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A LEGAL ANALYSIS OF ADEA AND ITS IMPACT ON OLDER WORKERS, EMPLOYER EFFICIENCY AND HUMAN RESOURCE PRACTICES

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The question that this paper addresses is whether age discrimination laws are justified for the protection of older workers from a societal and economic point of view. An analysis of the congressional intent in enacting the Age Discrimination in Employment Act (ADEA) and a brief review of significant court interpretations of the ADEA provides initial insight into the legislative objectives and the unique problems that older persons face in the workforce. Both the positive and negative impacts of the ADEA on older workers and cost efficiency objectives of employers are evaluated. Despite certain of its limitations in protecting older workers and increase in costs to employers, the enactment of the ADEA has been instrumental in initiating policies that address the changing demographic of an aging workforce and prompting a transformation in human resource practices towards older workers.

LEGAL ANALYSIS

The ADEA states as its objective in broad terms: to promote the employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.[1] Whether the ADEA is effective in meeting its objectives is unsettled. The longstanding problem with anti-age discrimination legislation, including the ADEA, is that the enforcement mechanisms typically bear little consequence to the violator. While pre-ADEA laws lacked any administrative procedures to uphold policies, the ADEA is enforced through the Equal Opportunities Employment Commission, as are Title VII violations. However, the damages to an employer for violating the ADEA are slight compared to other discrimination violations. Furthermore, injunctive relief in which the older worker is rehired is not a desirable remedy for the typical worker who has resorted to filing a claim against their employer.

Legislative History

Age discrimination legislation at the federal level has a history that precedes the enactment of the 1967 Age Discrimination in Employment Act (ADEA)[2]. In 1956, the United States Civil Service Commission "abolished maximum ages of entry into employment…eliminating age discrimination in hiring in federal employment" (Neumark, March 2001:2). Executive Order No. 11141 issued in 1964 established a policy that prohibited age discrimination in the employment of federal contractors. (Neumark, March 2001:2). Congress enacted the Older Americans Act in 1965 which "was designed to encourage research and programs to aid the aged, but also stated among its general objectives 'the opportunity for employment with no discriminatory personnel practices because of age'" (Neumark, March 2001:2). The problem with these executive and congressional initiatives is that they failed to establish administrative procedures for upholding their polices, rendering them ineffective. (Neumark, March 2001).

At the state level, legislative prohibitions against age discrimination were enacted as early as 1903 (Neumark & Stock, July 1997), and began to parallel the later federal legislation beginning in the 1930's (Neumark, March 2001). State laws that included anti-age discrimination provisions were commonly part of the fair employment practices legislation, with a civil rights commission or labor department that had powers of conciliation and enforcement (Neumark et al., July 1997). Those state laws without any enforcement provisions had little or no impact.

The ADEA was enacted by Congress in 1967 in the wake of Title VII of the Civil Rights Act of

[1] 29 U.S.C. § 621, et seq.

[2] *Ibid.*

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1964 (Title VII)[3], which prohibits employment discrimination based on race, color, religion, sex, or national origin. The ADEA has many parallels with Title VII: it defines as illegal many of the same activities (Neumark, March 2001); and, it is enforced by the Equal Employment Opportunity Commission. However, as highlighted by Neumark (2001, pp. 5-6), there are differences regarding the treatment of age in the labor market: "[T]he ADEA recognizes the role of seniority systems, and as such protects the use of a bona fide seniority system, as long as it is not used to evade the purposes of the Act. It also recognizes that some work limitations may arise with age, and hence permits the use of age as a bona fide occupational qualification (BFOQ) that is 'reasonably necessary to the normal operation of a business'. Finally, it recognizes that cost related to benefits may be higher for older workers, and makes some allowances for this; in particular, an employer can offer younger and older workers benefits that cost the same, even if the actual benefit to the older worker is less."

