

Age discrimination in employment act

[Sociology](#), [Social Issues](#)



In an age where it was originally thought that many of the " Baby Boomers" would be making room for " Generation X" to make their mark in the business world, less and less older workers are leaving the workforce. This can be attribute to limited funds provided through the Social Security System or dipping into retirement funds for emergencies or to covered education costs. Whatever the individual reason may be, it is apparent that older worker wishes to stay employed as long as possible. To ensure they are not discriminate upon, the Age Discrimination in Employment Act of 1967 was created to protect the older worker. In the beginning, ADEA was the following:

The ADEA sought to protect older workers from discrimination based on age in both the hiring and retention process. The ADEA applies to employers with at least twenty employees (Arrendondo, 2002, 263). ADEA started out protecting workers between the ages of 40 to 65 years old, however, in 1978, the protection class changed to at least 40 but less than 70 years of age. Ultimately, in 1986, discrimination against anyone over the age of 40 became illegal.

Employers should keep in mind that ADEA does not guarantee that a member of the protected class will maintain employment no matter their age or performance. With any job/position, if an employee can no longer perform a job, a nondiscriminatory, job-related basis for termination exists. We should never assume that an employee's age is the reason for their declining performance and eventual termination. Regardless of age, an employee should be able to perform their assigned responsibilities or risk the increase possibility of termination.

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The Older Workers Benefit Protection Act, which was an amendment to ADEA, prohibits discrimination in the administration of benefits on the basis of age but permits early retirement incentive plans as long as they are voluntary. This act contains an equal cost principle, which means that benefits of older employees can be less than those for younger employees only if the cost of providing the benefit increases with age.

In the 1996 case of *O'Connor v. Consolidated Coin Caterers Corp.*, the US Supreme Court ruled that an employee does not have to show that he or she was replaced by someone younger than 40 to bring suit under ADEA and went on to state that discrimination is illegal even when all the employees are members of the protected age group. A 40-year old employee replaced a 56-year old regional sales manager. The Court found that being replaced by someone substantially younger was a more reliable indicator of age discrimination than being replaced by someone outside the protected class (DiCesane, 1996, 51).

Pregnancy Discrimination Act of 1978

Many women either become pregnant while employed or seeking employment. The sight of a pregnant worker may lead to misconceptions about their performance or increase in health insurance. An employer may want to turn a pregnant applicant away for the simple fact they will have to incur medical costs for a woman who will give birth soon after employed with the company. In any event, the Pregnancy Discrimination Act of 1978 prohibits discrimination in employment based on pregnancy, childbirth or related medical conditions. Pregnant employees cannot be made to leave

work early to take maternity leave at a certain arbitrarily set date. Women should be able to return to work after leave to the jobs they maintained before the leave went into effect. A woman is also entitled to disability benefits and any health insurance provides must cover expenses for pregnancy-related conditions.

Pregnant employees can use FMLA or Family Medical Leave Act to cover time off when the baby has been delivered. FMLA guarantees job securities for those who take time off, assuring them that their job will be available upon return. This statute, if violated, comes with its share of harsh penalties. AT&T settled a discrimination suit with the EEOC in 1991 for \$66 million . . . charging that pregnant workers were required to leave at the end of their sixth month of pregnancy, denied seniority credit and refused to guarantee the employee a job after they returned (Keller, 1991, B8).

American with Disabilities Act (ADA) The American with Disabilities Act, ADA, forces employers to change not only their perception of who a disable person is but also the perception of what a disabled person is capable of achieving. Employers should attempt to think of employees as being able to perform in numerous ways, having abilities that differ from our general thinking. ADA is as follows:

The ADA, passed in 1990, sought to eliminate discrimination against individuals with disabilities". It specifically prohibits discrimination against a qualified individual with a disability. A qualified individual is defined as " an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such

individual holds or desires". The ADA defines a disability as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; (C) being regarded as having such an impairment". The ADA applies to employers who have fifteen or more employees (Arrendondo, 2002, 264).

A unique aspect of ADA is that it also protects those who are discriminated against because they have a known association/relationship with a disabled individual. The EEOC's regulations expounds on three provisions in relation to ADA, impairment, major life activities and substantial limitations.

Impairment is any physiological disorder or condition affecting one or more of the body systems, i. e., respiratory, or any mental/psychological disorder that substantially limits one of life's major activities. Major life activities are functions such as caring for oneself, walking, seeing, hearing, speaking and working. The inability to perform a major life activity that the average person in the general population can perform or significantly restricts the condition, manner, or duration under which the person can perform a major life activity.

ADA prohibits discrimination from occurring in employment practices such as compensation, training, advancement or hiring. The EEOC prohibits a hiring company from conducting inquiries or require the applicant to submit to a medical examination with the intention to gain knowledge of a disability before extending a job offer. It is highly important during an interview that the applicant understands the tasks/responsibilities of the position for which they are seeking.

An applicant may arrive to the interview in a wheelchair, in which case, it can be seen that applicant has a disability and reasonable accommodations can be discussed. Not all the time when it will be obvious that the applicant has a disability, therefore, questions should be focus towards whether or not the applicant can handle the functions of the position. If an applicant voluntarily disclose a disability or ask about reasonable accommodations, then the disability can be discussed.