

Boston Business Journal - March 8, 2010
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Boston Business Journal

Friday, March 5, 2010

Age-old problem: In bad economy, more older workers file bias claims

Boston Business Journal - by [Lisa van der Pool](#)

Age discrimination complaints in Massachusetts have hit a four-year high, highlighting the vulnerability of older workers in a tough economy.

In Massachusetts, approximately 593 age-discrimination claims were filed in 2009 (marking the third year in a row such complaints numbered at least 585), up from the 307 age-discrimination claims filed in 2006, according to the Massachusetts Commission Against Discrimination.

Rampant layoffs, an aging work force, and the fact that older workers often pull in higher salaries and thus are more appealing targets for layoffs, have fueled the surge in age discrimination claims during the past several years, according to labor attorneys and employment experts.

And while age discrimination claims are normally tricky to prove, occasionally, an employee successfully proves age bias.

That was the case in December, in the MCAD v. **Willowbend Country Club Inc.** case, where the MCAD awarded nearly \$1 million in damages, including \$200,000 for “emotional distress,” to complainant Virginia DiIorio. In the case, the MCAD concluded that Willowbend in Mashpee, a Cape Cod country club and resort, had engaged in age discrimination and retaliation after the club laid off DiIorio, who was 59 at the time and the vice president of sales at the company.

According to the MCAD, DiIorio was fired with a group of 12 other staffers. Ten of those staffers were over the age of 50. MCAD was able to determine that age discrimination took place in part due to testimony that a Willowbend general manager had said he wanted to “bring in some younger blood” to the company, according to the MCAD.

“There are cases — and we believe Ms. DiIorio’s case is one of these — in which, as part of the layoffs, employers have used this as an opportunity to dismiss older employees and use a reduction in force as a cover for that,” said Marc Redlich, a Boston-based labor attorney who represented DiIorio in the Willowbend case.

Age claims are exacerbated by the fact that laid off workers — young and old — are having a tough time finding new jobs.

“In a better economy, many of these older employees would be able to find employment at some other company, using the skills they’ve acquired over decades,” said Redlich.

Nationally, age discrimination complaints have skyrocketed. Age charges hit an all-time high of 24,582 complaints in 2008. That number dipped slightly to 22,778 age-related charges in 2009, according to the **U.S. Equal Employment Opportunity Commission** in Washington, D.C.

“Even though there was a slight drop, age charges were still at a historically high level in 2009,” said David Grinberg, an EEOC spokesman.

Age discrimination claims have been “steadily rising in the last several years,” said Gary Oberstein, an employment partner at the Boston-based law firm **Nixon Peabody LLP**. “From a corporate perspective, it underscores the importance of running through the appropriate termination process.”

In terms of how companies can cover themselves, Terence McCourt, an employment lawyer at **Greenberg Traurig LLP** in Boston, says that just as companies hold sexual harassment awareness training, they should also ensure employees refrain from making ageist comments to their co-workers.

“Right now it’s the perfect storm of an aging workforce and a bad economy,” said McCourt.

Meanwhile, older workers looking for jobs in this economy are having a difficult time, according to human resource experts. Older workers increasingly engage in tactics to mask their true age by scrubbing dates from résumés, minimizing the number of degrees they have so as not to appear over-qualified — or just getting Botox.

“I’m sad and troubled by it when people reach a certain age ... and they marginalize their past experience,” said Fred Foulkes, a professor of organizational behavior and director of the Human Resources Policy Institute at **Boston University**, who notes many people are



Attorney Marc Redlich handled a recent age discrimination case for a Massachusetts woman.

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worried they look too old.

“It’s a youth culture, so if they’re 58, they’re trying to look 48,” said Foulkes.

Jay Hargis, managing partner of the Boston-based **Talent Insight Group**, doesn’t think experienced workers should dumb down their résumés. On the other hand, says Hargis, appearing modern, is crucial.

“(Older workers) need to take a good, hard look at themselves and invest in an updated wardrobe, a new pair of glasses, or walk into an interview with an iPhone to demonstrate that you understand what’s going on in the world. That’s the key,” said Hargis.

Despite the difficulty, sometimes workers are also able to prove they weren’t hired because of age discrimination. That was the case for Timothy Poh, who applied for a controller job at Freudenberg-NOK, an auto parts manufacturer in New Hampshire. After the interview, Poh followed up, but was told point blank the company was looking to hire someone “not quite so old with as much experience.”

Poh, who now works as a financial analyst at **Huggins Hospital** in Wolfeboro, N.H., was awarded \$80,000 after the EEOC’s Boston office filed a suit on his behalf and Freudenberg-NOK agreed to settle.

“I think, unfortunately what happens as you get older, you’re branded as soon as you walk in the door,” said Poh.

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