

Age Discrimination Affects All in the Workplace

Here in Montgomery County, a growing number of workers especially those who are 40 or older say there's plenty of age discrimination in the workplace. They trade stories of both subtle and overt acts of discrimination that lead to frustration and desperation. The negative effects of age discrimination don't stop there. They also impact employers and our community overall.

Age discrimination may occur when an employer treats staff or job applicants differently because of their age, and that could occur in hiring, firing, assignment, training, promotion, compensation, working conditions or benefits. And it is certainly not limited to for-profit companies. Employees of nonprofit organizations and government agencies, too, report workplace decisions that appear to be based on age rather than individual merit.

Older jobseekers face special challenges. Some employers tell them they are overqualified (i.e., too old). Others express concern about "their potential fit" with the organization. Some never call back once they see wrinkles or grey hair. And some come right out and say, "You should be enjoying your retirement and your grandchildren!"

People age 40 and older are protected from employment discrimination based on age by the Federal Age Discrimination in Employment Act (ADEA) of 1967. Did you know, however, that Montgomery County's law protects people as young as 18 and the State of Maryland law has no age requirement?

An intergenerational workforce that welcomes people of different ages and stages in life as well as different races, cultures, genders, sexual orientation and other attributes allows employers to stay competitive in an everchanging marketplace. It's ability that matters. Getting proper advice is essential and the Montgomery County Office of Human Rights (OHR) can help you with the technical assistance and needed guidance.

Here is but one example: In *Hiring in the Age of Ageism*, the Society of Human Resource Management (SHRM) describes how proactive many employers have become in trying to snag tech-savvy workers. The sad and illegal thing is that some jump to the conclusion that only Millennials will do. Beware of thinking along those lines and be alert to any shift in hiring managers' vocabulary (or even your own).

Do you or your colleagues say that they value "experienced" and "seasoned" workers or only those that are "high-potential" and "energetic"? The latter terms can be code for "young employees." If that's the case, it is essential to do more than drop the illegal language; it is necessary to change the corporate mindset, and that might require management training as well as organization-wide awareness sessions.

A recent investigation by ProPublica and the Urban Institute found that 56 percent of workers over age 50 report that they were pushed out of their jobs by their employers before they were ready to leave. Some of the comments heard by those employees include:

- "Older workers can't handle the day-to-day demands of the job."
- "They can't be retrained and are too hard to manage."
- "They cost too much money in salary and benefits."
- "They create too much risk of an employment discrimination claim."

Discriminators, who may themselves be older workers, put the organization at legal risk, create ill will and fail to use and recognize a large and valuable class of employees. At the same time, they can damage the employer's brand.

Hiring practices skewed towards the growing generation of Millennials may introduce a whole new set of legal challenges. "Five Legal Lessons for Screening Millennials," another SHRM article, discusses the following Millennial issues:

- **Social Media Search.** Social media in many ways defines this generation but jumping into social media as a way to screen job candidates can be a risky proposition because the information you find might not be legal to use in a hiring context. Information about a candidate's age, religious affiliation, national origin, sexual orientation, marital status or health condition may all be prohibited under state and federal anti-discrimination laws.
- **Digital Native and Age Discrimination.** The term "digital native" is the new code for a recent (young) graduate, and it's popping up in hallway conversations and in recruitment ads, too. Managers use that term to describe a person who was born and raised in the digital age. Instead, competency not age is what's required.
- **Driving Records.** Apparently, Millennials don't like to drive. According to AARP, Millennials drive about 25 percent less than their counterparts did just eight years ago. Unless a clean driving record is a bona fide job requirement, an employer should drop it.
- **Credit.** Credit is a slippery slope, with many states prohibiting use of credit for pre-employment screening except for certain positions such as those with fiduciary responsibilities.
- **Job History and Verification.** According to a recent federal study, Millennials are less likely to have worked during school so they may graduate college without a work history. As a result, countable experience should include volunteer work and potentially personal references.

Interestingly, being fair to Millennials may help older workers, too. Equity is often equitable across generations.

How could OHR help you? Montgomery County established the office to help educate and promote compliance with human rights laws, provide technical assistance to the residents and the marketplace and provides mediation and conciliation services.

For additional information visit the OHR website at www.montgomerycountymd.gov/humanrights.

Together, we can make Montgomery a community for a lifetime.

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