Age Discrimination

Megan M. Hudson
Associate Assistant Attorney General
Civil Rights Section
The first senior moment.
True or False

- Race discrimination has more severe penalties under Ohio’s anti-discrimination laws than age discrimination?
False!

- Age and race discrimination are equally unlawful under Ohio’s anti-discrimination laws and carry the same penalties.

- Why do people “joke” about age?
Agenda

• Introduction
• Stereotypes
• The law
• Layoffs
• Waivers
• Exceptions
• Questions
• Best Practices
Introduction

• Who am I?

• Why do you care?

• Is age discrimination really a problem?
EEOC Age Related Charges

• In 2014 the EEOC received 20,588 charges that alleged age discrimination.

• The EEOC collected $77.7 million in monetary benefits as a result of settlements and successful conciliations.
Age Distribution of Ohio’s Labor Force is Changing

Source: Ohio Department of Job and Family Services
Bureau of Labor Market Information
Stereotypes

- “You are probably going to retire soon...”
- “Older workers just don’t do well with technology.”
- “Older workers don’t adapt well to change...”
The Law

- Ohio’s anti-discrimination law and the federal Age Discrimination in Employment Act (ADEA) prohibit discrimination based on age.
Too Young?

• It is not against the law to discriminate against someone because they are under the age of 40.
When is an employee protected?

• All aspects of employment, including:
  – Apprenticeship programs
  – Job notices and Advertisements
  – Pre-Employment Inquiries
  – Benefits
True or False?

• Firing an employee who is over the age of 40 is illegal.
False

- It is not unlawful to fire an employee who is over the age of 40, because being over the age of 40 is not an excuse for:
  - Poor work performance
  - Poor attendance
  - Punching your boss
  - Etc., etc., etc...
True or False?

• Firing an employee because the employee is over the age of 40 is illegal.
True

- Making an employment decision based on the fact that the person is 40 years old (or older) is against the law.
How are Age Discrimination Claims Proven?

• Direct evidence – no inference or presumption needed.

• Indirect evidence – requires an inference that the employee was discriminated against because of their age.
Indirect Evidence of Age Discrimination?

• “I’m sorry, but we’re looking for more energetic, upbeat people to fill this position. Get out.”

• In January, the employer is overheard saying “You can’t teach an old dog new tricks” about an employee. Then, 4 months later the same employee is fired.
Indirect Evidence:
3 Steps to Proving Discrimination

- *Prima Facie* case

- “Legitimate, non-discriminatory reason”

- Pretext
Question
Yes

• No direct evidence, so look to indirect evidence:
  – Steve is at least 40 years old
  – Steve was subjected to an “adverse employment action” (didn’t get the job)
  – Steve met the requirements of the job description
  – Steve was treated differently (i.e. worse) than someone who was “substantially younger” than him.
What is “substantially younger?”

• The term “defies an absolute definition...”
  Coryell v. Bank One Trust Co., 101 Ohio St.3d 175, 2004-Ohio-723

• 7 years may be sufficient (Coryell) but 2 years is not enough.

• No Ohio court has yet held anything less than a 9-year difference to be “substantial”
Layoffs
Waivers and Release Agreements

- Often, if an employer decides to terminate an employee or offers early retirement, the law allows the employer to ask the employee to sign a release, waiving their rights and claims under the ADEA.

- The law is very specific about the procedure that must be followed – consult with legal counsel.
Exceptions
Questions?
Minimizing the Risk of Age Discrimination Claims

- Regularly review policies and practices
- Don’t assume!
- Be aware of age related “joking” in the workplace
How to contact us

Civil Rights Section
614-466-7900
30 E. Broad St., 15th Floor
Columbus, Ohio 43215