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Age Discrimination in the Workplace: Learning from Google's Experience

Case

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Abstract

This case study examines age discrimination in the American workplace, and reviews two examples of age discrimination cases filed against Google since 2007 to illustrate this concern in organizational practices. The two different court cases presented show different aspects of plaintiffs' allegations of age discrimination. The 1967 Age Discrimination in Employment Act and the associated legal implications for employment decisions involving aging workers are presented. Both the challenges and issues related to potential age discrimination in an organization are reviewed, and organizational solutions to avoid age discrimination and ensure fair employment practices for qualified older workers are suggested.

Case

Learning Outcomes

By completing this case, students should be able to:

- understand the rights and responsibilities of both employers and aging workers within a growing aging workforce;
- recognize legislation related to organizational practices and potential age discrimination;
- assess concerns regarding potentially ageist workforce policies and practices affecting qualified older adults' workforce participation;
- evaluate potential workplace solutions to create more "aging friendly" organizations in response to the increasingly older workforce.

Introduction

There will be an increasing number of older workers in the U.S. and globally through 2050 (Bal, Kooij, & Rousseau, 2015; Ilmarinen, 2009). Accordingly, the workplace needs to adjust to the changing age demographic of its employees, to better understand how to engage and maintain a qualified aging workforce, and to prevent potential ageism among employees and/or management (Avery, McKay, & Wilson, 2007; Bal, Reiss, Rudolph, & Baltes, 2011; Baltes, Rudolph, & Bal, 2012; Truxillo, Cadiz, & Hammer, 2015). As the legal cases faced by Google indicate, there are multiple challenges and issues related to potential age discrimination in an organization, and it is increasingly important to implement organizational solutions to avoid age discrimination and ensure fair employment practices for qualified older workers.

Legal Protection: ADEA and Beyond

Age discrimination manifests itself in organizational decision-making (Truxillo & Fraccaroli, 2016) and is an issue addressed by federal and state legislation. The *Age Discrimination in Employment Act* (ADEA) of 1967 (primary amendments in 1978, 1986) defines "age discrimination" as organizational decision-making that takes into account the age of employees when making decisions of employee benefits (e.g., pay/benefits, hiring, training, promotion, job assignment, demotion, and/or termination/layoff). In companies with more than

20 employees, not counting independent contractors, this federal regulation protects employees age 40 and older as a "protected class." The purpose of the act is to ensure the employment of older workers is based upon their employment-related qualifications, not their chronological age. One exception to this rule, however, is employees in "safety force" occupations (e.g., police and firefighters), as their employment may affect public safety.

Rights and responsibilities

Both employers and employees have rights and responsibilities around age discrimination. According to the ADEA legislation, employers must clearly communicate both the ADEA guidelines (e.g., communicated through periodic workplace training workshops or workplace policy postings around the workplace) and the intended protections for their older employees. Documentation of all employment-related decisions impacting employees is a responsibility of employers, and is also required by the *Equal Employment Opportunity Commission* (EEOC) who may initiate a discrimination case against an employer if reports indicate discriminatory practices based upon non-job-related factors of applicants or employees.

According to the ADEA legislation, an "older worker" is defined as an individual who is age 40 years or older. Under federal regulations, this age-related designation of a "protected class" of older workers necessitates that employers with more than 20 employees fairly accommodate, retain, and support qualified older workers in the workplace. Beyond federal regulations, it is equally important to understand that there is state-by-state legislation (http://www.workplacefairness.org/age_statelaw) enforced through *Fair Employment Practice Agencies* (FEPA) on the state and local level to protect individuals' employment rights.

While the bulk of the responsibilities fall on the employers in discrimination cases, it is the employee's responsibility to report an incidence of age discrimination in the workplace. In addition to this reporting responsibility, employees can ensure they remain current in their job knowledge and skills to increase promotion opportunities and reduce termination possibilities. It is also helpful for employees to be aware of their personal rights and responsibilities, including how to gather evidence in discriminatory incidents and when to launch a complaint. Despite these safeguards against discrimination, ageism may still occur.

