

## Introduction

The purpose of the Age Discrimination in Employment Act of 1967 (ADEA) is to promote employment of older persons, to prohibit discrimination in employment, and to help employers and workers find ways of meeting problems arising from the impact of age on employment.

In this unit, you will learn about:

- The Age Discrimination in Employment Act of 1967 (ADEA).
- Behaviors that constitute age discrimination.
- Key terms and definitions associated with age discrimination.
- Appropriate supervisory actions given a series of field-specific case studies in age discrimination.

## The Law in a Nutshell



The ADEA prohibits employers from discriminating against any person over 40 because of age. It is unlawful discrimination either to create a benefit or a disadvantage for a person because of age. For example, it is unlawful to tell a person who is 45 years old that you are looking for someone who is more mature. Similarly, telling a person who is 65 years old that you are seeking more youthful people in your workforce is also discrimination.

The ADEA specifically prohibits:

- Statements of age preferences and limitations in job notices or advertisements.
- Discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs.
- Denial of benefits (including health care benefits) to older employees.
- Discharging or requiring retirement of any person because of age.
- Harassment because of age.

## The Law in a Nutshell (Continued)



Other examples of age discrimination include:

- Identifying performance problems only after an employee reaches a certain age.
- Suggesting that an employee sign up for Social Security or take early retirement.
- Taking action against older employees with supposedly poor performance records (e.g., demoting or discharging them), but not taking similar action against younger employees with bad or worse records.
- Placing unreasonable standards on older employees that make it difficult or impossible to meet the demands placed on them.
- Requiring employees over a certain age to take tests or physical examinations.

The EEOC often considers seemingly innocuous statements or assumptions as evidence of age harassment. Some examples include: "Older employees are more accident prone than younger employees," and "Older employees are less flexible or unable to learn new tasks." Making older employees the butt of jokes or barbs because of age, poor health, or other medical problems, while younger employees' illnesses are overlooked, may also be determined discriminatory.

## Key Definition



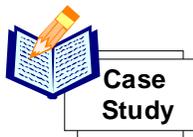
- **Bona Fide Occupational Qualification (BFOQ)**. Under the ADEA, you cannot discriminate against any person over age of 40 unless age can be shown to be a BFOQ (e.g., many police departments and the Secret Service in the U.S. Department of State have age cut-offs). Otherwise, any personnel decisions based on age must be strictly job-related.

## Case Studies in Age Discrimination

### Instructions:

*On the following pages are a series of real-world situations that you are likely to encounter on the job. After you complete each case study, review the appropriate answer(s) that follow each case study.*

- 4 *If your answer is correct, review the learning points associated with the case study and move on to the next case.*
- 4 *If your answer is wrong, review the relevant material indicated, and try again. In addition, review the Director's Policy on Equal Opportunity and Affirmative Employment (no. 3-93) in Appendix A.*



### CASE STUDY ONE: GOOD INTENTIONS

You are a supervisor working on a large-scale disaster caused by a category four hurricane. Because this is a large-scale disaster, you have two inspectors. One of your staff, named Maurice (a DAE), is a very experienced 69-year-old man. He has not worked on a disaster operation for almost a year because he had triple bypass surgery following a heart attack and decided to take time off to ensure he was healthy before working again. This is his first disaster since surgery and he appears healthy and eager to work.

The conditions in the field are quite stressful. The weather has been extremely hot and humid; there has been a great deal of flooding. The field staff (many of whom are younger than Maurice) are run down and suffering from colds, viruses, and lack of sleep. You are very concerned about sending Maurice to the field. Your brother had triple bypass surgery two years ago and when he returned to work he had another heart attack, almost certain to be caused by the stress and strain of his job.

What should you do? (Circle the most appropriate responses below.)

- a. Send Maurice to the field. He is old and wise enough to make his own decision.
- b. Discuss the matter with Maurice. Tell him your concerns and ask him what he would like to do and reach a mutual decision on where Maurice will work.
- c. Assign Maurice to a "desk job."

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## Case Studies in Age Discrimination (Continued)



### Answer to Case Study One: Good Intentions

- Answer A: Send Maurice to the field. This answer is correct from an EEO or ADEA standpoint. By treating Maurice like everyone else, you are not discriminating against him because of his age. However, your concerns about his health may be valid.
- Answer B: Discuss the matter with Maurice. This answer is correct. It would be important, however, to discuss health concerns with everyone, because it appears that many staff members are affected.
- Answer C: Assign Maurice to a desk job. This answer is incorrect (unless Maurice agrees to reassignment to a desk job).

