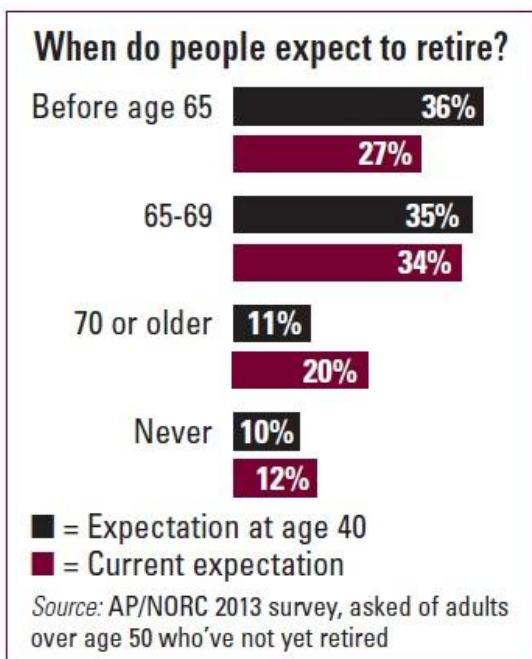


# How to avoid age bias when talking retirement

Supervisors and HR walk a legal tightrope when discussing retirement plans with aging workers.

If it appears you're pushing an employee out the door based on his age—or if you suddenly eliminate his position after discussing retirement—you'll be setting yourself up for an age discrimination lawsuit. And with more employees delaying their retirement plans (*see chart*), this is becoming a white-hot legal issue.



Your best approach? Never assume that someone wants to retire. Adopt an attitude that assumes employees want to keep working until they make it crystal clear to you that they don't.

Provide retirement education to everyone. If you offer a defined-contribution retirement plan—such as a 401(k)—let the administrators handle all retirement questions. Set up retirement education sessions. Advertise them to *all* employees.

Also, designate a knowledgeable person in HR to handle retirement questions. That way, you don't look like you're trying to push anyone toward retirement, while still providing valuable information.

In most age bias lawsuits, timing is everything. When adverse actions (firing, demotion, etc.) occur close in time to an employee's discussion about retirement, you'll be raising the legal antenna of your employee—and possibly a jury's antenna, too.

**Recent case:** Alexander worked as a Virginia school custodian since 1957 and received positive reviews. Each year, school employees had to declare that they wanted to return the next school year. Everyone worked under one-year contracts.

When Alexander turned in his forms, his supervisor began asking him about potential retirement. Alexander said

he'd retire only if he were paid for accumulated leave and some other disputed leave time. After this conversation, the school board eliminated his position, effectively forcing him into retirement. He sued.

The school pursued a summary judgment, but the court agreed that Alexander had enough evidence to take the case to trial. If a jury believes the school district wanted to force Alexander into retirement, it could be liable for age discrimination. (*Harris v. Powhatan County School Board*, No. 12-2091, 4th Cir., 2013)

**Online resource:** This doesn't mean you can't hold older workers to legitimate performance standards. But if you do plan to discipline or terminate older workers due to reduced performance, make sure you treat all other employees the same way for the same offenses. Consistency is key. To learn how to discipline aging employees (and still comply with age bias law and the Americans with Disabilities Act) see "[Older worker slows down: Does firing = bias?](#)"