



## Job Tips for 50+ Workers

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### Age Discrimination Fact Sheet

Your best defense against age discrimination is information. It's worth your time to learn how the Age Discrimination in Employment Act protects you against age bias in the workplace. You also need to learn about the limits of the law.

The ADEA is a federal law that protects workers age 40 and over from age-based discrimination in hiring and in every other aspect of employment.

#### What the ADEA Covers

- The ADEA makes it illegal for employers, employment agencies, and the federal government to discriminate against employees and job applicants who are age 40 and over and work for employers with at least 20 employees.
- The ADEA also prohibits age discrimination by local and state governments. In addition, it covers employment agencies and labor organizations, such as unions, that have at least 25 members.
- In addition, every state also has a law prohibiting age discrimination in employment. Most state laws apply to employers with fewer than 20 employees.

#### How the ADEA Protects You

The ADEA prohibits employers from discriminating against individuals because of age. This includes decisions about hiring, firing, layoffs, pay, benefits, promotions, demotions, performance reviews, or any other condition of employment.

Specifically, the ADEA says:

- Job ads or recruitment materials cannot mention age or say that a certain age is preferred.
- Employers cannot set age limits for training programs.
- Employers cannot retaliate against workers who file charges of age discrimination or who help the government investigate age-discrimination charges.
- Except for a few very narrow exceptions, employers cannot force employees to retire at a certain age.

An important note about firing: We have what's called "employment at will" in this country. This means an employer can fire you for *any* reason, as long as it's not based on a prohibited factor such as age, race, color, national origin, religion, sex, or disability. There does not have to be a lawful reason; there simply must not be an *unlawful* reason.

## **“Disparate Impact”**

Employees can challenge policies and practices that do not mention age, but in fact fall more harshly on older workers. Example: A school district announces that it will not hire any new teachers with more than 10 years of experience. This type of case is known as one arising out of “disparate impact.”

Policies or practices that have a significantly adverse impact on older workers are unlawful unless the employer can prove that they are based on a “reasonable factor other than age.”

## **What About Benefits?**

- Employers may not deny individuals the opportunity to participate in the employer’s benefit plans because of their age.
- Employers may not reduce benefits based on age, unless the cost of the benefit increases with age. In those instances, the employer must incur the same cost for providing the benefits to older workers as it does for younger workers.

An example is life insurance. The cost of providing life insurance increases with age. Therefore, an employer does not violate the ADEA if it spends the same amount to buy life insurance for younger and older workers, even though the younger workers will receive greater coverage.

## **Filing a Claim**

If you believe you have been discriminated against based on your age, you have the right to file a charge with the Equal Employment Opportunity Commission. This is the federal agency responsible for enforcing the ADEA.

- The EEOC will notify the employer that a charge of age discrimination has been filed against it and will investigate the charge.
- If the EEOC determines that the charge has merit, it will attempt conciliation. This means the EEOC will try to persuade the employer to voluntarily eliminate and remedy the discrimination.
- If conciliation fails, the EEOC could pursue your claim on your behalf. However, the agency does so in very few instances.

## **Important Information About Filing a Suit**

- Keep in mind that you have the right to proceed to federal court to pursue your age-discrimination claim, regardless of whether or not the EEOC finds merit in your claim.
- In addition, you don’t have to wait for the EEOC to conclude its investigation before you file a lawsuit. You need only wait 60 days from after you file the charge. However, if you opt to wait for the EEOC to conclude its investigation, a lawsuit must be filed within 90 days after the agency notifies you that it has terminated the proceedings.

## Know the Deadlines

There are strict time deadlines for filing claims. The EEOC can help you only if you keep to all the time requirements.

- If at all possible, file a charge with the EEOC within 180 days of the discriminatory action or when you first became aware of the discriminatory action, whichever occurred first. In many states, the time limit to file an ADEA charge is extended to 300 days.
- Call the EEOC toll-free at 800-669-4000 or visit [www.eeoc.gov](http://www.eeoc.gov) for information on time limits. Get details on exactly what you have to do to file a charge.

## To File or Not to File?

It takes a strong commitment to pursue an age-discrimination suit. While it's important to know your rights under the ADEA, the law in itself is not the solution to all problems. Consult your lawyer and family before proceeding.

- Legal costs could run into the tens of thousands of dollars, and the legal process could take many months or even years.
- A lawsuit can take an emotional and personal toll on you and your family.
- You may never have your day in court. In those cases where employees have solid evidence of age bias, research shows that employers are inclined to settle outside of court.

### More Resources on Age Discrimination

- To learn more about your rights under the ADEA, other federal discrimination statutes, and your state's discrimination laws, visit **Workplace Fairness** online. [www.workplacefairness.org](http://www.workplacefairness.org)
- To find a lawyer, visit the Web site of the **National Employment Lawyers Association**, a group dedicated to protecting workers' rights. [www.nela.org/NELA](http://www.nela.org/NELA)



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