
**Federal Court Report**

**Age Discrimination Claims Against HP Sent to Trial**

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The 6th U.S. Circuit Court of Appeals sent claims to a jury that a former employee of Hewlett-Packard (HP) was fired because of age discrimination and in retaliation for complaints about age discrimination.

The plaintiff was 54 years old when he was hired by HP to develop training programs for its salespeople. In his first five years with HP, his performance reviews were positive and his managers noted his work "exceeded expectations" and "significantly exceeded expectations."

The plaintiff's experience changed when his position was transferred to a different group within HP. At this point, the plaintiff was 60 years old and the oldest person reporting to his new manager. The plaintiff immediately experienced a challenging relationship with the new manager. Notably, the evidence suggested:

* After six years of positive performance reviews and an unbroken streak of 30 percent performance bonuses, the new manager gave the plaintiff an 8 percent performance bonus and no raise.
* The manager never offered the plaintiff any job responsibilities other than allowing him to continue in a supporting role in his new group.
* The plaintiff and the manager met regarding a performance review, and the plaintiff told the manager it was his belief that the poor rating was motivated by age discrimination.
* The manager announced that the plaintiff had "old skills" in connection with a tech issue the plaintiff had with a laptop presentation in a group meeting. The manager also sarcastically referred to the plaintiff as "young man" several times during that meeting.
* The manager reportedly asked the plaintiff, "Why are you still here?" in a meeting.

On at least 10 occasions the manager allegedly asked the plaintiff "When are you going to retire?" The plaintiff complained to the HR department. In his next performance review, the plaintiff's performance was rated as "stalled"—the second-worst rating that existed at HP.

Ultimately, the manager's team was broken up due to HP downsizing and the plaintiff was reassigned to a vice president, while others were laid off. Thereafter, the manager sent the vice president a PowerPoint presentation that indicated the plaintiff's future was "not clear." Soon thereafter, the vice president told the plaintiff that he would be fired.

The plaintiff sued HP for age discrimination and retaliation.

In order for the plaintiff to meet the requirements of an age discrimination claim, he must show that his age had a determinative influence on the outcome of the employer's decision-making process. This requirement could be shown by either a direct case—for example, the employer admitting to discrimination—or through indirect evidence, which would allow a jury to infer that unlawful discrimination occurred.

The plaintiff's lawsuit rested on indirect evidence, which legally triggers a three-part analysis. First, the employee must put forth evidence that, on its face, illustrates the alleged discrimination. Second, the employer is then required to identify a legitimate, nondiscriminatory reason for the adverse employment occurrence(s). If the employer does so, the plaintiff must prove the employer's offered reason was a mere pretext for the discrimination.

The appeals court found that the plaintiff easily satisfied an allegation of discrimination on its face. In response, HP indicated that the plaintiff was terminated because his responsibilities could be handled by others.

In analyzing the third factor—whether HP's asserted reason was a pretext—the appeals court emphasized the rule that an employer is liable for discrimination or retaliation that a supervisor initiates, even if that supervisor is not the individual who ultimately takes the adverse action against the employee.

Ultimately, the court decided there was enough evidence in this case to allow a jury to find that the manager was the relevant decision-maker in the plaintiff's termination and that the manager's acts were the cause of the termination. The same analysis also supported the court's conclusion that a jury could find that the plaintiff's age "had a determinative influence on the outcome" of HP's decision-making process and that he was retaliated against for his claims that his performance was motivated by his age.

*Sloat v. Hewlett-Packard Enter. Co.*, 6th Cir., No. 20-6169 (Nov. 17, 2021).

**Professional Pointer:**This decision demonstrates how inquiries from an employer about an employee's retirement can be evidence of age discrimination, particularly when these inquiries are introduced after several years of positive reviews. It is important for employers to be mindful in how they discuss retirement or other age-related comments that a court could find demonstrate age discrimination.

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