

## Age Discrimination: What Every Manager Needs to Know

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## O! Frank in the warehouse

- ▶ He's been a good employee
- ▶ But now he's up there in years
- ▶ Supervisor Arlene thinks he'd be better off behind a desk



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## Frank's no paper-pusher

- ▶ He asks to remain in his warehouse job
- ▶ But the boss says no...
- ▶ And it turns out Frank's lousy at a desk job
- ▶ He's fired, and he sues



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## Frank wins his lawsuit

- ▶ Supervisor Arlene blundered
- ▶ She assumed that Frank was too old to do a physically tough job
- ▶ Sometimes older workers can't do the job anymore
  - But you must assess each case individually
  - You can't stereotype



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## You will learn

- ▶ The key concepts of age discrimination law
- ▶ 4 ways you're at risk of breaking the law
- ▶ A question that will help you stay legal



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## The ADEA

- ▶ Age Discrimination in Employment Act is the federal law
  - Most states have their own laws, as well
- ▶ The ADEA says you must:
  - Treat 40+ workers as well as younger employees
  - Treat them equally, no matter how far over 40 they are



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## Trap #1 – Stereotyping about abilities

- ▶ Don't assume that older workers can't do certain jobs



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## A rising star

- ▶ Supervisor Paul tells 26-year-old Beth he prefers “aggressive young people”
- ▶ She's flattered, but...



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## What about Mollie?

- ▶ She's twice the younger employee's age
- ▶ And she's slow to pick up on new tasks
- ▶ So Paul shoves her aside in favor of Beth
- ▶ Mollie quits and



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## An unfortunate remark

- ▶ Mollie's lawyer grills Beth
- ▶ She admits he praised "aggressive young people"
- ▶ It sounds to the judge like age bias
- ▶ The company faces an expensive trial



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## Trap #2 – Ageist comments

- ▶ Don't make remarks about employees' age, or their youth
- ▶ Some examples:
  - "fresh blood"
  - "been here too long"
  - "young, high-energy"
  - "slowed down"
- ▶ Steer clear of 'code words'
  - "vibrant"
  - "enthusiastic"
  - "energetic"



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## Trap # 3 – Young for old



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## It's not always illegal

- ▶ There must be a strong job-related reason
- ▶ But age discrepancies will still raise a red flag
- ▶ So be able to justify your decision



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## Two 40+ workers

- ▶ Example: You replace a 58-year-old with a 42-year-old
  - This, too, may look like age discrimination
  - Again, you must document a sound business reason
- ▶ How much of a difference looks suspicious?
  - There's no ironclad rule
  - But watch out if it's more than 5 years



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## Trap #4 - Unequal discipline

- ▶ Don't punish older employees more harshly than younger ones



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## Vivian's young guns - and George

- ▶ 20-somethings Max and Adam mean well, but they get out of line a lot
- ▶ George, almost 60, is a bit of a crank



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## George goes off on Max

- ▶ He berates the younger man for misplacing tools
- ▶ Supervisor Vivian calls George out over his outburst



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## George is suspended

- ▶ Vivian gives him a week without pay to think things over
- ▶ 'He's old and crabby, and he deserves it,' she thinks
- ▶ Max gets off with a warning
- ▶ But George doesn't take it lying down



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## Vivian's mistake

- ▶ She was harder on George than on his younger co-workers
- ▶ She let George's age and temperament get under her skin
- ▶ It looks like discrimination



Gorzynski v. JetBlue Airways

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## A key question

- ▶ If you're taking personnel action involving an over-40, ask:
  - ▶ 'Do I have a good business reason?'
- ▶ If you're not sure:
  - Stop and think, and
  - Consult HR



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## Summary

- ▶ Don't make assumptions about older workers' abilities
- ▶ Don't comment about employees' youth or age
- ▶ Have a strong business reason if you replace an older worker with a younger one
- ▶ Don't discipline older workers more severely



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Thanks for watching

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