

## Various state, federal laws protect older workers

The average American worker is getting older. According to the Congressional Task Force on Aging, 48 percent of our current work force is over 40 years of age. That's about 69 million workers, and the number is expected to grow to 75 million over the next two years. By the year 2020, one out of every five workers will be 55 years or older.

That's not good news for a lot of business owners out there. Statistically, a worker's productivity peaks around age 35. After that, age-related vascular, metabolic and neurological changes begin to set in. By age 50, the average worker will lose about 25 percent of his or her productivity. As the worker grows older, age-related changes can evolve into disabling conditions that will further impair productivity. According to some estimates, by age 65, four out of 10 workers will be suffering from some type of permanent disability.

Historically, business owners were able to avoid these aging problems by getting rid of their older workers. They did this in various ways.

A lot of owners adopted mandatory retirement programs that required workers to retire at a certain age. Both my grandfathers lost their jobs because of these programs. However, some owners didn't want to wait for a retirement age. They implemented more aggressive measures to terminate workers in their 40s and 50s.

Some large industrial concerns used targeted layoffs. Worse yet, others instituted unrealistic production quotas or unnecessary job qualifications to disqualify workers from their jobs. As a result of all these measures, thousands of workers found themselves out of a job simply because they were getting old. And that made a lot of people mad. They demanded that Congress do something about this type of "age" discrimination.



**Tom Keuler**

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### **Federal changes**

At first, Congress was unable to reach a consensus on whom to protect. That lack of consensus kept age discrimi-

# LAW: Older workers entitled to protection

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nation out of the Civil Rights Act of 1964. However, as a result of President Johnson's "Older American" speech on Jan. 23, 1967, Congress passed the Age Discrimination Employment Act of 1967. Under the ADEA, employers are prohibited from discriminating against any worker ages 40 to 65. Congress subsequently increased the age cap to 70 in 1978, then deleted the age cap in 1986. As the law now stands, the ADEA applies to all workers over the age of 40.

But the ADEA does contain two exceptions that allow business owners to terminate an older worker for age-related reasons.

■ The first exception applies to employment situations where age is a "bona fide occupational qualification." These cases usually involve workers who are employed in positions of public safety, such as police officers, firefighters and airline pilots. In these situations, public safety trumps age.

■ The second exception applies to employment situations where an owner takes an adverse employment action that is based on "reasonable factors other than age." This exception recognizes an owner's legitimate need to operate in accordance with generally accepted business practices. Under this exception, an owner is permitted to demote or terminate older workers for legitimate business reasons that may have some relation to age. This exception allows owners to enforce reasonable job requirements and to carry out nondiscriminatory layoffs.

## Other protection

Older workers can be entitled to employment protection under other federal and state laws. If an older worker is a member of a protected class, he or she will be eligible for protection under Title VII of the Civil Rights Act.

Furthermore, if an older worker is disabled, there is protection under

the Americans With Disabilities Act. These laws can offer more protection than provided under the ADEA, especially in cases of disability. A business owner may very well find himself providing a reasonable accommodation to enable an older worker to keep his job.

Should an owner violate an older worker's rights under the ADEA, the owner will be required to make the worker "whole." Under the Act, a court is authorized to grant "legal ... relief as may be appropriate." Under this provision, a court can award a variety of damages, including reinstatement, back pay, vacation pay, retirement benefits, retroactive seniority, attorney fees, and in some cases, punitive damages.

If an owner wants to settle an ADEA claim, he must follow a specific settlement procedure. Generally, settling ADEA claims is more complicated than other civil rights claims. Under the ADEA, the owner must give the worker 21 days to consider a proposed settlement agreement. In addition, once the worker signs the agreement, he has a period of seven days to revoke his acceptance.



One thing for sure, older workers are here to stay. But when all is said and done, that may not be such a bad thing. From what I have read and seen, an older worker has many virtues that many younger workers don't have — loyalty, appreciation, dedication and experience. Though business owners may have to pay a little more for a little less productivity, they may very well get a good bargain in the end.

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