

The Graying of the American Workforce

By Jeffrey W. Larroca



The American workplace is aging. Employees 40 years of age or older represent nearly 50 percent of the total U.S. labor force, and that number is expected to grow in the future. Indeed, the number of workers 55 and older is slated to increase from 13 percent of the U.S. labor force in 2000 to 20 percent in 2020. Implicit in these statistics are the readily recognizable benefits of an older workforce. Older workers are increasingly valuable due to their expertise and hands-on experience, and they often represent the institutional care of any business. Their longevity in and of itself is a testament to their worth. Most employers do not keep poor employees for long stretches of time.

That said, the older American worker is currently besieged by numerous influences that make his or her job more precarious as the years go by. For example, when a company is trying to better the bottom line in a tough economy, older workers - and their higher salaries - become attractive candidates for downsizing. Congress recognized the vulnerability of the older American worker when it passed the Older Workers Benefits Protections Act ("OWBPA") in 1990. Prior to passage of the OWBPA, an employer could walk into an older employee's office, explain that he was being let go, and give him a piece of paper offering some money for a release of all his claims against the employer, including any age discrimination claims. If the older employee refused, or asked for some time to have his lawyer or accountant review the agreement, the employer could say, "Nope. Take it or leave it. But if you do not sign by the end of the day, you will get no severance. If you sign, you'll get the XX weeks." The OWBPA changed the rules and stopped the steamrolling. Now, employers must give an employee who is releasing a federal age discrimination claim 21 days (or, in the case of a group termination, 45 days) to consider the agreement, and even after the agreement is signed, an older employee has another seven days to revoke it.

Still, older workers often suffer a discrimination completely different than that suffered by other groups because the discrimination is in many ways deemed acceptable by society at large. If, for example, a late-night talk show

host were to make fun of an African-American or a gay politician because of a factor tied to their protected status, there would be at best nervous laughter, followed by a public discussion and the inevitable apology. But in the case of age, there are no such taboos. Take, for example, some of David Letterman's riffs on John McCain in the last presidential campaign:

But seriously how about that John McCain? John McCain looks like a guy whose head you can barely see over the steering wheel. ... John McCain looks like the guy who thinks the nurses are stealing his stuff. 'Dad, why would they take your socks? It doesn't make sense.'

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"How about that John McCain, huh? John McCain looks like the kind of guy who brags that his new denture adhesive allows him to eat corn on the cob. He looks like a guy who parked his RV overnight at Wal-Mart."

The ease with which people make fun of older Americans trickles down to the workplace and can be seen in any number of casual comments that would never in any way be tolerated if directed at another protected status. Some choice phrases are below:

- * "Old man"
- * "We need some new blood around here."
- * "Fuddy-duddy"
- * "You have had 34 years, and that is enough."
- * "We need new energy."
- * "Not a good cultural fit."
- * "I'm not sure we want a grandpa working with our high school students."

All of the phrases above come from actual age discrimination lawsuits, but the last one had a particularly negative impact on the employer. In *Jones v. National American University*, the plaintiff applied for a promotion at the university. The university president did not select the plaintiff, who was 56 years old, and in the process he said, "I'm not sure we want a grandpa working with our high school students." The jury found age discrimination and doubled the damages, concluding that it was willful.

It is impossible to know what the university president was thinking when he made the statement, but one can fairly assume that he would never have said,

"I'm not sure we want a dame working with our high school students." For the same reasons David Letterman is comfortable taking shots at older people, the university president may have blithely made his comment.

An aging workforce and a culture that is somewhat comfortable in being ageist makes for a combustible combination. Employers should consider one more element to the mix: unlike all other protected categories, if we are fortunate, all of us will one day be older workers which leads to a great deal of jury sympathy. Given the circumstances, if employers do not work through policies, training and other endeavors to combat ageism, the damage could be significant. ●

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