



Age Discrimination in the Workplace

Cathy Ventrell-Monsees
AARP Consultant
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Federal Workplace Discrimination Laws

Title VII of the Civil Rights Act (1964)

- Race, Sex, Religion, National Origin, Color and Creed

Age Discrimination in Employment Act (ADEA 1967)

- Age

U.S. Supreme Court Narrowly Defines “Because of Age”

Age

- interpreted broadly for first 30 years

2008

- U.S. Supreme Court defines age discrimination as very narrow. Rules a “proxy” for age isn’t age discrimination (*Kentucky Retirement Systems* case)

Explicitly
Age

- Justices Kennedy, Scalia, Ginsburg, and Alito warn of harm of a new definition of “discriminate because of age”

Courts Rule NOT Age Discrimination

Supervisor said “Why don’t you retire and make everyone happy?”

Court dismissed age discrimination claim

Vice-President’s statements that company “‘is run by white-haired old men waiting to retire,’ and ‘[t]his must change’” and those who lost their jobs would be replaced by “young college graduates at less money”

Court ruled irrelevant.

Supervisor said:
“It was purely economical -- they were the two oldest employees here.”

Court ruled supervisor’s comment was “irrelevant” and dismissed age claim.

OREGON UPDATED DEFINITIONS OF DISCRIMINATION BASED ON SEX AND RACE

Updated Definition of Because of Sex

- **“Because of sex”** includes, but is not limited to, because of pregnancy, childbirth and related medical conditions or occurrences. An individual affected by the individual’s pregnancy, childbirth or related medical condition. (659A.029)

Updated Definition of Because of Race

- **“Race”** includes physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles. (659A.001)

CONSISTENT TO UPDATE DEFINITION OF BECAUSE OF AGE

Problem: Oregon Law Doesn't Define "Because of Age"

- With no definition of "because of age," Oregon courts rely on federal court decisions.
- Courts interpret "because of age" very narrowly. They dismiss valid age claims unless age bias is explicit.

Solution: Define Age to Include Factors Associated with Age

- Factors used as a proxy for age, such as salary, length of employment service, or retirement status.
- Tells state courts to take a closer look at the evidence to see if age is really a factor.

Bias in the Hiring Process

- ❖ Applications don't ask about race, sex, parental responsibilities, etc.
- ❖ Oregon updated its law to ban inquiries into:
 - Criminal history
 - Salary History
- ❖ But applications still ask about age, date of birth and date of graduation

Banning Age-Related Inquiries in Applications



Oregon Age-Inquiry Ban would bar asking:

- Age or DOB
- Graduation dates
- Except if job has a legal age requirement

States with Age-Related Inquiry Bans

- Connecticut
- Delaware
- Colorado



Questions