Differential treatment based on age, as compared with race and sex, is typically derived from negative stereotypes of older workers (Crawshaw-Lewis, 1996); whereas the basis for Title VII protections is largely to combat hostile intentional discrimination based on prejudice or bias. The record of the debate over the ADEA from the Congressional Record, as cited by Crawshaw-Lewis (1996, p. 770), underscores the point: "The bill recognizes two distinct types of unfair discrimination based on age: First, the discrimination which is the result of misunderstanding of the relationship of age to usefulness; and second, the discrimination which is a result of a deliberate disregard of a worker's value solely because of age." In addition, "Congress found that setting arbitrary age limits without regard to potential for job performance was common and that unemployment with attendant deterioration in skills and moral was higher for older workers as compared to those who are younger" (Donald J. Spero, 2004).

The ADEA has undergone significant amendments since its original enactment. In 1978, the ADEA was amended to raise the age protection limit from ages forty (40) through sixty-five (65), to age seventy (70). This amendment also resulted in raising the mandatory retirement age to seventy (70), with certain exceptions (Neumark, March 2001). The ADEA was later amended in 1986 to eliminate the age cap, which resulted in the prohibition of mandatory retirement.

Once mandatory retirement was disallowed by the 1986 amendment, employers turned to financial inducements for workers to retire, which led to the enactment of the 1990 Older Workers Protection Act (OWBPS)[4] (Neumark, March 2001). The OWBPS prohibits discrimination with respect to employee benefits on the basis of age and regulates early retirement incentive programs. Under the OWBPA, employees eligible for early retirement incentive plans must be provided with complete and accurate information concerning what benefits are available under the plan. The OWBPS also insures that workers are not compelled or pressured to waive their rights under the ADEA. If certain conditions of the OWBPA are met, employees may legally sign waivers of their ADEA rights to sue for age discrimination (Alexander Hamilton Institute, 2005) The federal courts have found releases invalid which have not provided the ages of both those who have been terminated and those who have been retained, so that workers can determine whether they would have an age discrimination claim (McMorris, 1998).

Judicial Interpretation of the ADEA

Under the ADEA, an employee can establish a claim for protection against discrimination on the basis of age by proving: first, that the employee is a member of the protected class (i.e. over forty [40] years of age); second, that the employee is qualified to do the job; third, that the employee was subject to adverse employment action; and fourth, that the employee was replaced by a person outside the age group.

In order to meet their burden of proof, an employee must present evidence that the employer intentionally treated the employee less favorable because of age. This theory of recovery under the

[3] 42 U.S.C. § 2000e, et seq.

[4] Pub. L. No. 101-433, 104 Stat. 978 (effective October 16, 1990)

ADEA is known as "disparate treatment." [5] Age discrimination may be proven through direct evidence, for example, a disparaging remark from an employer that an employee is "too old." It may also be proven through circumstantial evidence by which indirect evidence of discrimination is established by inference of certain fact from another, without direct proof.

Assuming an employee meets their burden of proof, the burden shifts to the employer to articulate a non-discriminatory reason for the adverse action. The employer is not obligated to *prove* the non-discriminatory intent, but merely to state it. The reason may be based on mistaken belief, a poor reason, or no reason at all. If the employer articulates a non-discriminatory reason in good faith, it is sufficient to rebut the employee's principle case.

In the event of a rebuttal, the burden switches back to the employee to demonstrate that the reason articulated for the employer's adverse action is merely a pretext for discrimination. The employee may meet their proof by showing that the employer's reason is not believable, or that people outside the protected age group (less than forty [40] years of age), were treated more favorably under like circumstances.

In Title VII actions alleging employment discrimination based on race, color, religion, sex, or national origin, the United States Supreme Court, in the case of *Griggs v. Duke Power Co.* (1971)[6], established a theory of recovery known as "disparate impact." In order to prove "disparate impact", it is not necessary for the employee to prove that its employer intentionally discriminated based on age. Rather discrimination under this theory of recover requires: "first, that an employer's policy that may appear neutral in fact impacts older individuals more adversely; and second, that the practice cannot be justified by 'business necessity'" (Starkman, 1992). "Disparate impact" is most commonly established through statistical evidence that demonstrates a pattern of discrimination on the basis of age.

