

Case Studies from Express



Age Discrimination

Learning from other companies' mistakes can help you know what to avoid when it comes to age discrimination. These case studies share real-life examples of mistakes that managers have made regarding age discrimination. By knowing these pitfalls and following these tips provided by Express Personnel Services, you can be assured that you understand age discrimination laws. Contact Express Personnel for more information on this and other HR issues.

Job Applicant Awarded \$50,000 in Compensatory Damages

An applicant was a 59-year-old man with over 24 years of experience in car sales. When he applied for a job as a salesman at a car dealership, he was told no one was available to interview him, so he left his application with the cashier. The company never interviewed him and instead hired seven younger sales people. The applicant filed a discrimination charge against the dealership for age discrimination since the application form asked for the date of his discharge from the military and he indicated he was discharged in May 1959. The applicant's theory at trial was that this information alerted the company to the fact that he was well over 40 years of age.

The applicant also presented evidence that suggested the managers were apt to discriminate on the basis of age. He established at trial that the company's general manager and the person with ultimate hiring authority at the dealership often noted the ages of employment applicants by hand on their applications, in a section of the application that he admittedly used to make notes of information he considered relevant to his hiring decision. The general manager testified that he was not aware that it was illegal to consider age in making hiring decisions. A second manager admitted at trial that he looked for applicants who were "bright, young and aggressive."

The company argued that its employment applications clearly state that "the Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age" and argued that this statement proved the company made a good-faith attempt to comply with the ADEA. However, in this case, the evidence was more harmful than helpful. The jury concluded that printing this statement on the application, but then making no effort to train hiring managers about the ADEA, proved the company knew what the law required but was indifferent to whether its managers followed that law.

What can we learn? There are several things we can learn from this scenario. First, you should always be sensitive to the questions you ask on your employment application to ensure you are not encouraging unnecessary age-related information. Also, you never want to deny an individual access to the application process based on their age or any other protected characteristic, and you definitely don't want to make comments on an individual's application regarding such characteristics. Lastly, it is important that all employees with hiring authority be trained on their responsibilities under the law. These employees act as an agent on the company's behalf and therefore the company could be liable for their mistakes if no effort is made to train them.

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Employee Wins Retaliation Case

A former president for a financial company claimed he was forced out of his job at age 62 because the company wanted a younger image. The employee applied for a different position as president at the parent company, but he was passed over for a 35-year-old with no experience in the financial industry. Shortly after this decision, another executive made offensive age-related comments, and the individual was replaced after he complained about age discrimination. Although the jury found that the company had not discriminated against the individual when they passed him over for the position of president, the jury did conclude that the company violated the Age Discrimination in Employment Act (ADEA) when it retaliated against the employee and fired him immediately after he complained of age discrimination.

What can we learn? First of all, it is important that you have a company policy prohibiting harassment based on any protected characteristic (such as age, race, sex, religion, disability). Next, you must have a process in place to investigate complaints regarding harassment. Terminating an individual who complains of harassment without conducting a proper investigation exposes employers to retaliation claims in addition to discrimination claims.

Company Successfully Defends Pay Raise Plan

The City of Jackson, Mississippi, was accused of violating the ADEA when it adopted a new pay plan. The City granted raises to all police officers and dispatchers to increase the starting salaries up to the regional average in an attempt to attract and retain qualified employees. Under the new plan, officers with less than five years of service received a greater percentage than those with more seniority, most of whom were over the age of 40. A group of these officers filed suit under the ADEA claiming they were adversely affected by the pay plan because of their age. The City successfully countered the claim by showing the purpose of the pay plan was to increase salaries of recently hired employees to be competitive with comparable positions in the surrounding market.

What can we learn? Employers must guard against policies or actions that have a discriminatory impact on employees in a variety of protected categories, including those covered by the ADEA. Employers can avoid liability by showing that the difference in treatment is based on "reasonable factors other than age."