



## Commission on Human Rights

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### **NYC COMMISSION ON HUMAN RIGHTS RELEASES LEGAL ENFORCEMENT GUIDANCE ON AGE DISCRIMINATION IN THE WORKPLACE**

*The legal enforcement guidance outlines the different ways in which age discrimination manifests in recruitment, hiring, policies, harassment, and termination; identifies best practices for employers; and addresses specific COVID-19-related workplace concerns*

**NEW YORK** – Today, the NYC Commission on Human Rights released [legal enforcement guidance](#) on discrimination on the basis of age, highlighting just how entrenched stereotypes and prejudices are with respect to both older workers and younger workers, and providing recommendations on how to attract and sustain an intergenerational workforce. Discrimination on the basis of age in employment is illegal under the NYC Human Rights Law, one of the most protective civil rights laws in the nation. The guidance draws a clear distinction between the protections available under the NYC Human Rights Law and the federal Age Discrimination in Employment Act (ADEA), highlighting the expansive legal framework under local law.

The guidance arrives at a time of unprecedented unemployment due to the COVID-19 global pandemic. To help navigate the unique concerns and challenges facing New York City employers and workers during this time, the Commission also released a COVID-19 supplement to the legal enforcement guidance, which provides examples of scenarios facing workers and employers specific to COVID-19 and clarity on legal protections related to age. This supplement builds off of regularly updated information on the Commission’s website, highlighting the intersection of COVID-19 and the NYC Human Rights Law.

Age discrimination in the workplace is a pervasive issue. Older workers are particularly at risk of being pushed out from long-held positions or forced to retire early. Younger workers, perceived as easily dispensable, are often the first to be laid off in times of financial or organizational struggle. Although age discrimination can affect employees at any point in their careers, many workers report experiencing age discrimination after the age of 50, despite the fact that having an age-diverse workforce has been shown to increase productivity, job satisfaction, and morale. The intersection of age and other identities, including race, disability, and gender, can make workers even more vulnerable to workplace discrimination.

“Every person in the workforce deserves to be treated with dignity and respect, regardless of age,” **said Carmelyn P. Malalis, Chair and Commissioner of the NYC Commission on Human Rights.** “This guidance serves as a reminder that harmful stereotypes about age abound in our society, and that age discrimination remains prevalent because of these pernicious stereotypes, impacting workers at a time when workplace rights are critical. We are hopeful that

this guidance will add to the chorus of advocates challenging the norms that allow older workers to be cast aside or prejudged, and young workers to be dismissed.”

Age discrimination can occur at every stage of employment, from recruiting and job postings to layoffs and terminations. When posting open positions and recruiting new employees, employers cannot directly or indirectly express a preference for a certain age group, unless mandated by law for certain positions. Further, employers cannot directly or indirectly restrict the age of candidates by capping number of years of experience or specifying a graduation year. Employers are cautioned against using phrases like “perfect for recent college graduates,” as this may discourage older candidates.

The COVID-19 pandemic has presented an employment crisis not seen in the United States since the Great Depression, creating an environment of increased age discrimination. Forty-eight percent of young adult workers ages 16-24 work in industries most affected by COVID-19-related closures such as restaurants, bars, gyms, and coffee shops, compared to 24 percent of overall workers. Older workers are also more likely to face long-term unemployment. Unemployment rates for adults 55 and older went from 3.3 percent to 13.6 percent during the COVID-19 closures.

“Older workers have a lot to contribute to our workforce – expertise, dedication, and know-how, and contribute to the bottom line. Unfortunately, ageism is so pervasive in our culture that workplaces often fail to see discrimination in the workplace,” **said Department for the Aging Commissioner Lorraine Cortés-Vázquez.** “These guidelines will help employers recognize age discrimination and how to take steps to stop it. The City Department for the Aging will continue advocating for the protection of older workers and will be launching an anti-ageism campaign in the coming year, focused on ending the ageist attitudes that are prevalent in our culture.”

The NYC Commission on Human Rights actively engages with advocates and organizations supporting older workers to inform them of their rights under the NYC Human Rights Law. Throughout Fiscal Year 2020, the Commission has conducted over 100 age discrimination and age diversity events throughout New York City in partnership with NYC Department for the Aging, New York State Office for the Aging, New York State Alliance for Retired Americans, Brookdale Center for Healthy Aging, Hunter College, AARP, and Services and Advocacy for GLBT Elders (SAGE), among others. In Fiscal Year 2019, the Commission received 106 reports of age discrimination in employment and filed 42 complaints.

The New York City Human Rights Law prohibits discrimination and harassment based on race, gender, national origin, immigration status, age, and over 20 other protected classes in housing, employment, and public accommodations. If you have experienced discrimination, call the NYC Commission on Human Rights by dialing (212) 416-0197, or visit the Commission’s website at [NYC.gov/HumanRights](http://NYC.gov/HumanRights).

