

*Older workers - California*

# CALIFORNIA EMPLOYERS

and the

# OLDER WORKER

*[California. Department  
of Employment.]*

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# QUESTIONS and ANSWERS ON CALIFORNIA'S AGE DISCRIMINATION LEGISLATION

"It is the public policy of the State of California that manpower should be used to its fullest extent. This statement of policy compels the further conclusion that human beings seeking employment, or retention thereof, should be judged fairly and without resort to rigid and unsound rules that operate to disqualify significant portions of the population from gainful and useful employment. Accordingly, use by employers, employment agencies, and labor organizations of arbitrary and unreasonable rules which bar or terminate employment on the ground of age offend the public policy of this State."

Chapter 9.5 Section 2070  
California Unemployment Insurance Code

Signed by Governor Edmund G. Brown on July 14, 1961;  
effective September 15, 1961

# AGE DISCRIMINATION

California has reached the point where middle-aged and older men and women constitute a very considerable part of our manpower resources. The number of persons "over 45" in the State labor force is 2,247,000, or 35% of the current total. The number of "over 45" workers is expected to increase by 37% in the next decade as contrasted to a national increase of 20%. Thus, an increasing number of older workers in California will want and need jobs.

California is the fifteenth state to enact legislation which makes employer discrimination against older job seekers illegal. Restrictive hiring practices, based on the widespread misconceptions concerning the capabilities and job performance of these workers, have necessitated the passage of legislation to make it possible for qualified older workers to compete for jobs in the State's labor market.

The effect of this law will not reduce the quality of employees hired by California employers. On the contrary, the removal of arbitrary, unrealistic age limitations increases the employer span of selection by one-third.

The law contemplates a continuing emphasis on education and information carried on through the resources of the Department of Employment. In answer to the many questions regarding what is proper and what is improper under this law and Department policy, this series of questions and answers has been prepared to assist California employers in recruiting, screening and selecting the best qualified workers without regard to age.

Irving H. Perluss, Director  
California Department of Employment

DOES THE LAW OBLIGE AN EMPLOYER TO HIRE AN OLDER WORKER?

1

No. The right of an employer to select the better qualified person from among all applicants for a job is not abridged. Section 2072 of the California Unemployment Insurance Code also guarantees the right of employment agencies and labor unions to select and refer the better qualified persons from among all applicants for a job.

DOES THE NEW LAW GIVE PERSONS BETWEEN AGES 40 AND 64 ANY SPECIAL PRIVILEGES IN OBTAINING EMPLOYMENT?

2

No. The purpose of this law is to afford every mature worker equal opportunity to compete for, or to hold, any job for which he is qualified without regard to his age.

WHAT SPECIFIC ACTS ARE PROHIBITED BY THE LAW?

3

It is unlawful for an employer to refuse to hire or employ; or to discharge, dismiss, reduce, suspend or demote any individual between the ages of 40-64 solely on the ground of age except in cases where the law compels or provides for such action.

It is unlawful to refuse employment because the age of an applicant does not permit inclusion within a company insurance coverage plan, if that individual is between the ages of 40-64 years inclusive.

## ARE THERE EXCEPTIONS TO THE LAW?

# 4

Yes. The law states that any employer with six or more employees, including the State of California and its political subdivisions, is subject. An employer with less than six employees is not subject to the law.

The age limitations of the Apprenticeship programs in which the State of California participates shall not be considered discriminatory within the meaning of the law.

This law does not affect the retirement of employees under a bona fide retirement or pension plan. And it is not a violation for an employer to refuse to hire a person for the sole reason that his age exceeds the maximum entrance age for a bona fide plan if the plan contains a compulsory retirement age and the individual must work a stated number of years to become eligible.

Promotions from within existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities and trade schools, in and of themselves, do not constitute a violation of the law.

The California law does not apply to Federal establishments (including the Armed Services) operating in California. However, the United States Civil Service Commission has regulations which prohibit the establishment of maximum age requirements for entrance into the Federal civil service system.

ARE EMPLOYERS FROM OTHER STATES HIRING EMPLOYEES IN CALIFORNIA BOUND BY THE CALIFORNIA LAW?

5

Yes.

CAN AN OLDER WORKER BE DISMISSED FROM A JOB?

6

Yes. It is not a violation to reject an individual or terminate employment when the individual applicant or employee fails to meet the bona fide requirements of the job.

An employer may terminate the employment of a worker under the provisions of a bona fide pension or retirement plan.

CAN AN EMPLOYER REQUIRE A PHYSICAL EXAMINATION TO MAKE CERTAIN THE OLDER WORKER IS PHYSICALLY ABLE TO DO THE JOB?

7

The law does not preclude any physical and medical examinations of applicants and employees as an employer may require to determine fitness for the job.

## WHAT ABOUT NEWSPAPER ADVERTISING?



The law does not refer to newspaper advertising. Therefore, the placing of a newspaper advertisement which includes an upper-age restriction or which asks applicants to write to a box number and "state age," is not, of itself, a violation of the law. However, if a person between the ages of 40-64 years applies for employment in response to such an ad, and the employer refuses to hire the person solely on the ground of his age, a question of violation would certainly exist.

