

CHAPTER 10

Age Discrimination

Unless you know your rights, it may be difficult to detect age discrimination in employment practices. This chapter will familiarize you with your rights and the law employers must follow to ensure equal employment opportunities.

Oregon and federal laws regarding age discrimination are outlined in this chapter. You will also find out how to file a discrimination charge and which organizations can help you.

“You are overqualified for this job.”

“This is an entry level position.”

“This job is too strenuous for you.”

If you have heard statements like these from an employer or prospective employer, it may mean that he or she is discriminating against you because of your age. Age discrimination can occur in hiring, firing, promotions, transfers and layoffs. **Age discrimination is illegal under state and federal law.**

Employment Discrimination: Oregon Law

In Oregon, it is unlawful for an employer to fire, refuse to hire or refuse to promote an individual because of race, religion, color, sex, national origin, disability, marital status or age. However, discrimination may not be illegal if a job requirement that causes the discrimination is necessary to the normal operation of the employer’s business. Oregon law applies to every employer in the state regardless of the number of employees. State law protects people 18 and older from unlawful hiring and firing, as well as discriminatory wages, benefits and overtime. Oregon law also forbids age discrimination by labor unions and employment agencies.

A physical disability may be related to age. If you have a disability, state and federal laws forbid discrimination because of it, so long as the disability does not interfere with your ability to perform the essential functions of your job, as defined by your employer. Furthermore, if you ask, your employer is required to make a reasonable accommodation with regard to your disability to help you do your job. For example, an employer may have to provide a telephone amplifier for a receptionist who has a hearing loss.

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State and federal law make it illegal to discriminate against someone not only if the person has a disability, but also if the employer mistakenly believes the person has a disability. (Listen to Tel-Law topic 1095, “Discrimination in Employment Opportunities,” for more information.)

Employment Discrimination: Federal Law

The federal **Age Discrimination in Employment Act (ADEA)** protects persons aged 40 or older who are performing their jobs in a satisfactory manner against age discrimination by employers employing 20 or more persons, and by labor organizations with 25 or more members. The ADEA covers all terms, conditions and privileges of employment, including hiring, firing, layoffs, promotions, wages, benefits and training opportunities.

Protecting Your Rights: Federal and State Law

Although largely similar, federal and state discrimination laws differ in the rights and types of persons they protect. Most importantly, the laws allow different time limits within which to file a complaint charging discrimination. If you have questions about how to protect your rights, contact a lawyer who has experience handling cases involving age and disability discrimination.

Under state law, you have one year from the date of the discriminatory act to file a complaint with the **Civil Rights Division** of the Oregon Bureau of Labor and Industries (BOLI). (See Resources at end of chapter.) Under federal law, you must file a complaint of age or disability discrimination in the workplace with the **Equal Employment Opportunity Commission (EEOC)** within 300 days of the discriminatory act. (If the employer is an agency of the federal government, the rules are different.) Under state law, you may file a lawsuit within one year without first having filed a complaint with BOLI. Under federal law, you must wait 60 days after filing your complaint with the EEOC to file a lawsuit alleging age discrimination. For disability discrimination cases, you must first receive a “right to sue notice” from the EEOC, and then file your lawsuit not later than 90 days after receiving that notice. For other types of discrimination claims, you should seek legal advice regarding any other limits that may apply.

If you do not file a complaint with either the state or federal agency within these time limits, you may lose the right to sue for age or disability discrimination. EEOC and BOLI have a work-sharing agreement which usually means that filing with one agency will result in your complaint being filed with the other agency. However, because of different time limits for filing and different remedies that exist between state and federal law, you may want to file a complaint with both agencies.

State and federal law provide different remedies for persons who establish that they were discriminated against in their jobs because of age. Under

state law, you may recover a maximum of two years' back wages and benefits lost because of discrimination. Federal remedies are broader and include the recovery of lost back wages from the date of discrimination to the date of judgment, plus a penalty equal to the lost wages for willful violations of the ADEA. Remedies under state and federal law for on-the-job disability discrimination allow for a jury trial and for the recovery of lost wages and benefits, plus non-monetary damages for stress and punitive damages. Both state and federal law allow you to recover reasonable attorney fees and costs associated with bringing an age or disability discrimination lawsuit if you win the case. In addition, state law allows for the recovery of expert witness fees.

