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## Staff Matters: When Do Comments about Age Become Discriminatory?

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# When Do Comments about Age Become Discriminatory?



By Jodi Schafer, SPHR, SHRM-SCP

**Q**uestion: In our practice, we have staff with varied experience and ages. I've noticed that some of our senior staff members, and some-

times our doctors, comment on how "young" some of the staff are, and they sometimes attribute challenges they may be having with their age. I'm starting to hear comments like, "Oh, they're so young and immature." On the flip side, I've also had resumes come through from candidates who have decades of experience, and concerns have been raised about whether they would be able to keep up with our technologies and if they're too "set in their ways." I know there are laws about discriminating based on age, but I'm not sure what they are and if I should correct these statements. Can you please help?

**Answer:** You are right to be concerned about these situations. There are indeed laws that you need to be aware of so that you can mitigate your practice's legal exposure.

For employers with more than 20 employees, the federal Age Discrimination in Employment Act, passed in 1967, forbids age discrimination against individuals who are age 40 or older in any aspect of employment (i.e., recruiting, hiring, compensation/benefits, promotions, etc.). The law does not protect workers under the age of 40, but many states have a similar law that does, and Michigan is one of those states. According to Michigan's Elliott-Larsen Civil Rights Act, any employer with one or more employees may not use age as a factor in hiring or terminating employees, organizing or classifying employees in ways that affect workplace opportunities, limiting employees' access to training programs, and in application processes. Under Michigan law, age discrimination has no minimum age.

How employees are treated may also put you at risk for lawsuits related to harassment. Harassment can include offensive or derogatory remarks about a person's age. The law isn't typically applied to isolated incidents,

but you are more at risk when it is severe and/or pervasive, creating a hostile or offensive work environment. The "harasser" can be the employee's supervisor, a supervisor in another area, a co-worker, or a third party such as a patient or vendor.

In addition to the legal implications, your practice needs to think about its culture and values. Do you want a practice that allows assumptions and judgments to be based on stereotypes (such as age, race, gender, etc.)? Where biases, whether intentional or not, are driving decisions about hiring, promotions, and terminations? Or where your employees feel "less than" other employees? I assume not, so it will be important to address these issues directly.

Take a good look at your practice and your processes. Is anyone acting on beliefs or assumptions about age that are related to an employee's performance and/or behavior, in areas such as initiative, commitment, flexibility, or use of technology? If so, you want to talk with the person individually, even if they are in leadership, and explain how their behavior is putting the company at risk and does not align with your practice's values. Overall, this can be an opportunity to share not only the legal risks, but also the impact of these beliefs and subsequent behaviors on others and on the practice's culture.

If you want to be seen as a great place to work and be able to attract a diverse workforce who bring unique experiences and perspectives, then these types of statements cannot be allowed to continue. In addition to the one-on-one conversation(s), it is probably time for an all-staff training about the basics of discrimination, bias, and harassment. You can never over-communicate on a topic like this, so take these recent examples as sign that it is time to reinforce your messaging and hold everyone accountable to the values of the practice. ●

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