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# Age Discrimination

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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# Age Discrimination

Reference Number: CTAS-1052

Both the federal Age Discrimination in Employment Act (ADEA) and the Tennessee Human Rights Act, T.C.A. § 4-21-101 *et seq.*, protect individuals who are age 40 and older from employment discrimination based on age.<sup>[1]</sup> It is unlawful to include age preferences, limitations, or specifications in job notices or advertisements, except in those very rare circumstances where age is a bona fide occupational qualification (BFOQ) reasonably necessary to the essence of the business. The ADEA applies to states and local governments regardless of the number of employees they may have.<sup>[2]</sup>

These laws also prohibit forced retirement of employees on the basis of age unless a specific exemption applies (law enforcement and firefighters are exempt and may be compelled to retire after the age of 65). The law does not, however, prohibit a plan permitting individuals to elect early retirement at a specified age, nor is it unlawful for a plan to require early retirement for reasons other than age.

The ADEA does not specifically prohibit asking an applicant's age or date of birth, but such requests are closely scrutinized to ensure they are for a lawful purpose and not for a purpose prohibited under the ADEA.

EEOC Facts about Age Discrimination

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[1] The U. S. Supreme Court has held that the ADEA did not abrogate states' 11<sup>th</sup> Amendment immunity and therefore employees cannot bring suit against state employers under the ADEA unless the state has waived its sovereign immunity; the opinion also appears to include local governments within the protection of the 11<sup>th</sup> Amendment. *Kimel v. Florida Board of Regents*, 528 U.S. 62, 120 S.Ct. 631 (2000). However, in a 2001 case concerning the Americans with Disabilities Act, the Supreme Court directly addressed whether 11<sup>th</sup> Amendment immunity extends to cities and counties and found that it does not. *Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356, 121 S.Ct. 955 (2001); *see also Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977); *Ernst v. Rising*, 427 F.3d 351 (6<sup>th</sup> Cir 2005); *Johnson v. Southwest Tennessee Community College*, 2010 WL 1417739 (W.D. Tenn. 2010). Further, Tennessee law states that the intent of Tennessee's Human Rights Act is to "provide for execution within Tennessee of the policies embodied in the federal Civil Rights Act of 1962, 1968, and 1972, the Pregnancy Amendment of 1978, and the Age Discrimination in Employment Act of 1967, as amended." T.C.A. § 4-21-101(a)(1).

[2] *Mount Lemmon Fire District v. Guido*, 139 S. Ct. 22 (2018).

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