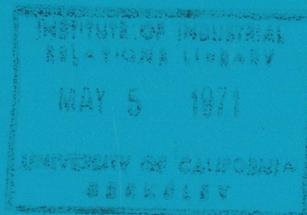


Older workers - Laws, statutes, etc. ✓

U.S. Wage and Hour Division - Lic. Contracts Divisions.

THE LAW AGAINST

# AGE DISCRIMINATION IN EMPLOYMENT



Washington, U.S. Govt. Print. Off., 1970z

(WH Publication 1303)

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# AGE DISCRIMINATION IN EMPLOYMENT ACT...

REMOVING JOB BARRIERS FOR THE OLDER WORKER

## BACKGROUND

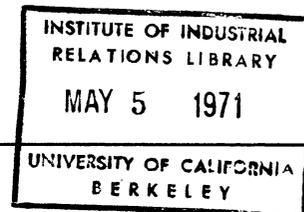
Before the Age Discrimination in Employment Act was passed, many older job applicants were denied a job because of age. Other older workers found they were denied promotions or discharged because of age.

Such discriminatory action deprives the economy of badly needed resources and also creates financial, psychological, and physical hardship for the older job applicant or worker.

Statistics show that older persons experience great difficulty in finding jobs. They stay unemployed longer than younger people.

The problems of unemployment are even more severe among nonwhite older workers who are doubly disadvantaged because they often are discriminated against on the basis of both their age and minority group status. Unemployment among the nonwhite older sector is almost double the rate experienced by the white sector. Because of such double jeopardy, many of these nonwhite workers give up their search for a job.

The cause of poverty for a great many, therefore, cannot be solely attributed to the lack of skills. Rather, the problem is that many people with needed skills are simply not being provided with adequate job opportunities.



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## STUDEBAKER SHUTDOWN

A good example of the difficulties encountered by older workers in finding new jobs occurred during the shutdown of the Studebaker Corporation operations in 1963 when more than 8,000 workers lost their jobs.

It was found that the younger the worker, the easier it was for him to find another job.

Those Studebaker workers over 50 years tended to make fewer applications than those under 50. This was not due to lack of job interest by older workers, but rather to their difficulty in finding a new job. They were just not wanted, particularly when there were younger workers available. Many of the workers over 60 eventually chose to retire rather than continue the seemingly futile search for employment.

## AMERICAN VISCOSE SHUTDOWN

A similar situation occurred after the closing of the American Viscose Corporation textile plant in Roanoke, Virginia in 1958.

Five years after the plant closed, a study established that 59.6% of the former Viscose workers were employed, but only 38% in the 45 or older group had found new employment.

The difference in earnings between the over and under age 45 groups was even greater. Median annual earnings dropped sharply in the year following layoff, except for those who left the area. By the end of the study period, however, earnings of nonmigrants under age 45 had risen from \$3,190 in 1958 to \$4,200 in 1962. However, earnings of nonmigrants age 45 or older who were still working had *declined* from \$3,380 in 1958 to \$2,310 in 1962.

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## CONGRESSIONAL ACTION

It was against this background that Congress decided several years ago to look into the employment problems of older workers. Careful examination of various studies, reports, and testimony, led Congress to the following findings:

— in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

— the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

— the incidence of unemployment, especially long-term unemployment, with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

— the existence in industries affecting commerce of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

To prevent this type of job discrimination, Congress passed the *Age Discrimination in Employment Act* in 1967. The law became effective in June, 1968.

## BASIC PROVISIONS OF ADEA

### PURPOSE

- To prohibit arbitrary age discrimination in employment;
- To promote employment of older persons based on ability rather than age;
- To help employers and workers find ways of meeting problems arising from the impact of age on employment.

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## PROTECTION

Protects persons 40-65 years from age discrimination in employment in such matters as hiring, discharge, leave, compensation, promotions, and other areas of employment.

## COVERAGE

Prohibits discrimination by employers, employment agencies, and labor organizations as follows:

- EMPLOYERS\* of 25 or more persons

It is unlawful for an employer to

1. fail or refuse to hire, discharge, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of age;
2. limit, segregate, or classify workers in any way which would deprive or tend to deprive any individual of job opportunities, or otherwise adversely affect his status as an employee because of his age;
3. reduce the wage rate of any worker in order to comply with the Act.

