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Old Folks NOT at Home: New Scenarios for Senior Workers

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1 NEW SCENARIOS FOR SENIOR WORKERS

Not so long ago, employers were happy to see their aging employees retire—even giving them a gold-plated push if necessary.

Now, with the baby boomer generation reaching their 60s, both employers and employees often are having second thoughts about retirement issues. Some very different dilemmas are emerging. Consider the following scenarios:

Scenario 1: Tom is 63 and would like to retire but realizes his pension and social security won't stretch to cover the retirement style he had anticipated. He senses that his employer would just as soon see him leave. Is he in danger of losing out all the way around?

Scenario 2: Mary, age 64, needs to keep working for financial reasons but would prefer to work fewer hours. Dare she make that suggestion to her boss?

Scenario 3: Dick also wants to keep working and knows that his workmate in the same job classification, Harry, has a similar desire. What really gnaws at Dick is the suspicion that their employer plans to ditch him and retain Harry.

Scenario 4: Same scenario, except that Harry is 10 years younger. Would Dick have a legal case if he is pushed into retirement and Harry stays?

Scenario 5: Employer Frank, in sizing up employees who are in their 60s, realizes he would like to keep Jane for her abilities but would just as soon see Betty retire. Can he maneuver that result without exposing the organization to a lawsuit by Betty?

Scenario 6: Trucking company employer John realizes that one of his good drivers, Jim, is losing the strength to wrestle freight items in and out of his truck. But he can tell that Jim loves his work; is still proud of his driving abilities; and has no intention of accepting a new assignment, let alone retiring.

Before 1967, when Congress passed the Age Discrimination in Employment Act, employers had greater latitude to act as they pleased in such cases. That is no longer the case. The biggest factor affecting retirement decisions today is the changing workforce, in which keeping older workers on the job is an increasingly desirable option for both employers and employees.

In Chapter 2 we focus on that changing workforce and its bearing on the scenarios above.

2 THE BABY BOOMER DIFFERENCE

In 1889, when German Chancellor Otto von Bismarck inaugurated the first-ever social security system for the elderly, he set the pivotal date for eligibility at age 70. Later, in 1916, Germany lowered the age to 65. If people reached this age at all, their declining health usually meant that death was near at hand and that the cost to the government would be minimal.

But modern sanitation and medical care have greatly extended life expectancies since then, particularly in advanced societies such as the United States. The tremendous 78.2-million-person demographic swell caused by the huge post-World War II increase in the birth rate—known as the baby boom—is now approaching retirement. The first "official" baby boomer—Kathleen Casey-Kirschling, born just moments after midnight on January 1, 1946—has applied for social security. The corresponding drop in births following the end of the baby boom in the mid-1960s means labor shortages may lie in the years just ahead.

William C. Byham outlines the potential results for employers in compelling fashion in his book *70: The New 50.* Byham is chairman and CEO of Development Dimensions International, Inc. (DDI), a global human resources consulting firm headquartered in suburban Pittsburgh. Byham offers employers these warnings:

- In many companies, 50 percent of managers and key professionals will be eligible to retire by 2010, and 70 percent of them by 2015. If these and other members of the boomer generation choose to leave the workforce en masse over the next few years, organizations will face a severe loss of key leadership knowledge, skills, and contacts.
- Talent is already scarce for many organizations, and the imminent boomer exodus will make it even more so. Companies will not be able to rely on the next generations to pick up the slack—the Generation X cohort following the baby boomer is one-quarter smaller and not nearly as experienced. With suitable replacements sparse, many open jobs will go unfilled for long periods or be outsourced. Recruiting and training costs will rise sharply because finding experienced candidates will be more difficult, and many new hires will require considerable time to ramp up and become productive.

Byham then turns to the employee side of the equation and points out why baby boomers may tend to work well into what traditionally

would have been their retirement years:

- **Full retirement is not affordable.** An estimated 43 percent of baby boomers don't have sufficient savings or pension income to retire at anything approaching the lifestyle they would like. For almost all boomers, retirement income will be less secure as more organizations switch from defined benefit pension plans to 401(k)s and other defined contribution plans. Even people with a seemingly secure retirement income will be asking themselves, "What if my company goes bankrupt and dumps my defined benefit plan onto the federal government, where the payouts won't be as much as I have planned for?"
- **The fear of rising health care costs** and of the possible cancellation or downscaling of retirement health care plans will force many older boomers to work longer so as to maintain health care coverage or enlarge their savings before retirement.

