The federal Age Discrimination in Employment Act (ADEA) prohibits employers with 20 or more employees from engaging in personnel practices that discriminate against workers or applicants who are age 40 and older.

That includes hiring, firing, promotions, compensation, benefits, job assignments and training. You also can’t retaliate against a worker for filing an age-discrimination claim or even for speaking out against allegedly age-biased practices.

Age-discrimination complaints have increased as baby boomers grow older. The EEOC received 14,141 age-bias complaints in 1999. By 2008, the number had spiked to 24,582 before settling down in the neighborhood of 20,000 per year since then.

Age-discrimination cases are among the most costly for employers, with awards and settlements routinely topping $250,000.

Contrary to popular belief, employees alleging age bias don’t have to prove someone under age 40 replaced them—only that they were replaced by someone “substantially younger.”

Many states have their own age-bias laws. While some mirror the ADEA, others apply to companies with fewer than 20 workers.

Do you have an age-bias problem?

The bottom-line test for age discrimination is to ask yourself: “If not for the person’s age, would he or she have been fired, hired or otherwise treated the same as younger, lower-paid workers at the company?” If you’re even the least bit fuzzy on the answer, you could be asking for trouble.

The best way to avoid age-discrimination trouble is to avoid asking applicants and employees their age unless you have a bona fide reason. The ADEA doesn’t specifically ban this, but steering clear of questions about age is wise because asking could imply the intent to discriminate.

Older workers not immune

So are workers over the age of 40 untouchable? No way. You can successfully defend yourself from an ADEA claim by proving one of the following:
• **Bona fide occupational qualification (BFOQ).** That is, an older worker couldn't perform the job because of his or her age. Example: Age qualifies as a BFOQ for pilots, who can’t earn FAA certification past age 60.

• **Just cause.** You have an ironclad reason for termination or any other job action, such as poor performance or misconduct. Make sure you have well-established documentation.

• **Business necessity.** A legitimate business reason caused the employment action. Example: A reorganization due to financial troubles.

Read the official text of the ADEA at [www.eeoc.gov/laws/statutes/adea.cfm](http://www.eeoc.gov/laws/statutes/adea.cfm). Find the EEOC’s fact sheet on the ADEA at [www.eeoc.gov/facts/age.html](http://www.eeoc.gov/facts/age.html).

**Termination waivers: Requirements for older workers**

When terminating workers, it’s smart to have them sign an agreement waiving their right to sue for discrimination. But with workers over 40, you must add an additional provision that deals with age-discrimination claims.

The Older Workers Benefit Protection Act says waivers must:

- Be in writing and easily understood
- Discuss age-bias rights and advise the worker to consult an attorney
- State that the worker is being compensated for signing the waiver
- Give the worker 21 days to consider the agreement and seven days to revoke the deal after signing it.