

# Protect Against Age-Discrimination Claims

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## SUMMARY

Age-discrimination claims are increasing in number and expense. To protect against potential age discrimination claims, firm principals must understand the current laws regarding age discrimination and ensure that firm policies and procedures adhere to those laws.

## HOW TO LIMIT EXPOSURE

The success of an age-discrimination case depends largely on specific facts. Plaintiffs look to the legal system for redress, especially in a period of reduced benefits, downsizing, or unequal treatment based on age. To mitigate exposure to age-discrimination claims, design firms should consider the following:

- Plan carefully for any change in benefits
- Set objective criteria for employee termination
- Provide thorough explanations to employees about the company's financial situation, staffing needs, and change process
- Be consistent in communication and actions
- Confirm with employees that benefit plans are subject to change

## BE AWARE OF APPLICABLE STATUTES

The Older Workers Benefit Protection Act of 1990 prohibits discriminatory employee benefit plans, establishes requirements for early retirement plans, and provides a guide on the requirements for valid waivers of rights. The Age Discrimination in Employment Act (ADEA) of 1967 specifically protects individuals aged 40 years or older. ADEA prohibits private employers of 20 or more employees from using age as a basis for employment decisions, including but not limited to hiring and firing, compensation, promotions, benefits, and layoffs.

Statistics from the Equal Employment Opportunity Commission show that age-discrimination charges have increased to their highest levels in a decade, and the number of claims continues to rise. Conversely, the number of other types of discrimination charges, such as those related to race and sex, have either declined or remained flat.

When firms are under pressures to cut salary and benefit costs, age-discrimination claims become likelier, as cuts can disproportionately affect older workers. These cuts increase the risk for the industry as more people enter the protected age range.

Age discrimination claims are increasing in expense as well. Jury Verdict Research found that the median compensatory award for age discrimination cases is \$270,000—more than twice the median award in racial discrimination (\$121,000) or sex discrimination cases (\$100,000). Given such high settlement figures, firms should ensure that their downsizing procedures avoid age discrimination.

## RESOURCES

### More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- |          |   |
|----------|---|
| 09.04.01 | It's Pruning Time: The Benefits of Downsizing |
| 09.01.08 | Five Factors of Employee Satisfaction         |
| 12.01.07 | Controlling Exposure to Risk                  |

### For More Information on This Topic

See also "Staff Development" by Laurie Dreyer-Hadley and Kathleen C. Maurel, Assoc. AIA, *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 9, page 242. The *Handbook* can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by sending an e-mail to [bookstore@aia.org](mailto:bookstore@aia.org).



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**Key Terms**

- Practice
- Legal management
- Disputes
- Lawsuits