At this point, we should review the two main types of benefit plans.

In **defined benefit plans**, retiring employees received a fixed income for the rest of their lives—a defined benefit. The amount of the pension payout is based on the employee's salary history and years of service.

This concept of retirement coverage, made popular by the unionized automobile and steel industries, became common after World War II. Up to that time, only about 14 percent of the active U.S. workforce was covered by any company-provided pension. Under these union-encouraged plans, the assumption was that individuals would start their career with a company at a relatively young age and stay there until they became eligible for retirement. Eventually, organizations of all sizes followed the lead of the larger corporations; by the late 1970s, 62 percent of all workers were covered by a defined benefit retirement program of some sort.

In **defined contribution and 401(k) plans**, organizations chip in a certain amount of money each month (or year) to a retirement fund for each employee. The amount is usually a percentage of salary, and employees also may contribute a portion of their salary to the retirement fund. The money may be pooled and invested by trustees, or individual employees may be responsible for making their own investment decisions.

Although 401(k) plans were established when Congress passed the Revenue Act of 1978, they did not become popular until 1981, when

(continued...)

the Internal Revenue Service clarified that employee contributions could be made on a pretax basis. In a typical 401(k) plan design, individuals contribute tax-deferred money for their retirement, and the employer matches those contributions according to some predetermined formula (for example, dollar for dollar up to $4,000 per employee, per year).

Defined contribution plans offer greater portability—that is, participants can take their money with them if they leave the company for another. Under defined benefit plans, employees lost or sharply reduced their pension entitlement if they changed jobs.

Two drawbacks to the defined contribution pension system should be noted. The first is that these plans make no lifelong commitment to the employee. Organizations contribute their share and that's it.

Second, there are no actuarial projections of the funds required to support the retirees, no responsibility for how the investments perform, and no cost adjustments for an increase in the life span of retirees. Instead, all risks are shifted to the individual. This drawback was vividly revealed when Enron Corp. employees lost $1 billion in their 401(k) plans and employees at WorldCom and Kmart lost at least $100 million—all because their 401(k) plans were largely invested in their own company's stock. And, of course, any investment in stocks or bonds is subject to losses as well as gains.

Byham notes that, currently, less than 14 percent of people working past age 65 do so in their career companies. One reason for this lack of employee retention is that defined benefit pension plans have forced people to leave their career companies in order to collect pension benefits.

But times are changing. People over age 65 now can collect their social security pensions while they continue to work in any job. Those in organizations with defined contribution plans, such as 401(k) plans, often can start drawing cash when they reach age 59½ while staying in their current job. Moreover, retirement-eligible people in organizations that have amended their company's defined benefit plans (an option that became available January 1, 2007, under provisions of the 2006 Pension Protection Act) are able to collect their pensions upon reaching age 62 while they continue to work with their career employers.

These changes are making it much more viable for long-term employees to continue with the same company into their 60s and 70s. Indeed, people who collect their company's defined benefit pensions and social security benefits while they are still working will feel as if they've received a big pay increase, just in time to help them top off their personal retirement funds. The 2006 law will allow more people to accept part-time employment with their career organization, suffering no loss of total income because social security and/or their company pension will make up the difference.

Byham summarizes several other recent events and trends that have affected perceptions of the viability of retirement:

- **Fewer workers are in the workforce to support retirees.** This fact makes some people fear for the long-term viability of social security and of some company retirement plans.
- **The dot-com bust around the year 2000 cut the assets of many pension plans that were heavily invested in technology companies.** This downturn was followed by a relatively slow-growing stock market and historically low long-term interest rates, further straining pension plans' efforts to recover their losses.
- **Downsizing has continued.** Organizations have viewed a fixed retirement age as an advantage in their downsizing efforts. Many have even encouraged individuals to retire earlier, offering some type of monetary payment to fill the gap until they would be eligible to retire under the organization's defined benefit plan.
- **The social security earnings test for retirees over age 65 was eliminated.** This change has allowed individuals to continue working as long and as much as they'd like while still receiving full social security benefits.
- **Many companies have gone bankrupt and transferred responsibility for their retirees' pensions to the federal government.** But the federal Pension Benefit Guaranty Corp. (PBGC), established in 1974 to serve as an insurance plan for retirees, does not have enough money to cover the bankruptcies of all the major firms that have gone under in recent years. To preserve its financial stability, the PBGC has set limits on the amount of money a retiree of a bankrupt company can receive. In some cases, retirees have lost half of the pension amounts they originally expected to receive. This situation has grown worse as companies in struggling industries, such as steel or air travel, have gained an advantage over competitors by dumping their pension responsibilities. Not surprisingly, other organizations in

the same industry have tended to follow suit, putting more pressure on the PBGC.

