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EMPLOYEE ASSISTANCE REPORT

supporting EAP professionals

FAQs About Age Discrimination

By Dr. Arin N. Reeves

Today's workplaces have more employees older than 40 than ever before. As employers strive to balance the needs of their older employees with the organization's need to hire new talent and develop the next generation of leaders, more and more questions about age discrimination are being raised.

The following FAQs about age discrimination are a good starting point for employers, EA professionals, HR managers, and others, to better understand a complex issue.

❖ What is age discrimination?

Theoretically, age discrimination is a simple concept: if an employer treats an employee unfairly simply because of the employee's age, the unfairness by the employer is age discrimination.

Legally, age discrimination is more complex than simple unfair treatment based on age. There are certain requirements that need to be met in order for unfair treatment to become an action protected under the Age Discrimination in Employment Act of 1967 (ADEA), the primary federal law that governs age discrimination in the U.S.

➢ Age discrimination laws kick in when the *employer* makes an *adverse employment decision* regarding *employment terms, conditions*, or *privileges* based on age considerations that have nothing to do with an employee's ability to perform the tasks required in a particular job. (The laws apply to current employees as well as job applicants. Employers cannot refuse to hire someone simply because of his/her age.)

> ***"A lack of training about age/generational diversity can perpetuate bad historical practices even when greater awareness about age discrimination is achieved."***

➢ The laws also allow for *hostile work environment* charges based on age in circumstances where employees find employment conditions to be harassing or offensive specifically related to age.

➢ The laws only apply to employers who have at least 20 employees.

➢ The laws only apply to employees who are 40 years old or older. (*It is not age discrimination for an employer to make employment decisions based purely on age for employees who are below the age of 40! It may not be a smart business practice, but it is not illegal*.)

➢ The laws also require that the employee must be able to prove that his/her age was not just a *factor* in the adverse decision by the employer but that his/her age was a *determining factor*. (This definitely makes it harder for employees to "prove" that age played a role in an adverse employment decision.)

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Featured Inside

NOTE: Many states have their own age discrimination laws that supplement the ADEA. Although the ADEA has created a national baseline, specifics vary from state to state.

❖ What factors make age discrimination more likely to occur in workplaces?

A high concentration of employees over the age of 40, a lack of awareness around age/generational diversity, a lack of training on age/generational bias, and unexpected changes in the economic climate are some of the primary factors that make age discrimination more likely in workplaces.

A high concentration of employees older than 40, especially when employees are more likely to delay retirement due to financial concerns, creates a tension in workplaces between needing to respect the rights of the older employees and bringing in new talent to stay competitive. This tension is further exacerbated by the perceptions (and reality) that older employees are more expensive than younger workers.

A lack of awareness about age/generational diversity creates an environment where employers allow age and generation biases about the ability of employees to taint employment decisions. Often, the biases are unconscious and unintentional, but the impact of the biases is very real. Moreover, the lack of awareness does not have to be universal in order for a workplace to be riddled with age discrimination. A small group of supervisors – or even one individual manager – can influence the overall workplace culture by consistently acting without awareness.

A lack of training about age/generational diversity can perpetuate bad historical practices even when greater awareness about age discrimination is achieved. Without clear training on the specific actions a supervisor/manager should undertake in situations, an individual may know *what to do*, but he/she may not know *how to do it*.

❖ Is there ever a situation where age discrimination is legal?

The ADEA does provide employers the ability to legally discriminate based on age if age can be shown to be a "Bona Fide Occupational Qualification (BFOQ)" for a particular position or if the employer has a "bona fide seniority system" in place that allows the employer to make employment decisions that adversely affect employees over 40.

(Again, these rules vary state by state, and legal advice should be sought to fully understand how "bona fide seniority systems" do not include mandatory retirement and how BFOQs should be articulated and implemented.) Many age-based BFOQs involve physical abilities, safety concerns, and training capacities.

❖ How is the prevention of age discrimination different than the management of generational differences?

The prevention of age discrimination and the management of generational differences are closely connected because both strategies have their roots in age-based biases. However, management strategies, as well as connected communication strategies, have to be very different for the following reasons:

➢ Prevention of age discrimination has to be focused only on employment decisions that affect employees over the age of 40 – whereas management of generational differences has to focus on *all* employees.

