Age Discrimination And Technology: Don't Take A "Mechanized" Approach

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William A. Nolan
Partner
Columbus
Managing Partner

From robots performing minimally invasive surgical procedures to computerized payroll, almost all businesses look to the latest technology to optimize day-to-day operations. Employers need to remain mindful, however, of potential employment implications of being "cutting edge." For example, in *Marlow v. Chesterfield Cnty. Sch. Bd.*, 749 F. Supp. 2d 417 (E.D. Va. 2010), a terminated school administrator sued her former employer based on circumstantial evidence of age discrimination. Prior to termination, the Superintendent questioned the plaintiff employee's "21st Century skills." Additionally, the school corporation had terminated the most senior and oldest technology education teachers based on their relative lack of modern technology skills. The court found that this evidence was sufficient to overcome summary judgment and send the case to trial. It is common for us to see employers expressing concerns about the technological capabilities of older employees. This naturally raises potential age discrimination issues, which employers need to work through carefully. Here are some best practices that may help employers in this regard:

- Refrain from providing a "one size fits all" technology training program. Different employees may learn technology differently. Provide training that gives all employees a reasonable opportunity to effectively learn the technology.

- As with any job requirement, articulate the requirement in as objective and measurable a way as possible. Of course some job requirements are inherently at least partly subjective, but with a little prodding (including from counsel) supervisors can often articulate needs and requirements in more objective ways than they might be now.

- Give particular attention to evaluation factors that are susceptible to age-based stereotyping. Flexibility, willingness to learn, and technological skills are all important and valid qualities, but can easily morph into supervisor comments that can be damaging in the event of litigation. Which also leads us to …

- Train supervisors on being sensitive to potential age stereotypes and how they can be part of effectively managing such concerns while at the same time getting the high employee performance your organization deserves.

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Effectively using technology is probably an integral part of your company's success. Some planning and training can help you avoid that it becoming an unintended source of liability.