



CHAPTER 4: AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)
29 U.S.C. §§ 621-634
EEO LAW BASICS

{AS OF: Spring 2006}

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

visit TBD's [website](#) for the most up-to-date information

TABLE OF CONTENTS | CHAPTER 4 | AGE DISCRIMINATION IN EMPLOYMENT ACT...

ID	Item	Title	Page
D01	4-A	Who is covered under the ADEA?	4
D02	4-B	What is prohibited under the ADEA?	6
D03	4-C	How does a plaintiff establish a prima facie...	8
D04	4-D	What is the burden of proof under the ADEA?	9
D05	4-E	Who May Be Held Liable Under ADEA?	10
D06	4-F	What is required for posting notices under...	11
D07	4-G	What are the standard defenses to an ADEA Claim?	12
D08	4-H	What is required to obtain a waiver of ADEA...	14
D09	4-I	How is the ADEA enforced?	15
D10	4-J	What Relief is Available Under the ADEA?	16
-	n/a	Appendix	17



EEO LAW BASICS

CHAPTER: 4 AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)
29 U.S.C. §§ 621-634

AUTHOR: AMERICAN BAR ASSOCIATION

ITEMS: A through J



4-A | WHO IS COVERED UNDER THE ADEA?¹⁰

1) The ADEA Applies to:

a) Private Sector Employees

Any employee or job applicant age 40 or older working for or applying to work for an employer that is engaged in interstate commerce and employs more than 20 workers.

b) Public Sector Employees Employed By:

(i) Federal government;

(ii) State and local governments and state agencies;

(iii) State colleges and public school districts;

(iv) Employment agencies; and

(v) Labor organizations.

c) U.S. citizens employed overseas by a U.S. corporation or a subsidiary

d) Recipients of federal funds, such as Head Start, recipients of block grants such as health entities, and low income energy assistance

e) Presidential appointees and employees of elected state and local officials

f) Federal government contractors and subcontractors: Executive Order 11141

2) The ADEA Does Not Apply to

a) An employee working for an employer who is a foreign person not controlled by a U.S. employer

b) Uniformed personnel in active or reserve armed forces

c) Independent contractors:

(1) Test for distinguishing independent contractor from employee

(a) "right to control test"

(b) "economic realities test"

d) Partners in a partnership

e) Indian tribes



3) Other:

a) Religious institutions are not given a blanket exemption under the ADEA. Courts apply the test set out in NLRB v. Catholic Bishop, 440 U.S. 490 (1979) on a case by case basis.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*

Footnotes

¹⁰The OWBPA amended the ADEA.



4-B | WHAT IS PROHIBITED UNDER THE ADEA?

1) The ADEA prohibits discrimination against an employee 40 years old or older on the basis of age with respect to any term, condition, or privilege of employment, including, but not limited to hiring, firing, promotion, layoff and recall, transfer, testing, use of company facilities, compensation, benefits, job assignments, classifications of employees, recruitment, fringe benefits, retirement plans, disability leave, training, apprenticeship programs

a) "Employee" is defined as "an individual employed by any employer."

b) "Employer" is defined as "one engaged in an industry affecting interstate commerce with 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year"

c) "Adverse employment action"

(i) To constitute an adverse employment action, the action must significantly alter the terms and conditions of the job.

(ii) An important question is, "Would the employment action which has occurred be viewed as material by a reasonable person?"

(iii) Actions, other than discharge, have been held to violate the ADEA, including:

(a) Reassignment

(b) Age-based harassment

(iv) Not all actions have been held to be a violation, generally including the following:

(a) Adverse employment actions taken for reasons other than age or any other unlawful discrimination motive;

(b) Mere threats to downgrade or to fire;

(c) Lateral transfer; and

(d) Reassignment to specific geographic area



2) Evaluation of employees

a) Employers are to evaluate older employees on their individual merits and not on their particular age.

b) Employers cannot rely on age as a proxy for an employee's other characteristics, such as productivity, stamina, mental acuity but rather must address each of those factors on an individual basis. Hazen Paper Co. v. Biggins, 507 U.S. 604 (1993)

3) Job notices and advertisements may not include age preferences, limitations, or specifications, except in rare circumstances in which age is a bona fide occupational qualification reasonably necessary to the normal operation of the business.

4) Pre-employment inquires may include age or date of birth, but such inquiries are closely scrutinized to make sure the inquiry is made for a lawful purpose.

5) The disparate treatment theory of employment discrimination is also applicable under the ADEA. Hazen, 507 U.S. 604.

6) Employer may not discriminate between two employees over the age of 40 by favoring one on the basis of age.

7) Mandatory retirement is not lawful, except in limited cases:

a) Bona fide executive

b) High policymaking employee

8) Reverse age discrimination is not prohibited.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-C | HOW DOES A PLAINTIFF ESTABLISH A PRIMA FACIE CASE OF AGE DISCRIMINATION IN EMPLOYMENT?