➢ Prevention of age discrimination is primarily a legal compliance strategy – whereas management of generational differences is a talent and team development strategy.

➢ Raising awareness and creating training programs for supervisors/managers on prevention of age discrimination should be conducted in consultation with legal advice – whereas management of generational differences does not

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need (and generally should not include) references to legalities and/or compliance.

❖ What can workplaces do to prevent age discrimination?

➢ Develop and implement an awareness program that raises the level of awareness on the issue at all levels of the workplace. An awareness program should include frequent messages about how to understand age discrimination, how to prevent it, how to detect it and how to communicate about it. Awareness programs need to be paired with training programs to maximize understanding with action.

➢ Develop and implement a universal training program. It should teach people specifically how to communicate on the issue, how to report it if they see it happening, and how to report it if it happens to them.

➢ Develop and implement a leadership-training program. It should teach supervisors and managers the specific skill sets they need to understand the parameters of the laws, the connections between the laws and their employment policies, and the communication strategies they need in order to answer the questions that may be posed to them on this topic.

➢ Differentiate between trainings on generational differences and age discrimination. However, ensure that both are articulating consistent messages on how to recognize and interrupt age-based biases.

➢ Develop and communicate a clear reporting mechanism by which people can confidentially

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Editor's Notebook

Numerous managers don't understand that Baby Boomers and Gen X-ers are different – and their priorities are different – (retirement vs. flexibility for child care, individual work vs. collaboration, etc).

This month's issue of *EAR* addresses this gap with a *Brown Bagger* article about generational differences – a topic that is going to be increasingly important as more and more Boomers retire, and their organizations transition from older, to younger business leaders.

Even if, as an EA professional, you are in-tune to generational differences and preferences, this month's cover article also presents, in a factually-based, Q&A format, answers to various questions you may have about a related matter: age discrimination issues. I wish to thank Dr. Arin Reeves for her time and insights.

Finally, if any of your clients (or maybe even you!) exceeded gift-giving budgets during the holiday season, Gary Foreman offers advice to get finances back on track this year. Happy reading!

Mike Jacquart

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In the News

Disability Discrimination Cases Increasing

Claims and cases based on disability discrimination have become, in many instances, the most frequent type of discrimination claim. As more illnesses, injuries, diseases, and mental health conditions are considered to be disabilities as defined by the *Americans with Disabilities Act* and corresponding state laws, the number of disability discrimination claims have often surpassed race and gender discrimination claims.

According to Michael Zeytoonian, director and founding member of the Zeytoonian Center for Dispute Resolution, the key inquiry in these types of claims usually focuses on whether the employer provided a reasonable accommodation for the disabled employee. However, laws do not provide an objective or clear standard as to what is – and isn't – a reasonable accommodation.

In addition, another gray area pertains to whether providing the accommodation creates an undue hardship for the employer. This same analysis is part of many religious discrimination claims, which also hinge on the accommodation issue.

However, establishing clear policies and procedures, and offering preventive training on discrimination helps employers and employees better understand concepts, such as reasonable accommodation – and identify when they apply and how to satisfy any legal requirements. These measures also establish a first line of defense against claims and lawsuits.

Zeytoonian says that organizations should utilize the proactive services of a neutral, independent, and confidential resource person to address situations arising out of disability or religious practices before they escalate to the level of complaints or lawsuits. ■

ask questions and discuss situations so they can resolve issues in a constructive way. A lack of a reporting mechanism can often lead to a lawsuit, while the *presenc*e of a reporting mechanism can *prevent* a lawsuit.

➢ Make sure that all of your efforts on age discrimination are reviewed by an internal or external attorney who can ensure that your efforts are compliant with current laws. ■

Dr. Arin N. Reeves is president of Nextions, a Chicago-based leadership and inclusion consulting and coaching firm. She writes an award-winning magazine column, and has taught classes in law and society at Northwestern University. For more information, visit www.nextions.com or call (312) 922-0226. ***Editor's note****: See page 3 for a related story.*

Quick Ideas

Powerful Action Steps for 2011

❖ **Attitude is critical**. Focus on what's working and what your corporate client can be grateful for.

