

Occupy Wall Street Highlights High Unemployment of Younger Workers

By Graig F. Zappia

Federal Law Doesn't Shield Young Workers from Age Discrimination, State Law Does

While much of the "Occupy Wall Street" movement remains an enigma, particularly its goals, it is pretty clear that there are many upset young Americans out there. When considering how the unemployment rates for Americans younger than 25 years old is two to three times higher than the rates for workers 40 years old, the source of this dissatisfaction becomes a little more apparent (see chart

).

In New York, though, it's a different story. The state's Human Rights Law makes it an unlawful discriminatory practice for an employer or licensing agency to refuse to hire, employ or fire an individual because of his or her age

, race

, creed

, color

, national origin

, sexual orientation

, military status, sex

, disability

, predisposing genetic characteristics, marital status, or domestic violence victim status. What is important with this prohibition, established under Executive Law § 296(a), is that it does not put an age limit on coverage. In the early 1980s, the New York Court of Appeals in *McLean Trucking Co. v. State Human Rights Appeal Bd.*

affirmed

a lower court's ruling

that a trucking company's 24-year-old minimum age requirement for tractor trailer drivers violated the rights of a 21-year-old applicant who did not get the job.

Limited Reach of the Age Discrimination in Employment Act of 1967 (ADEA)

Employment Law Protections (U.S./N.Y.)

Age (years)

Sept. 2011 Unemployment Rate

Not protected by the ADEA

Protected by NYS Human Rights Law (EXEC § 296)

16 to 17

24.8

18 to 19

24.3

20 to 24

14.3

25 to 29

10.3

30 to 34

8.3

35 to 39

7.7

Protected by ADEA

Protected by NYS Human Rights Law (EXEC § 296)

40 to 44

7.0

45 to 49

7.1

50 to 54

6.5

55 to 59

6.4

60 to 64

6.3

65 and over

6.8

Unemployment data from U.S. Bureau of Labor Statistics, "Employment Status of the Civilian Noninstitutional Population by Age, Sex, and Race," Household Data, Not Seasonally Adjusted, A-13, Oct. 7, 2011.

Workers – young or old – who believe age played a factor in an employer's decision to not hire them or fire them should immediately contact an employment attorney

who could help them assert their rights under federal and/or state law.

For example, while 14.3 percent of workers between 20 and 24 years old are unemployed, only 7.1 percent of workers between the ages of 45 and 49 are out of work. This disparity in unemployment rates between older and younger workers begs the question as to whether employers nationwide are deliberately refusing to hire workers because they are too young. During the recent recession, age discrimination

against older workers received a lot of media attention as some businesses unlawfully targeted older, higher paid workers in layoffs to help them meet their bottom line.

Younger workers, meanwhile, became hot commodities, mainly because they were considered cheap, enthusiastic labor. Now, as businesses struggle to remain competitive, they want more experienced workers. If an employer passes over a job candidate because he or she lacked certain qualifications, that would be a legitimate employment decision. If, however, the employer refuses to hire a worker because he or she is too young or not of a minimum age then that could, under certain circumstances, qualify as age discrimination

.
The catch is that most workers who were not hired because they are not old enough do not have legal recourse under the Age Discrimination in Employment Act of 1967 (ADEA). This law prohibits employers from discriminating against people at least 40 years old

because of their age. So, federal law protects workers against age discrimination if they are “too old”, but not “too young.”

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