

Employers cannot discriminate on basis of age

By: Mathew Tully, Esq. Question: Are employers allowed to not hire someone “up in years” because he is “overqualified”? Answer: Under New York state and federal law, employers cannot discriminate against workers on the basis of their age. New York’s Human Rights Law protects employees regardless of how old they are, and the federal Age Discrimination in Employment Act (ADEA) protects employees so long as they are at least 40 years old. Just because employers cannot make employment decisions based upon a person’s age does not mean age-related facts cannot be considered. As the U.S. District Court for the Southern District of New York concluded in *Ira D. Sklar v. New York Life Insurance Co.* (2001), “employers do not violate the ADEA when, without more, they act out of concern for costs, even if those costs are correlated with age, as in the case of pension status and non-salary benefits.” What this means is employers can fire an older employee who is “close to vesting” in pension benefits, the court said. Employers, the court added, can act “out of concern for excessive costs, even if they arise from age-related facts -- such as that employees with long seniority command a higher salary and benefits [more] expensive than new hires.” It could be a different story, however, if an employer refuses to hire or promote a candidate because he or she is “overqualified.” The 2nd U.S. Circuit Court of Appeals found in *Thomas Taggart v. Time Inc.* (1991) that this “overqualified” excuse “defies common sense.” The court remarked that “[d]enying employment to an older job applicant because he or she has too much experience, training or education is simply to employ a euphemism to mask the real reason for refusal, namely, in the eyes of the employer the applicant is too old.” That is not to say the “overqualified” excuse will always serve as pretext for age discrimination. This “overqualified” excuse could be reasonable for short-term positions that are more appealing to younger workers who are more inclined than older workers to move onto new jobs, according to the 2nd Circuit. Older workers who believe they have been subjected to age discrimination should immediately contact an employment law attorney. And business owners or managers with questions concerning what age-related facts they are allowed to consider under the law should also consult with an employment law attorney. Mathew B. Tully is author of The Saratogian’s “Ask the Lawyer” column and founding partner of the law firm Tully Rinckey PLLC in Colonie. Email business law-, employment law- or real estate law-related questions to askthelawyer@1888law4life.com. The information in this column is not intended as legal advice.