



Welcome to Risk Management PLUS+ Online®

A Service of Travelers Bond & Financial Products

Downsizing and Age Discrimination - A Costly Brew

An employer will pay \$272,000 to settle an age discrimination lawsuit. The lawsuit claimed that the employer targeted workers age 40 or above for termination during a reduction in force (RIF). The average age of those who lost their job from the RIF was over 50. "Kodak Subsidiary To Pay \$272,000 For Age Bias," *The United States Equal Employment Opportunity Commission* (March 22, 2009).

In addition to the monetary payment, the settlement requires the employer to train management on ADEA requirements, requires the issuance of a new anti-discrimination policy and allows the EEOC to monitor future severance agreements during RIFs.

Commentary

The Age Discrimination in Employment Act of 1967 (ADEA) protects employees over the age of 40 from discrimination based on age.

During 2008, the EEOC received a record number of age discrimination charge filings, a 29 percent increase from the prior year and a 65 percent jump from the number of filings in FY 2005. This jump is directly tied to the large number of layoffs performed in 2008, and the charge numbers for 2009 will undoubtedly be even higher.

With employers working hard to control expenses during a difficult economy, they may be tempted to layoff older employees disproportionately in an effort to save on typically higher salaries and benefits. The EEOC recognizes this trend and looks for patterns that suggest age discrimination.

One point of contention is whether employers ask managers to cut back on payroll by a percentage. The temptation is for managers to select the fewest number of employees for layoffs by selecting those employees who make more money. Those employees are often over the age of 40.

During an investigation following a claim of age discrimination, employers are required to provide documentation that no such pattern exists. Records that employers must keep to support non-discriminatory employment decisions include:

- ✓ Information on each employee - including name, address, date of birth, occupation, pay rate and compensation earned each week.
- ✓ Job applications, resumes, or any other form of employment inquiry submitted to the employer in response to job openings, including records pertaining to refusal to hire any individual.
- ✓ Documentation for promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee.
- ✓ Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings.
- ✓ Test(s) completed by applicants or candidates relating to the job.
- ✓ The results of any physical examinations considered for employment.
- ✓ Any advertisements or notices to the public or employees relating to job openings, promotions, training, or opportunities for overtime.
- ✓ Employee benefit plans.

This informational piece is part of "The Loss Prevention Journal" published on March 30, 2009.

March 30, 2009