

Where to Go for Help

If you suspect that you have been discriminated against in programs of assistance, in your employment (obtaining or keeping a job or getting a promotion), in matters involving your housing or in credit matters, there are several places you can obtain assistance.

In many of the laws prohibiting discrimination, the federal government has placed the responsibility of enforcement on federal agencies. In employment matters, you can contact the Equal Employment Opportunity Commission (EEOC), which has offices throughout the country. The state's Attorney General's Office or the Office of the U.S. Attorney are also good resources.

The U.S. Attorney and the state Attorney General are also helpful in assisting with discrimination claims concerning housing, credit or in other matters. The Federal Trade Commission is also able to assist with credit matters.

In addition, the private Elder Law attorney who has experience in Age Discrimination matters may provide invaluable help. Some of the laws prohibiting age discrimination also permit a person to initiate a private lawsuit for payment of damages as a result of the discrimination.

The Role of the Elder Law Attorney

Age discrimination is one of the areas that most Elder Law attorneys have focused on in their work, since it is an important area of protecting the rights of older persons. Elder Law attorneys are able to work with clients to select the best route in enforcing the claim of illegal discrimination and are able to effectively assist clients in determining their goals in the matter.

Elder Law attorneys are particularly sensitive to the concerns of older persons and their families and are able to address these specific issues. Elder Law attorneys are also able to provide information about other areas affecting the elderly.

About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder Law Attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with disabilities, and who advocate for the needs of such individuals.

While NAELA Elder Law attorneys work one-on-one with clients in their local areas, NAELA also examines and advocates on national public policy issues facing seniors in America including long-term health care; planning for retirement; estate planning and probate; guardianship and conservatorship; health care decision making; and elder abuse and neglect.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder Law attorney.

More information on NAELA and a directory of NAELA members in your area can be found at www.NAELA.org.

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Age Discrimination



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The Law and Aging Series

The Issues

Since the 1960s, the federal government has enacted several laws prohibiting discrimination against individuals based upon their age. Such laws apply in all states and many states have enacted additional laws that enhance the federal protections. The laws prohibit age discrimination in employment, housing options, the delivery of services and benefits from federally-assisted programs and services, and the granting of credit.

The laws involved are the Age Discrimination in Employment Act of 1967 (ADEA), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act of 1990, the Equal Credit Opportunity Act of 1974 and the Truth in Lending Act of 1968. Each of these federal laws has specific provisions that address the question of discrimination based upon age. All of these laws are complex and lengthy, but each also provides relatively easy access to the agencies charged with enforcement.

In the Age Discrimination in Employment Act, employees and job applicants over the age of 40 are protected from age discrimination with respect to any employment practice or decision including hiring and discharge, promotion, layoffs, compensation and other terms, conditions and rights of employment. Age may not be used in advertising employment positions either specifically or by inference.

The Age Discrimination Act of 1975 prohibits age discrimination in the delivery of federal or federally-assisted services and benefits. Such programs may include health services, educational programs, housing, welfare, food stamps and rehabilitation programs.

The Older Workers Benefit Protection Act of 1990 (OWBPA) amends the ADEA to specifically prohibit employers from denying benefits to older workers. Recognizing, however, that providing benefits to older workers may be more costly than providing similar benefits to younger employees, Congress added language to avoid encouraging a disincentive to hiring older individuals. Reduced benefits are permitted where the employer can

show that the cost of reduced benefits to older individuals is the same as the cost as providing standard benefits to younger workers.

Also, older individuals can voluntarily waive the protections of ADEA to gain employment where benefits may be unnecessary due to availability of another source, such as a working spouse. Waivers must be in writing and must specifically refer to the ADEA rights being waived. Moreover, the law provides that waivers do not apply to benefits that may arise in the future.

The Rehabilitation Act protects individuals with disabilities from discrimination in housing programs, employment and other federally-assisted programs.

The Fair Housing Amendments Act protects older adults with disabilities from discrimination in the sale or rental of housing. Another housing statute recognizes the physical and mental benefits of pets to older persons and prohibits unreasonable rules barring pets in housing that receives federal assistance.

The Americans with Disabilities Act is a sweeping law requiring reasonable access to places of public accommodation and public entities. The Act further protects persons with disabilities in employment, transportation and communications programs and assures that such programs will be usable and reachable by such persons.

The statutes relating to credit issues require that information about credit be readily available and subject to challenge. Actual costs of credit must be prominently disclosed. It is unlawful to discriminate against any applicant for credit on the basis of age. The act protects persons 62 and older.

What You Need to Know

Each of the laws prohibiting discrimination based upon age has specific enforcement provisions. While the laws are indeed complex, all of them provide for governmental assistance in protecting Americans' rights. At the same time, some of the laws allow an individual to bring a private

lawsuit for damages resulting from prohibited discrimination.

Actions taken will depend upon the result wanted. If someone is denied credit and believes the denial was wrongfully based upon age, the goal then is probably to simply get a loan. If, on the other hand, someone is denied a promotion or discharged from employment because of his/her age, then he/she may want to be promoted, reinstated and perhaps paid for the loss of income that would have been earned. In some cases, it is also possible to obtain punitive damages where there has been willful discrimination.

There are certain exceptions that permit an employer to act based upon age considerations. Firefighters and law enforcement officers, for example, are not covered by the ADEA for public safety reasons. Tenured university employees have been excluded from coverage as are certain executives and policy making employees. In addition, there are certain defenses that are available to employers charged with age discrimination, including age-specific qualifications for the job itself, such as a model for children's clothing. An employer can always discharge or pass over an employee for poor performance or other job related problems other than age.

In determining whether you may be a victim of age discrimination, it is important to look at all circumstances surrounding your employment, credit or housing problem and gather as much information as possible about what has occurred. It will be important that you keep records concerning any events that make you believe that age was the reason for your problem — such records include copies of letters, employment reviews and forms.

Finally, there are time limits (statutes of limitations) governing how long you can wait before making a complaint. If you suspect you have been discriminated against, you should take action promptly.