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Age Bias - A Bad Business Decision

An employer has agreed to pay \$80,000 to settle an age discrimination lawsuit. A former sales representative with the employer claimed he was fired due to his age. He is 71 years old.



The former employee claimed the sales manager made several derogatory comments demonstrating a bias against older workers, including stating that he would like to remove all the older representatives and replace them with younger employees. He also repeatedly asked the former employee about his retirement plans and remarked that he would retire if he were as old as the plaintiff. "Meenan Oil to Pay \$80,000 to Settle EEOC Age Discrimination Lawsuit," *The U.S. Equal Employment Opportunity Commission* (May 13, 2009).

The sales manager also took sales leads and sales territory from the former employee prior to firing him. After the discharge, the employer replaced the 71-year-old with a substantially younger employee.

Commentary and Checklist

Terminating older employees because of their age is not only illegal, but often short-sighted...a poor decision no matter what the angle.

A recent example of the abilities of older workers is Joan Rivers, 75. Ms. Rivers won \$250,000 for her selected charity after competing in Donald Trump's TV show *Celebrity Apprentice*. The show sets competitive challenges for contestants designed to gauge business skills.

Ms. Rivers was the oldest contestant to ever compete on the show and beat out 15 other challengers to win the competition. "This Old Pro is the New 'Apprentice,'" *CBSNews.com* (May 13, 2009).

Since the start of the recession in December 2007, employers have cut more than five million jobs, and nearly two-thirds of those job losses occurred between November 2008 and March of 2009.

Figures from the Equal Employment Opportunity Commission (EEOC) show that age-related discrimination allegations are at a record high, jumping 29 percent in 2008 over the 2007 figures, and the EEOC charges for 2008 were tallied only through September 30, 2008. The spike in age discrimination charges coinciding with widespread layoffs is predictable.

Here are some additional tips to consider to avoid age litigation after a layoff:

- ✓ If affordable, provide methods other than involuntary layoffs to reduce your workforce.
- ✓ Provide fair severance packages alongside severance agreements for those involuntarily laid off. Have an attorney approve all severance agreements.
- ✓ Carefully analyze all factors used for involuntary reductions-in-force.
- ✓ Make a determination whether your reduction-in-force criteria can withstand legal and public scrutiny.
- ✓ Perform a disparate impact analysis of any reduction-in-force. Is the result skewed so that one employee group is impacted more than others?

This informational piece is part of "The Loss Prevention Journal" published on May 20, 2009.

May 20, 2009

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