

## The ADEA is getting its AARP card and some special attention from the EEOC



Miriam L. Rosen | Friday, July 21, 2017

The Age Discrimination in Employment Act turns 50 this year (on December 15 – just in case you want to send a card). The EEOC is already celebrating by holding a theme party...ah, public meeting entitled, "The ADEA @ 50 - More Relevant Than Ever."

The ADEA is the federal law that prohibits age bias against employees age 40 and over. In toasting the ADEA at the public meeting, acting EEOC chair Victoria Lipnic noted that, "[o]utdated assumptions about age and work deprive people of economic opportunity and stifle job growth and productivity. My hope is that 50 years after the enactment of the Age Discrimination in Employment Act ("ADEA"), we can work together to fulfill the promise of this important civil rights law to ensure opportunities are based on ability, not age."

Lipnic had previously stated that tackling age discrimination would be one of the EEOC's key priorities under her interim leadership and that the ADEA "should get a high profile this year."

It makes sense. Although more than 50 percent of the workforce is over 40, and a 2017 AARP survey reported that "nearly two-thirds of workers age 55-64 report their age as a barrier to getting a job."

### **Ensure your business practices are ADEA compliant**

With this EEOC focus in mind, employers should ensure that their practices are ADEA compliant:

- **Know what the law requires:** The ADEA prohibits age discrimination against applicants and employees

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who are age 40 or older in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits and any other term or condition of employment.

- **Don't make assumptions about what an applicant or employee can or can't do based on age.** Workers age 40 and over shouldn't get better or worse treatment based on age. Employers should set clear performance expectations and standards of conduct and hold all employees accountable regardless of age. As a corollary, don't make assumptions about physical or mental abilities based on age.
- **Understand the requirements to release ADEA claims.** The ADEA was amended by the Older Workers Benefit Protection Act in 1990 to require some specific provisions related to the release age discrimination claims. These provisions include a 21 day period to consider release terms in an individual release agreement and a seven day period to revoke after signing. In addition, in a group reduction situation, an agreement must provide 45 days to consider the release agreement, seven days to revoke, and must include notice of the ages of workers who were considered for termination and were and were not terminated.
- **Train managers and supervisors.** A frequent allegation in age discrimination cases is that a manager or supervisor made age-related comments. These types of comments – “we need some young blood,” “hey gramps” or “he's a dinosaur” – often become evidence of the supervisor/manager's alleged age bias. To do their jobs and limit risk, managers and supervisors must understand what the ADEA covers, to make decisions without regard to age, and that their words can have costly consequences.
- **Value age diversity in the workplace.** Diversity comes in all shapes, sizes – and ages. As a commenter at the EEOC's public meeting noted, “numerous negative stereotypes about older workers still exist... These stereotypes can also prevent organizations from realizing the wealth of positive assets, such as wisdom, experience, and reliability that older workers can bring to the table.”

The EEOC has made clear that age issues will be a priority this year. If you want to celebrate the ADEA's 50<sup>th</sup>, send a card – but make sure you don't have to include a check to settle an age discrimination claim.

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[Team member bio](#)