\* *The term employer does not include Federal, State, or local governments.*

- EMPLOYMENT AGENCIES serving covered employers

It is unlawful for an employment agency to

1. fail or refuse to refer for employment, or in any other way discriminate against anyone, due to age.
2. classify or refer anyone for employment on the basis of age.

- LABOR ORGANIZATIONS with 25 or more members, or which refer persons for employment to covered employers, or which represent employees of employers covered by the Act.

It is unlawful for a labor organization to

1. exclude or expel from its membership, or otherwise discriminate against, any individual because of his age;
2. limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment, any individual in any way which would deprive or tend to deprive any individual of job opportunity, limit job opportunities, or adversely affect his status as an employee or a job applicant because of such person's age;
3. cause or attempt to cause an employer to discriminate against an individual because of age.

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## CLASSIFIED ADS

Help-wanted advertisements which indicate any preference, limitation, specification, or discrimination based on age are in violation of the law.

Uses of such terms as "*boy*," "*girl*," "*young*," or designating a preference for a specific age group such as "age 35-55," may not be used as they indicate the exclusion of qualified applicants simply because of their age.

## EXEMPTIONS

Exempt from the Act are jobs or situations where —

— Age is a bona fide job qualification reasonably necessary to the normal operations of a particular business such as modeling clothes for teen-agers.

— Differentiations are based on reasonable factors other than age such as the use of physical examinations where stringent physical requirements are necessary to perform the work.

— Differentiations are based on the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of the Act. However, no employee benefit plan can excuse the failure to hire any individual.

— An individual is discharged or otherwise disciplined for good cause.

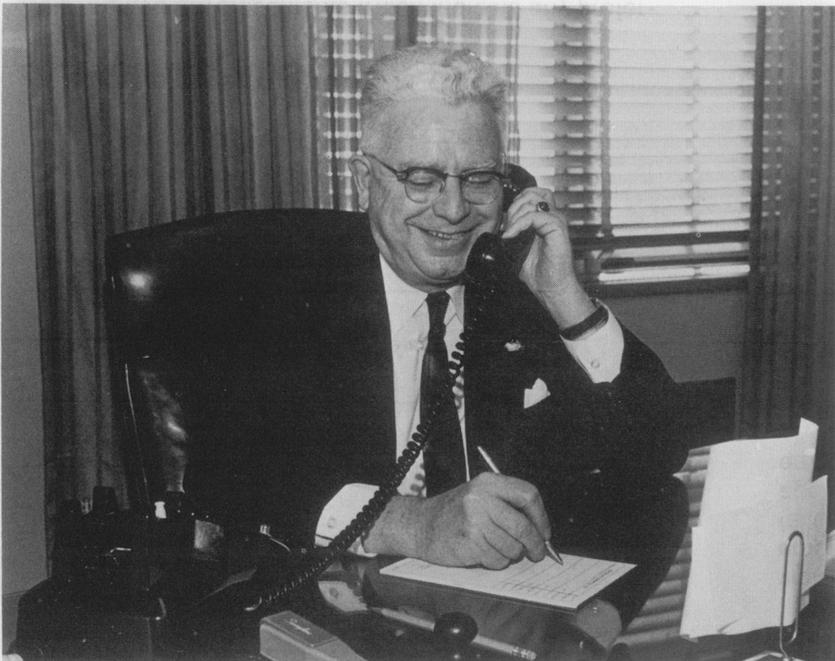
— Federal and State programs, designed to encourage the employment of the disadvantaged, are being implemented, such as the Manpower Development and Training Act and the Economic Opportunity Act.



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## EMPLOYMENT STUDIES ON OLDER WORKERS SHOW...

- 1 Older workers' attendance is likely to be better than that of younger persons.
- 2 Older workers are less prone to change jobs.
- 3 In production jobs, output of older persons up to age 65 compares favorably with that of younger workers.
- 4 In office jobs, there are minimal differences in output.
- 5 Learning ability does not decline significantly with age.



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## **RECORDKEEPING**

Employers, employment agencies, and labor organizations are required to maintain certain records as specified in Wage-Hour Regulations, Part 850 (29 CFR 850), and to make these records available upon request for inspection by authorized representatives of the Wage-Hour Division.

