

Unwise Old Sayings? Watch Out For Stereotypes That Might Trigger An Age Discrimination Lawsuit

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By this point, most employers know not to make explicit ageist remarks such as calling an employee Grandpa, saying an employee is old, or inquiring about when an employee will retire. However, employers should also be mindful that less explicit remarks, even if not intended to be ageist, can evoke certain stereotypes and result in allegations of age discrimination. In a recent Eighth Circuit case, an employee sued for age discrimination after his termination. His supervisor had noted that tasks requiring “physical skill or dexterity” were difficult for him, that he was stubborn and lacked learning potential, and that troubleshooting computer systems was difficult for him. The Eighth Circuit ultimately affirmed the District of Minnesota’s grant of summary judgment for the employer, holding that “these statements are generic workplace criticisms used to explain many terminations regardless of the employee’s age.” Also helpful to the employer were the facts that the employee had only recently been hired when he was already in his mid-50s and that his supervisor who made the decision was approximately the same age. Although the employer prevailed, it is worth noting that employees are more likely to sue if they believed they are being unfairly stereotyped. Older employees are more likely to claim discrimination if they feel they are unfairly judged as “old dogs” who cannot learn new tricks, or that they are incapable of understanding computers or performing certain skills commonly associated with younger employees. The same is true with stereotypes associated with race, sex, or disability discrimination. There is value to being sensitive to employees and avoiding stereotypes, even if there is no malicious discriminatory intent in using those stereotypes. The case is *Nash v. Optomec, Inc.*, No. 16-2186, out of the Eighth Circuit.

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