

AGE IS MORE THAN A NUMBER: TRENDS IN WORKFORCE COMPOSITION, AGEISM, AND EFFORTS TO ADDRESS THE ELEPHANT IN THE ROOM

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Various factors have created a workplace phenomenon that is both underreported and underestimated: an aging workforce and increasing incidence of age discrimination. As people in this country are living longer, the cost of living continues to rise, and the pension model nears extinction, many older Americans continue to work well into their 70's.

Combine that with stereotypes borne of both bygone eras and the current tech-forward attitudes of the younger workforce, and the incidence of age-based discrimination in the workplace is increasing – though the problem is not typically viewed or treated as seriously as other forms of discrimination. Despite laws in place to protect older workers, many hurdles exist in identifying and addressing the issue. Your organization can benefit from better understanding and adapting to the shifting demographics and challenging your own preconceptions, with the potential for creating a more motivated and productive workforce as a result.

AGE DISCRIMINATION IS MORE PREVALENT THAN YOU THINK

According to a recent study conducted by the AARP, the proportion of the US workforce composed of individuals 65 or older was 19.3%. Another [study](#) found that the 65-plus crowd is the fastest growing segment of the U.S. workforce. Per the AARP, by 2022, nearly 35% of workers will be age 50 or older.

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The reasons for this are many, including decreased financial security due to higher costs of living, care for parents living longer, and other investment-related shortfalls. Also, many people continue to find meaning and satisfaction in their work, or work to maintain their psychological well-being.

Due to the various ways age discrimination manifests itself, and the hesitancy of older workers to disclose such discrimination, amongst other reasons, the issue has been underreported. Attempts at identifying the scale of the issue have found the rates are higher than expected and increasing.

According to [the AARP](#), “nearly two out of three workers over the age of 45 have seen or experienced age discrimination on the job.” Indeed, in a [similar 2019 study](#), 80% of older workers studied said their career trajectory has been impacted by their age, and 62% of middle-managers or higher said age may prevent them from getting a new job after job loss.

The widening gap between the oldest and youngest workers appears to be creating intergenerational tension, with the opportunity for misinformed stereotypes and miscommunication to exacerbate the issue. This is more common in certain industries, such as the technology sector, where it has been reported that Millennials and Generation Z workers often devalue the contribution older workers can make. Further, the different means of preferred communication might reinforce ageist beliefs among some younger workers that their older counterparts are “out of touch.”

Managers on the frontlines (a cohort comprised of all age demographics) may be unaware of the scale of age discrimination, and efforts to curb it may be perpetually behind the curve. Hiring practices focusing on social media platforms have already drawn the attention of plaintiff’s attorneys, with non-selection lawsuits on the rise, especially in the technology sector. And the cost to employers can be great – in the form of decreased productivity, increased turnover, lesser qualified candidate selection, discrimination complaints and lawsuits, and loss of intellectual property when long-time and knowledgeable employees leave abruptly and earlier than they otherwise would have.

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THE SUBTLETIES OF AGE DISCRIMINATION AND WHY IT'S HARDER TO PROVE THAN OTHER FORMS OF DISCRIMINATION

Perhaps more than any other protected category, age discrimination manifests in ways that are subtle and unique, in that many age-related biases have a direct relation with the employee's ability to perform their job. For example, older workers [might be asked if they have email](#) (of course they do), or might have coworkers that (intentionally or subconsciously) speak more slowly or loudly to them.

They might be subject to age specific-stereotypes, such as being stubborn and resistant to change, not technologically competent, or perhaps more difficult to train. These stereotypes often coincide with the notion that older workers are "more expensive" than younger workers.

Add it all up and these biases play out in all kinds of ways and throughout each stage of the employment process, from hiring, onboarding, performance management, promotional opportunities, discipline and termination. At least one study showed that older workers tend to receive significantly lower ratings than younger workers on job performance, and that disparity increased with respect to older employees with younger managers. Another reported that [tens of thousands of workers say](#) that even with the right qualifications for a job, they are repeatedly turned away because they are over 50 and considered too old.

In addition to these implicit biases and negative stereotypes, two significant factors stand in the way of identifying and proving age discrimination. First, according to the EEOC and an AARP survey, there is vast underreporting of age discrimination. In fact, an [AARP survey](#) found that only 3% of older employees have ever made a formal complaint of age discrimination.

Driving some of the underreporting, in addition to fearing retaliation in the form of reduced role or even termination couched in terms of performance, many older workers internalize ageist biases and harbor their own stereotypes of the very portion of the population to which they belong. Thus, because age discrimination can manifest in so many subtle ways, and because older workers are not likely to report issues when they do arise, employers face an uphill battle in identifying potential instances of discrimination and effectively responding to them.

Second, with respect to age discrimination under the Age Discrimination in Employment Act (ADEA), employees are subjected to a heightened burden of proof not applicable to other forms of discrimination. Specifically, employees must prove that age was the deciding factor in the adverse action taken against them, such as a failure to hire or to promote, or a termination or other disciplinary action. That is, employees must prove that, “but for” their age, the adverse employment action would not have occurred. These two factors create a significant impediment to identifying and effectively responding to age-based discrimination and present significant challenges even for the most proactive and well-meaning employers.

STRATEGIES TO CURB AGE DISCRIMINATION

The problem of age discrimination, of course, is not a new development. We are 50 years into the ADEA. However, as discussed above, that legislation has done little to abate the wave of age discrimination in the workplace, especially given the evidentiary burdens placed upon a complaining party. Legislative efforts are underway to address age discrimination in today's workplaces.

On a federal level, H.R. 1230 – the Protecting Older Workers Against Discrimination Act – passed the House and was referred to the Senate's Committee on Health, Education, Labor, and Pensions. This bill seeks to amend the ADEA to allow “mixed motive” claims, which would allow a finding of liability even where an employer's employment practice was only partially motivated by age. This would place age discrimination on the same plane with other employment discrimination and retaliation claims under the ADA and the Civil Rights Act (disability and race/ethnicity, respectfully).

Businesses that have recognized the negative impacts of ageism and discrimination in the workplace have also taken steps to address the issue. Some companies have been focused on inclusion, **creating an open and welcoming culture** to identify the strengths of age groups, and of the life experiences older workers bring to the table. Those companies and others also encourage open dialogue about age, without fear of retaliation, and include age along with other diversity attributes, in forming committees devoted to diversity and preventing discrimination.

Given the clear data showing that interviews are a primary source of age discrimination, companies have addressed the recruitment and interview process by varying the job posting methods and [training interviewers](#) to identify and combat potential age bias. Finally, following up on complaints may lead to a decrease in potential litigation, and a more motivated and productive workforce, at all levels.

CONCLUSION

Age is indeed, more than a number. Age discrimination can be harmful to employee morale, leading to low productivity, increased litigation, and a loss of key workers. It can also prevent the onboarding of valuable contributors, who bring life and industrial experience.

Adjusting the dialogue and mindsets of workplace culture can benefit any organization. With the ever-increasing proportion of older employees in the workplace, you need to be proactive and creative in developing and implementing strategies to combat age discrimination and create a more inclusive, diverse and productive workforce. If you need assistance in crafting workplace policies and in training your managers to handle potential age bias, consult your employment attorneys.

For more information, contact the authors [here](#) or [here](#).