Organizational Practices and Policies: Why They Are Needed to Protect Aging Workers

Beyond their legal obligations to act fairly, it makes sense for organizations to implement policies and practices to accommodate qualified older workers who have much to offer through their accumulated organizational knowledge and expertise. Older workers have decades of accumulated job knowledge and skills that cannot be replicated through training workshops or "refresher" college courses (e.g., in the 1990s, retired computer programmers were recruited by technology companies to address Y2K computer concerns because of their expertise in "outdated" computer programming knowledge); the insights from this segment of the workforce can be irretrievably lost if age discrimination is allowed to occur in the workplace.

In 2007, the U.S. Government Accountability Office (GAO) wrote in a report entitled *Some Best Practices and Strategies for Engaging and Retaining Older Workers* that employers must engage in organizational policies and practices to both acquire and maintain a qualified aging workforce. There are many benefits to recruiting and/or retaining qualified older employees in the workplace (e.g., Hertel & Zacher, 2015; Truxillo et al., 2015):

- high organizational and job commitment;
- in-depth job knowledge (expertise);
- good industry-related network of contacts (e.g., customer base);
- strong work ethic (e.g., less voluntary absenteeism).

According to the GAO (2007) report, older adults would equally benefit from extended employment participation because of increased personal longevity and the need to delay retirement onset due to motivational and/or financial needs. If the workplace encourages older employees' contributions and mentoring activities with younger employees, this can address aging adults' personal motivation to "give back" to society (e.g., generativity motivation) (Mor-Barak, 1995) and assist in maintaining a good level of physical activity, cognitive activity, and social engagement into later life (Johnson, Mermin, & Resseger, 2007).

What should be emphasized is that all employees would benefit from the implementation of fairer employment practices regarding "aging in place" among qualified employees, ranging from enhanced fair employment policies and practices supporting increased employee diversity to the sharing of expertise and learning to increase productivity and knowledge amongst multiple generations in the workplace (e.g., increased organizational productivity of both younger and older through the utilization of "mixed-aged" employee teams) (Göbel & Zwick, 2013). Promoting diversity in the workplace benefits employers because such organizational strategic planning promotes a positive work environment, which stimulates organizational productivity through a dynamic, diverse employee base, exemplifying enhanced adaptability, heightened creativity, multiple skills, multiple areas of expertise, and multiple perspectives (Lambert, 2016). Further, employee diversity in the workplace creates a global advantage for organizations through increased insights into diverse perspectives and the characteristics of diverse groups across the world (Grillitsch & Chaminade, 2016).

Consequences of Age Discrimination

Employers may be further motivated to safeguard against age discrimination in their organizations by the consequences they may face, including legal challenges launched under ADEA legislation. Organizations that are found to have violated ADEA regulations may be ordered to compensate the plaintiff(s) for:

- "back pay," or to compensate any past missed wages, benefits, or associated compensation lost due to the employer's past discriminatory practices;
- "front pay," or to compensate for any future earnings lost due to the employer's past discriminatory practices;
- a "liquidated damages" financial penalty, or the same financial amount as the back pay penalty if there is evidence to suggest that the employer was blatantly intentional or exhibited reckless disregard in aging-related discriminatory practices; and/or
- attorney and court costs, if deemed appropriate by the court.

Perceived age discrimination has negative effects for organizations beyond the aforementioned financial penalties. The impact of an organization's perceived or proven discriminatory practices can hurt the standing of the employer within its industry (and beyond), create low employee morale, incur disruptive workplace behavior (e.g., excessive tardiness) and/or develop a culture of employee distrust and suspicion toward management (Perrewé, Brymer, Stepina, & Hassell, 1991). Further, an organization's unfair employment practices toward older workers can negatively impact the broader society through increased unemployment rates of older adults (Hedge, Borman, & Lammlein, 2006).

