

Fact Sheet

Age Discrimination

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Federal and State Anti-discrimination Laws Prohibit Age-based, Work-related Discrimination

- The ADEA protects individuals 40 years of age or older from employment discrimination based on age. Under this federal law, employers with 20 or more employees may not discriminate against a person because of his or her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.
- With regard to employee benefits, an employer can comply with the ADEA in one of two ways: provide equal benefits to younger and older workers or incur the same cost to provide benefits to older and younger workers. This is called the “equal benefit or equal cost” principle. It allows employers to provide lower benefits to older workers or to base insurance premiums on age if it costs more to provide the benefit to older workers.
- Federal prohibitions against other types of employment discrimination (i.e., based on race, color, religion, sex, or national origin) emanate from a different statute—Title VII of the Civil Rights Act of 1964. While the ADEA is modeled on that legislation, it does not provide the same level of protection to workers.¹
- Every state has its own age discrimination statute and several state statutes provide even broader protection than the ADEA.

Evidence Suggests That Age Discrimination Continues

- The federal Equal Employment Opportunity Commission (EEOC) enforces federal laws against employment-based discrimination. More than 20 percent of charges filed with the EEOC over the past 20 years—nearly 20,000 annually, nationwide—have included an age discrimination claim.²
- The number of age discrimination charges filed with the EEOC increased substantially as the economy weakened with the Great Recession, and the number of charges filed has not yet returned to pre-recession levels. (See exhibit 1.)
- Workers ages 45–74 report that age discrimination persists in the workplace. Two-thirds say they have seen or experienced age discrimination on the job. Of those, 92 percent say it is very or somewhat common.³ Among people in this age group, women are more likely than men to say that they have seen or experienced workplace age bias (72 percent vs. 57 percent). (See exhibit 2.)

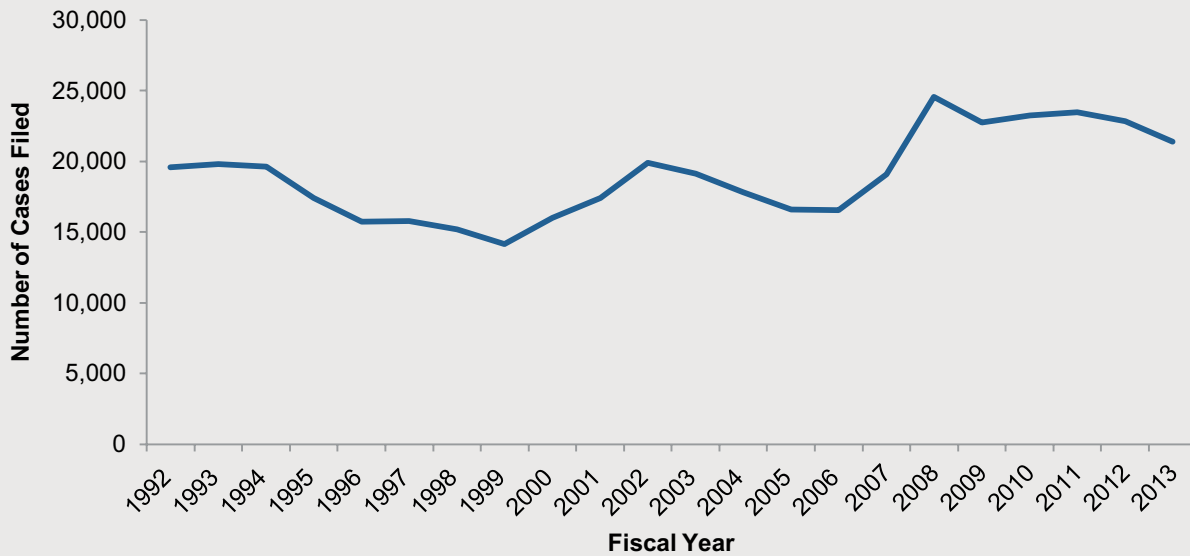
Prior to the passage of the Age Discrimination in Employment Act (ADEA) in 1967, many employers overtly refused to hire older workers or forced them to retire. For nearly half a century, the ADEA has deterred and remedied unfair treatment of older workers. Yet evidence suggests that discrimination against older workers remains a problem.