❖ **Take time every day to acknowledge people**. People will give their best when they feel appreciated.

❖ **Stop complaining**. It doesn't lead anywhere. Complaints bring more things to complain about.

❖ **Create a picture of where you (or your client) want business to be in 5 years**. Then, act as if you (or they) are already there. When the focus is on the future and not on present problems, you'd be surprised at how this approach can help an organization get to where they want to be.

❖ **Have faith**. Trust that everything will work out fine. We worry too much about things that never happen. ■

Source: Scott Hunter, author of Unshackled Leadership (www.unshackledleadership.com).

Workplace Survey

Social Media Enhances Career Visibility

In business, it's not what you know or even who you know, but who knows you that matters, suggests a new Robert Half Management Resources survey.

Almost one in three (28%) chief financial officers (CFOs) interviewed said staying connected through professional groups is the best way to enhance professional visibility. Active participation on social media sites, such as LinkedIn and Twitter came in a close second, with 22% of the response.

"As social networking continues to gain popularity, it's especially important to use online tools to build credibility and visibility in the business community," said Paul McDonald, senior executive director of Robert Half Management Resources, which conducted the survey.

Robert Half Management Resources offers the following five tips to help executives manage their digital networks:

✓ **Join the discussion**. LinkedIn features many professional groups that can help professionals share expertise, stay connected, and keep pace with new developments. Likewise, Twitter and Facebook are useful venues for keeping pace with the latest industry news.

✓ **Be selective**. Your network is only as strong as those with whom you're connected. Be selective about whom you invite into your network.

✓ **Be personable and complete**. Complete your profile and include keywords that can help people find you on LinkedIn or Twitter. However, avoid details that are too personal if you plan to use these networks for professional reasons only.

✓ **Pay it forward**. Retweeting others' posts on Twitter or answering questions on LinkedIn discussion groups is a great way to strengthen your network and enhance your reputation as an industry resource.

✓ **Conduct a self-audit**. Privacy policies on social media sites are subject to change at any time. Therefore, it's prudent to recheck your settings and review the policies of individual sites on a periodic basis to ensure your personal information remains private. ■

Source: Robert Half Management (www.roberthalfmr.com).

Achieve More in Less Time: Part I

By Joelle Jay

Americans are busier than ever, and it seems to be getting worse. In order to avoid burnout people need to stop trying to go faster and instead maximize the time they have so they are more productive. Yes, it is possible, and the benefit is that as people gain productivity, they actually work less.

If your corporate clients – employers or employees – or even yourself for that matter, are ready to trade in a frantic pace of work for one that's more relaxed yet still efficient, the following strategy will help anyone achieve more in less time. (Several additional strategies will be presented in part two of this two-part article.)

Make New Time Rules

Fact: We are all operating on unspoken time rules.

Financial advisors often ask people to set "money rules," such as "save 10% of every paycheck."

Money rules help you be decisive and stay true to your financial goals.

For efficiency and quality of life, apply the same concept by setting new time rules. Here are some of the rules that other business leaders have set:

- ✓ Never open email before planning the day.
- ✓ Never schedule a meeting before 9 a.m. or after 4 p.m.
- ✓ Turn off your computer after 7 p.m.
- ✓ Keep your PDA off during family time.
- ✓ Be home in time to tuck in the kids in bed every night, or at least call them to say goodnight.

Would any of these rules work for you? To set time rules, follow this simple formula:

- ✓ Notice what's not working about the way you spend your time.
- ✓ Write down what *would* work better. Make a time rule that makes your time work well for *you*.

Here's an example:

- ✓ It's not working for me to have people walking into my office all-day long.
- ✓ I would prefer to have at least two consecutive hours a day with the door closed.
- ✓ Rule: I close my door for two hours a day.

Summary

Time rules, even small ones, have the advantage of being concrete and explicit, making it easier to hold yourself accountable. Once you set a rule, communicate it to others so you can accommodate the people in your life. They can only respect your boundaries if the limits are clear.

