

Age Discrimination In Hiring

By Rich Volin

Federal and state statutes prohibit employers from refusing to hire someone because of that person's age. But while the prohibition is clear, ageism can be subtle. Sometimes questions and comments during the application and interview process can provide insight into whether an employer is making hiring decisions based on age. If you believe that a potential employer may be discriminating against you because of your age, there are resources to which you can turn for information, guidance, and protection. Those resources include federal, state, and local agencies whose missions are to enforce laws that prohibit workplace discrimination.

Certain topics during the application and interview process may, under the circumstances, signal improper age discrimination. Often, these topics seem innocuous. Employers may ask about your ability to understand the latest technology, including how to navigate and leverage social media. They may ask whether you can withstand late hours or last-minute travel. They may ask whether you have issues working among younger colleagues, or for a supervisor that is younger than you. They may comment that you seem overqualified for the position, or that you would need to take a significant salary decrease. They may discuss whether you have a retirement timeline.

Is an employer's questioning and comments on these topics a proxy for age discrimination? Unfortunately, the answer is rarely straightforward. Just because you hear some of these questions does not mean that your employer has violated the law, or that you can easily prove such a violation. Discrimination cases are fact-intensive inquiries that depend on the details of your specific situation, including information as to how the open position was eventually filled, if at all. (Did they hire someone much younger? Was that person asked the same questions, and did they respond the same way? Was the person a handpicked lateral hire outside the applicant pool?)

These facts must be analyzed in the context of the federal, state, or local laws that might govern any potential case. Moreover, judicial decisions that interpret employment laws are constantly evolving. As such, employment lawyers, and government agencies that enforce employment laws, need to stay abreast of developments. Those developments could affect whether a violation exists, and what evidence would be necessary to prove that violation in court.

Applicants who are concerned that they may have been denied a job based on age can seek guidance from a variety of resources. They may ask the prospective employer about their hiring process and their specific reasons for not extending an offer. They may consult (often for free) with an employment attorney. They may also seek additional information from government agencies whose missions are to enforce federal, state, and local laws that prohibit many types of discrimination, including age discrimination in hiring.

In a crowded and competitive market, many job candidates endure numerous applications and interviews. When candidates are denied opportunities based on their age, several laws offer protection and an avenue to relief. Below is additional information to help you understand and pursue your right to be free from age discrimination in the workplace.

- The Age Discrimination in Employment Act (ADEA) is a federal law that protects employees who are 40 or older. It applies to employers with 20 or more employees. The ADEA prohibits discrimination in many aspects of employment, including hiring, firing, salary, terms, conditions, and privileges.

- The U.S. Equal Employment Opportunity Commission (EEOC) enforces federal laws that prohibit discrimination against job applicants and employees based on age - as well as other protected classes, such as race, color, religion, sex, national origin, disability or genetic information. You can review the EEOC's guidance on age discrimination issues here: <https://www.eeoc.gov/laws/types/age.cfm>.
- Before filing suit in federal court under the ADEA, you must file a Charge of Discrimination with the EEOC. You can review the process for filing a Charge of Discrimination here: <https://www.eeoc.gov/employees/charge.cfm>.
- Time limits apply. It is important to understand the filing time limits that may apply to each statute, and how those time limits are calculated in your situation. The EEOC provides further explanation on time limits here: <https://www.eeoc.gov/employees/timeliness.cfm>.
- In addition to the ADEA, state and local laws may provide additional – or even greater – protection for employees who suffer an adverse employment action because of their age. For example, the District of Columbia Human Rights Act prohibits age discrimination against anyone 18 or older. You can find out more information by contacting the D.C. Office of Human Rights at (202) 727-4559. You can review the D.C. complaint filing procedure at <https://ohr.dc.gov/service/file-discrimination-complaint>.
- Similarly, the Virginia Human Rights Act prohibits discrimination based on age, and may be enforced through Virginia's Division of Human Rights. More information can be found here: <https://www.oag.state.va.us/programs-initiatives/human-rights>. Some cities and counties in Virginia may also have human rights laws, as well as commissions to enforce those laws. Here are several links that provide additional information:
 - City of Alexandria Office of Human Rights: <https://www.alexandriava.gov/humanrights/>.
 - Arlington County Human Rights Commission: <https://commissions.arlingtonva.us/human-rights-commission-hrc/>
 - Fairfax County Office of Human Rights and Equity Programs: <https://www.fairfaxcounty.gov/ohrep/hrd/>
 - Prince William County Human Rights Office: <http://www.pwcgov.org/government/dept/hrc/pages/default.aspx>.
- The Maryland Commission on Civil Rights (<http://mccr.maryland.gov/Pages/default.aspx>) enforces Maryland's laws against discrimination in, among other areas, employment. Maryland counties may also offer guidance and enforcement services. For example, the Montgomery County Office of Human Rights (<https://www.montgomerycountymd.gov/humanrights/about/who.html>) accepts complaints and enforces the Maryland County Code, which prohibits discriminatory practices, such as age discrimination in hiring.

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