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## Rigzone Poll: Age Discrimination a Concern in Oil and Gas

By Matthew V. Veazey

Age discrimination – or at least the perception of it – is a significant concern in the oil and gas industry, according to a recent poll on Rigzone’s Twitter page. In fact, **66 percent of the 1,603 survey participants** selected “yes” when asked if they thought they have ever experienced age discrimination while searching for a job. The finding parallels more formal research cited by AARP that reveals a similar conclusion on a broader scale: the majority of U.S. workers surveyed have **either seen or experienced age discrimination** in the workplace.



Two-thirds of poll participants report first-hand experience with age discrimination.

As this **U.S. Equal Employment Opportunity Commission (EEOC)-compiled list of pending and resolved cases** under the federal Age Discrimination in Employment Act of 1967 (ADEA) shows, some examples of age discrimination by employers include:

- Developing hiring criteria that exclude applicants above a certain age for managerial roles
- Manipulating layoff criteria to target affected employees based on age
- Extending a search to fill a vacancy in order to find someone younger than a more seasoned leading candidate

To be sure, there are limits – at least under U.S. law – regarding what actually qualifies as age discrimination, point out Alicia Lockheed Goodrow and Terese Connolly, partners in the cloud-based law firm Culhane Meadows. Goodrow and Connolly – based in Houston and Chicago, respectively – noted that two examples of what falls outside the bounds of age discrimination include:

- Terminating an employee who happens to be over 40 years old after the employer has compiled sufficient written documentation of consistently poor performance or misconduct – as long as others who consistently perform poorly and/or engage in the same or similar misconduct are treated equally.
- Refusing to hire a highly experienced engineer who does not possess the technological skills necessary to perform the job and has expressed a lack of desire to learn such skills.

Nevertheless, Goodrow and Connolly said that employers need to tread carefully when making “adverse employment decisions.” Examples of such decisions include refusals to hire, demotions and terminations, and employers should contact legal counsel beforehand to ensure that they are complying with all applicable laws and regulations to mitigate risk, they said.

Read on for additional insights from Goodrow and Connolly regarding age discrimination, including how it can occur in the oil and gas industry and what proof is necessary if you think you've experienced it. *(Note that their comments correspond just to the U.S. federal ADEA statute. Various individual states have their own variants of ADEA that are broader than the federal law – and the confines of this discussion.)*

**Rigzone:** Broadly speaking, what is age discrimination and what isn't age discrimination in the context of employment? For instance, are there any rules-of-thumb that one can use to gauge whether discrimination has actually occurred?

**Goodrow:** ADEA protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments and training. The ADEA permits employers to favor older workers based on age even when doing so adversely affects a younger worker who is 40 or older. The ADEA applies to employers with 20 or more employees.

**Rigzone:** What are some common ways in which age discrimination manifests itself in hiring, promotions and layoffs? Are there any examples unique to the oil and gas industry?

**Goodrow:** In the oil and gas industry, we more frequently encounter age discrimination issues in layoff situations than in hiring and promotion, though it can occur in all of those areas.

Over the past 20 years, it has become very common at the middle management through executive levels to structure early retirement buy-out plans when the price of oil dips and short-term profits look bleak. Often the large, multi-national companies have very generous benefits packages including historic employer-funded pension plans, generous vacation packages and premier health plans. Older employees with longer tenures are more expensive to keep on the payroll because of these benefits packages. It is possible to structure a non-discriminatory voluntary retirement plan that incentivizes older workers to retire.

The trouble comes in when the plans are not truly voluntary and come with penalties for electing out of the option to retire.

On the promotion/hiring side, the oil and gas industry currently has a skill-based generation gap in the engineering ranks. Generation X is often underrepresented because there are fewer Gen X employees with strong petroleum/energy engineering backgrounds. The Baby Boomers are retiring and the Gen Y and Millennials haven't yet gained the practical experience to fill the gap. That means many companies want to keep the older workers involved longer to mentor and train. But it may also mean that the 40- to 55-year-olds are caught in the middle.

To prove an age-discrimination case, you need to show that you are part of a definable group and that some in that group are clearly favored over others for age reasons and not reasons related to performance, experience, tenure, etc. Age discrimination is based on outcomes more than environments. It is very hard to demonstrate that a "hostile work environment" has created an age discrimination right.

**Connolly:** With respect to hiring in industries across the board, when interviewing older workers, many biases can come into play. A common bias is the perception that older workers lack the technological skills. To avoid the unfortunate consequence of overlooking a candidate with extensive industry experience, employers would be wise to educate those employees in charge of hiring on their own biases in order to interrupt the bias. Ideally, hiring teams should consist of individuals from each generation.

**Rigzone:** What options do you have if you believe you're the victim of age discrimination? Are there any steps before simply contacting an attorney?

**Connolly:** Review your company's handbook policies and be sure to follow the internal procedures for reporting. Note to employers: If you do not have such policies, you need to have them drafted. If you do have such policies, you should be updating them yearly in accordance with federal, state and local laws and regulations, which change from time to time. This is especially true when there is a change in the administration.

**Rigzone:** How can individuals ages 40 and above make themselves less likely to experience age discrimination?

**Connolly:** Everyone in the workplace can interrupt bias against older workers by not playing into those biases.

For example, we have all heard from our co-workers, "don't get old, it is no fun" or "I cannot stand and speak for an hour now that I am older." These comments in the workplace affirm the stereotypes about older workers.

Instead of accentuating the negatives, accentuate your positives. If you are 40 or older, remind those around you that you still frequently skydive, do trapeze, run marathons, etc. Comments like these are sure to interrupt biases.

Most importantly, never stop learning. As Henry Ford once said, "Anyone who stops learning is old whether at 20 or 80, and anyone who keeps learning stays young." Continuing to learn keeps you relevant no matter how old you are.

**Goodrow:** If you can, find opportunities to publish or teach in your field. Make sure you are up to date on personal and professional technology relevant to your field. New apps, software and tools like tablets, robotics, and artificial intelligence interfaces evolve constantly in all industries. If you've been out of work or consulting from the sidelines for more than a few months, be proactive about keeping up your skills. Geophysicists and geologists work with Big Data daily and partner with programmers to manipulate and evaluate data. Machinists are now largely programmers of specialized computers. Landmen in the field have to use satellite-based communication and monitoring. Everyone at the rig or in the refinery or field is expected to have a Smartphone and use it for work and play, and work apps are increasingly designed to build on fun skills used in personal technology.

If you are currently interviewing, craft a resume highlighting concrete experiences and skills that are relevant. Downplay or even eliminate jobs you held in the 1980s and 1990s that are not relevant now. Don't include years of graduation or years of employment except for recent activity.