## **POSTERS**

ADEA posters calling attention to the provisions of the law are required to be posted in a prominent place on the premises of employers, employment agencies and labor organizations subject to the Act, where they can readily be seen.

Posters can be obtained free of charge from any local office of the Wage and Hour Division.

## **ENFORCEMENT**

The Act is administered and enforced by the U.S. Department of Labor's Wage-Hour Division. Wage-Hour has approximately 1,000 Compliance Officers located in 400 cities and towns throughout the country to help enforce the Act.

Many ADEA investigations conducted by Compliance Officers are made concurrently with investigations for compliance with the Fair Labor Standards Act or other laws enforced by Wage-Hour.

Compliance Officers are required by law to attempt first to obtain voluntary compliance through informal methods of conciliation, conference, and persuasion. When such efforts fail, the Department of Labor or the individual affected can then resort to court action for compliance. Courts are authorized to grant relief through judgments compelling employment, reinstatement or promotion, and enforcing the liability for amounts determined to be unpaid compensation.

Initial experience under the law has indicated that violations which frequently occur are: (1) the refusal of employers to hire workers 40-65 because of age, (2) the failure of employment agencies to refer applicants in that age bracket, and (3) illegal age preferences in advertising employment opportunities.

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## ADEA CASES

Many instances of age discrimination in employment were corrected in the first year of the law's effectiveness. The following are representative:

— A 47-year old man responded to a newspaper ad for a job as a paint salesman to cover a four-State territory. After an interview with a company representative, he was told he had excellent wholesale sales experience and was otherwise well qualified, but his age was beyond the 45 year age limit policy of the company for hiring in such positions.

He filed a complaint with the Wage-Hour Division. A Compliance Officer investigated the firm, found them in violation of the Act, and presented them with the findings. Company officials agreed to interview the applicant again. After lengthy interviews and a physical examination, he so impressed the officials that they agreed to hire him beginning the following week in a territory even better than the one for which he applied. They also agreed to pay him approximately \$3,000 in monetary damages for lost working time.

Later the Vice President and Sales Manager of the company admitted that instead of *losing* a good man the investigation had helped them to *find* a good man.

— An ADEA complaint was received from an employee who was discharged because he was "*too old*." The firm for which he worked was closing its operations in the Chicago area and transferring to another State. Although he had seniority over several other employees, the employee was among the first workers cut because he was the oldest in the company.

A Compliance Officer obtained evidence from several sources to substantiate the complaint, and obtained \$1,455 to compensate the complainant for time lost until he got another job.

— A 43-year old man applied for a job as a brakeman. The railroad had a maximum hiring age of 35 for brakemen and, consequently, the man was refused employment. He then filed a complaint with Wage-Hour.

As a result of a Wage-Hour investigation, the railroad eliminated all maximum age requirements for all jobs and the man received a \$900 check for restitution from the railroad.

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— A plumber, age 64 and with 35 years of experience, was denied admittance to a union except upon written examination, not required of other members. The union contended his age would create problems under its pension plan. As a result, complainant lost his job with a plumbing contractor.

The matter was brought to the attention of a Compliance Officer who informed the union of its violation of the Act. The union thereupon admitted complainant into its membership without written examination.

— A Wage-Hour investigation of a supermarket disclosed that three snackbar employees, aged 62, 55, and 50, were discharged by their employer on the basis that he thought business would improve if younger workers were employed. In discussing the discharge with one of the employees, the employer said he wanted to put “*young chicks*” to work.

Confronted with the violation, the employer claimed the employees were discharged for inefficiency. Investigation showed that the inefficiency claimed simply could not be substantiated. The employer also was guilty of illegally advertising for replacement employees between the ages of 21-35.

The employer eventually offered reinstatement to the three employees and paid damages of \$4,317 to them.

## INQUIRIES

Questions frequently asked about the Act are:

- Q** Can a worker be retired before age 65 against his wishes?
- A** Yes, but only if such involuntary retirement is authorized by the terms of a bona fide retirement or pension program.
- Q** Are validated employment tests permissible when applying for a job?
- A** Yes. However, such a test must be specifically related to the requirements of the job; fair and reasonable; administered in good faith and without age discrimination; and properly evaluated.
- Q** Is it permissible to give preference to a job applicant who is 41 years old over a 61-year-old applicant solely on age?
- A** No. It is just as unlawful to give preference to one person within the 40-65 protected age group over another as it is to give preference because of age to someone under 40 over someone between 40 and 65.

