



## Age Discrimination

By studying other companies' age discrimination violations, you can learn what mistakes to avoid and what steps you should take to follow the age discrimination laws in your workplace. In addition, Express Personnel Services is prepared to help you learn about this and other human resource issues. Contact your local Express office today for more information on age discrimination and to find out how we can help solve your HR challenges.

### Age Discrimination in Employment Act (ADEA)

The Age Discrimination in Employment Act (ADEA) prohibits companies with at least 20 employees from considering age in employment decisions (hiring, compensation, benefits, promotions and training) for persons age 40 or older, unless a specific exception to the law applies. Although most states follow the ADEA's guidelines, a few states have enacted stricter laws concerning age discrimination (example: New York prohibits discrimination against employees or applicants age 18 or over).

### Avoiding Age Discrimination

To avoid discriminating against an individual based on age, you should make employment decisions based strictly on an individual's knowledge, skills and work experience. You should avoid assuming that older workers are not qualified. Make sure your advertisements do not imply a specific age, do not ask about a candidate's age or date of birth during the interview process, make sure your harassment policy addresses harassment based on age, and be cautious when making layoff/downsizing decisions.

### Age Requirements for Certain Jobs

Occasionally age is reasonably necessary for a specific job. In these unique cases a "bona fide occupational qualification" (BFOQ) may apply to allow an employer to specify an age limit. To establish a BFOQ, the employer must show three things:

- The age requirement is reasonably necessary to the nature of the job
- All (or the majority) of all individuals who are excluded from the position are unable to perform the job safely or efficiently
- Excluded individuals have a disqualifying trait that can only be explained through age-based qualifiers

### Legal Consequences for Violating the ADEA

The Equal Employment Opportunity Commission (EEOC) oversees enforcement of the Age Discrimination in Employment Act. Remedies imposed by the EEOC or courts for violations of the Act can include hiring, reinstatement or promotion; compensatory damages in the form of back pay for lost wages and benefits or front pay accompanying reinstatement; and punitive damages for intentional discrimination.