California law protects job applicants and employees aged 40 and older from discrimination based on age. California recognizes that people aged 40 and older face unique obstacles in the later phases of their careers and need protection from age-related biases and stereotypes.

WHAT IS WORKPLACE AGE DISCRIMINATION?

California's Fair Employment and Housing Act (FEHA) makes it illegal for an employer to discriminate against or harass an employee or job applicant based on protected characteristics, including age. In the employment context, people aged 40 and older are protected from age discrimination.

The law also provides protections when an employer discriminates against someone based on the mistaken belief the person is 40 or older or based on their association with a person aged 40 or older. FEHA's protections against discrimination apply to private employers with five or more employees as well as public employers (state and local). The protections against harassment apply to all employers.

EXAMPLES OF AGE DISCRIMINATION IN CALIFORNIA

Age discrimination can take different forms. Sometimes discrimination is obvious, while other times it is more subtle. The following are examples of age discrimination.

Excluding older people when hiring

In the hiring process, it is generally against the law for employers to refuse to consider people aged 40 and older as potential candidates. Examples of unlawful actions include:

- Limiting how much experience a candidate can have (for example, "candidate should have no more than seven years of experience")
- Requiring candidates to be "digital natives" (people who grew up using certain types of technology)
- Requiring candidates to have a college email address

When advertising an open position, such as on a job posting website or in the media, employers generally cannot implicitly or explicitly indicate a preference for people under the age of 40 or state that people aged 40 and older will not be considered. Examples of unlawful language include:

- "Looking for someone young and energetic to join the team."
- "Seeking a candidate between the ages of 25 and 30."
- "Searching for a recent college graduate or early career professional."
- "Company seeks college student for part-time work."
- "No senior citizens."

Employers are free to hire the most qualified candidate as long as age (or another protected characteristic) is not a factor in hiring. They can also participate in programs that help high school students get jobs and are allowed to recruit on college campuses. But employers cannot use these efforts as a way of avoiding hiring adults aged 40 and older.

Asking about a candidate's age before hiring

During the hiring process, employers generally cannot ask a job candidate to share their age, date of birth, or graduation date. For example, an employer cannot ask an applicant to share their age or date of birth on a job application, during an interview, or during another pre-hiring conversation (including over email or text message). This includes drop-down menus that list an age range or cutoff for online applicants.

Employers with legal reporting requirements – including employers with 100 or more employees – can lawfully ask questions that reveal a person's age for record-keeping purposes only.

Giving lower wages or benefits because of age

Employers cannot pay employees aged 40 and older less than other employees doing equivalent work because of their age. For example, an employer cannot pay employees who are 40 and older less than younger employees in the same role because the employer believes older employees are more financially secure and less likely to have costs related to student loans or a home mortgage.

Employers cannot create policies more likely to harm employees who are 40 and older. For example, an employer cannot have a policy that says only employees with children under five can receive annual bonuses. Though the policy applies to all employees, this policy is likely to disproportionately exclude older employees.

Employers may pay employees differently based on experience or other business-related, non-discriminatory reasons so long as age is not the reason for the employer's decision.

Denying a promotion because of age

Employers cannot deny someone a promotion or evaluate them unequally compared to other candidates because they are 40 or older. On the other hand, employers are not obligated to promote a candidate who is 40 or older over a younger candidate if the younger candidate is more qualified – as long as age is not a factor.

Laying off or forcing retirement because of age

The age of employees who are 40 and older must not be a factor when making decisions about laying off or firing employees. A financial or operational need to downsize does not justify discrimination against employees because of age. Employers cannot use downsizing as an excuse to get rid of older workers and only keep lower-cost workers who may be younger.

Private employers generally cannot force someone to retire just because they reach a specific age over 40. Private employers' retirement plans and pensions, union contracts, and similar plans or agreements also cannot require people to retire when they reach a specific age over 40 unless otherwise required by law. However, if after passing retirement age an employee's job performance no longer meets the employer's standards, an employer can legally fire the employee, as long as the standards are not arbitrary or based on age.

Making comments, jokes, or insults about age

Age-based harassment can interfere with the employee's work performance by creating a hostile work environment. Examples of harassment can include:

- Repeatedly making comments such as: "Okay, Boomer!"
- Joking that someone has been working there since the "dark ages"
- Mocking someone's clothes or hair as "old-fashioned"
- Refusing to train an employee on new technology because of their age

These types of comments are against the law when they are not welcomed by the person to whom they are directed. These types of comments may create a hostile work environment when they are severe or pervasive (happen often) enough to alter that person's work conditions.

Exceptions in California

California law allows age to be a factor in employment decisions in a few limited circumstances, such as:

- Mandatory retirement for certain professions
- When age is a "bona fide occupational qualification," like when a TV production company sets an age limit when casting a role written for a child

TO FILE A COMPLAINT

If you believe you experienced employment discrimination because of age, you may file a complaint with CRD. You must file your complaint within three years from the alleged incident(s).

Civil Rights Department
calcivilrights.ca.gov/complaintprocess
Toll Free: 800.884.1684
TTY: 800.700.2320

CRD can provide reasonable accommodations for people with disabilities during the complaint process.

For translations of this guidance visit calcivilrights.ca.gov/posters/employment