To avoid age discrimination, employers across industries should prioritize non-ageist practices in employment testing design, implementation, and/or scoring and interpretation; job design and associated human factors considerations (e.g., building accessibility); and availability of training opportunities for skill updating (Kanfer, Beier, & Ackerman, 2013; Silverstein, 2008). According to the case statistics reported on the EEOC website (<https://www.eeoc.gov/eeoc/statistics/enforcement/adea.cfm>), there was an increase in the number of age discrimination cases filed from 2005 to 2015 (from 16,585 to 20,144 cases). As the number of "baby boomers" living longer and "aging in place" within the workplace increases, it is reasonable to assume that there will be an increased number of age discrimination claims unless employers are not more proactive in creating "age-fair" workplaces (Sargeant, 2012). Google has experienced two recent age discrimination cases that offer insight into the implications of accommodating an aging workforce.

Age Discrimination Cases with Google

Reid v. Google, Inc.

An examination of two inter-related age discrimination court cases involving Google illustrates the legal and organizational implications of age discrimination and the necessity for organizational policies and practices to address this issue. The first case was filed in 2007 by Brian Reid, a Google employee who alleged he suffered age discrimination on the job (*Reid v. Google, Inc.*, H029602 Case No.: CV023646 (2007) filed in the Santa Clara County Super. Ct.). Brian Reid, the plaintiff in the age discrimination case, claimed that he encountered ageist attitudes from both co-workers and management, referred to by other employees as an "old fuddy-duddy" and "old man." Further, Reid alleged receiving performance appraisal feedback suggesting that younger employees exemplified the "superfast pace" of the organization and that he may not be the best fit within the organization. Reid was terminated in 2004 from his job later following this performance feedback.

In 2010, for the court case *Reid v. Google, Inc.*, the California Supreme Court and Court of Appeal (Sixth District) overturned a previous trial court's ruling in favor of Google requesting a summary judgment, and ruled that the former Google executive Reid had presented sufficient *prima facie* court evidence of age discrimination and that court case should proceed. In support of the age discrimination claim, AARP filed an *amicus curiae* brief in this case. Evidence supporting charges of Google's illegal age discrimination resulted in an out-of-court settlement in the *Reid v. Google, Inc.* case.

The financial cost to Google in the financial settlement with Reid is apparent but the "social cost" for the corporation equally exists. Current employees and potential future applicants may certainly question the on-going trustworthiness of the corporation in dealing fairly with its employees. Further, Google's reputation within its industry can be harmed with associated business consequences, such as clients (e.g., "baby boomer" consumers) switching companies to utilizing competitors' services and a loss of business partners who are disillusioned by the unfair treatment of older employees at Google.

Heath v. Google, Inc.

In 2015 another age discrimination case was filed against Google (*Heath v. Google Inc.*, Case No.: 15-1824, filed in U.S. District Court of Northern California in San Jose, California). The

case was filed by plaintiff Robert Heath, who applied for a software developer job position at Google in 2011. At the time of the job application, Heath was 60 years old and had Master certification in both Java and C++. Although demonstrating qualifications in both professional background in satisfactory applicant testing and software development knowledge and the job interviewer indicating he was a great candidate for the job position, Heath was not hired for the job in 2011. In pursuing legal action against Google for unfair employment practices, Heath and his attorneys claimed that the corporation violated both California's legislation regarding fair practices in the workplace and ADEA legislation by hiring much younger workers with a median age significantly lower than the national average for comparable U.S. workers in computer-related job positions. At the time of the case being filed, an analysis of Google's employee database suggested that the median age of its employees was approximate 29 years of age, which is significantly lower than the median age of U.S. employees in the workforce of approximately 43 years of age.

