



# How to Avoid Age-Discrimination Lawsuits

*Are you violating the Age Discrimination Act? Find out now—before an employee takes you to court!*

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Age discrimination, also called ageism, is one of the fastest growing legal issues in today's workplace. In the last recession, workers over the age of 55 lost their jobs at five times the rate of junior workers.<sup>1</sup> Between 1989 and 1993, there was a 29 percent increase in lawsuits filed under the Age Discrimination in Employment Act (ADEA).

Passed in 1967, the ADEA states that it is illegal to discriminate against any worker or job candidate because of age. Employers may not use age as a basis for promotions, raises, transfers, hiring, firing, or any other job-related matter.<sup>2</sup>

## Recent Rulings on Ageism

Since 1995, there have been two important Supreme Court cases concerning age discrimination. These decisions are likely to cause an even greater wave of lawsuits charging ageism.

The first case involves a 56-year-old man who was replaced by a 40-year-old worker. The court ruled that older employees may sue even when replaced by workers who themselves are over 40. Before this ruling, employees could file age-discrimination suits only if they lost their jobs to workers under 40. Thus, this decision greatly expands the scope of lawsuits based on age.<sup>3</sup>

The second decision is called the after-acquired-evidence rule. It concerns an older woman who sued on the basis of ageism after she was laid off by a publishing company. Although the publishing company later learned that the woman had kept some confidential documents, the court ruled that her age-discrimination lawsuit could not be dropped.<sup>4</sup> In other words, lawsuits filed by employees cannot be thrown out simply because employers discover prior wrongdoings that would justify job termination.

## What Should You Do to Combat Ageism?

By the year 2020, people over 55 will account for at least 38 percent of the

workforce, up from 27 percent in 1992. One reason is that there is a trend toward hiring more part-time and temporary workers. Since older people's schedules are more flexible, they make up a large proportion of such workers. Flexible work arrangements are especially worthwhile for small nonprofit organizations trying to contain costs.

It's crucial, therefore, that you eradicate ageism from your organization. Not only will age discrimination leave your organization open to costly lawsuits, but it will also deny your organization the experience, commitment, loyalty, maturity, and productivity of older workers. Here are steps you can take to be sure your organization is free from ageism:

1. **Realize that age discrimination does exist**, and it is a serious problem.
2. **Consider ability, not age**, as the most important factor in hiring, firing, and promoting people.
3. **Create an employment policy** saying that your organization will not tolerate age discrimination.
4. **Check workplace conditions** to be sure there aren't any unreasonable age-related criteria. Don't assume, without sound justification, that certain positions can be handled only by workers of certain age groups.

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5. **Monitor the composition** of your workforce by age. Make sure it consists of people from different age groups.

6. **Through education and training, defeat prejudices and misconceptions** you and others in your organization may have against older workers.<sup>5</sup> There are four common fallacies about older workers:

- **Health.** Employers often worry that older workers will be absent more frequently because of poor health. Research shows otherwise.<sup>6</sup> Short-term sickness and work absences are no more frequent in older than in younger people.
- **Productivity.** Some employers assume that older workers are less productive than younger workers. The truth is that productivity does not normally decline as people grow older.<sup>7</sup>
- **Accidents.** People often think that older adults have more accidents on the job than younger workers. The truth is that older people tend to avoid unsafe conditions and thus reduce their chances of getting hurt.<sup>8</sup>
- **Learning.** Many people believe that elders are too old to learn new skills. Because of this assumption, older employees usually don't receive enough training on the job. It's true that older people may need more time to learn new tasks. After completing training, however, mature workers are as capable as younger workers in performing most tasks. In fact, older employees are more reliable and committed in their jobs, as evidenced by low turnover rates, low absenteeism, and a strong work ethic.<sup>9</sup>

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Remember, ageism is just as serious as any other form of workplace discrimination. Age-discrimination lawsuits are growing at an alarming rate. Make any necessary changes in your workplace now, before someone takes you to court. ■

**Footnotes**

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<sup>2</sup>J. Horsly, "Fighting Age Discrimination on the Job," *RN*, Vol. 57, No. 4, 1994, p. 57.  
<sup>3</sup>L. Denniston, "High Court Overturns Age Bias Decision; Gap Need Not Be Great for Job Switch to Be Illegal, Ruling Says," *The Baltimore Sun*, 1996, p. 1A.  
<sup>4</sup>C.B. DeCesare, "The After-Acquired-Evidence Rule: The Law at Work," *Monthly Labor Review*, Vol. 118, No. 5, 1995, p. 62.  
<sup>5</sup>G. Capowski & M.H. Peak, "Ageism: The New Diversity Issue," *Management*

*Review*, Vol. 83, No. 10, 1994, pp. 10-16.  
<sup>6</sup>M.L. Levine, *Age Discrimination and the Mandatory Retirement Controversy*, Baltimore: John Hopkins University Press, 1988.  
<sup>7</sup>C.S. Humple & M. Lyons, *Management and the Older Workforce*, New York: AMA Membership Publications, 1983.  
<sup>8</sup>D. Fagiano, "A Younger Middle Age," *Management Review*, Vol. 83, No. 10, 1994, p. 4.  
<sup>9</sup>Humple & Lyons, *op. cit.*

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