The recent United States Supreme Court case of *Smith, et al. v. City of Jackson (2005)*[7] addressed an issue on which the federal courts had been divided, namely, whether the "disparate impact" theory of recovery announced in *Griggs v. Duke Power Co.* (1971), for cases brought under Title VII of the Civil Rights Act of 1964, is cognizable under the ADEA.[8] The *Smith* Court held as follows: "The ADEA authorizes recovery in disparate-impact cases comparable to *Griggs.*… Except for the substitution of 'age'" for 'race, color, religion, sex, or national origin,' the language of ADEA §4(a)(2) and Title VII §703(a)(2) is identical. Unlike Title VII, however, ADEA §4(f)(1) significantly narrows its coverage by permitting any 'otherwise prohibited' action 'where the differentiation is based on reasonable factors other than age' (hereinafter RFOA provision)."[9]

Justice Stevens who wrote the *Smith* decision disputed the suggestion of Justice O'Connor that the RFOA provision is a "safe harbor from liability."[10] Citing the case of *Teamsters v. United States* (1977)[11], Justice Stevens emphasized that "claims that stress 'disparate impact' involve employment practices that are facially neutral in their treatment of difference groups but that in fact fall more harshly on one group than another…." Justice Stevens concluded accordingly that it is "in cases involving disparate-impact claims that the RFOA provision plays its principal role by precluding liability if the adverse impact was attributable to a nonage factor that was 'reasonable.'"[12] Stevens further notes that "if Congress intended to prohibit all disparate-impact claims, it certainly would have do so….The fact that Congress provided that employees could use only *reasonable* factors in defending a suit under the ADEA is therefore instructive."[13]

In an earlier decision, *Hazen Paper Co. v. Biggins* (1993),[14] the United States Supreme Court "on the one hand noted that the ADEA was

[5] See *International Board of Teamsters v. United States*, 431 U.S. 324 (1977)
[6] 401 U. S. 424 (1971)
[7] 544 U. S.____ (2005)
[8] *Smith*, No. 03—1160, p. 1
[9] *Ibid*. at p. 2-4
[10] *Ibid*. at p. 10
[11] 431 U. S. 324, 335-336, n.15 (1977)
[12] *Smith* at p. 10
[13] *Ibid.* at p. 10, n.11
[14] 507 U. S. 604 (1993)

concerned with employment decisions based on age stereotyping, but on the other hand allowed decisions to be based on factors like seniority that may be strongly correlated with (but analytically distinct from) age, instructing lower courts to look for evidence of whether age actually motivated the decision " (Neumark, March 2001:11) (Crawshaw-Lewis, 1996). According to Crawshaw-Lewis (1996, p. 781), "since *Hazen*, the courts have been much less favorable to age discrimination disparate impact claims based on the argument that an employer's decision was motivated by the higher salary of an older worker, with some courts ruling that firing employees based on high compensation stemming from seniority does not violate the ADEA" (Neumark, March 2001:11-12).

IMPACT OF ADEA ON OLDER WORKERS

The ADEA has improved the relevant employment opportunities for older workers and reduced their retirement. However, aggrieved older employees face a difficult burden in proving age discrimination because of the "reasonable factor other than age" defense available to employers under the ADEA, which does not exist as a defense under Title VII actions. Even if an employee is successful in proving age discrimination, the damages are generally small, providing limited disincentives for employers to address human resource policies that negatively impact older workers.

Pre-ADEA

Prior to the enactment of the ADEA, "general unemployment rates were highest for the youngest part of the population;" however, "there were also some indications that older workers who lost their jobs had a more difficult time finding new jobs than did 'prime age' workers" (Neumark, March 2001:13) Researchers have also determined that the durations of unemployment were also longer for older workers (Neumark, March 2001). Moreover, the figures used to establish such theories have been noted to be understated because older workers who were unable to find employment were more likely to leave the workforce altogether, and thus avoid being counted as "unemployed." (Neumark, March 2001).

In addition, restrictions in hiring significantly deterred the employment of older workers. According to surveys conducted in New York between the years 1957 and 1958, forty-two (42%) percent of firms had maximum age restrictions of fifty (50) years of age for new hires (Neumark, March 2001:16). Similarly, a United States Department of Labor study conducted in 1965 determined that among the states that did not have discrimination statutes, nearly sixty (60) percent imposed upper age limits within the range of forty-five and fifty (45-50) year of age (Neumark, March 2001:16). These figures dispute claims that both higher and longer unemployment rates among older workers did not solely result from worker choice (Neumark, March 2001:14).