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“Age discrimination in the workplace is an all-too-common encounter of younger and older workers alike. Discrimination in the workplace on the basis of age is not only unethical, it is also

illegal. As an elected official, I am proud to employ an intergenerational staff because I know it means my office is equipped with a diversity of experiences and perspectives. I commend Chair and Commissioner Malalis for releasing this guidance for workers and employers in our city and understanding that age discrimination has no place in New York's workplaces.” – **New York State Senator Leroy Comrie**

“As the number of older New Yorkers increases, it's important that we take steps to address age discrimination in the workplace, especially during the current COVID-19 economic crisis. I'm extremely grateful to the NYC Commission on Human Rights Chair and Commissioner Malalis for issuing this important guidance on age discrimination.” – **New York State Senator Brad Hoylman**

“Age discrimination in hiring and in the workplace is a growing problem, particularly as New Yorkers are living longer, many want to, and some need to work. The New York City Commission on Human Rights has taken a national leadership role to develop guidance for employers and employees that clearly outlines employer responsibilities and workers’ rights in relation to age discrimination and can be used as a model across the country. Ultimately, this guidance will help protect workers and support a robust 21<sup>st</sup> century multigenerational workforce.” – **New York State Senator Liz Krueger**

“This new guidance on age discrimination is much needed. Ageism cuts both ways in the workplace, as I saw often during my decades as a labor organizer. In recent years, my office has also seen many cases of age-based discrimination in hiring practices, particularly against older applicants. As we strengthen these protections against ageism, we also must redouble our efforts to provide older workers with the skills they need to succeed in this ever-shifting job market. I'm committed to working with my colleagues in the city and state government to do so, and I applaud this new anti-discrimination guidance from the Commission on Human Rights.” – **New York State Senator Robert Jackson**

“No one should face job discrimination including on the basis of age. In fact, older adults often have the experience that make them an asset in many positions. Age discrimination in employment is illegal under the NYC Human Rights Law, and it is important that employers know this and are given the proper guidance to act fairly. I am pleased that the NYC Commission on Human Rights has released such guidance.” – **New York State Senator James Sanders Jr.**

“I commend the NYC Commission on Human Rights for releasing legal enforcement guidance on age discrimination in the workplace. New York City is facing record unemployment due to the COVID-19 pandemic and job seekers of every age need to be aware there are federal and NYC protections in place. All workers deserve to be treated equally.” – **Assistant Speaker Félix W. Ortiz**

“A pandemic is not an excuse for age discrimination. As we work to rebuild the economy, we must take extra measures to protect workers’ rights.” – **New York State Assemblymember Mathylde Frontus.**

“In the face of an unprecedented economic crisis and public health emergency, there's no question that the well-being of older New Yorkers is being threatened on multiple fronts. Age discrimination in the workplace is never acceptable, the crisis in front of us has magnified the urgency to expand protections for those being discriminated against or locked out of career opportunities because of their age. I thank Commissioner Malalis and the partnership of the NYC Commission on Human Rights for giving this pervasive issue the attention it deserves.” – **New York City Council Member Margaret Chin.**

“Age discrimination is unfortunately still a pervasive problem throughout society, including in the workplace. At a time when the COVID-19 pandemic has created an economic crisis unparalleled in modern history, it is more critical than ever that those in the workforce and those looking to re-enter the workforce understand their rights under New York City’s Human Rights Law. I thank Mayor de Blasio and Commissioner Malalis for reaffirming and underscoring that all workers, regardless of age, have a place in our economy.” – **Brooklyn Borough President Eric Adams.**

“New Yorkers from all backgrounds and age groups benefit from anti-discrimination laws that are vigorously enforced. This new and updated legal enforcement guidance comes at a necessary time when, because of COVID-19, workers are rendered even more vulnerable to workplace discrimination with the intersection of age and other identities such as race, disability and gender. The NYC Commission on Human Rights is right to direct and expect compliance by employers.” – **Rocky Chin, Commissioner, NYC Commission on Human Rights**

“We applaud the Commission’s guidance that age discrimination against New Yorkers will not be tolerated. While COVID-19 has had devastating impacts, including job losses for people of all ages and characteristics, it is an unacceptable excuse to discriminate against older New Yorkers. Employers should be advised that age discrimination is not only illegal, but also bad for business: Studies show that age-diverse workforces have a positive impact on employee engagement, productivity and the bottom line.” – **Beth Finkel, State Director, AARP New York**

“The new guidance on age discrimination from New York City’s Human Rights Commission is clear, courageous, and necessary. From our research on older workers, we know that age discrimination is ubiquitous, but many employers don’t know when they are doing it and most employees don’t know what to do about it. This guidance will help both groups. And it is courageous to remind us all that human rights are important pandemic or no pandemic. And to provide advice about safeguarding both rights and safety in that context.” – **Dr. Ruth Finkelstein, Executive Director, Brookdale Center for Healthy Aging, Hunter College, CUNY.**

“Age discrimination creates a situation of double jeopardy for LGBT elders. A lifetime of experienced stigma and discrimination already puts LGBT older people at increased risk for financial instability and poverty. The extra impact of age discrimination in the workplace only exacerbates the financial strain and well-being of these pioneers. In fact, forty-four percent of LGBT older people are very or extremely concerned that they will have to work well beyond retirement age just to have enough money to live, as compared to 26% of non-LGBT older

people. The Commission's legal enforcement guidance on age discrimination is a welcome step in making sure that our City's LGBT elders continue to be visible and supported in NYC's workforce." – **Lynn Faria, Executive Vice President of SAGE**

"On behalf of NYSARA and thousands of older workers throughout NYC, I applaud the NYC Commission on Human Rights for developing the first NYC legal enforcement guidance on employment discrimination based on age. According to the 2017 American Community Census, 33%, or one out of three New Yorkers, are over the age of 50. Workers over age 50 frequently face age discrimination in hiring, on the job and firing, increasing for those over 65. With millions of New Yorkers facing unemployment due to the COVID-19 pandemic, older workers are navigating the double challenges of avoiding the virus as a high-risk group while experiencing fear of losing their income and health insurance. We look forward to working with the CCHR to ensure employers and employees are aware of these protections for older workers." – **Bobbie Sackman, Workplace Discrimination Coordinator, NYC Chapter, NY State Alliance for Retired Americans**