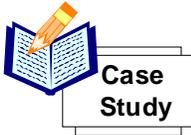
*If your answer was incorrect, turn to pages 2.2 and 6.1 through 6.2 for review.*

### Learning Points



- 4 Check out your assumptions about a person before taking any action.
- 4 Make staffing and personnel decisions based on known employees' skills and abilities rather than on your assumptions about their health.
- 4 Treat all workers as if they are similarly capable. In this case, Maurice may be in better shape than some of his younger colleagues. Conditions have the potential for being stressful for all employees; therefore, you should talk to all employees.
- 4 Avoid forming and acting on generalized impressions you have about a group of people.

## Case Studies in Age Discrimination (Continued)



### **CASE STUDY TWO: POOR SUPERVISION TURNS INTO AN EEO COMPLAINT**

It is widely known that a supervisor and one of his employees who have worked on several disasters together do not get along well. They have very different personalities and work styles. At the end of the last disaster, the supervisor presented the employee with a satisfactory work performance evaluation on the last day of work. Both the supervisor and the employee had plane reservations to return home later that day.

In the "Comments" section of the performance evaluation, the supervisor wrote that the employee had an attitude problem and had an inability to take directions. The employee had no prior feedback or warnings about his performance or the evaluation.

The employee objected strenuously to the evaluation and wanted the offending language in the "Comments" section deleted. The employee asserted that the action on the part of the supervisor was a result of clashes that had occurred between them in previous disasters. The supervisor denied this, stating that the evaluation was based on the employee's performance in the current disaster.

The employee took the evaluation to the Section Chief and discovered that the Section Chief had been fully involved in crafting the language that appeared in the "Comments" section of the evaluation form.

The employee then turned to the Equal Rights Officer (ERO). The employee told the ERO that she was not claiming any kind of discrimination. The ERO offered to mediate the dispute, even though it appeared to be purely a "management" (as opposed to discrimination) dispute. The mediation was unsuccessful. Neither party was willing to yield and there was a lack of time in which to act because both parties were returning home that day.

Later, the supervisor learned that the employee had filed an age discrimination complaint.

How could the supervisor have kept this situation from occurring in the first place?

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*Go to page 6.6*

## Case Studies in Age Discrimination (Continued)

### Answer to Case Study Two: Poor Supervision Turns Into an EEO Complaint



How could the supervisor have kept this situation from occurring in the first place? Your answer is correct if it contains these elements:

- The supervisor should have been giving the employee ongoing performance feedback.
- If the employee had performance problems, the supervisor should have given the employee warnings and an opportunity to change.
- Written documentation should have been made of the warnings, and copies given to the employee.
- Well before the time of check out, the employee should have been told what the evaluation comments would contain.

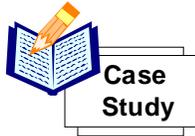
*If your answers were incorrect, return to pages 2.2, 2.5, 2.7, 2.8, and 6.1 through 6.2 for review.*

### Learning Points



- 4 Give ongoing performance feedback. If work performance is a problem, give feedback as early as possible so the employee has an opportunity to improve his or her performance.
- 4 Keep feedback behaviorally specific. Avoid general and ambiguous terms such as “attitude problem.”
- 4 Understand that poor management and supervision can turn into EEO complaints.
- 4 Failure to provide performance feedback or counseling and lack of written documentation makes the information in the performance appraisal appear arbitrary, lending credence to the view that the employee was discriminated against.

## Case Studies in Age Discrimination (Continued)



### CASE STUDY THREE: WHY AM I THE FIRST TO GO?

Gerald, an experienced DAE, approaches the ERO and alleges that he has been discriminated against. He states that he was the first person to be released in his section during the downsizing process. The DAE is 65 years old and claims that he has much more experience than his much younger co-workers who were kept on.

Could Gerald have a legitimate EEO complaint? Why or why not?

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How could Gerald's supervisor have prevented this situation from occurring?

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*Go to page 6.8*

## Case Studies in Age Discrimination (Continued)



### Answer to Case Study Three: Why Am I the First To Go?

Could Gerald have a legitimate EEO complaint? Your answer is correct if it contains these elements:

- Yes, Gerald can claim age discrimination if the younger workers were less qualified than he.

How could Gerald's supervisor have prevented this situation from occurring? Your answer is correct if it contains these elements:

- The supervisor should have established a downsizing plan that clearly specifies changes that will occur in the workforce and communicated this plan to all employees. The plan should identify legitimate business reasons for downsizing.
- Gerald's supervisor should have considered the EEO ramification of letting Gerald go before the younger workers.