Enactment of the ADEA

Although the ADEA was enacted only a few years after the anti-discrimination laws of Title VII, and was similar in its objectives and enforcement provisions, age discrimination was perceived differently. As Neumark (March 2001:18) notes, "animus towards older workers was not the view of the original Department of Labor report (U.S. Department of Labor, 1965) arguing for passage of the ADEA, and it seems difficult to view age discrimination in the same light as race discrimination, for which we have a well-document history of animus." It was further observed that "the kind of 'we-they' thinking that foster racial, ethnic, and sexual discrimination is unlikely to play a role in the treatment of older workers" (Posner, 1995), "because the people who make the firing and hiring decisions are often older workers" (Neumark, March 2001:18).

Researchers have frequently observed that age discrimination is rooted more in stereotype than it is in animus. Those who have conducted studies in the field of industrial gerontology have explored "the effects of aging on productivity and supervisor appraisals (which could reflect stereotypes), and found evidence of productivity either holding steady or declining slightly" (Neumark, March 2001:19). Neumark (March 2001:19) further states that other evidence points to vision, hearing, ease of memorization, and computational speed, for example, but that there is an offset: "aging is associated with declines in creativity but increases in leadership and abilities."

Neumark (March 2001:19) surmises that "with the evidence suggesting that many differences between older and younger workers are largely non-existent or small, negative stereotypes about older workers and classifications based on them seem likely to act-at least sometimes-in an arbitrary fashion, harming many productive workers."

In addition to improving the overall employment opportunities for older workers and reducing their retirement, the ADEA has had the predominant effect of reducing the likelihood that firms renege on long-term relationships between workers and firms" (Neumark, March, 2001:35). By comparison, consider that in the United Kingdom where there are no laws prohibiting discrimination on basis of age there is "evidence of persistent and widespread discrimination against older workers in both the private and public sectors" (Chiu, Chan, Snape, & Redman, 2001)

The federal courts have upheld the objectives of the ADEA in matters concerning pensions and hiring practices. The Third Circuit Court of Appeals decided that an employer sponsored health plans that provided different benefits for Medicare-eligible retirees younger than age 65 violated ADEA [15] (Employee Benefit Plan Review, 2000). Moreover, the Second Circuit Court of Appeals in the seminal case of *Taggart v. Time Incorporated*[16] determined that "declining to hire an older person for being 'overqualified' can be grounds for an age discrimination suit." According to *Target* court, "such a reason may often be simply a code word for too old" (Lambert & Hayes, 1991) Lambert & Hayes (1992:2) include the quotation of a lawyer who defends against age discrimination who sneered that "over-qualification" is simply a "buzzword for 'we'll have to pay him too much'". Even the *Target* court made the common sense query: "How can a person overqualified by experience and training be turned down for a position given to a younger person deemed better qualified?" Despite the court ruling in *Target*, it is important to note that "the ADEA does not prohibit employers from using 'overqualified' as a negative criterion in personnel actions-as long as it has a performance related basis" (Kandel, 1991).

Barriers to ADEA Protections

Citing the work of Posner (1995, Ch. 13), Neumark (March, 2001:30) sets forth the argument that the ADEA acts to reduce hiring of older workers for two reasons: "first …the costs of hiring these workers are increased as a result of their new legal rights under the ADEA;" and, "second, because damages in hiring discrimination cases are likely to be small, while injunctive relief-hiring the older worker who has filed a claim- is unlikely to be attractive the plaintiff, legal action is unlikely to be effective in increasing hiring of older workers."

In addition, ADEA cases are difficult to prove for older workers. The "reasonable factor other than age" defense available to employers makes any discriminatory treatment of older workers difficult to prove, short of an overt disparaging remark. Most employers are educated enough not to make that obvious mistake.

