

CHECKLIST

COMPLYING WITH THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Presented by Franconia Insurance & Financial Services

The Age Discrimination in Employment Act (ADEA) is a federal law that protects individuals aged 40 years or older from employment discrimination based on age. This law applies to all employers with 20 or more employees on each working day in each of 20 or more calendar weeks in a current or prior year, as well as employment agencies and labor organizations. Several states have enacted similar laws that cover smaller employers and offer more protections to workers.

This checklist provides an overview of the ADEA's key recordkeeping and waiver requirements and outlines key steps for establishing best practices to help comply with the law. This checklist is intended to be a guide, and employers may need to take additional steps to comply with the ADEA, depending on the facts of a specific situation. Employers should also be aware that compliance with the ADEA may not guard them against liability under other state-specific age-discrimination laws. Therefore, they should ensure that they follow any applicable state and local laws. If employers have compliance concerns, they should seek local legal counsel.

ADEA Recordkeeping Requirements	Complete
<p>Keep the following information for at least three years from the date of creation for every employee:</p> <ul style="list-style-type: none">• Name• Address• Date of birth• Occupation• Rate of pay• Compensation earned each week	<input type="checkbox"/>
<p>Retain the following information for at least one year from the date of the personnel action to which each record relates for every regular and temporary employee:</p> <ul style="list-style-type: none">• Job applications, resumes and other responses to job ads or postings• Records relating to failures or refusals to hire individuals• Records of promotions, demotions, transfers, selections for training, layoffs, recalls or discharges of any employee• Job orders given to agencies or unions for recruiting personnel for job openings• Employment tests or physical examinations, including test and examination results, that are considered in connection with any personnel action• Ads or notices for job openings, promotions, training, programs or opportunities for overtime	<input type="checkbox"/>

This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, state or local standards. Consult your licensed representative at Franconia Insurance & Financial Services or legal counsel to address possible compliance requirements. © 2023 Zywave, Inc. All rights reserved.

Maintain any records relating to employee benefits plans for the full period any plan or system is in effect and at least one year after its termination. This requirement applies to benefits plans, including: <ul style="list-style-type: none"> • Pension plans • Insurance plans • Seniority systems 	<input type="checkbox"/>
Store required records in a safe and accessible location at the place of employment or business where the individual to whom they relate is employed or has applied for employment.	<input type="checkbox"/>
If required records are maintained at a central recordkeeping office, ensure that they are available within 72 hours after receiving an inspection request from the U.S. Equal Employment Opportunity Commission (EEOC).	<input type="checkbox"/>

Establishing ADEA Compliance Best Practices	Complete
Create an employment policy that prohibits age discrimination in all employment practices (e.g., hiring, promotion, compensation, termination).	<input type="checkbox"/>
Explain the policy to all employees and ensure they understand it.	<input type="checkbox"/>
Train managers and supervisors on the ADEA and how to avoid discriminatory decisions and practices based on an employee's age. For example, educate managers and supervisors to refrain from asking candidates age-related questions during the hiring process or performance evaluations or avoid assigning duties that managers and supervisors believe correspond to the employee's age.	<input type="checkbox"/>
Ensure that all job opportunities, training and promotions are available to all employees, regardless of age.	<input type="checkbox"/>
Audit organizational policies and practices regularly to ensure they remain fair and free from bias.	<input type="checkbox"/>
Determine whether employment practices meet reasonable factors other than age (RFOA) criteria. <i>RFOA is a non-age factor that is objectively reasonable when viewed from the position of a prudent employer mindful of its responsibilities under the ADEA. To be considered an RFOA, a practice must be reasonably designed to further or achieve a legitimate business purpose and administered in a way that reasonably achieves that purpose in light of the particular facts and circumstances that were known or should have been known to the employer.</i>	<input type="checkbox"/>

Ensure any employee benefit plan is “bona fide,” meaning it has been accurately described in writing to all employees, actually provides the benefits in accordance with the plan’s terms and is not a subterfuge to evade the purposes of the ADEA.	<input type="checkbox"/>
<p>Confirm that any age limit for employment or other age-based employment decision meets a bona fide occupational qualification for a specific job. This includes:</p> <ul style="list-style-type: none"> Establishing that the age limit or preference is reasonably necessary to the essence of the organization’s business; and Determining either: <ul style="list-style-type: none"> That all or substantially all individuals excluded from the job involved are, in fact, disqualified That some of the excluded individuals have a disqualifying trait that cannot be ascertained except by reference to age 	<input type="checkbox"/>
Investigate any complaints of age discrimination thoroughly and respond promptly.	<input type="checkbox"/>
Take prompt and appropriate remedial action if age discrimination is found upon investigation.	<input type="checkbox"/>
Retain documents for all employment decisions to help establish that they were based on job-related factors, not age.	<input type="checkbox"/>
Provide older employees with accommodations, such as ergonomic equipment or flexible working arrangements.	<input type="checkbox"/>
Discourage inappropriate aged-based comments or dialogue in the workplace, such as using phrases like “OK, boomer.”	<input type="checkbox"/>
Check the ADEA and other state and local age-related employment laws regularly to stay current on any changes.	<input type="checkbox"/>
Post the “Know Your Rights: Workplace Discrimination is Illegal” poster prepared by the EEOC in a place and format that is accessible to applicants and employees.	<input type="checkbox"/>

ADEA Waivers	Complete
<p><i>An employer may ask an employee to waive their rights or claims under the ADEA. These waivers are common in settling ADEA discrimination claims or in connection with exit incentives or other employment termination programs. However, specific minimum standards must be met in order for a waiver to be considered knowing and voluntary and, therefore, valid.</i></p>	
<p>For valid ADEA waivers, ensure the following requirements are met:</p> <ul style="list-style-type: none"> The waiver is in writing. The waiver is written in a way that can be understood by the average employee. 	<input type="checkbox"/>

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<ul style="list-style-type: none">• The waiver specifically refers to rights or claims under the ADEA.• The waiver does not waive rights or claims that may arise in the future.• The employee signing the waiver is offered adequate consideration in addition to anything of value to which the employee is already entitled.• The employee is advised in writing to consult with an attorney before signing the waiver.• The employee is provided with at least 21 days to consider the waiver and at least seven days to revoke the agreement after signing it.• <i>The employee must be provided with at least 45 days if the waiver is part of an exit incentive program.</i>	
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Use this checklist as a guide when reviewing your organization's policies and practices to help ensure compliance with the ADEA. For assistance, contact Franconia Insurance & Financial Services.