

Age discrimination claims by older workers against their employers are expected to grow dramatically over the next few years. Many older workers have not prepared well for retirement and thus will need to remain in the workplace longer. At the same time, your restaurant may find itself under pressure from younger workers who want to move up in responsibilities and seniority. The bottleneck of employment in your restaurant, coupled with the simple fact that today's seniors are far more litigious than any previous generation, means that you need to understand this issue in order to avoid becoming a victim to it.

If your restaurant is considering reducing your number of employees, or if you are considering replacing an older worker with a younger one, then it would behoove you to make yourself familiar with the Age Discrimination Act and the Older Workers Benefit Protection Act. What most restaurant owners don't understand clearly is that everyone over 40 is protected by these acts. To establish a claim for age discrimination, all the older, terminated worker must do is prove that they were employed, that they were over 40 and that they were the target of an adverse employment action and that they were replaced by someone who was either not in a protected class or whose age difference is large enough to give an inference of age discrimination.

To help you better protect yourself from this kind of action, here is a list of some of the issues that you might want to consider.

- Don't assume that workers over age 65 should retire. Don't suggest that they do so or ask them if they are looking forward to retirement.
- If you must terminate an older employee, make sure that your reasons for doing so don't relate to age and that you have these reasons well documented.
- Don't make the mistake of assuming or implementing a program that assumes that older workers are incapable of learning new things.
- Give any older workers that may be terminated in a reduction in work force, the opportunity to apply for a position elsewhere in your restaurant should one be open.
- When laying off older workers, be sure that all paperwork is order, including release of liability forms that you associate with a severance package.
- Offer generous severance packages in return for release of liability forms signed by the employee.
- Avoid making any age-related comments about the employee, either during employment or at termination. Should you mess this up, then immediately retract any negative comments that relate to age that you may have made.
- If you have to perform a multi-employee layoff, be sure to study the demographic data to be sure that you can't be accused of cleaning out your older employees.
- Make sure that you keep Employment Practices Liability Insurance in force at all times in

case you do make a mistake and need insurance protection, particularly for defense costs should you be sued.

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