



ADEA Fact Sheet

What employers are covered?

- All companies with 20 or more employees.

What employees are covered?

- All persons age 40 and older.

What's prohibited?

- Age discrimination, unless based on a Bona Fide Job Qualification (BFJQ)
- Hostile work environment based on age
- Retaliation or harassment for exercising your ADEA rights
- Retaliation or harassment against non-protected individuals for raising a complaint on behalf of protected individuals

What is a "BFJQ"?

- A BFJQ is a bona fide job qualification. In general, an employer can't prove that age is a BFJQ unless it can establish that all or almost all members over the selected age can't safely perform the essential functions of the job. A BFJQ is very difficult to prove unless the position at issue directly affects public safety.

How do you obtain a waiver of ADEA rights?

- Obtain a written release executed (signed) by the employee that specifically refers to the ADEA.
- Provide 21 days for the employee to consider the waiver and advise the employee to consult an attorney.
- Provide 7 days for employee to revoke the waiver after signing. Caution: do not pay any settlement amounts until these 7 days have passed.
- In mass lay-offs, reduction-in-force (RIF) situations, provide 45 days (rather than 21 days) for the employee to consider the waiver and add an attachment to the waiver that contains the following:
 - The selection criteria for the RIF and any applicable time limits and
 - A list of job titles and ages of each person subject to the RIF and those employees who fall into the same organizational unit but were not subject to the RIF.

ADEA Tips

- Don't ask for an applicant's age at any point during the application process.
- Train interviewers on how not to ask questions that could lead to a claim of age discrimination
- Prohibit all age-related comments from the workplace pursuant to an effective anti-harassment policy.
- Base any employment actions on factors other than age (or other protected characteristics). Apply performance standards, policies and procedures, and access to benefits uniformly without regard to age. Document poor performance and disciplinary measures taken against employees.
- Document disciplinary measures taken against employees that make inappropriate, age-related remarks.