

2. Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA), passed 3 years after the 1964 Civil Rights Act, recognized that older workers were disadvantaged in finding and retaining employment and that employers commonly set age limits unrelated to performance potential. Congress's stated purposes in enacting the ADEA included "promot[ing] employment of older persons based on their ability rather than age [and] prohibit[ing] arbitrary age discrimination in employment." Despite the aging baby boomer population, increased longevity, and a desire of many older persons to remain gainfully employed, age discrimination remains a fact of life in our society.

A high performing manager whose immediate supervisor was pleased with his work was nevertheless seen by a company executive as "just too old" at age 61 to remain employed. The employee's supervisor was instructed to discharge him or harass him into resigning. The supervisor later told the EEOC that the same executive had told him to get rid of two other managers in their 50s because they also were viewed as too old. When the 61-year-old manager learned of the request to get rid of him, he resigned and filed a charge of discrimination. *EEOC v. Family Dollar Operations, d/b/a Family Dollar Store* (N.D. Miss. April. 29, 2004) (\$98,750 in backpay, interest, and liquidated damages and training on the ADEA to all regional vice presidents).

Despite his extensive credentials, a 51-year-old applicant for a management trainee position at a financial services company was rejected due to an alleged unstable work history; the employer instead hired a recent college graduate with no experience. Evidence disclosed that seven other people under age 40 with inferior credentials had been hired by the company. The EEOC also found that defendant had not kept applicant information required by the ADEA. The case was resolved by consent decree for a total of \$130,000 for two aggrieved individuals and an injunction prohibiting age discrimination in recruiting or hiring for management trainee positions in seven Texas offices and requiring compliance with the ADEA's record keeping provisions. *EEOC v. Wells Fargo Financial Texas, Inc., f/k/a Norwest Financial Texas, Inc.* (W.D. Tex. Oct. 31, 2003).