

COMPLIANCE @ WORK

advancing workplace rights, safety & health, and accessibility in the legislative branch

What is age discrimination?

“Class of 2008 or 2009 preferred...”

“Seeking young and energetic staff to...”

“Recent college graduates are encouraged to apply...”

These commonly used phrases might not seem out of place in a job announcement. However, for older workers, these phrases may deter qualified applicants from applying to a position. Subtle age discrimination in the hiring process can disproportionately exclude older workers from job opportunities that would otherwise be available to them.

Section 201 of the Congressional Accountability Act (CAA) applies the protections of the Age Discrimination in Employment Act of 1967 (ADEA) to legislative branch employees. The CAA protects covered employees age 40 or older from discrimination based on age.

The law prohibits age discrimination in decisions about hiring, firing, layoffs, promotion, demotion, pay, benefits, performance reviews, reassignment, and other personnel actions affecting the terms and conditions of employment.

Are there any lawful actions based on age an employer can make?

- Personnel actions directed towards individuals younger than forty (e.g., being denied a promotion because a supervisor thinks the employee is too inexperienced).
- Bona fide seniority or merit systems, provided they are not instituted to discriminate on the basis of age.
- Advertising or hiring on the basis of age only where age is a “bona fide occupational qualification” and reasonably necessary to the essence of the business.



When the ADEA became law, the U.S. population of people ages 40-65 was about 50 million. Today, that number has more than doubled.

What is unlawful under the ADEA?

- Refusing to hire an individual because of age if over 40.
- Refusing to provide equal compensation, or other terms, conditions, or privileges of employment to a covered employee over the age of 40.
- Limiting, segregating, or classifying a covered employee in any way that would deprive or tend to deprive him or her of an employment opportunity because of age.
- Forcing an employee to retire at a certain age (some narrow exceptions exist).



- Harassing a person because of their age.
- Retaliating against an employee who files a charge of age discrimination.

How do I file an ADEA claim and what happens if a claim is found to be true?

Covered employees file claims under the CAA through the OCWR for discrimination, harassment, or retaliation on the basis of age.

A covered employee may have a right to be hired, reinstated, or promoted. In addition, an employee may be entitled to backpay, attorneys' fees, and liquidated damages.

Discrimination can occur when both people involved are over the age of 40.

But I think I'm being discriminated because I'm too young. Am I protected?

The ADEA only protects employees age 40 or older from age discrimination. Although workers under the age of 40 are not statutorily protected from discrimination based on age, the CAA does protect workers from other forms of harassment and discrimination based on race, color, religion, sex, national origin, and disability.

✓ CHECKLIST FOR EMPLOYERS: Best Practices for ADEA Compliance

✓ Watch language used in job announcements.

Terms such as "digital native" may exclude those who learned technical skills later in life.

✓ Examine your recruiting pool.

When college campuses are used exclusively, whether on-campus or online job boards, this limits who can apply.

✓ Avoid asking for information that may convey an applicant's age.

Although not illegal, it's best to avoid asking for date of birth or graduation dates in an application.

✓ Examine interview questions for potential age bias.

Asking an applicant if they would be able to work for a younger manager or director may infer age discrimination.



The limits of age discrimination have recently been expanded in some court rulings. For example, the Seventh Circuit in the case of *Kleber v. CareFusion Corp.*, No. 17-1206 (7th Cir. 2018), found that a practice of excluding job applicants who exceed a maximum level of experience could be unlawful.

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