



AGE DISCRIMINATION IN THE WORKPLACE

The Chicago Human Rights Ordinance prohibits discrimination in employment based on age, along with 15 other protected classifications. What does this mean?

- “Age” is defined in the Human Rights Ordinance as the chronological age of not less than 40 years. It is not an ordinance violation to discriminate against younger people.
- In general, the Human Rights Ordinance prohibits an employer from treating employees in similarly-situated positions age 40 and over differently based on their age. It is usually a violation to refuse to hire or promote a candidate over age 40, or to discharge such an employee, based on age.
- A pre-employment inquiry which directly or indirectly expresses a limitation, specification, or discrimination against employees over age 40 is prohibited unless based on a *bona fide* occupational qualification. (BFOQ) Employers should avoid inquiries or discussion about a job candidate’s age unless able to show the inquiry was made in good faith for a non-discriminatory purpose.
- A maximum age limit may be a *bona fide* occupational qualification (BFOQ) for some jobs. An employer claiming such a BFOQ has the burden to prove it is appropriate for the job in question, usually by showing it is necessary for safe and sufficient job performance.
- A BFOQ defense cannot be based on assumptions about older employees, characterizations attributed generally to older employees, preferences of co-workers or customers, or customs or traditions which discriminate against older employees.
- Employers and employment agencies may not cause publication of job advertisements using terminology suggesting that a position is not appropriate for an employee over age 40, unless a BFOQ can be established.
- Discrimination against any segment of the population over age over 40—for example people over age 65—is also prohibited unless a BFOQ can be established.
- Employers are not required to accommodate employees over a certain age and may apply legitimate performance expectations to employees of all ages.

Penalties for violations of the Human Rights Ordinance include—

- Fines of \$100 to \$1,000 per incident, paid to the City.
- Damages and attorney fees, paid to the complaining party.
- An injunction ordering specific actions to eliminate discriminatory practices.

Age discrimination may also violate state or federal anti-discrimination laws. A discrimination finding may affect continued licensure of a business by the City of Chicago as well as City contractor or vendor status.

A person who claims to have been subjected to prohibited discrimination within the City of Chicago may file a discrimination complaint at the Commission on Human Relations. The Commission investigates and rules on each complaint through a neutral process which gives complainants and respondents the opportunity to present evidence and legal arguments to support their positions.

See the back of this flyer for selected ordinance and regulation provisions. For more information, see www.cityofchicago.org/humanrelations.

SELECTED LEGAL PROVISIONS AGE DISCRIMINATION IN EMPLOYMENT

Chicago Human Rights Ordinance, Section 2-160-030

No person shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military status, credit history or source of income....

Reg. 305.100 Bona Fide Occupational Qualifications

The Commission shall find that it is not a violation of the "Chicago Human Rights Ordinance" (HRO), Chicago Muni. Code, ch. 2-160-010 (1990), for an employer or employment agency to discriminate based on [age] if it constitutes a *bona fide* occupational qualification ("BFOQ") for a particular job. The person asserting the exemption shall bear the burden of establishing that it is appropriate in a particular circumstance. The Commission shall examine the effect of an employer's claim of BFOQ in excluding persons based upon their membership in a Protected Class under the HRO (see Reg. 100(26)). Generally, a BFOQ is appropriate to exclude an entire class of individuals on the basis of a standard that is necessary for safe and sufficient job performance.

SUBPART 310 EMPLOYMENT AGENCIES

Reg. 310.100 Prohibition of Discrimination by Employment Agencies

It shall be deemed unlawful for an employment agency to discriminate against any individual on the basis of membership in a Protected Class under the HRO (see Reg. 100(26)). For example, an employment agency which accepts a job order containing an [age restriction] shall be liable under the HRO (as shall be the employer placing the order) if the agency filing the order knows or should have known that the specification is not based upon a *bona fide* occupational qualification.

Reg. 310.110 Restriction of Listings

An employment agency which restricts the availability of its services or which maintains separate files, listings or referral systems based on [applicants' ages] is in violation of the HRO except to the extent that membership in one of these classes is a BFOQ for the job involved. (See Reg. 100(26) and Reg. 305.100.)

SUBPART 315 ADVERTISING OF JOB OPPORTUNITIES

Reg. 315.100 Discriminatory Advertising

It is a violation of the HRO for an employer or an employment agency to cause a newspaper, magazine or similar publication to publish "help wanted" advertisements in columns or sections segregated on the basis of [age] (see Reg. 100(26)) or to publish such advertisements using terminology suggesting that the positions for which applicants are sought are restricted to or appropriate for persons [of a certain age]. For example, an advertisement expressly directed to applicants of a certain age, *e.g.*, "youthful person," shall be considered discrimination on the basis of age. There is no violation of the HRO, however, if, for example, age is a *bona fide* occupational qualification for the job advertised.

SUBPART 320 PRE-EMPLOYMENT INQUIRIES

Reg. 320.100 Discriminatory Pre-Employment Inquiries

Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to an applicant's age shall be unlawful unless based upon a BFOQ. An employer may not, for example, make inquiry about the age of an applicant for employment. However, a pre-employment inquiry may, for example, ask an applicant to designate his/her gender or may solicit the applicant's preferred designation as "Mr.," "Mrs.," or "Ms." provided that the inquiry is shown to be made in good faith for a non-discriminatory purpose.

For pre-employment inquiries concerning people with disabilities, see Commission Reg. 365.150.

SUBPART 325 COMPENSATION

Reg. 325.100 Discriminatory Compensation

It is a violation of the HRO for any person to discriminate among employees based upon age (see Reg. 100(26)) in negotiating or establishing wages, benefits or other compensation. An employer may not differentiate, based upon [age], among employees performing the same or substantially the same work under like working conditions in fixing the employees' wages and benefits.

SUBPART 330 FRINGE BENEFITS

Reg. 330.100 Definition of "Fringe Benefits"

"Fringe benefits," as used herein, includes medical, hospital, accident, and life insurance; retirement benefits; profit-sharing and bonus plans; leave time; and other terms, conditions, and privileges of employment.

Reg. 330.110 Prohibition of Discrimination

It shall be a violation of the HRO for an employer to discriminate in the entitlement to or qualification for fringe benefits based upon [an employee's age].

Reg. 330.120 Cost Not a Defense

It shall not be a defense under the HRO to a charge of discrimination in affording benefits for an employer to assert that the cost of such benefits is greater or perceived to be greater for [employees over 40] as compared to others.

Reg. 330.130 Memberships in Clubs

An employer which maintains a practice of purchasing, reimbursing or subsidizing memberships for any of its employees in private clubs must ensure that the practice is followed consistently among employees without regard to [age].

Reg. 330.140 Pension or Retirement Plan

It shall be a violation of the HRO for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on membership in a Protected Class or which differentiates in benefits on the basis of membership in a Protected Class (see Reg. 100(26) above).