

ADEA Cheat Sheet

What Employers Are Covered?

Those with 20 or more employees

What Employees are Covered?

Persons age 40 and older

What's Prohibited?

- Discrimination against individuals age 40 and over on the basis of age, unless based on a valid BFOQ
- Hostile work environment based on age
- Retaliation or harassment for exercising ADEA rights

What's Not Prohibited?

An employer may take adverse action against an ADEA-protected employee for non-discriminatory reasons unrelated to age

What is a "BFOQ"?

A BFOQ is a "bona fide occupational qualification"

- The employer must establish that all or almost all members over the selected age can't safely perform the essential functions of the job
- Generally, BFOQs are difficult to prove unless the employee is working in a position that directly affects public safety

What Are the Elements of a Valid Waiver of ADEA Rights?

- Obtain a written release executed by the employee that specifically refers to the ADEA
- Provide 21 days for the employee to consider the waiver and advise the employee to consult an attorney
- Provide 7 days for the employee to revoke the waiver after signing
- In RIF situations, provide 45 days for the employee to consider the waiver and an attachment to the waiver that contains the following:
 - The selection criteria for the RIF and any applicable time limits
 - A list of job titles and ages of each person subject to the RIF, as well as employees who fall into the same organizational unit but were not subject to the RIF

What are the Potential Penalties?

- Back pay
- Reinstatement or front pay
- Retroactive seniority
- Compensatory damages
- Punitive damages
- Attorneys' fees

Top ADEA Tips

- Don't ask an applicant's age at any point during the application process
- Prohibit all age-related comments in the workplace pursuant to an effective anti-harassment policy
- Base any adverse employment actions on factors other than age (or other protected characteristics)
- Apply performance standards, policies and procedures and access to benefits uniformly without regard to age
- Follow the waiver rules closely

