

Dealing with Multi-Generational Workforces

February 2006

**Employment Law Breakfast Seminars
Perkins Coie LLP and The Washington Firm**

Are You Prepared?

Failing to Bridge Generational Gaps → Multiple Impacts

- Poor morale
- Lower productivity and performance
- Loss of talent, expertise
- Turnover
- Conflicts
- Charges and lawsuits for age-based harassment and discrimination, retaliation

- A combination of salary and long-term savings and retirement options inspires employee loyalty.

TRUE, *for older employees.*

FALSE, *for employees in their 20's and 30's who do not believe they will be with any employer long enough to reap long-term benefits.*

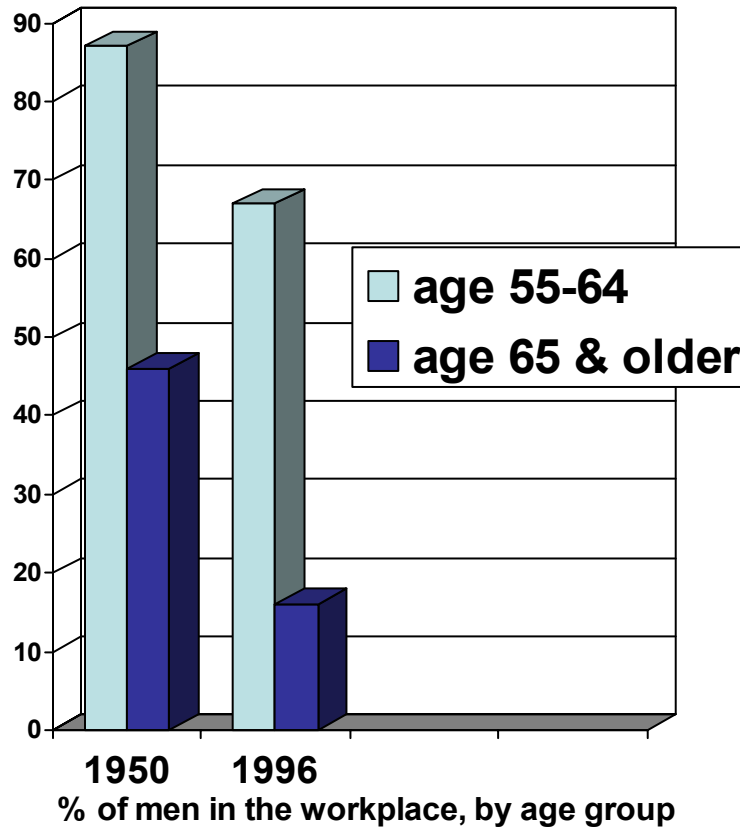
- Younger workers, more than any other age group, want to work part-time and have flexible work schedules.

FALSE. *All age groups are showing signs that they want to work more flexible or fewer hours.*

- Age 62 is the average national retirement age.
FALSE.
- People are retiring at earlier ages.
FALSE. *Despite the fact that older men are leaving the workforce at a higher rate, for the first time in US history there are 4 generations in the workplace, with the greatest increase amongst Baby Boomers and Millenials (persons born after around 1980 and after).*
- 1 out of 5 charges filed with the EEOC is for age discrimination.
TRUE. *For the last 5 years, 20% or more of charges filed with the EEOC have been for age discrimination.*

Brain Drain

Why are older men leaving the workforce?



Eligibility for retirement benefits?

Desire to be free?

Belief that Social Security plus retirement benefits and savings will provide a livable income?

Negative work climate where older employees are seen as less valuable?

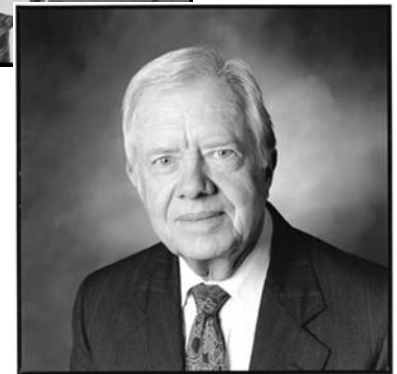
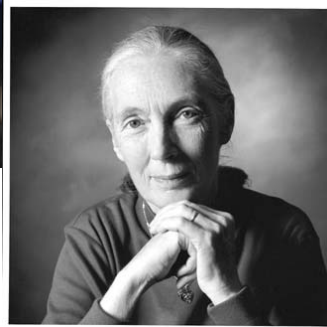
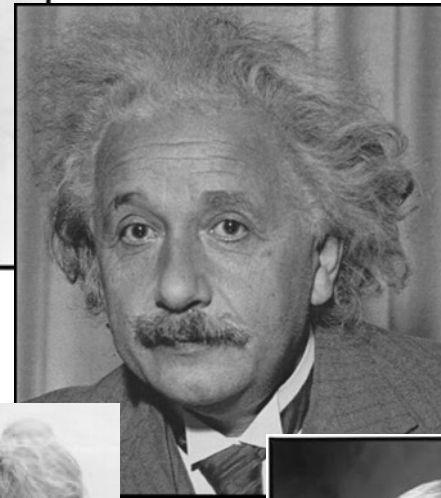
Source, Department of Health and Human Services, "Age Discrimination: A Pervasive and Damaging Influence"

