

# Age discrimination in the workplace – assignment



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Becoming old can be a daunting experience, having to worry about employment when you become older can be even worse. Age discrimination should not be something an older person in the workforce has to worry about, but today it is still one of the most common forms of discrimination. This paper will review the definition of discrimination and age discrimination, what the current laws are regarding age discrimination, how prevalent age discrimination is today, some of the perceived pluses and minuses of an older workforce, a personal story about age discrimination, and some methods on how to prevent age discrimination in the workplace.

Discrimination is a word that carries a very high negative connotation. It is a word and act that society has been struggling with every since there were two people on this planet. The dictionary defines discrimination as a “ treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit. ” There are many types of discrimination in the workforce; race, color, religion, sex, national origin and age.

Age discrimination is defined as an “ unfair or unequal treatment of an employee by an employer because of the employee’s age. ” Being discriminated against for any reason is a battle that we have to continue to fight against. As workers become older in the workforce today, they are a group that has to be protected against unfair or unequal treatment. The United States government made headway against discrimination by adopting the Civil Rights Act of 1964, which is commonly known as TitleVII.

This act prohibits employment discrimination based on race, color, religion, sex, or national origin. From there the Age Discrimination in Employment Act of 1967 (ADEA) was introduced. The Age Discrimination in Employment Act of 1967 protects individuals between the ages of 40 to 65 from employment discrimination based on age. The upper limit was extended to 70 in 1978 and then the limit was removed completely later on. The ADEA's protections apply to both employees and job applicants.

Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment — including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The ADEA applies to employers with 20 or more employees who work more than 20 weeks in a year, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. This act provides substantial and adequate support for people 40 years or older when finding a new employer. When it pertains to older workers and benefits, “ The Older Workers Benefit Protection Act of 1990 (OWBPA)” amended the ADEA to specifically prohibit employers from denying benefits to older employees.

An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers. The United States Equal Employment Opportunity Commission (EEOC) enforces the ADEA. If a person believes they have been discriminated against because of age, they have to file a complaint with the EEOC. A charge must be filed with the EEOC within 180 days from the date of the alleged violation. This limit can be extended to 300 days if a state or local anti-discrimination law also covers the charge.

To be able to file a case against age discrimination, you must establish prima facie. To establish prima facie, you must prove: 1) they are in the age group protected by the ADEA; 2) they were discharged or demoted; 3) at the time of the discharge or demotion, they were performing their job at a level that met the employer's legitimate expectations; 4) following discharge or demotion, they were replaced by someone of comparable qualifications outside the protected class. If all four areas are met, the burden of proof moves to the employer to prove there was no discrimination.

Age discrimination is a real problem in the courts system. Between 1997 and 2007 the amount of cases have varied between 15, 000 to 20, 000 cases a year. In 2007 there was 19, 103 charges filed to the EEOC. That would work out to approximately fifty suits that are filed daily regarding age discrimination. Of those cases, sixty-two percent were thrown out because of " No Reasonable Cause," where the EEOC found no reasonable cause to believe that discrimination occurred based upon the evidence obtained in the investigation. The charging party may still exercise the right to bring private court action.

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Seventeen percent were dismissed because of “ Administrative Closures,” for reasons such as failure to locate charging party, charging party failed to respond to EEOC communications, no statutory jurisdiction, etc. That leaves twenty one percent of age discrimination receive some type of “ Merit Resolutions,” these include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations. The total of Merit Resolutions has steadily increased from a low in 1997 of almost twelve percent to a high in 2007 of twenty one percent.

In the last ten years employers have paid out almost 600 million dollars in settlements. In 2007 the total was 66. 8 million dollars. Age discrimination cases can receive the largest damage awards from juries, even compared to the more publicized sexual harassment cases. There are a variety of reasons for this. Some are strictly legal, others have more to do with the emotional attachment jurors often have to age discrimination cases. There are two types of discrimination in the workplace, disparate treatment and disparate impact. Disparate treatment is blatant discrimination by the employer.

A company’s employment practice is based on a practice, which intentionally treats a protected class member(s) less favorable. Because the practice is intentional, punitive damages may be imposed. Disparate impact is subtle discrimination. A company’s employment practice appears to be neutral, but the effect or impact unreasonably discriminates against a protected class. Disparate impact discrimination is more complicated and harder to prove than disparate treatment. Quite often it results from company policy that excludes a certain individual or individuals from the job or from promotions.

The policy was not designed to exclude them; that was just the unfortunate result. Penalties resulting from disparate impact discrimination are usually less severe than those resulting from disparate treatment discrimination. Age discrimination has evolved and developed into something that affects productivity in the workplace. Some companies prefer younger workers to work for them, thinking that they offer better productivity and higher competition. Other companies prefer to have older employees because they are more experienced and harder workers.

Yet these older workers may somehow be mistreated. Today's culture shows that younger workers are smarter and head towards achievement. With older employees, companies have come up with the assumption that as a person grows older their performance might fall for a number of reasons, the main reason is age. Companies also tend to spend more on older employees because of health reasons. They believe that the older worker will have higher rates of absenteeism and turnover, or generally perform at lower levels than their younger counterparts.

These companies hesitate to send employees or older workers to training programs, afraid that they might retire soon. Why would you hire a 50 or 60 year old and have them stay for 5 to 10 years instead of hiring a younger person who could stay with the company longer. One good side is that older employees are more experienced, since they might have spent a long time with a company and they have the background and experience that could help in the long run. Older workers tend to have higher salaries and benefits. A lot of companies turn to younger workers because they are cheaper.

