Discrimination on the Basis of Age

Part Three in a Series on Workplace Discrimination

Which of the these three hypothetical situations involve age discrimination?

John celebrated his 40th birthday and received notice from his employer shortly thereafter that certain healthcare benefits would no longer be available to him.

Mary recently returned to college after raising her kids. She read an advertisement requesting college interns for a prominent office on Capitol Hill. She considered applying until she noticed that the office was seeking "young" interns.

Susan had been with her employing office for 18 years, when her employer asked for a staff member to give presentations at various offices across the country. Susan had the most experience with the subject matter, but her employer said the traveling would be too taxing for someone her age.

Each situation raises possible issues of age discrimination. Employers and employees alike should be aware of the various forms of potential age discrimination.

Age Discrimination and the CAA

Section 201 of the Congressional Accountability Act (CAA) protects covered employees age 40 or more from discrimination based on age.

Individuals younger than 40 do not receive such protection.

The law generally forbids the use of age as a motivating factor in personnel actions, such as hiring, discharge, promotion, pay, or benefits. A covered employee over 40 may also assert that he or she is harassed because of age if certain conduct creates a hostile work environment or interferes with that employee's work performance.

Example One: John's 40th Birthday

In the first example above, John may have been discriminated against because age appears to have been a motivating factor in eliminating certain employment benefits still available to other employees.

While there is no single test for determining whether age was a motivating factor in his case, John may still attempt to prove that he was discriminated against by demonstrating that his benefits were decreased because of his age and not because of another unrelated factor.

Example Two: Mary's Ad For "Young" Interns

In the second example above, when Mary saw that they were looking for a "young" intern, she did not apply because she believed her application would not be considered.

Image courtesy aarp.com

According to the U.S. Equal Employment Opportunity Commission (EEOC), a job notice or advertisement may not specify an age limit except in rare circumstances where age is shown to be a "bona fide occupational qualification" and is reasonably necessary to the essence of the business. However, the EEOC warns that a "bona fide occupational qualification" in reference to discrimination on the basis of age is complicated, and the burden of proof typically falls on the employer.

Example Three: Susan's Diminished Responsibilities

Aside from the terms and conditions of employment, the CAA also protects legislative branch employees from decreased privilege in employment based upon their age.

In the third example above, Susan appears to have been denied the opportunity for a privileged job assignment simply because of her age.

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Age Discrimination Exceptions

There are exceptions to the general prohibition on age discrimination. Employers may use age as an employment criterion if they can justify its use. They must show a "bona fide occupational qualification," as mentioned in Mary's example above.

Another exception is that employers may allow fringe benefit plans that provide unequal benefits for different age groups if the differences are justified by different employer costs. For example, an employer can provide each employee with $1000 of healthcare insurance, even though that $1000 may buy less protection for older employees.

Dealing With Age Discrimination

If you believe you have been discriminated against because of your age, you may first speak with your employer or a supervisor, but you are not required to do so. If the behavior does not stop, you may detail all circumstances surrounding the incident in writing. A supervisor who receives a complaint of alleged age discrimination should take immediate steps to address it and conduct an investigation if necessary.

Employing offices are encouraged to publish their policies against age discrimination and provide employees with viable methods to report, investigate and resolve possible claims of age discrimination.

Congress also offers training courses and other resources to educate managers and employees about preventing and addressing all forms of discrimination in the workplace. All legislative branch employees and employing offices may also contact the Office of Compliance to seek information on issues involving discrimination in the workplace, or simply to ask a question. Call (202) 724-9250 or visit *www.compliance.gov* for more information.

Office of Compliance
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