- **Many companies freeze their defined benefit pension plans as it gets "colder" for retirees.** It started with smaller companies, but after 2003, the practice began spreading to larger organizations, at least for their nonunion workers. A pension freeze refers to the scenario where companies have chosen to freeze their employee's pension on a certain date. The employee keeps his or her pension benefit through that date, and the benefits are paid once the employee retires. The downside to a pension freeze is that pension benefits no longer accrue to the employee after the freeze date, resulting in a lower pension payment once the employee retires. Some companies that have frozen pension benefits have done so out of necessity because of their financial instability. Other companies have done so to remain competitive. Employees whose pensions have been frozen, or new employees with no pension, will need to rely more heavily on 401(k)-type plans for retirement.

We now turn to two pivotal issues that significantly impact the role of elderly people in the workforce: discrimination laws and phased retirement plans.

3 THE DISCRIMINATION DILEMMA

Let's go back to the scenario in Chapter 1 about employer Frank, who wants to keep Jane working but would like to see Betty retire. Can he make this happen without risking a lawsuit by Betty? What can John, the trucking company owner, say to a driver who is losing the ability to lift items out of his truck?

In both cases, we can see the cloud of potential age discrimination that frequently hovers over the issue of maintaining elderly persons in the workforce. Many employers were reluctant even to be interviewed for this edition of *Issues* due to fears that their comments could be used against them in a discrimination case.

A presentation provided to the Three Rivers Workforce Investment Board by Steve Irwin and his colleagues at the law firm of Leech Tishman Fuscaldo & Lampl, LLC, provides essential background in this regard. Following are questions and answers from the presentation.*

* The information provided by attorneys of Leech Tishman Fuscaldo & Lampl, LLC, and reproduced herein, is intended to provide information of general interest to the public and is not intended to offer legal advice about specific situations or problems. Leech Tishman does not intend to create an attorney-client relationship by offering this information, and anyone's review of the information shall not be deemed to create such a relationship. You should consult a lawyer if you have a legal matter requiring attention.

How does one make a qualified case of age discrimination under the Age Discrimination in Employment Act (ADEA) of 1967?

To make a claim of age discrimination under ADEA, the plaintiff must:

- Be over age 40,
- Be qualified for the position in question,
- Have suffered from an adverse employment action, and
- Have been replaced by someone sufficiently younger to permit a reasonable inference of age discrimination.

What if the employer had legitimate reasons for discharging the protected employee?

- When the plaintiff has presented evidence of age discrimination, the burden shifts to the employer to prove that that person would have been discharged regardless of age.
- Age can be a factor, but it cannot be the sole factor in discharging an employee.

What does it mean to be replaced by a person "sufficiently younger"?

- Although an employee alleging illegal age discrimination must be over 40, the employee supposedly receiving more favorable treatment does not have to be under 40.
- The age minimum of 40 applies only to the class of persons in the protected group who may make a claim under ADEA. So long as the plaintiff is disadvantaged because of his/her age, the discrimination falls under ADEA.
- An eight-year age difference is sufficient to make a case. A seven-year age difference may not be sufficiently younger, as the age of the replacement may be viewed as not materially different from that of the protected employee.
- Statements by supervisors regarding a general need to lower the average age of the workforce are not sufficient to prove age-based discrimination.

What constitutes unlawful age-based discriminatory conduct?

- The conduct:
  1. Has the purpose or effect of creating an intimidating, hostile, or offensive work environment;
  2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
  3. Otherwise adversely affects an individual's employment opportunities.

- Examples include:
    1. Telling the employee that the company wants younger workers;
    2. Giving a bad review for the purpose of promoting younger workers;
    3. Unfriendly or hostile day-to-day interactions; and
    4. Unrelenting, demeaning, or derogatory remarks.

What about age discrimination abroad?

- ADEA is generally applicable to any U.S. citizen working for a U.S. employer abroad. ADEA does not apply, however, where applying ADEA would violate the law of the country where the employee works.
- ADEA protections are not applicable to U.S. citizens working for foreign employers, to noncitizens working abroad for a U.S. employer, or to noncitizens applying from abroad for a position in the United States.
- However, U.S. courts have construed the phrase "an individual" to suggest that ADEA, in general, protects noncitizens of the United States from unlawful discrimination. As such, there is a generally accepted principle that the protections embodied in ADEA apply to foreign nationals who are legally employed in the United States.