Google's hiring practices might have inadvertently led to this ageist outcome. As former Google executives, Schmidt and Rosenberg (2014) wrote in their book, *How Google works*, the rigorous hiring practices at Google involve assessments of applicants' cognitive creativity and "fit" within the organizational culture. They also note the peer-reviewed hiring committee process, which used rigorous assessment techniques to hire the most creative and talented employees. What is important to understand is that the very practices implemented to find the ideal job candidate "fit" for Google, may have alienated older applicants who were not the same age cohort as the hiring committee. It may have also alienated those who did not have the same "new ideas" as a result of their different occupational training background—for example, older candidates would have a different background from younger candidates immediately exiting from university training.

Heath v. Google, Inc. has a trial set for May 2017, and Cheryl Fillekes has filed to join the class action suit in the spring of 2016. The co-plaintiffs are alleging in case filings that Google engaged in organizational practices which were in violation of the ADEA. The co-plaintiffs are filing both a class action lawsuit on behalf of all individuals age 40 or older who applied for a job position but were not hired at Google (U.S. location) from August 13, 2010 to the present. The co-plaintiffs are also filing separate claims of age discrimination violations against Google under the *California Fair Employment and Housing Act*.

Organizational impact on Google

The age discrimination cases filed against Google have affected the company's organizational functioning, but Google has not attributed those changes to the charges of ageism. In 2014, Google released a statement that it was making a concerted effort to increase the diversity of its employees through a targeted hiring of more women and racial groups, but it did not allude to addressing the age disparity of its employees to the general aging workforce in terms of median age. To date, Google representatives have not admitted publicly to their management espousing ageist attitudes and/or engaging in ageist hiring or *employee practices in the workplace. Their stance in response to the court cases has been to dismiss such allegations as being baseless and misrepresented by plaintiffs.*

Learning from Google: Age Discrimination Concerns and Solutions

Unlike the aforementioned organizational responses of Google, employers do need to carefully review all aspects of organizational decision making (i.e., hiring, allocation and

increases in pay and benefits, promotion, job transfer, training opportunities, demotion, and termination) to ensure that the decision criteria is based upon well-developed, updated job descriptions of positions and is not based upon biased, non-job related criteria (e.g., age of an individual). To create an "age fair" workplace environment, it is vital for employers to be transparent and equalitarian in both their communications (e.g., memos, performance reviews, and training workshops) and practices (e.g., selection processes and criteria for awarding raises or promotions). Based on the climate of an aging workforce and the experiences of Google, several workplace concerns and solutions can be identified around age discrimination.

Workplace concerns about age discrimination

1. In the case of *Heath vs Google, Inc.*, the concern that the court case alleges is that Google, and potentially other employers in similar industries, may be engaging in hiring and other organizational decisions/activities that ignore the qualifications of a growing aging workforce and, instead, are selecting employees based upon a "youth" age criterion regardless of work expertise or employment testing outcomes.
2. The Reid and Heath cases against Google suggest a potential concern regarding the treatment of older employees based upon chronological age (and associated cultural biases) without acknowledgment of their accumulated job-related knowledge and expertise.
3. There are many incidences of age discrimination occurring across many industries in both the U.S. and other countries. These cases do not come to light often because the burden of proof (*prima facie* evidence) is on the plaintiff. However, this does not negate the need for employers to be more proactive in selecting, retaining, and promoting qualified older workers to remain as productive members within the workforce.
4. Older workers may not pursue age discrimination lawsuits against employers because of fear of retribution or concern that other employment-related benefits may be lost. Policies and procedures must be in place to protect an older employees' anonymity when discrimination is perceived to occur and a complaint should be filed. There needs to be clear guidelines for both employers and aging workers regarding their rights and responsibilities to ensure a fair and age equitable workplace environment exist for all concerned. Regarding responsibilities, skill updating and remaining qualified within the field of employment is on both the employer and the older worker.