Recent studies and reports on the status of age discrimination in employment are not encouraging. The executives of ExecuNet, a career networking job search engine found that "eighty-two (82%) percent of those surveyed consider age bias a 'serious problem' in today's workplace, up from seventy-eight (78%) percent in 2001" (Fischer, 2004:1) A report on NASA noted similarly discouraging outcomes: "age discrimination…seems to be endemic to the entire aerospace industry (Khol, 2003:2). NASA has informed unsuccessful older candidates that NASA is trying to fill its positions with people who are 'fresh out,' meaning fresh out of college" (Khol, 2003:2). Khol (2003:3) comments that aside from being illegal, these actions shed light on why "NASA is losing technological competency."

IMPACT ON COST EFFICIENCY OBJECTIVES OF EMPLOYERS

The research conclusions about the impact of the ADEA on cost efficiency objectives of employers are varied. Neumark & Stock (1997:1), in their analysis of the work of Lazear (1979, 1981), dispute his conclusion that age discrimination laws limit the use of long-term incentive contracts ("Lazear contracts") and

[15] See *Lavia v. Commonwealth of Pennsylvania, et.* (No. 99-3863), Third Circuit U.S. Court of Appeals

[16] 924 F.2d 43 (2d Cir. 1991)

reduce efficiency. Other researchers conclude that the ADEA was never intended to negatively impact cost efficiency and that the courts have upheld the determination. Still others claim that the ADEA is tantamount to "rent-seeking", meaning that it provides and unjustifiable "windfall" to older workers.

Lazear Contracts

The term "Lazear Contracts," which are long term incentive contracts, are derived from the influential research of Lazear (1979, 1981) (Neumark & Stock, 1997:1). In 1979, Lazear created a model of efficient long-term incentive contracts in which employers impose involuntary retirement based on age. Age discrimination laws, which bar involuntary terminations based on age, discourage the use of such contracts and reduce efficiency. Citing the work of Lazear (1979:1283-84), Neumark & Stock, 1997:1) note his argument that "…because the wage of older workers exceeds their reservation wage, an implication of eliminating the ability of firms to use involuntary retirement based on age is that 'current older workers will enjoy a small one-and-for-all gain at the expense of a much larger and continuing efficiency loss that affects all workers and firms adversely.'"

The analysis of Neumark & Stock (1997:1) resulted in their reaching the conclusion that the implications of age discrimination laws in Lazear's model have little impact. First, "not all pension plans encourage early retirement, firms have remained able to offer financial incentives that induce retirement at specific ages;" and second, "mandatory retirement per se was generally unimportant in inducing retirement for all but a small percentage of workers" (Neumark & Stock, 1997:5-6).

Moreover, the "laws…serve as a pre-commitment device that makes credible the long-term commitment to workers that firms must make under long-term incentive contracts, by making it costly for firms to dismiss older workers to whom payments in excess of current marginal product are owed (Neumark & Stock, 1997: 43). Neumark & Stock (1997:43-44) explain that "forcing workers to retire at some point (in Lazear's model, when the present values of the streams of wages and marginal products are equal) may appear to be made more difficult if mandatory retirement is prohibited, but under the ADEA firms retain the ability to offer strong financial incentives to encourage retirement at any age they choose." Consequently, Neumark & Stock (1997:44) explain that "this alternative perspective suggests that the predominant effect of the ADEA and other age discrimination laws may have been to strengthen the bonds between workers and firms, thus enabling greater use of Lazear contracts." The result is to "…boost the employment of order workers, while having essentially no effect on employment of younger, unprotected workers" (Neumark & Stock, 1997: 44). Accordingly, "…age discrimination laws lead to steeper age-earnings profiles in the labor market….increasing rather than decreasing labor market efficiency" (Neumark & Stock, 1997:44).

Cost Efficiency Not in Jeopardy

The federal courts have held that replacing older workers for economic reasons does not violate the ADEA. Some argue that such consistent court rulings in favor of economic incentives indicate that the ADEA was never intended to jeopardize the cost-efficiency of business. (HR Focus, 1997). Others have emphasized the corporate rationale for keeping older workers on the payroll, which is pure economics: "…keeping an employee on payroll saves companies money because they don't have to pay out pensions later" (Capowski, 1994). Additionally, the most effective way to avoid costs related to the ADEA violations is for employer to be "cautious and ensure that legitimate work-related reasons exist for ending and employee's employment" (Zall, 2000:40).

