support the decisions of who is laid off, it's important for managers to keep honest, updated appraisals on all employees.

Also, with a few exceptions, employers can't force employees to retire at a certain age. For that reason, managers should avoid comments and questions about employees' retirement plans.