Workplace solution options to reduce age discrimination

1. Offer regular on-site skill updating training opportunities for all employees, regardless of tenure in the organization. This helps older workers avoid skill obsolescence and promotes better opportunities for job retention and/or promotion.
2. Create promotion tests that better reflect older workers' accumulated job experience and associated skill development over time. Older workers' expertise would be valued more in both the evaluative process and larger organizational culture.
3. Ensure that the selection and/or promotional process is both job relevant and meaningfully extends from knowledge and skills learned on the job. This practice makes the hiring and promotion process fairer and more job relevant for all regardless of age.
4. Train leaders within the organization to promote an appreciation of employee diversity from an expertise, skill-based perspective rather than focus on judging employees' "fit" within the organization based upon non-job related characteristics (e.g., an employee's

- age). Organizational management should encourage "mixed age" employee teams to cultivate creative, multi-perspective teamwork outcomes among employees.
5. Offer on-site training to employees regarding how to gather evidence of workplace discrimination and file formal organizational complaints and/or launch legal proceedings. Employers should encourage employees to understand their rights under the ADEA, and create policies to protect employees' anonymity during such complaints to reduce further discrimination.
 6. Provide on-going sensitivity training regarding diversity and aging issues to all new hires and all levels of management. This pervasive and consistent age sensitivity training would encourage effective and significant change organizational culture and associated employee decision-making practices (including at Google).

Conclusion

All aspects of organizational functioning (e.g., human resources, training, benefits, management, finance, and operations) can be affected by ageism. Most age discrimination cases, however, do not make it to trial because they cannot be proven, and this issue will only grow in concern as the aging workforce will increase in both the number of workers delaying retirement and the number of years occupying job positions through at least 2050 (Bal, et al., 2015; Cooper & Mishkind, 1993).

As Google's age discrimination cases indicate, there are potential legal and financial costs to employers if they are not diligent in this process. Whether an employer is risking liability for ADEA violations or engaging in innocuous but equally offensive ageist behavior, the cost of ageist policies and practices can have a devastating impact on all levels of organizational functioning (i.e., human resources, finance, marketing, operations, and management), as well as employees' job motivation and/or productivity. Further, an organization's corporate image (e.g., leadership quality or organizational trustworthiness) can be permanently tainted both internally (e.g., lowered organizational commitment of its employees) and externally (e.g., lowered corporate reputation amongst competitors and customers/ clients within the industry; stockholders). Employers implicated in age discrimination cases may also experience increased organizational costs associated with decreased organizational productivity due to heightened job stress among employees and management, loss of customers/clients, which translates into decreased profits; and decreased efficiency due to lower employee morale.

The business issue is not only to avoid potential age discrimination charges, but for employers to also realize that there are many benefits to hiring and retaining a qualified aging and overall diverse workforce. All levels and aspects of an organization should be focused on promoting age-related diversity in the workplace because a workplace with multiple perspectives and areas of expertise would be beneficial for employers who wish to have a multi-talented, creative, and synergistic employee base. For organizational change to occur, however, both employers and employees need to challenge the *status quo* and embrace the diversity related to retaining an aging workforce. Otherwise, employers will lose a vast area of knowledge and skills learned from aging workers' decades of training (i.e., a "brain drain"). Employers must become much more cognizant of how to avoid ageist workforce policies and practices affecting older adults' workplace participation. Specifically, employers need to proactively review on a continual basis and ensure non-ageist practices in employment testing design, implementation, and/or scoring and interpretation; job design and associated human factors considerations (e.g., building accessibility); and availability of training opportunities for skill updating should be priorities for employers across industries.

Discussion Questions

1. What are some ways that organizations may inadvertently create potential age discrimination? Analyze how Google may have created potential age discrimination.
2. What are the legal implications for organizations that do not safeguard against age discrimination?
3. Assess the suggested solutions for age discrimination in the case. How else might employers proactively avoid the possibilities of ageist attitudes and/or behaviors in the workplace?
4. What impact can discriminatory practices, such as age discrimination, have on organizations?
5. How can employees protect themselves from age-related discrimination and advocate for their rights?
6. Do you anticipate that there will be more age discrimination cases filed as baby boomers delay retirement and/or return to the workforce after retirement? Explain your answer.

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