This is considered wage discrimination. To them promoting an expensive older worker is a waste of time in because that means more responsibility and less productivity. Sometimes older employees find it hard to keep up with technology. They believe in what they were brought up with and that such thing as computers are ineffectual or they are afraid to learn the new technology. There are some advantages of being an older worker. Although the age might affect these people, they generally are better workers than others. They have the faith that work has to be done completely and perfectly to have an effective outcome.

A person has to be practical in the work they do. Generally they are more loyal and committed to the organization, especially if they had spent a long time with it. They also believe that by practice a person can accomplish a perfect result. Alternatively, other organizations prefer younger employees. Younger employees strive for perfection, want to give a good impression, and need to build a new life of their own away from their families. These employees are cheaper and flexible, implying that they are ready to learn anything and everything just to promote their lives.

Companies think that the younger the worker the better productivity and work. At times, younger employees are discriminated by older ones, since they might be less experienced and can be recent graduates with degrees. No respect is given from both sides. The older workers think that they are better than the younger and the younger workers do not want to be bossed around by the older. Younger employees have the potential to change and adapt to the working environment and have interest in technology, although

they have to be trained. Young workers have xenophobia, fear of people who are not like you.

They think that they are better off working with people like themselves, from the same age group and who think like them. The key is to find what makes sense for the type of work that you do. Finding the right person for the right type of work looks easier than what it truly is. In my work, I manage around thirty people at one time. Part of my work function is being responsible for the hiring of technicians when positions open up. In this process I have hired approximately fifteen people over the last four years. Going through the process of qualifying applicants can be a very trying experience.

As a manager you know through training and from your own experience that you are not suppose to look at the things you can pick up reading a resume', where the person lives, what sex they are, and of course the age of the applicant. Doing this would violate not only your company's policies but also city, state, and federal laws pertaining to discrimination, but it is still in the back of you mind. The place that I work in is a production facility of electronic communications equipment. There are set qualifications needed for the positions that I hire. Specialized training and work experience is the common requirements.

Sometimes it is hard finding the right mix of qualification and experience to fit the positions. At times being a technician can be quite fast paced and have many changing priorities throughout the day. As a technician you need to be able to switch gears and test the equipment quickly and accurately. Deadlines are important to make sure we ship items on time. There is a full

training program that each technician has to go through when they are hired on. Plus we do evaluations at two-weeks, thirty days, sixty days, and ninety days. Of the fifteen people I have hired, three were in their late fifties with one being over sixty.

Each technician did not make it more than ninety days. And with each technician it came down to the same thing, they were too slow to learn the system and products. Of the other twelve technicians, three did not make it past five months. They were let go because of other reasons, but none of them were because they were too slow. The type of failure that I have experienced with the older workers is setting a subconscious realization in my mind that technicians that have been in the electronics field are either too set in their ways to change or have just slowed down over time.

Why should I make the effort to hire an older worker when I have not had any success? The even scarier question is what will it be like for me when I am at that age and I need to find employment? As a manager I will continue to look at the technical merits of an applicant and I will keep my blinds up to outside influences. I do not believe I have discriminated any persons in the decisions that had to be made for the company, but I am not sure what will happen the next time I have two candidates with the same qualifications but one is much older than the other.

Being aware of any discrimination is the key for a good employer and how they treat their employees. Now that age discrimination has become something that I am very aware of, I have discovered some actions companies can take to ensure that age discrimination does not become a

problem at any company. •Recognize age bias and discrimination as the pervasive, escalating issue it is. •Re-think attitudes about older adults in your workplace. •Review and, if necessary, revise policies, training programs, recruiting methods, job designs, and evaluations to eliminate discriminatory language and/or implications. Expand preventative training on age bias. •Do an audit to assess your organization’s “ culture. ” Find out how employees feel about older workers and how those feelings manifest themselves in the workplace. Messages often emanate from the CEO and are picked up by managers and supervisors. •Initiate a dialogue between managers of different departments regarding age discrimination. Discuss the issue at appropriate professional organization meetings to find out how other businesses are dealing with it. •Tap into agencies and networks that involve the older adult population. Build moral and higher productivity by demonstrating to older workers that they are valued and appreciated. Age discrimination is not going to go away. Life expectancy has risen thirty years in the past century. Since 1960, there has been a 100 percent increase in those over the age of sixty-five and a 274 percent increase of those over eighty-five. The so-called baby boom generation, those Americans born in the 1950’s, are seventy-six million strong and will make up sixteen percent of the population in at least ten states by 2020.

Employers know what age discrimination is and they know what the laws are, and in many cases, older employees have some benefits over the younger work force. There are many ways employers can correct the attitude about age discrimination. They do not have to be afraid to hire a person that has worked hard all their life to be left at the curb because a younger person is

perceived to be better. References Age Discrimination in Employment Act (ADEA) Charges FY 1997 - FY 2007 (2008, February 26). Retrieved May 17, 2008, from <http://www.eoc.gov/stats/adea.html> Age Discrimination at Work (2008, May 28). Retrieved May 19, 2008, from <http://www.aarp.org/money/careers/jobloss/a2004-04-28-agediscrimination.html> Harris, D. (2003, May 21). Simple Justice: The story behind a record-setting age discrimination settlement and what it could mean in your workplace. Retrieved May 19, 2008, from [http://www.aarpmagazine.org/lifestyle/a2003-05-21-mag-justice\\_age](http://www.aarpmagazine.org/lifestyle/a2003-05-21-mag-justice_age) Federal Laws Prohibit Job Discrimination Questions and Answers: Federal Equal Employment Opportunity (EEO) Laws (2008).

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