

Pennsylvania Discrimination Lawsuit: Can Employers Implement Mandatory Age Retirement Policies?

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As many Americans are continuing to work well past the average age of retirement, age discrimination is becoming a more significant issue for employers. One particular area of concern is mandatory retirement policies.

The Age Discrimination in Employment Act (ADEA) prohibits employers from discriminating against persons aged 40 years or older in hiring, discharge, compensation, terms, conditions or privileges of employment. This generally includes mandatory age retirement policies for employees.

However, it is important to understand that there are some exceptions. For instance, the ADEA does allow the imposition of age limits for certain professions if evidence shows the ability to perform a particular job significantly diminishes with age or imposes a danger to society. In such cases, age is considered a bona fide occupational qualification (BFOQ). Under this exception, courts have interpreted the ADEA as allowing the imposition of age limits on professions such as airline pilot and fire fighters because research confirms that performance levels in these occupations decrease with age. There is another exception for bona fide executives.

Unfortunately, the exceptions are very narrow and many employers fail to consult with an attorney before instituting a mandatory retirement policy. Just this week, a Pennsylvania employer learned this lesson when it was forced to pay \$100,000 to settle a federal age discrimination lawsuit, the U.S. Equal Employment Opportunity Commission (EEOC) [announced](#).

The EEOC charged that Asian World of Martial Arts, Inc. fired its controller, Morris Pashko, because of his age, 74, pursuant to a newly implemented retirement policy, which mandated that all employees age 67 and over be terminated. Pashko had a good performance record during his 26 years of employment with the company prior to the forced retirement. Most importantly, Pashko's termination and the employer's retirement policy did not fall into one of the narrow exceptions under the ADEA.

About Beth Lincow Cole

The [Law Office of Beth Lincow Cole](#) is committed to helping employers comply with federal and

state employment law and avoid potential business-wrecking lawsuits.

If your company needs employee or management training or assistance in drafting, reviewing, or

revising its EEOC/discrimination policies, [contact](#) employment law attorney [Beth Lincow Cole](#).