

Age Discrimination

The Office of Civil Rights (OCR) manages the Department of Commerce's Equal Employment Opportunity (EEO) Complaint Process and other EEO programs. This fact sheet provides basic information about age discrimination, which is prohibited by the Age Discrimination in Employment Act of 1967.

Q. What protections do Commerce employees and job applicants have from age discrimination?

A. The Age Discrimination in Employment Act (ADEA) protects Commerce employees and job applicants who are 40 years of age or older from employment discrimination based on age.

Individuals who are younger than 40 are not covered by the ADEA.

Q. What types of discriminatory practices are prohibited?

A. Under the ADEA, it is unlawful to discriminate against any individual who is 40 years of age or older because of age in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.

Discriminatory practices also include:

- harassment based on age;

- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices; and

- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of people of a particular age.

Q. What recourse do I have if I believe I was treated differently than another person who is 40 or older?

A. If two individuals are protected by the ADEA, an employer still may not treat them differently on the basis of age. For example, a selecting official cannot hire a 42 year-old applicant over someone who is 58 years old because of age.

Q. Can a selecting official ask an applicant's age?

A. Nothing in the ADEA specifically prevents an employer from asking an applicant's age or date of birth.

However, because such inquiries may deter older workers from applying for a job or may otherwise indicate a possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA.

Q. Can an employer force me to retire?

A. As long as an employee is performing his or her job duties, generally the answer is no. The ADEA does have some limited exceptions, such as federal employees having to do with law enforcement and traffic control. However, offering early retirement in an effort to save money or reduce the size of the workforce without resorting to involuntary layoffs does not violate the ADEA.

Q. Can I be turned down for a job because I am "over-qualified?"

A. It depends. The ADEA only prohibits discrimination based

on age. Although increased age is often associated with more skills and experience, an employer is not required to hire the most qualified or experienced person for a particular position if the company believes that person's skills and experiences are not the best match for the position.

While some believe that the explanation that a worker is "over-qualified" is an indication of age discrimination, an employee would still need to prove that the employer was motivated by the worker's age, rather than a valid reason other than age.

However, it would be unlawful if an employer did not hire an individual based solely on the assumption that a person of that age would be so overqualified as to be more likely to leave the position sooner.

Similarly, an employer may not act on the basis of other age-related stereotypes such as assumptions that older employees are less vigorous or energetic or are out of touch with the latest developments in their fields.

Q. What remedies are available to me if I prove age discrimination?

A. Victims of age discrimination can recover remedies which may include:

- back pay or front pay;
- hiring, promotion, or reinstatement; or
- other actions that would make an individual "whole" (in the condition s/he would have been but for the discrimination).

An employer may be required to post notices addressing the violations of a specific charge and advising all employees of their rights under the laws enforced through the EEO complaint process and the right to be free from retaliation.

The employer also may be required to take actions to cure the source of the identified discrimination and minimize the chance of its recurrence, as well as discontinue the specific discriminatory practices involved in your case.

To be awarded remedies, you must prove that you were subjected to age discrimination in violation of the ADEA.

Q. Do negative comments related to age violate the ADEA?

A. It depends on the circumstances.

Derogatory comments and other verbal or physical conduct based on an individual's age constitute unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance.

Q. How can I raise a claim of age discrimination in the EEO complaint process?

A. The first step is to see an EEO Counselor. To preserve your right to file a formal complaint, you must do this within 45 days of the action you believe is discriminatory or when you first knew or should have known of the possible discrimination. Contact your bureau EEO Officer to initiate counseling. Your EEO Counselor will explain the EEO Complaint Process and can also give you information about other possible avenues of redress for your claim.

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