High Costs to Employers

The most commonly cited arguments against age discrimination laws are that they increase employer costs because of the higher likelihood of illness and death among older workers, and the higher costs of health insurance and life insurance. In addition, employers argue that when older workers are trained, there is less time to recoup from that investment in human capital. (Neumark, March 2001).

The more controversial argument against age discrimination laws is that they provide essentially

a "windfall" to older workers. Among the theories of Lazear (1979: 1283-4) is the premise that "…current older workers will enjoy a small once-and-for-all gain at the expense of a much larger and continuing efficiency loss that affects all workers and firms adversely. (Neumark, March 2001)

Similarly, some are critical that the "entire structure of anti-age discrimination legislation reflects "rent-seeking" behavior on the part of older workers" (Issacharoff and Worth Harris, 1997:796). According to this theory, it is argued that Congress, in passing the ADEA, intended to protect older workers from maximum age limits for new hires, but the typical plaintiff is seeking redress over dismissal. (Neumark, March 2001: 32). As a result, the "ADEA is form of protection against wrongful discharge of older white males" (Neumark, March 2001).

THE ADEA AND HUMAN RESOURCE PRACTICES

Capowski (1994:1) cautioned ten years ago that "workers 55 and older are the fastest growing segment of the workforce, with the median age of the workforce projected to reach 40 by 2010." How to deal with this phenomenon is the fundamental question that employers need to address. (Capowski, 1994:1). First and foremost, it is imperative that employers have a grasp on how their ingrained personnel policies, as well as their personal stereotypes, may ultimately sabotage human resource objectives. In the absence of change, it may be difficult for employers to meet their objective of gathering and sustaining a competent, productive and committed workforce. Similarly, older workers attempting to remain in the workforce or reenter to need to have a clear appreciation of what makes a candidate competitive in today's changing workforce.

Overcome Stereotypes

In 1997, a study was conducted by Rosen and Jerdee in which they used various hypothetical scenarios to evaluate the personnel decisions of managers. As a result of this study Rosen and Jerdee (1997) concluded that: "first, managers perceive older workers as less flexible and more resistant to change; second, managers are less inclined to provide support for career development and training of older workers; and, third, promotion opportunities for older workers are more likely to be restricted in jobs requiring flexibility, creativity, and high motivation" (Neumark, March 2001).

Certain researches found a "negative relationship between employee age and the performance ratings they received from their supervisors…despite the fact that systematic difference in performance between workers involved in the study did not seem to exist" (Ferris & King, 1992). Ferris and King (1992:7) found that the potential explanation for what may appear to be intentional age discrimination in evaluation is that "older people behave less politically and thus receive lower performance ratings than younger people in the same job." The real issue is not one of competence or ability, but rather the reality that "older employees receive lower performance ratings because they are less effective (or willing to try) at manipulating how the supervisor likes them" (Ferris & King, 1992:7).

Consider Alternative Employment Arrangements

Capwoski (1994:2-3) emphasizes the importance of establishing policies that are flexible and accommodate a changing diverse work force, especially with older workers. In support of employing older workers, studies have shown that the capacity to learn continues into 70s and beyond for most people. (Capwoski, 1994:3). Capwoski (1994:3) cites the employment policies of McDonalds which have encouraged older workers, recognizing that the shortage of younger workers was a bad demographic trend. McDonald's took a "proactive approach and instituted McMaster's program, a formal recruitment and training program" (Capwoski, 1994:3). While the McMaster's program is no longer officially in place, "more than 40,000 seniors work in McDonald's around world" (Capwoski, 1994:3). McDonald's has found that its older workers are very dependable and committed; seniors and young employees work well together; and, seniors act as mentors. (Capwoski, 1994).