An individual seeking employment through an advertisement can specify his age without violating the law.

If an advertisement is paid for by the Department of Employment, no mention of age shall be made. When an employer places an advertisement which requests applicants to report to a Department Local Office, his advertisement cannot contain any mention of age.

WHAT IS THE NATURE OF A VIOLATION OF THIS LAW?

9

Section 2112 of the California Unemployment Insurance Code makes a violation of this law a misdemeanor.

MAY AN APPLICANT'S AGE BE ASKED PRIOR TO EMPLOYMENT?

10

Yes.

WHAT ABOUT PENSION, RETIREMENT AND INSURANCE PROGRAMS UNDER THIS LEGISLATION?

11

An employer can maintain a bona fide pension or retirement plan under which an employee is not eligible to join unless he has served the employer a stated minimum number of years.

An employer can maintain a bona fide pension or retirement plan under which an employee is not eligible to join if he was hired at an age beyond the maximum entrance age established for such plan. Such an employee should be advised that he will be excluded, or if he were included, that he might expect to receive a reduced amount of benefits on attainment of retirement eligibility.

An employer can maintain a bona fide group health and accident or life insurance program under which an employee is not eligible because of age, or that the coverage extended would be less than that offered younger employees.

WHAT IS A BONA FIDE PENSION, RETIREMENT OR GROUP INSURANCE PLAN?

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A bona fide plan has qualified for Federal income tax purposes under Section 401 of the Internal Revenue Code of 1954.

HOW IS A COMPLAINT FILED?

13

Any individual between the ages of 40 and 64 who believes that an employer has refused to hire him or has discharged or demoted him solely on the ground of age may file a complaint against this employer.

The complaint should be filed with the Police or Sheriff's Department which has jurisdiction over the locality where the alleged offense occurred.

The law states that the burden of proving a violation shall be upon the person claiming that the violation occurred. Any legal action will be solely between the complainant and the employer.

WHAT HAVE WE LEARNED ABOUT OLDER WORKERS FROM RECENT RESEARCH STUDIES BY INDUSTRY, LABOR AND GOVERNMENT?

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- a. Variations in output of persons of the same age group show greater differences than those between different age groups.
- b. Many workers over 55 have output rates higher than the average rate of the group with peak production.
- c. Most older workers have no significant physical handicaps that affect their job performance. Even when there is a diminution in physical ability, their overall performance is stabilized by changes in their work methods. Today, few jobs require great strength or heavy lifting.
- d. Older workers have a steadier rate of output with considerably less variation from week to week than workers in the younger age groups.
- e. Most older workers have demonstrated by their past work histories flexibility and ability to shift occupational fields.
- f. Attendance, health, safety and turnover records of older workers compare favorably with, and in many instances are better than, those of other age groups.
- g. Among the favorable attributes of the mature worker are stability, reliability, responsibility, loyalty and steadiness.
- h. In commenting on the value of the mature worker, the National Association of Manufacturers has said: "In any considerations of possible increased costs, while it may be desirable to have a low insurance and pension rate, it is insignificant

when one compares it with the costs involved in turnover, poor or indifferent performance, absenteeism, lack of job interest and application, and the fact that the company is cutting itself off from the services of able, mature employees."

WHAT AGENCY OF CALIFORNIA STATE GOVERNMENT IS PRIMARILY RESPONSIBLE FOR CARRYING OUT THE OBJECTIVES OF THE ANTI-AGE DISCRIMINATION LEGISLATION?

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The California Department of Employment is named in the legislation as the agency having primary responsibility. The policies of this agency relating to age discrimination are:

- a. To refer qualified workers to employers without regard to upper-age restrictions.
- b. To accept no orders from employers which include upper-age restrictions, except where necessitated by law or the job requirements themselves.
- c. To apply (a) and (b) to all employers regardless of size (not limited to six or more) and to all upper-age limits (not limited to those between 40 and 64 years). The decision to apply the anti-age discrimination policy to all employers and to all upper-age restrictions was made on the basis that it provides the best educational approach to employers and provides the greatest number of applicants and widest choice of job openings.
- d. To carry on a continuing program of education, information, research, study and community organization concerning the problems of older workers in seeking, obtaining and holding employment.

WHERE CAN AN OLDER  
WORKER OBTAIN ASSIST-  
ANCE IN LOCATING A JOB?

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Over 100 Local Offices of the California State Employment Service offer counseling, placement and job development services. An Older-Worker Specialist is available in each office. These Older-Worker Specialists are in constant contact with employers to discuss the qualified older applicants. They also participate in community activities which promote the Older-Worker program of the CSES.

*Ability is Ageless*

**HIRE  
OLDER WORKERS**

PUBLIC EMPLOYMENT SERVICE



SERVICE FOR EVERYONE  
LOCAL-STATE-NATIONAL

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DEPARTMENT OF EMPLOYMENT  
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