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- Q** Can an employer allow younger workers to work more overtime hours than older workers?
- A** No. Such an allocation of overtime is illegal unless a statutory exception applies.
- Q** Can an employer refuse to hire a person because he is not receiving Social Security payments?
- A** No. It is illegal for an employer to specify that he will hire only persons receiving Social Security benefits.

## CAUSES OF JOB DISCRIMINATION

What are the causes of job discrimination based on age?

Partly because we are living in a society which places emphasis on youth, older workers find it difficult to obtain better jobs, promotions, and sometimes even lose their jobs when competing with younger workers. Yet, unless this situation changes, today's young people will be confronted with these same job problems when they reach middle age.

Unfortunately, much of the discrimination directed against older workers is due to unfounded and unsubstantiated myths about their physical and mental capabilities. Among the stereotyped statements most frequently heard are:

**Older workers will not be able to stand the strains of a job;**

**Older workers will be ill more often;**

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**Older workers will not be able to learn new techniques as rapidly as younger workers;**

**Older workers are slower on the assembly line.**

*However, Department of Labor and private studies show otherwise. They indicate that:*

**Older workers' attendance is likely to be better than that of younger persons;**

**Older workers are less prone to change jobs;**

**Even though some older workers may have longer spells of illness, they are apt to be ill or disabled less frequently than younger persons;**

**In production jobs, the output of older persons up to age 65 compares favorably with that of younger workers.**

**In office jobs, there were minimal differences in output by age group among 6,000 workers checked in one study.**

**Older workers are highly motivated as evidenced by their job stability and their attitude of job responsibility;**

**Learning ability does not decline significantly with age; Ability to learn at ages 50 and 60 is about equal to that at age 16.**

Supplemented with these facts, the Department of Labor is attempting to remove the unjustified stigmas cast upon the older worker through enforcement and education.

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## ADDITIONAL INFORMATION

Where can you go if you want additional information about ADEA or have a complaint?

Contact your local Wage-Hour office. The Division has offices in many communities throughout the United States. Addresses are listed in the United States Government section of most telephone directories under

Department of Labor  
Wage and Hour Division

If not listed, write: U.S. Department of Labor, Wage and Hour Division, Washington, D.C. 20210.

*All inquiries are kept in strict confidence.* An employer is prohibited by law from discharging or otherwise discriminating against any employee for filing a complaint or participating in a court proceeding against him.

In addition, employers, employment agencies and labor organizations need not fear their establishments will be investigated because they make an inquiry. The Wage and Hour Division is more interested in obtaining compliance with the law than it is in punishing violators or totaling up penalties.

## CONCLUSION

Ralph Waldo Emerson once said, "*A man's years should not be counted, until he has nothing else to count.*"

It is this attitude toward older persons that Wage-Hour wants to convey to as many employers, employment agencies, and unions as possible. False, stereotyped attitudes towards older workers must be eliminated. All persons who are able and willing to work should be given equal opportunity in employment so they will be able to look forward to a life of independence, dignity, and usefulness.

An effective public information program, supplemented by a continuing vigorous enforcement of ADEA by Wage-Hour, should help achieve these goals.

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## WAGE AND HOUR PROGRAMS

The Wage and Hour Division was originally established in 1938 for the purpose of administering and enforcing the Fair Labor Standards Act. The agency's responsibilities have broadened considerably so it now enforces numerous programs some of which affect every working man and woman in America and every establishment where people work.

The major programs are:

- Fair Labor Standards Act
  - Minimum Wage
  - Equal Pay for Equal Work
  - Overtime Pay
  - Child Labor provisions
- Age Discrimination in Employment Act
- Public Contracts Act
- Service Contract Act
- Davis-Bacon and Related Acts
- Federal Wage Garnishment Restrictions of the Consumer Credit Protection Act



**U.S. DEPARTMENT OF LABOR**

WORKPLACE STANDARDS ADMINISTRATION

WAGE AND HOUR DIVISION