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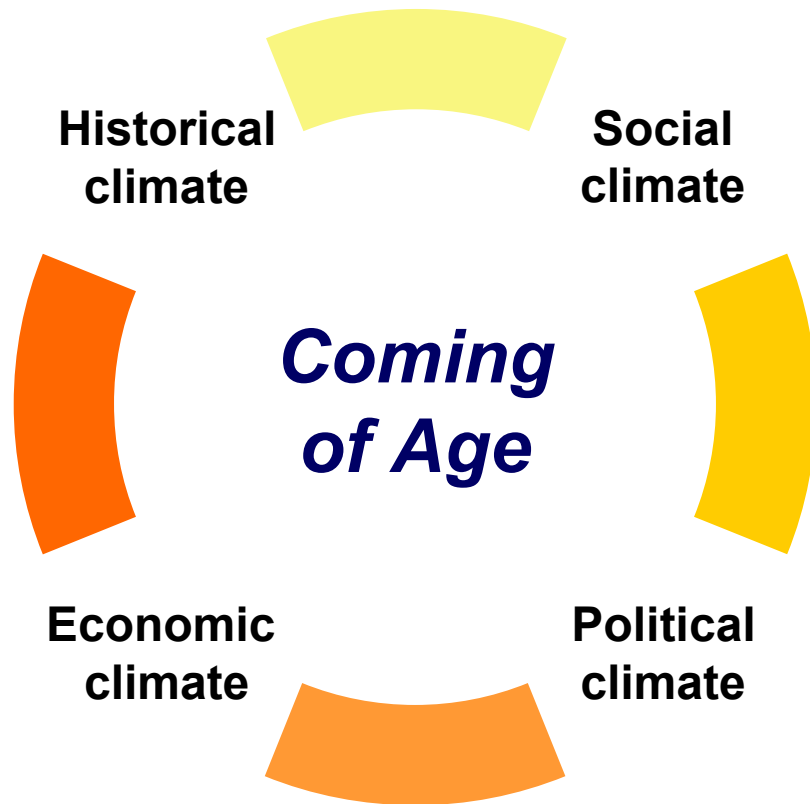
Four Generations at Work



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Generational Influences



Each generation is shaped in depth by the **economic, social, historical and political** climates in which they come of age.

Generation Characteristics

Generation	Characteristics	Stereotype
Matures 1909-1945	<ul style="list-style-type: none"> •Hardworking & dedicated •Respectful of rules & authority •Conservative & traditional •Believe that company will take care of them with retirement and raises 	<ul style="list-style-type: none"> •Old-fashioned, behind the times •Rigid/autocratic •Change/risk averse •Resistant to new ways
Baby Boomers 1946-1964	<ul style="list-style-type: none"> •Youthful self-identity •Optimistic •Team player •Competitive •Concerned with family and future security •May be caring for children and adult parents (“sandwich generation”) 	<ul style="list-style-type: none"> •Self-centered •Unrealistic •Political •Power-driven, workaholic

Generation Characteristics

Generation	Characteristics	Stereotype
Generation X 1965-1978	<ul style="list-style-type: none"> •Balanced (work/life quality) •Self-reliant •Pragmatic •Anxious about health, money, etc. •Loyal to people, not companies •Value open communication 	<ul style="list-style-type: none"> •Slackers •Selfish •Impatient •Critical •Rebellious – resistant to authority
Millennials 1979-1988 <i>Also referred to as Nexters or Gen Y</i>	<ul style="list-style-type: none"> •Fast pace/multi-tasking •Fun- & personal fulfillment-seeking •Technology savvy (grew up with computers) •Desire feedback & recognition 	<ul style="list-style-type: none"> •Short attention span (leading to references regarding attention deficit) •Spoiled & disrespectful •Question authority •Technology dependent •Unambitious

5 Predictable Friction Points

1. Ageist stereotypes, comments, jokes, teasing, and expressions
2. Communication styles
3. Use of technology
4. Work ethic and loyalty
5. Younger bosses of older workers

Laws Prohibiting Age Discrimination

- Federal law
 - Age Discrimination in Employment Act (ADEA) prohibits discrimination of persons age 40 and over
 - Older Workers Benefit Protection Act (OWBPA) prohibits employers from denying benefits to older employees
- State laws may provide additional protections to persons under age 40

Hostile Work Environment and Age

- The EEOC, in Enforcement Guidance 915.002, has stated that the standards applied to allegations of sex based hostile work environment also apply to claims of hostile work environment based on age.
- Definition: Harassment which is sufficiently severe or pervasive so as to alter the conditions of the employee's employment, creating an abusive working environment.
- To be actionable, hostile environment harassment must be sufficiently severe or pervasive to "alter the conditions of [the victim's] employment and create an abusive working environment."

