pro seniors
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Age Discrimination

What Is Age Discrimination?

Age discrimination means that an individual is treated differently on the basis of age. Discrimination based on a person's age takes many forms, including discrimination that benefits older persons. Not all discrimination is illegal. For example, once you turn 65, you pay less for transportation, such as lower bus fares, and are entitled to live in special low-income housing reserved for the elderly. Some forms of discrimination are illegal and work against older people. If this happens to you, state and federal laws give you the right to take action.

What Types Of Discrimination Are Prohibited?

It is against the law for employers, employment agencies, personnel placement services, labor organizations, public entities, creditors and credit reporting agencies to discriminate against you based on your age. It is also illegal to discriminate on the basis of age in public places, including hotels, restaurants, barber shops, airlines, theaters, stores or any other place where accommodations are open to the public.

Who Is Protected From Age Discrimination?

Anyone who is at least 40 years old is protected under both state and federal law from unlawful discriminatory practices on the basis of age.

What Are My Rights Under Ohio Law?

Under Ohio law, it is illegal for an employer to discharge you without just cause, to refuse to hire or to treat you differently in the terms, conditions or privileges of employment because of your age. Remember that this law applies only to employers who have four or more employees.

If you are applying for a job, employers, employment agencies, personnel placement services or labor organizations cannot ask your age, keep a record of your age, advertise jobs that require you to be a certain age or use a quota system to deny or limit employment opportunities based on your age.

The only exception is if the Ohio Civil Rights Commission has certified in advance a bona fide occupational qualification (BFOQ) that is reasonably related to the occupation. BFOQs include standards for skill, aptitude, physical capability, education and experience.

It is not against the law for employers, employment agencies or labor organizations to set up and follow the rules of a bona fide seniority system or benefit plan, including retirement or pension. No employee benefit plan, however, can force you to retire unless it complies with the Age Discrimination in Employment Act (ADEA).

It is also illegal for restaurants, hotels, stores or other public places to prevent you from using their facilities because of your age.

How Do I Enforce My Rights Under Ohio Law?

There are three ways to enforce your rights under Ohio law:

a) You can file a civil suit under Ohio Revised Code §4112.02(N). You can enforce your rights by filing a lawsuit within 180 days after the alleged unlawful discriminatory practice occurred in any court with jurisdiction;

b) You can file a civil suit under Ohio Revised Code §4112.14. This section prohibits employers from discriminating against any employee age 40 or older. You can file a lawsuit in a court of competent jurisdiction; or

c) You can file a written complaint of unlawful discrimination with the Ohio Civil Rights Commission under Ohio Revised Code §4112.05. You must file with the Ohio Civil Rights Commission (known as the "Commission") within six months from the alleged discrimination.

If you decide to file a lawsuit, you can choose only one of the above actions. Ohio law is complicated and technical. If you think you have been discriminated against because of your age, consult with an attorney who specializes in age discrimination.

What Is The Ohio Civil Rights Commission?

The Commission has the right to prevent anyone from unlawfully discriminating against another person. The Commission investigates all discrimination complaints. If it finds probable cause to believe that unlawful discrimination has occurred, it will first use informal methods to resolve the matter. If the Commission is satisfied that the discriminatory practice will stop, it declares that the charge has been resolved. Otherwise, it files a complaint and a hearing is held.

What Is The Federal Age Discrimination In Employment Act (ADEA)?

The ADEA promotes employment of older persons based on their ability and not their age. It prohibits arbitrary age discrimination in employment. The ADEA makes it illegal for employers, employment agencies and labor organizations to refuse to hire, discharge or otherwise discriminate against anyone regarding wages, terms, conditions or privileges of employment because of age. The ADEA applies to employers with 20 or more employees.

The act makes it unlawful to limit, segregate or classify employees in any way which deprives them of employment opportunities, or which hurts their status as employees. There are important exceptions to the Act and objections which employers can raise, such as good cause, poor job performance, insubordination or lack of qualifications.

Under the ADEA, no employee benefit plan can require or force an employee over 40 to retire simply because of age. However, the ADEA does not prohibit compulsory retirement of certain executives and high policy-making employees.

How Do I Enforce My Rights Under The ADEA?

The ADEA is enforced by the Equal Employment Opportunity Commission (EEOC). If you think you have been the victim of age discrimination in employment, you can file a charge with the EEOC. This charge must be filed no later than 180 days from the time of the discrimination. After filing a charge with the EEOC, you must wait 60 days before you can file a lawsuit. If you are going to file a lawsuit, you must file it within two years of the date of the discrimination.

The EEOC has the power to investigate complaints without a charge being formally filed. This protects you if you want discriminatory conduct investigated, but do not want your employer to know what you are doing. If you want to pursue a federal ADEA claim, it is critical that you carefully examine and follow state law, because federal law requires that you file a charge with the Ohio Civil Rights Commission before bringing a lawsuit under the ADEA.

How Do I Protect Myself Against Age Discrimination In Employment?

If you are looking for a job, be sure that you meet all qualifications for the position. You should also save any advertisements dealing with the position. If you are qualified, and if you are not hired, you may have a claim based on age discrimination which will need to be investigated. If you are an employee, you should carefully review all personnel policies, union contracts and employee benefit plans to be sure they comply with both state and federal law.

Pro Seniors helps older Ohioans solve legal and long-term care problems and fight Medicare fraud. Our Legal Helpline provides free legal information and advice for Ohio residents aged 60 and older.
This fact sheet provides general information, not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.

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