NEXT MONTH: Using technology less; and taking a "virtual" vacation. ■

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Tips on Repaying Christmas Bills

By Gary Foreman

Are you starting off the new year with leftover Christmas bills? If so, you're far from alone. In many years, the typical consumer does not pay off his/her holiday credit card bills until May.

This article will present some ideas to get our from under those holiday bills. First, we'll look at some methods that could take a big bite out of the debt. Then, we'll follow with some slow but steady solutions.

❖ **The first method is for people who have equity in their home and have not already refinanced.** If your mortgage rate is at 6.5% or higher refinancing could reduce your monthly payments. We're not suggesting taking equity out of your home – simply to use the monthly saving to pay down credit card bills.

❖ **Another one-shot solution is to reduce the cost of home or auto insurance coverage.** You could save hundreds. Begin by calling your current agent and ask if he or she has any suggestions on changes in coverage. Then, get comparable quotes from two other companies. A few phone calls could reveal some serious savings!

For homeowners' insurance, you'll also want to contact several local agents.

Additional Suggestions

Finding savings on a monthly basis is harder, but it's still possible. Start by looking at where you spend your money. Review your credit and debit card statements – and your checkbook, too.

If you're like most families you'll see certain bills repeating. Those are prime candidates for assisting with your debt load. Which ones can you eliminate or reduce until holiday debts are repaid?

Eliminating services like cable TV will save money each month, and will also encourage you to get

debts repaid so you can begin watching some of your favorite TV shows again.

That's far from the only possibility. In reviewing your bills you probably noticed that you spend a lot on food – not only at the grocery store, but at work, fast-food joints and even convenience stores and coffee shops. For most of us, all food purchases totals about 20% of monthly expenses.

The advantage of reducing food expenses is that you have the opportunities to save *every day*. Many of them will have little impact on your lifestyle, but the savings add up quickly. Here are some ideas you can try:

✓ **Avoid restaurants.** If you're really dedicated, skip take-out food as well. You'd be surprised how easy it is to cook at home if you make use of your slow cooker, microwave, and freezer.

✓ **Swap generic for brand goods.** You might miss some favorites, but you might also discover some generics that you actually prefer to your usual brands.

✓ **Take your own snacks and coffee to work.** It might not seem like a lot, but those coffee breaks can add up to $3 or $4 each day. If you work a 40-hour week, that could save $80 a month!

✓ **Eliminate food waste.** Studies show that we throw out about 15% of the food we buy because of spoilage. Have plans for the food your buy and for leftovers. Those science projects in the back of the fridge are expensive!

Next, consider creative methods to save. Have you ever thought of carpooling or giving up club memberships? Don't assume that you can't live without a product or service. Consider how you'd adjust if it were not available. You might find ways to save that weren't obvious.

Finally, don't worry about the bills. Instead, celebrate the fact that you're taking positive steps to eliminate them. Don't forget to celebrate each step toward financial independence. ■

Gary Foreman is the editor of the Dollar Stretcher website (www.stretcher.com) and various e-newsletters. The Dollar Stretcher is dedicated to helping people live better on the money they already have. For more information about cutting expenses read www.stretcher.com/stories/00/000821a.cfm.

How the Media Boosts Social Media

By Marsha Friedman

Social networking sites are places where people go to interact with other people, catch up with friends, follow celebrities and, yes, look up their high school sweetheart from 20 years ago to see if he or she is single again.

Therefore, when entities get too commercial with their updates and messages, the community crashes down on their heads. With Facebook and Twitter, people are free to comment on your updates in whatever way they want. Sure, you can delete the ones you don't like, but that just means they'll post something else, or maybe talk about you on someone else's feed.

Consequently, allow me to offer two important points I try to keep in mind in using social networking for my business:

➢ **Don't promote, just educate** – How can you use social networks to grow your business and maybe promote a new book or training? You have to adjust your intentions! I love the quote from motivational speaker John Maxwell, who said, *"People don't care how much you know, until they know how much you care!"*

In other words, don't try to push promotional messages through those channels. However, if you provide advice from an expert's point of view that helps the reader, you will create a following of people wanting to know more about you.