Not every kind of discrimination because of age is illegal. For example, both federal and state law honor compulsory retirement for certain high-paid executives at age 65 and for tenured faculty at higher education institutions at age 70. Employers may also legally discriminate on the basis of age when a job requirement is necessary to the normal operation of a business, such as safety in the transportation industries.

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Retaliation for Complaining

Under federal and state laws, it is unlawful for an employer to retaliate against you if you have complained to your employer or to an agency about age or disability discrimination. You have the same remedies as those described above, and your rights are subject to the same time limits.

Other Kinds of Discrimination

Older people, particularly those aged 62 and older, have some protections against discrimination by creditors and lenders. Federal laws also forbid age and disability discrimination by programs and activities that receive federal funds. Hospitals, mental health centers, legal aid programs, the Red Cross, government-assisted housing and public schools are examples of programs subject to these laws. However, certain programs are specifically funded to serve people over age 60 or people who have disabilities.

Older people are not protected from age discrimination by private landlords. However, landlords are not permitted to discriminate based on disability. If you have a disability, you are entitled to make reasonable modifications to your housing unit, at your expense, to accommodate your disability. Your rights under state and federal law about this kind of discrimination are similar to those for discrimination in employment. (See Chapter 7 for information on discrimination by landlords.)

If you have a disability, you have the right to "reasonable accommodation" from agencies and most businesses. Under the **Americans with Disabilities Act (ADA)**, motels, hotels and meeting areas should make it possible for you to use a wheelchair in their buildings, get help with hearing or reading (through audio amplifiers, special phone equipment, Braille readers, etc.), and do other reasonable things to make places and services accessible. Restaurants, stores, and medical and law

offices must also make reasonable accommodations to allow the disabled to use their services. The degree of physical accommodation required depends to some degree on when the structure was built. Both federal and state law authorize people to file lawsuits to enforce these rights. The Oregon Advocacy Center also works with individuals who seek modifications in places of public accommodation. (See Resources at end of chapter.)

The federal government has a free special service, the Job Accommodation Network, to help workers with disabilities and their employers develop ways to accommodate workers who have disabilities. (See Resources at end of chapter.)

Resources

See **General Resource List** for AAA/SPD offices, legal aid offices, OSB Tel-Law service and more.

Equal Employment Opportunity Commission

(Seattle field office)
Federal Office Building
909 First Avenue, Suite 400
Seattle, WA 98104
206-220-6883 or **800-669-4000**; TTY: **206-220-6882**
Open Monday through Friday, 8:00 a.m. – 4:30 p.m.

Job Accommodation Network

PO Box 6080
Morgantown, WV 26506
800-526-7234 or **800-ADA-WORK** (V/TTY)
www.jan.wvu.edu

Oregon Advocacy Center

“Working for the rights of individuals with disabilities”
620 SW Fifth Avenue, 5th Floor
Portland, OR 97204
503-243-2081 or **800-452-1694**
TTY: **503-323-9161** or **800-556-5351**
www.oradvocacy.org

**Oregon Bureau of Labor and Industries —
Civil Rights Division**

www.boli.state.or.us/BOLI/CRD

Bend:

2480 NE Twin Knolls Drive
Bend, OR 97701
541-322-2435

Eugene:

1400 Executive Parkway, Suite 200
Eugene, OR 97401
541-686-7623

Medford:

119 N Oakdale Avenue
Medford, OR 97501
541-776-6270

Pendleton:

1327 SE Third Street, Room 110
PO Box 459
Pendleton, OR 97801
541-276-7884

Portland:

800 NE Oregon Street, Suite 1045
Portland, OR 97232
971-673-0761, option 3

Salem:

3865 Wolverine Street NE
Building E, Suite 1
Salem, OR 97305
503-378-3292

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Oregon State Bar Tel-Law Topic

1095 - Discrimination in Employment Opportunities

503-620-3000 or 800-452-4776

www.osbar.org

Glossary of Terms

Age Discrimination in Employment Act (ADEA): *Federal protection for persons aged 40 or older from discriminatory hirings, firings, layoffs, promotions, wages, benefits and training opportunities.*

Americans with Disabilities Act (ADA): *Federal law that protects employees from discrimination because of actual or perceived disability, and that also requires many agencies, businesses and places of “public accommodation” to make reasonable changes in structures or operations so people with disabilities can use them.*

Equal Employment Opportunity Commission (EEOC): *A federal agency that promotes equal employment opportunity and investigates complaints of discrimination.*

Oregon Civil Rights Division: *A state agency that protects civil rights and handles discrimination cases.*