- In a hostile environment claim, the plaintiff generally must prove more than a few isolated incidents and cannot rely solely on "casual comments or trivial events and sporadic conversation."
- The Ninth U.S. Circuit Court of Appeals has recognized that a hostile work environment claim may be predicated on age. In *Sischo-Nownejad v. Merced Community College District*, 934 F.2d 1104 (9th Cir. 1991), the court noted that a plaintiff may show a violation of Title VII and the ADEA "by proving the existence of a hostile work environment. . . . A hostile work environment requires the existence of severe or pervasive and unwelcome verbal or physical harassment because of a plaintiff's membership in a protected class."

- In *Rivera-Rodriguez v. Frito Lay Snacks Caribbean*, 265 F.3d 15 (1st Cir. 2001), the court noted that "[h]ostile work environment claims were first recognized in the sex-discrimination context, but have since been recognized for members of any protected class."
- A seven year age difference between Rivera and the employee who took over his responsibilities, was sufficient to support a *prima facie* case of age discrimination.
- Several comments made by Rivera's supervisors relating to Rivera's age were sufficiently anchored to Rivera's claims and were also sufficiently numerous to be considered systematic and continuous.

- In addition, statements about a need for youthful blood, a desire to retire workers over the age of 50, and repeated comments about Rivera's age, were all sufficiently severe and pervasive such that they created an objectively hostile work environment that was subjectively perceived by Rivera as abusive. The court concluded that a reasonable jury, given the totality of the circumstances, could find that Rivera was subjected to a hostile work environment based on his age.

6 OF 7 COMMENTS OVER 2-YEAR PERIOD, ALL AGE RELATED

1. "Be Quiet You're Stale";
2. Company has a preference for employees with "youth and intelligence";
3. Admitted factor in terminating another employee definitely "age";
4. Plaintiff's health problems were due to "ansia" meaning antiquity or old age;
5. Plaintiff's hair is so gray he must be in his 60s;
6. Also regarding plaintiff's health problems: due to the "bola de años" which roughly translated means "ball of years."

A Special Note for Public Employers:

- The ADEA as originally drafted did not cover local government entities. However, a 1974 amendment, applied the ADEA's prohibitions to state and local governments. The Supreme Court, in 1983, held that the ADEA applied to state law enforcement officers, and required that age restrictions meet the BFOQ standard. In 1986, Congress amended the ADEA to provide an exception for local police officers and firefighters. That amendment lapsed in 1993, but was renewed in 1996.

Descriptive Phrases that Can't Be Used in Advertising:

- Under EEOC interpretive guidelines, the following descriptive phrases should not be used in employment advertisements:
- "Young," "College Student," "Recent College Graduate," "Boy," or "Girl" cannot be used because they discourage older workers from applying for employment.
- "Age 40 to 50," "Age Over 65," "Retired Person," or "Supplement Your Pension" cannot be used because they discriminate against members of the protected class.
- 29 C.F.R. § 1625.4; WAC 162.16.260

Steps Employers Can Take to Protect Themselves From Age Discrimination Cases

- Keep Detailed Records of Employee Performance and Disciplinary Action
- Make Performance Appraisals Objective
- Have Supervisors Document Performance Problems As They Occur
- Effectively Communicate Performance Problems to Employees
- Do Not Pressure Older Workers to Retire or Quit
- Counsel Older Employees on the Advantages and Disadvantages of Employment, BUT Let Them Make Up Their Own Mind

“Age discrimination is sometimes allowed to continue with surprisingly little protest because of long-held assumptions”

Source, Department of Health and Human Services, “Age Discrimination: A Pervasive and Damaging Influence”

Top 10 List: Risks Associated with Multi-Generational Workforces

10. Unconscious biases, cultural expressions, common social stereotypes

- *“You can’t teach an old dog new tricks.”*
- *“He’s still wet behind the ears.”*
- *“He’s just a kid.”*
- *“She cares more about things outside of work and I’m busting my back trying to get our work done.”*
- *“Working for her is like working for my mom.”*
- *“I don’t want to manage someone who is more like my mom or dad [or my kid] than my employee.”*

Top 10 List: Risks Associated with Multi-Generational Workforces

9. Assuming that self-deprecating jokes are an invitation or permission for others to make similar jokes or comments.
8. Assuming that someone is going to retire “soon” or at a certain age.
7. Assuming that the same benefits options will be meaningful to persons of all generations.
6. Assuming that generational diversity is irrelevant to creating competitive advantage.
5. Assuming that younger workers value hierarchy and tenure demonstrated by older workers.

Top 10 List: Risks Associated with Multi-Generational Workforces

4. Assuming that older workers would want to (or have the skills to) mentor younger workers AND that younger workers need older mentors.
3. Assuming that younger workers are proficient with technology.
2. Assuming that unintentional biases or impact is not legally actionable.
1. Assuming that birthday celebrations that involve black armbands, balloons, etc. are funny to everyone.

Keys for Workplace Strategy

1. Conduct & Performance
2. Authority/Leadership
3. Communication & Diversity
4. Technology
5. Recognition & Rewards
6. Work/Family Balance
7. Loyalty: Talent Management & Succession Planning

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