For example, if you're a tax advisor who launched a new website, use your update to give people useful tax tips. If they like your advice they'll look at your profile, where you can passively place business contact information.

➢ **PR is the fuel to your social media engine** – PR is about newsworthy information that radio, TV, and print media use to inform their audiences. Since the most popular postings on social networks are links to useful articles, videos, podcasts and audio; there is nothing better to build your online following than linking your PR coverage from reputable media sources that introduces you as an expert.

In other words, utilize media coverage to provide legitimate updates about issues, as they won't be received as self-serving sales pieces.

Summary

I love to share my expertise with online friends and help them reach their goals. In the process, my book, *Celebritize Yourself*, and my PR agency automatically get promoted.

I can tell you from experience that these ideas work. I've received kind and flattering comments on Facebook and Twitter, because I prefer to educate others rather than to promote myself.

In the words of Zig Ziglar, *"If you help enough people get what they want, you will get what you want."* ■

Marsha Friedman is the CEO of EMSI Public Relations (www.emsincorporated.com), a national firm that provides PR strategy and publicity services to corporations, entertainers, authors, and professional firms.

Quick Ideas

The Employee's Bill of Emotional Rights

An employee has the right to:

1. Insist on a reasonable workload and fair expectations;
2. Put family obligations first when necessary;
3. Refuse to do something that conflicts with your core principles;
4. Receive fair compensation and pay increases for the work you perform;
5. Refuse to be responsible for someone else's performance;
6. Be kept informed about decisions that affect your job;
7. Refuse to participate in office politics without fear of emotional or economic retaliation;
8. Stand up and take action against harassment, threats, intimidation, discrimination, verbal abuse, or violations of confidentiality or trust;
9. Performance expectations that are clear, consistent, rational, and honest;
10. Adequate training;
11. Insist that stated or implied promises and commitments be kept; and
12. Move on if the job doesn't meet your needs.

Source: Scott Barella and Craig Chalquist,

New Year, New Approaches to HR Issues

By James J. McDonald

The start of a new year provides a natural opportunity for businesses to implement changes to their human resources policies and procedures in order to reduce exposure to legal claims and make the business more competitive in this challenging economy.

Moreover, changes introduced at the beginning of the year seem less abrupt to employees, and are less disruptive to employee morale. My recommendations are as follows:

❖ ***Introduce a new company handbook***—If you don't have an employee handbook, have one prepared and ready to distribute as soon as possible in the new year. A good handbook makes it clear what is expected of employees and what they can expect in terms of compensation and benefits.

It also reduces the likelihood of inconsistent application of policies that can lead to discrimination claims, and it provides a means to ensure that every employee has been informed of important policies, such as the policy against harassment, employment at will, and arbitration of disputes.

❖ ***Reclassify staff*** — If the exempt status of some employees from overtime seems questionable, the new year is a good time to reclassify them as non-exempt. Job descriptions for employees switched to non-exempt status should be revised to more accurately reflect their job duties.

❖ ***Adjust compensation plans*** — Instead of granting automatic pay raises at the first of the year or on an employee's anniversary date, consider implementing a pay-for-performance plan that ties a portion of employee compensation to the performance of the employee and/or the overall financial well-being of the company.

❖ ***Revise vacation policy*** — Companies can save money by revising their vacation policy. First, impose a waiting period of three or six months before new employees qualify for vacation benefits. This eliminates the need to pay accrued vacation to short-term employees who do not work out.

Second, if there is a "paid time off" or "PTO" policy, split it into vacation and sick leave. While employers must pay accrued vacation to terminated employees, they need not pay unused sick leave unless lumping it together with vacation time into "PTO."

❖ ***Reduce holiday pay*** — Consider eliminating some paid holidays. Employers are not required by law to provide paid holidays, so they can legally cut back on some of these paid holidays.

❖ ***Evaluate employee health plans*** — Are employees bearing their fair share of the costs of the plan, in terms of premiums and deductible amounts? Is the plan providing adequate coverage, given the cost – or would another plan provide better coverage for the same or lower cost?

Consider providing a stipend to employees who may decline coverage under your plan because they can be covered under a spouse's plan. ■

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