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AGE DISCRIMINATION IN EMPLOYMENT ACTIONABLE

Query: At what age is an employee protected against being terminated, replaced, or otherwise demoted solely because of age?

AnsWER: In Ohio, it is unlawful, and an employer may not discriminate, against any employee aged forty or older, so long as the employee is physically able to perform the duties and otherwise meet the established requirements of the job. If a person aged forty or older is discriminated against without just cause on the basis of age, he or she is entitled to file a suit within two years of the (date of) wrong and to seek money damages or reinstatement to his or her former job.

It is not only illegal for an employer to discriminate on the basis of age by *discharging* the employee from work. It is also illegal to *discriminate because of age* with respect to hiring, granting of tenure, terms of employment, conditions of employment or privileges of employment.

What constitutes discrimination? If an employee can show any direct proof that his or her employer discriminated on the basis of age, then that employee is in a position to make a claim. However, even if no direct proof can be shown that the firing or other discriminatory treatment was because of age, an employee forty years of age or older can still challenge his or her employer on the basis of age discrimination.

The Ohio Supreme Court has held that upon suit, the employee must show: (1) that he or she was a member of the statutorily-protected class (forty or older), (2) that he or she was discharged, (3) that he or she was qualified for the position,

and (4) that he or she was replaced by, or that his or her discharge permitted the retention of, a person not belonging to the protected class or who at least is substantially younger. Once the employee demonstrates this much, the burden of proof shifts, and it is then the responsibility of the employer to show it had a legitimate, nondiscriminatory reason for the discharge of the employee.

Employers must carefully guard against any act or action in connection with an employee that may be regarded, even remotely, as discriminatory. Employee transfers, or changes of job duties, status, job/position titles, etc., should be handled judiciously, and with the advice of counsel, in order to avoid any taint of employment discrimination under the law.

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This report, by its very length, defends itself against being read.

Winston Churchill (1874-1965) English Statesman, Writer, Speaker

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ROBERT F. McDOWELL, JR., a new Associate of the J. Norman Stark Law Firm, earned his Juris Doctor (JD) and Masters in Business Administration (MBA) at the University of Akron.