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EXHIBIT 1

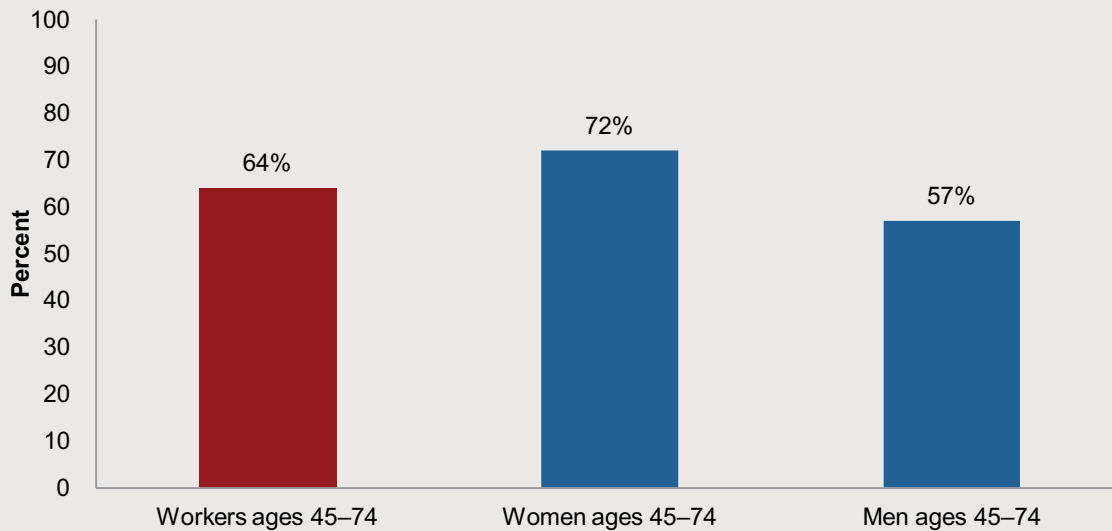
Number of Age Discrimination Cases Filed with the Equal Employment Opportunity Commission, FY1992-FY2013



Source: Equal Employment Opportunity Commission, Enforcement and Litigation Statistics. <http://www.eeoc.gov/eeoc/statistics/enforcement/index.cfm>.

EXHIBIT 2

Percent of Older Workers Who Think Workers Face Age Discrimination in the Workplace Responses for Workers Ages 45-74 by Sex



Source: AARP, "Staying Ahead of the Curve 2013." Survey of workers ages 45-74. "Based on what you have seen or experienced, do you think workers face age discrimination in the workplace today?"

- Proving discrimination in hiring decisions is very difficult, but researchers have detected discrimination based on age in employers' job applicant screening processes. One researcher sent resumes in response to advertised job openings, with the resumes differing with respect to the applicant's age (as reflected by high school graduation date). Younger workers (ages 32–49) were 40 percent more likely than older workers (ages 50 or older) to be called for an interview.⁴

Proving Age Discrimination in Court Has Become More Difficult as a Result of a 2009 Supreme Court Decision

- In *Gross v. FBL Financial Services, Inc.*, 557 US 167 (2009), the Supreme Court held that an older worker suing under the ADEA must satisfy a higher standard of proof than a plaintiff suing for employment discrimination based on race, color, religion, sex, or national origin (i.e., the protected classes under Title VII of the Civil Rights Act of 1964).
 - When suing under Title VII, workers must prove that race, color, religion, sex, or national origin was *one* of the factors behind their treatment. In contrast, workers suing under the ADEA must now prove that age was a *determinative* factor behind their treatment.
- Plaintiffs' attorneys have told AARP attorneys that *Gross* and other pro-employer Supreme Court ADEA cases have imposed significantly higher obstacles, making them less likely to file or appeal age discrimination cases in federal court.

Other Forms of Age Discrimination Deserve Attention

Requiring Birthdate or Graduation Date on Job Applications

- With the proliferation of online job application systems, employers can easily evade the ADEA by requiring birth or graduation dates. EEOC regulations state that asking for birth or graduation data does not necessarily violate the ADEA but will be closely scrutinized to ensure that the data are being used for a permissible purpose.

Mandatory Retirement

- The ADEA generally prohibits employers from establishing maximum hiring or mandatory retirement ages for their workers. Certain professions are exempt from the law, such as air traffic controllers, airline pilots, and public safety workers.
- While the ADEA initially seemed to eliminate most age-based hiring limits and retirement mandates, the practice seems to have returned in a variety of occupations. Evidence has emerged of privately held partnerships (e.g., law, medicine, and accounting firms) requiring retirement at age 65 or 70 (or younger). Concern arises on behalf of those directly affected as well as older job applicants since managers may be unwilling to hire older workers who are close to the mandatory retirement age.⁵

- 1 For example, through its rulings the Supreme Court has made it easier for employers to justify a discriminatory impact under the ADEA: They need only show a ruling was based on a "reasonable factor other than age," rather than the more stringent requirement under Title VII to prove that a practice was justified by "business necessity."
- 2 Equal Employment Opportunity Commission, Enforcement and Litigation Statistics, accessed at <http://www.eeoc.gov/eeoc/statistics/enforcement/index.cfm>.
- 3 AARP, "Staying Ahead of the Curve 2013: AARP Multicultural Work and Career Study Perceptions of Age Discrimination in the Workplace—Ages 45–74," accessed at <http://www.aarp.org/work/on-the-job/info-01-2013/staying-ahead-curve-work.html>.
- 4 Joanna N. Lahey, "Do Older Workers Face Discrimination?" Center for Retirement Research, July 2005, Issue Brief Number 33, accessed at http://crr.bc.edu/wp-content/uploads/2005/07/ib_33.pdf.
- 5 Michael Cohn, "Concern Mounts about Mandatory Retirement Age Policies at Accounting Firms," *Accounting Today*, June 28, 2013, accessed at <http://www.accountingtoday.com/news/Concern-Mounts-Mandatory-Retirement-Age-Policies-Accounting-Firms-67290-1.html>.

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