

Age Discrimination

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The first senior moment.



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True or False

- Race discrimination has more severe penalties under Ohio's anti-discrimination laws than age discrimination?



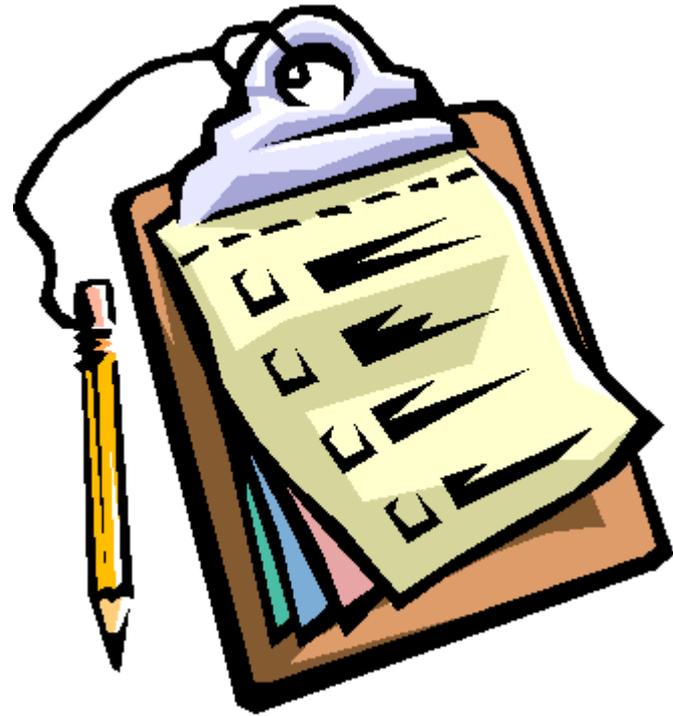
False!

- 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

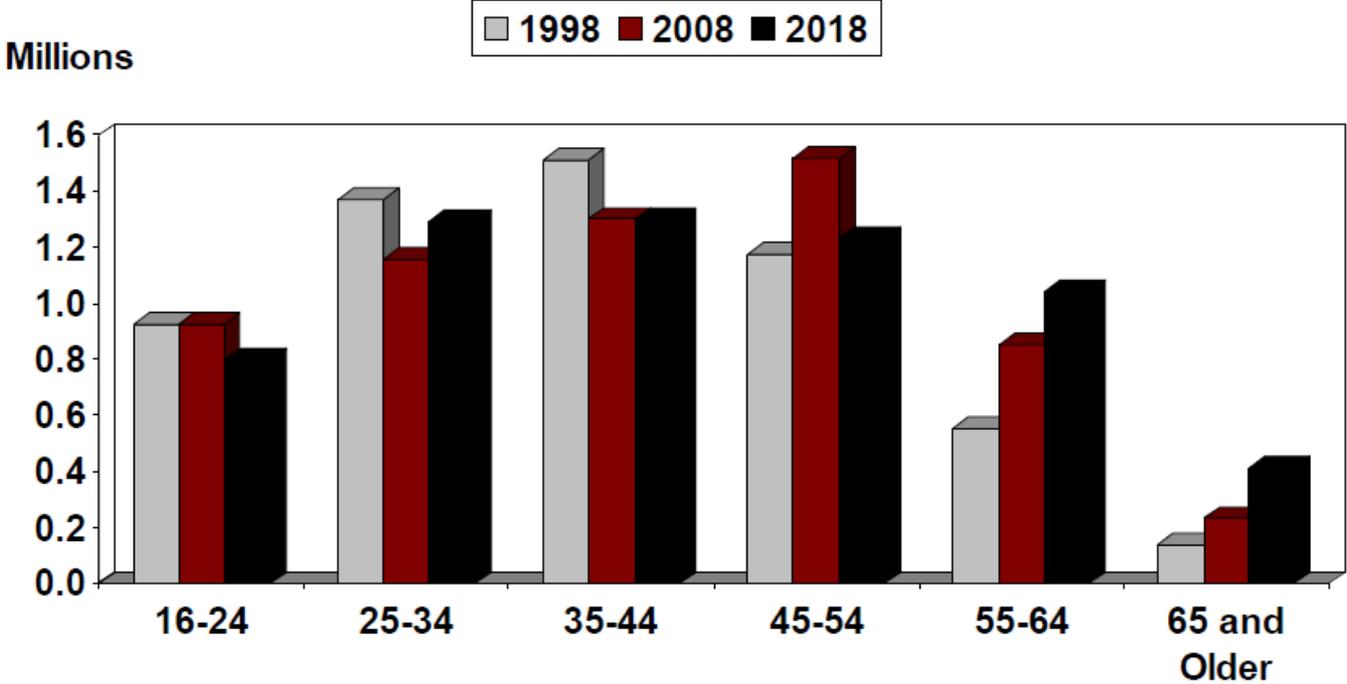
- Who am I?
- Why do you care?
- Is age discrimination really a problem?



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

OLDER WORKERS ARE:



- “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.

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.

Dean v. Chemineer, 2004-Ohio7254 (2nd Dist.2004)

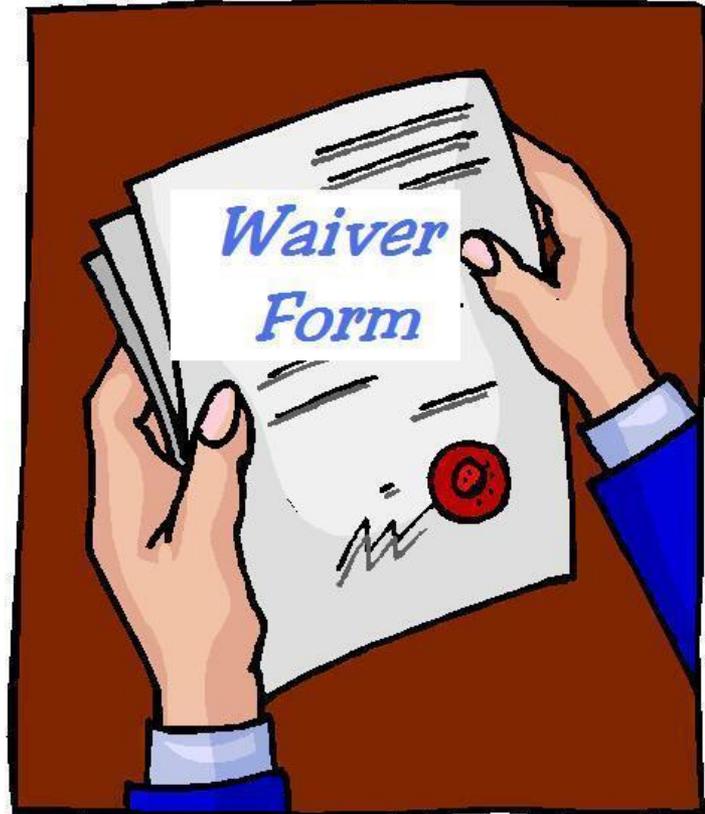
- No Ohio court has yet held anything less than a 9-year difference to be “substantial”

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

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