- 1) A plaintiff must ordinarily show he/she was:
 - a) Within the protected age group;
 - b) Adversely affected by the defendant's employment decision;
 - c) Qualified for the position at issue; and
 - d) Replaced by a person outside the protected group.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-D | WHAT IS THE BURDEN OF PROOF UNDER THE ADEA?

1) A plaintiff may proceed by either of two general methods to carry the burden of making his/her case:

a) A plaintiff may attempt to meet burden directly, by presenting direct or circumstantial evidence that age was a determining factor resulting in an adverse employment action.

b) A plaintiff may rely on the proof scheme for a prima facie case...." McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973); Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981))

c) Most often, a plaintiff will choose the "burden shifting analysis" set forth in McDonnell Douglas

(i) The plaintiff must establish prima facie case;

(ii) The defendant must then come forward with a legitimate, nondiscriminatory reason for the adverse action; and

(iii) The plaintiff must demonstrate that the defendant's reason is pre-textual.

d) Mixed-motive analysis

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-E | WHO MAY BE HELD LIABLE UNDER ADEA?

- 1) The employer
- 2) The employer's agents
- 3) An overwhelming majority of cases have held that an individual employee, such as a manager or supervisor, cannot not be held liable under the ADEA.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-F | WHAT IS REQUIRED FOR POSTING NOTICES UNDER THE ADEA?

- 1) A notice is posted to advise employees of all rights under the ADEA.
- 2) The notice should be conspicuous.
- 3) The notice should be accessible to employees with visual or other disabilities that affect reading.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-G | WHAT ARE THE STANDARD DEFENSES TO AN ADEA CLAIM?

1) Action, otherwise prohibited, in which age is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of the particular business.

a) Narrowly construed on case by case basis

b) Used to defend maximum hiring or mandatory retirement ages for jobs involving public safety, such as federal air traffic controller, Park Police officer and other law enforcement officers, nuclear materials courier, Armed Service reserve and active personnel

(1) Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985):

Airline to provide same transfer privileges to 60 year old captains as afforded to captains disqualified for reasons other than age.

(2) Western Air Lines, Inc. v. Criswell, 472 U.S. 400 (1985):

Mandatory flight engineers mandatory retirement at 60 held unlawful.

(3) Johnson v. Mayor & City Council of Baltimore, 462 U.S. 353 (1985):

Mandatory retirement age of 55 for firefighters must be applied on an individual basis.

c) Acts or omissions taken in a good faith effort to conform with or in reliance upon any administrative regulation, order, ruling, or interpretation issued by the EEOC.

2) Action, otherwise prohibited, is taken based upon reasonable factors other than age, including:

a) Deteriorating job performance

b) Age-neutral staff reduction

c) Safety concerns

d) Employee's pension status or seniority



- 3) Action, otherwise prohibited, in which involve an employee working in foreign country and ADEA compliance would violate foreign country's law.
- 4) Action, otherwise prohibited, in compliance with a bona fide seniority system.
- 5) Action, otherwise prohibited, in compliance with a bona fide employee benefit plan.
- 6) Action taken to discharge or discipline employee for good cause.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-H | WHAT IS REQUIRED TO OBTAIN A WAIVER OF ADEA RIGHTS GOVERNED BY THE OWBPA?

1) Permissible to request waiver of any ADEA right or claim:

- a) In a settlement of an administrative or court claim;
- b) In connection with an exit incentive program; and
- c) Employment termination.

2) Valid waiver must knowing and voluntary and:

- a) Be in writing and be understandable;
- b) Specifically refer to ADEA rights or claims;
- c) Not waive rights or claims that may arise in the future;
- d) Be in exchange for valid consideration in addition to any benefits or other amounts to which the employee is already entitled;
- e) Advise the employee in writing to consult an attorney before signing waiver; and
- f) Provide the employee at least 21 days to consider the agreement and at least 7 days to revoke the agreement after signing.
- g) There are additional requirements if waiver involves termination or severance program offered to a group of employees.

3) No waiver or agreement may affect the EEOC's enforcement responsibilities or interfere with and employee's right to file a charge or participate in EEOC investigation.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-I | HOW IS THE ADEA ENFORCED?

- 1) Equal Employment Opportunity Commission
- 2) Individual suit
- 3) Representative/Class actions

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



4-J | WHAT RELIEF IS AVAILABLE UNDER THE ADEA?

- 1) Back pay
- 2) Front pay
- 3) Liquidated damages for willful violations
- 4) Reinstatement or promotion
- 5) Injunctive relief
- 6) No punitive damages or recovery for emotional distress
- 7) Prejudgment interest discretionary
- 8) Attorneys fees and costs

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*



APPENDIX



COPYRIGHT NOTICE

TextBookDiscrimination.com is not the author of this handbook. Instead, TextBookDiscrimination.com merely re-printed and reformatted it for easier use.

ORIGINAL SOURCE

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Original Source	AmericanBarAssociation.org

INTERACTIVE VERSION

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Web	TextBookDiscrimination.com/Handbooks/EEOC/LawBasics/C04

CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com
W: www.TextBookDiscrimination.com

Congratulations! You're now **booked up** on Chapter 4 from the **EEO Law Basics** (*American Bar Association*)!

