

## Human Resources

# Age Discrimination Cases Up; Set Strong Policies

**T**HE EQUAL Employment Opportunity Commission continues seeing a steady flow of complaints for one of the more common forms of workplace bias — age discrimination.

The number of court filings the EEOC made under the Age Discrimination in Employment Act (ADEA) in fiscal year 2023 was more than double that of fiscal year 2022. As the EEOC steps up its efforts under the Biden administration, it's crucial that employers have in place policies and employment standards to avoid any appearances of discrimination against workers based on age.

The ADEA prohibits harassment and discrimination on the basis of a worker's age for individuals over 40. This extends to any aspect of employment, including hiring, job assignments, promotions, training, benefits and more.

The law even applies to employers that use third party recruiters to screen job applicants, according to EEOC guidance.



## RECENT CASES

- In March 2023, Fischer Connectors settled with the EEOC for \$460,000 over accusations that the manufacturer fired a human resources director and replaced her with two younger workers after she had spoken up about company plans to replace other older workers.
- In September 2023, two former IBM human resources employees who were both over 60, sued IBM after they were terminated, alleging age discrimination.
- Wisconsin-based Exact Sciences agreed to pay \$90,000 to settle a lawsuit alleging that it discriminated against a 49-year-old job applicant based on his age after it had turned him down for a medical sales rep position in favor of a 41-year-old.
- A 52-year-old woman sued a Palm Beach restaurant, alleging violations of the ADEA and the Florida Civil Rights Act of 1992. She claims that after working for 10 years as a seasonal server, she was terminated on the grounds that the restaurant was moving to year-round employment, yet continued to hire young seasonal workers.

## What you can do

Age discrimination in the workplace doesn't just negatively affect employees. It also affects your company. Over the past 15 years, age discrimination cases have accounted for 20-25% of all EEOC cases — and such cases typically receive the highest payouts.

Ageism in the workplace is bad for business. Not only do you risk a large settlement, but you also miss out on a large talent pool of older workers in your hiring practices. You also miss out on the major contributions that older workers can make to your organization.

To prevent age discrimination at your firm:

- Train your managers and supervisors on age discrimination and that it won't be tolerated. Have in place consequences

(and follow through on them) for managers that discriminate against an employee due to any protected status, including age.

- Consider taking out any sections of your application that disclose information about an applicant's age. Removing the date that an applicant graduated or completed their degree is helpful. This can allow hiring managers to focus on the skills and experience an applicant brings to the table rather than their age.
- If you have to go through a layoff, ensure you don't make any decisions based on age. You should focus only on two things during this process: making choices solely based on performance and the necessity of the position they hold. Even a seniority-based system is acceptable.

## The takeaway and insurance

Often when the EEOC settles these cases, it will require the employer to sign a consent decree requiring them to implement age-discrimination training for hiring managers. You shouldn't wait for an order by the agency to do the same.

Finally: In the event you are sued for age discrimination, if you have in a place an employment practices liability policy, it may cover your legal costs and any potential settlements or verdicts.

Besides age discrimination, these policies will cover a host of other lawsuits by employees. ❖