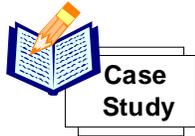
*If your answers were incorrect, turn to pages 2.2, 2.4, and 6.1 through 6.2 for review.*

### Learning Points



- 4 It is unlawful to treat people over 40 differently than those who are younger.
- 4 When downsizing a disaster operation, give careful consideration to the EEO implications of letting people go. Ask yourself if you are maintaining the most qualified individuals and if your workforce reflects a diverse balance as you make downsizing decisions.
- 4 Explain to employees the reasons why you are releasing them. If you cannot provide a good reason, then you should reconsider your decision because it may be based on improper criteria (i.e., age bias).

## Case Studies in Age Discrimination (Continued)



### CASE STUDY FOUR: UNDERUTILIZED

The hurricane that hit the coast caused a catastrophic disaster. You, the manager, have been extremely busy and have not had a lot of time to get to know your staff. However, you have noticed over the last week that an older man, named Gerald, a DAE, never seems to be working. You approach Gerald and ask casually what he is working on. Gerald says "Not much" and then complains that he has been on the disaster for over 2 weeks and has been given practically no assignments from his supervisor. You also discover that he is a retired award-winning newspaper writer.

When you approach Gerald's supervisor, the supervisor tells you, "He is terrified of computers. I don't have time to teach him, and we do not have time to provide secretarial services for him."

How should the manager handle this situation?

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*Go to page 6.10*

## Case Studies in Age Discrimination (Continued)



### Answer to Case Study Four: Underutilized

How should the manager handle this situation? Your answer is correct if it contains these elements.

- Investigate to determine if Gerald really is “terrified” of computers (i.e., is the supervisor making false assumptions about Gerald’s abilities?).
- If typing on a computer is an essential function of the job required of all employees, recommend rotating him out and have a replacement sent in.
- If computers are an essential function of the job, contact the DFTO to arrange training for Gerald.

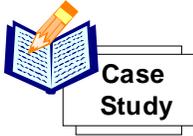
*If your answers were incorrect, turn to pages 2.2 and 6.1 through 6.2 for review.*

### Learning Points



- 4 Recruit and retain people who can perform essential job functions. It’s bad management—and a potential EEO problem—to assign employees tasks they cannot perform.
- 4 Be sure that employees have the right knowledge, skills, and abilities to perform.
- 4 Managers and supervisors should be resourceful and flexible in working with employees.

## Case Studies in Age Discrimination (Continued)



### **CASE STUDY FIVE: THERE IS MORE THAN ONE WAY TO DISCRIMINATE HERE**

A 63-year-old man applies for an administrative position in the DFO that will require extensive word processing. During the job interview, you find that he retired from the U.S. Air Force several years ago as a clerk-typist. He demonstrates records that indicate he has excellent typing skills. He has also taken word processing computer courses since his retirement.

During the interview, he states that he is now looking for something to keep him busy after retirement.

You are concerned whether he will be able to make a satisfactory adjustment from the "male" military environment to the DFO administrative office that is staffed mostly with young women. You also wonder how he will hold up in the modern world of word processing.

What should you do? (Circle the most appropriate responses below.)

- a. Reject his application because it is obvious that he will not fit in with the young women in the office.
- b. Suggest that he apply for a different job.
- c. Give him the job.

*Go to page 6.12*

## Case Studies in Age Discrimination (Continued)

### Answer to Case Study Five:

#### There Is More Than One Way To Discriminate Here



- Answer A: Reject his application...he will not fit in. This answer is incorrect because his disqualification is not based on any job-related criteria. The applicant would have legitimate grounds for filing an EEO complaint based on age and/or sex.
- Answer B: Suggest that he apply for a different job. This answer is incorrect and could also lead to an EEO charge. While your intentions may have been good (i.e., to save him the strain or pressure of what you feel will be an unsuitable working environment), your actions would be unlawful.
- Answer C: Give him the job. This answer is correct. The only factor that you should consider in this case is the candidate's qualifications for the job.

*If your answer was incorrect, turn to pages 2.2 through 2.5 and 6.1 through 6.2 for review.*

### Learning Points



- 4 Do not base your decisions on assumptions about a particular group(s) a person belongs to.
- 4 All hiring decisions should be based on job-related criteria.
- 4 If you have a qualified candidate, that candidate should receive the job.

### Summary and Transition



In this unit you completed age discrimination case studies. You were also presented with the correct answers to and learning points drawn from each case study. In the next unit, you will complete case studies on discrimination based on disability.