According to certain theorists, age discrimination is the direct neglect by employers to maintain and support workers who are [over

forty (40)]. (Martinez & Kleiner, 1993). Employers are encouraged to develop objective standards of employment for all workers, and break the mindset that retirees can only help fill unskilled positions. (Martinez & Kleiner, 1993:5).

Moreover, it is economically beneficial for employers to consider alternative work options such as, "part-time, consulting, reduced pay, job sharing, compressed work week, and job rotation." (Martinez & Kleiner, 1993:5). Losing an older experienced workforce often ends up being expensive. The costs include "replacement costs, retraining costs and downtime following layoffs;" and, in addition, "companies forfeit experience, expertise, commitment, loyalty, maturity and productivity of a growing group of workers" (Martinez & Kleiner, 1993:4). Employers need to adopt polices that encourage flexibility, include tapering off programs and a reduction of hours that eases older workers into the retirement process. (Martinez & Kleiner, 1993:5). The key is for employers to adapt to "look at workers as individuals, not older" and "manage based on capabilities and performance" (Martinez & Kleiner, 1993:4).

Recognize the Changing Workplace

Older workers have at their disposal certain strategies to held overcome age discrimination. In order to combat age bias, it is recommended that older workers "go into an interview with detailed research showing that you understand the business, the challenges it faces, and what problems need solving; interviewers will tend to look past your age and focus on your ideas" (Fischer, 2004:2). Other recommendations are that older workers stay current with industry developments, keep skills sharp and stay in touch with professional contacts. (Fischer, 2004).

Garner your Strengths

Researchers have found evidence to support that older workers have a stronger work ethic and are more willing to do thought in-depth research. (Fischer, 2004:2). Likewise, "older workers tend to 'be less self-absorbed and more self-aware'…they usually have a better understanding of their skills and limitations, and of what's important in life" (Fischer, 2004:2). Older workers are often "at a point in their lives at which they're not interested in being a CEO or in trying to cross another bridge too far. They know what they do best" (Bonney, Mar 22, 2004).

A GLOBAL PERSPECTIVE

In an article published by the United Nations Department of Public Information in response the 2002 World Assembly on Aging II, the policy response was: "The vitality of our societies will increasingly depend on active participation by older persons. It is therefore imperative that we foster economic and social conditions that will allow people of all ages to remain integrated into society. An essential challenge is to promote a culture that values the experience and knowledge that come with age" (Annan, March, 2002:5) he International Labour Organization (ILO) is also dedicated to ensuring decent work or retirement for older people. (Annan, March, 2002:6). The ILO calls upon states: "…to adopt national policies to promote equality of opportunity and treatment for workers, whatever their age; and to take measures to prevent discrimination against older workers, particularly with regard to: access to vocational guidance and placement services; access to employment of their choice that takes into account their personal skills, experience and qualifications; access to vocational training, in particular; further training and retraining; and employment security" (Annan, March, 2002:6).

On the issue of retirement, the ILO further recommends "that measure be taken to ensure that the transition from work to retirement is gradual, that retirement is voluntary, and that the age qualifying a person for a pension is flexible" (Annan, March, 2002:7). The issue is fundamental, especially as rapidly aging workforces in the United States and other industrialized countries threaten to vastly increase the social costs of any barriers to older workers' employment. (Johnson & Neumark, 1997; Neumark, March 2001).

CONCLUSION

The enactment of the ADEA has been critically important for the elimination of age restrictions in the hiring of older workers and mandatory retirement. The ADEA has not been as powerful a deterrent against employment policies that, in fact, impact older workers negatively.

Such policies are not illegal under the ADEA as long as their basis is a "reasonable factor other than age." Moreover, the replacement of older workers for economic reasons has been upheld by the courts as "reasonable."

The societal gains in integrating an aging population into the workforce in meaningful ways far outweigh the costs to employers. Alternative work arrangements that fairly compensate older workers for their contributions to the workforce serve not only to benefit individual employers, but also society in general as the public dole is not left to fill the economic void. Researchers who study older populations have concluded that the limited diminishment in older persons is generally offset by gains in the areas of life experience, priority setting and leadership abilities. Consequently, the vitality of the workforce depends on progressive human resource practices that promote equality and opportunity for workers regardless of age.

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