Age Discrimination

Age discrimination involves treating an applicant or employee less favorably because of his or her age.

The Age Discrimination in Employment Act (ADEA) forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40, although some states have laws that protect younger workers from age discrimination. It is not illegal for an [employer or other covered entity](https://www.eeoc.gov/employers/coverage.cfm) to favor an older worker over a younger one, even if both workers are age 40 or older.

Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40.

Age Discrimination & Work Situations

The law prohibits discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, benefits, and any other term or condition of employment.

Age Discrimination & Harassment

It is unlawful to harass a person because of his or her age.

Harassment can include, for example, offensive or derogatory remarks about a person's age. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Age Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees age 40 or older [and is not based on a reasonable factor other than age](https://www.federalregister.gov/articles/2012/03/30/2012-05896/disparate-impact-and-reasonable-factors-other-than-age-under-the-age-discrimination-in-employment) (RFOA).

(Source: U.S. Equal Employment Opportunity Commission)

§ 11074. General Prohibition Against Discrimination on the Basis of Age over the Age of Forty.

(a) Statement of Purpose. The purpose of the law prohibiting age discrimination in employment is to guarantee all protected individuals 40 or over employment opportunities commensurate with their abilities. These regulations are promulgated to assure that employment opportunities for those protected persons over the age of 40 are based upon their abilities and are not conditioned upon age-based stereotypes and unsupported generalizations about their qualifications or job performance. In addition, these regulations are promulgated to clarify when the use of mandatory retirement programs that are based upon age over the age of 40 is unlawful.

(b) Incorporation of General Regulations. These regulations pertaining to discrimination on the basis of age incorporate each of the provisions of Articles 1 and 2 of Subchapter 2, unless a provision is specifically excluded or modified.

§ 11076. Establishing Age Discrimination.

(a) Employers. Discrimination on the basis of age may be established by showing that a job applicant's or employee's age over 40 was considered in the denial of an employment benefit.

(b) Employment Agencies, Labor Organizations, and Apprenticeship Training Programs in Which the State Participates. Discrimination on the basis of age may be established against employment agencies, labor organizations, and apprenticeship training programs in which the state participates upon a showing that they have engaged in recruitment, screening, advertising, training, job referral, placement or similar activities that discriminate against an individual or individuals over 40.

§ 11079. Pre-Employment Inquiries, Interviews and Applications.

(a) Pre-Employment Inquiries. Pre-employment inquiries that would result in the direct or indirect identification of persons on the basis of age are unlawful. This provision applies to oral and written inquiries and interviews. (See section 11016(b), which is applicable and incorporated by reference herein.)

Pre-employment inquiries that result in the identification of persons on the basis of age shall not be unlawful when made for purposes of applicable reporting requirements or to maintain applicant flow data provided that the inquiries are made in a manner consistent with Section 11013 (and particularly subsection (b)) of Article 1.

(b) Applications. It is discrimination on the basis of age for an employer or other covered entity to reject or refuse to seriously and fairly consider the application form, pre-employment questionnaire, oral application or the oral or written inquiry of an individual because such individual is over 40. (See section 11016(c), which is applicable and incorporated by reference herein.)

§ 11080. Physical or Medical Examination of Applicants and Employees.

(a) It is not a violation of this article for an employer to require an applicant who is over 40 to undergo physical or medical examinations to determine whether or not the applicant meets the job-related physical or medical standards for the position sought so long as such examinations are uniformly and equally required of all applicants for the position, regardless of their age.

(b) It is not a violation of this article for an employer to require an employee who is over 40 to undergo a physical or medical examination at reasonable times and intervals and at the expense of the employer to determine whether or not the employee continues to meet the job-related physical or medical standards for the position held so long as such examinations are uniformly and equally required of all similarly situated employees in the particular job class regardless of their age.

(c) It is discrimination based on age to require an applicant or employee over 40 to meet physical or medical examination standards which are higher than those standards applied to applicants or employees who are below the age of 40 and are seeking or holding the same job.

§ 11081. Employee Selection.

(a) Selection. So long as age is not a factor, this article does not preclude an employer from selecting an individual who is in fact better qualified than other applicants, and it does not preclude an employer from hiring an individual on the basis of experience and training superior to other applicants.

(b) Selection Based Upon Seniority or Prior Service. So long as age is not a factor, it is not a violation of this article for an employer, during the process of selection, to give a candidate who has a record of seniority or time in prior service with that employer preference over a candidate who has no such record or who has less seniority or time in prior service with that employer. However, where candidates for hire have the same record of seniority or time in prior service, it is discrimination based on age, in selecting from among them, to refuse to select a candidate because he or she is over 40.

§ 11082. Promotions.

(a) In selecting a candidate for promotion, it is not, itself, a violation of this article, for an employer to limit the group of eligible candidates to members of the employer's existing workforce or to give a preference in selection to an incumbent employee over a candidate who is not an incumbent employee. However, in evaluating or selecting candidates for promotion from among its existing workforce, it is discrimination on the basis of age for an employer to evaluate unequally or to fail to select a candidate who is over 40 because of the age of the candidate.

(b) In selecting a candidate for promotion, it is not, itself, a violation of this article for an employer to promote a candidate under the age of 40 in preference to a candidate over 40 on the basis of the superior experience and training of the younger candidate, or on the basis of other legitimate reasons, so long as age is not a factor.

(c) It is discrimination on the basis of age for an employer to deny an employee the opportunity to gain the experience and training necessary to achieve promotion, because such employee is over 40.

§ 11084. Retirement Practices.

(a) Mandatory Retirement - Generally. Generally, it is discrimination on the basis of age for a private employer to discharge or force the retirement of an employee because such employee has reached a certain chronological age over 40.

(b) Retirement Plans Generally. Generally, any provision in a private employer's retirement plan, pension plan, collective bargaining agreement or similar plan or agreement that requires mandatory retirement of an employee over 40 years of age is unlawful.

(c) Mandatory Retirement Permitted. Mandatory retirement of the following employees is not unlawful:

(1) Any employee who has attained 65 years of age and who for the two year period immediately prior to retirement, was employed in a bona fide executive or high policymaking position, providing that at the time of mandatory retirement, the employee is entitled to receive an immediate non-forfeitable annual retirement benefit from the current employer, which equals a minimum of $27,000.00, and is either derived from one or a combination of plans such as profitsharing, pension, savings, or deferred compensation plans.

(2) Any employee who has attained 70 years of age and is a physician employed by a professional medical corporation, the articles or bylaws of which provide for compulsory retirement.

§ 11086. Termination and Disciplinary Actions.

(a) It is not a violation of this article for an employer to terminate, discharge, dismiss, demote or otherwise discipline an employee over 40 who fails to perform the normal functions of his or her position or who fails to conform to the bona fide requirements of his or her position, so long as the performance standards and job requirements do not discriminate against employees over 40.

(b) Where an employee is continuing in employment beyond his or her normal retirement date, it is not a violation of this article for an employer to terminate, force the retirement of, or otherwise discipline such an employee if the employee's job performance no longer satisfies the employer's performance standards. Any such performance standards for quality of work must not be arbitrary and must not be based upon the age of the employee.

(Source: California Code of Regulations)