Hiring and Retaining Employees

Companies and organizations should set clear policies and procedures to reduce exposure to claims of age discrimination while recruiting the best workforce.

Issue	Do	Don't
Advertising	Include an equal opportunity disclaimer	* Identify age as a job requirement * Include photos only of young people in advertising and collateral
Interviewing	Train your interviewers	* Ask questions that indirectly obtain information about age (such as "When did you graduate from high school?")
Hiring	Determine salary based on experience	* Determine salary based on perceived reduced need (such as "empty nest" status)
Evaluation	Subject employees in comparable positions to the same evaluation	* Use subjective criticism that employee is "stuck in an old way of doing things"
Promotion	Establish objective benchmarks for promotion	* Fail to consider older workers for advancement because of perceived shorter career span
Disciplining and Discharging	Evenly discipline and establish severance plans regardless of age	* Impose nonessential job duties that are particularly burdensome for older workers

4 THE PHASED RETIREMENT ALTERNATIVE

One solution to the legal and other dilemmas related to the employment of older workers is the use of phased retirement plans. Following is an explanation of that concept as provided by David J. DelFiandra of Leech Tishman.

First, however, let us note that employers can legally impose a mandatory retirement age on all their employees, as long as age is "a bona fide occupational qualification reasonably necessary to the normal operation of the particular employer or where the differentiation is based on reasonable factors other than age" [Age Discrimination in Employment Act, as amended. Section 623 of the act is specifically titled "Prohibition of Age Discrimination"]. The mandatory retirement cannot be applied on an ad hoc basis; it must be set forth in a clear policy and evenly applied. Even though employers are permitted under the Age Discrimination in Employment Act (ADEA) to implement a mandatory retirement program, an employee who is retained past the mandatory retirement age still can make a claim of age discrimination.

What is a phased retirement program?

- The Advisory Council on Employee Welfare and Pension Benefit Plans has proposed the following definition: "Phased retirement means a gradual change in a person's work arrangements as a transition toward full retirement. This may involve a change of employers (including self-employment), a change of career, or a reduction in the number of hours worked."

What are the features of a phased retirement plan?

- It allows employees to work on a reduced or modified basis as they approach retirement.
- It permits employees who are eligible for retirement to receive a portion of their pension benefits while continuing their employment.

What are the benefits to employers?

- Retain trained and qualified employees
- Reduce costs associated with hiring and training new employees
- Lower salary and benefit expenses

What are the benefits to employees?

- Flexible work arrangements
- Gradual transition to full-time retirement
- Supplemental retirement income
- Increase in retirement benefits through working and deferral

What are the laws applicable to the implementation of phased retirement plans?

- Internal Revenue Code of 1986, as amended
- Employee Retirement Income Security Act of 1974 (ERISA)
- Age Discrimination in Employment Act of 1967, as amended

What are the impediments to phased retirement plans?

- Pension plans generally cannot pay retirement benefits to an employee who has not yet reached "normal retirement age."
- "Normal retirement age" under a pension plan is typically 65 years of age.
- An employee may not want to participate in a phased retirement program because the employee will be unable to supplement his or her income with pension distributions.

How does the Pension Protection Act of 2006 affect phased retirement plans?

- The Pension Protection Act of 2006 adds Internal Revenue Code Section 401(a)(36) to allow pension plans to make distributions to employees who have reached age 62 and who have not separated from employment.
- It is effective for distributions in plan years beginning after 2006.

Are there any final regulations affecting phased retirement plans?

- The normal retirement age under a plan cannot be earlier than the typical retirement age of the industry in which the employee is employed.
- Safe harbor age is 62. ("Safe harbor" refers to a provision in a statute or a regulation that reduces or eliminates a party's liability under the law, on the condition that the party performed its actions in good faith. Legislators include safe harbor provisions to protect legitimate or excusable violations.)
- The public safety employee safe harbor age is 50, covering those with what are considered stressful jobs. Under Section 72(t)(10)(B), a qualified public safety employee "means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision."
- If the normal retirement age is 55–62, deference will be given to the employer, provided that

the age is reasonable for the industry, based on all relevant facts and circumstances.

What about life insurance and disability plans? Will they continue at the same rate or less?

- Health care benefits have to be carefully assessed, especially because of COBRA regulations. COBRA is an acronym derived from the landmark Consolidated Omnibus Budget Reconciliation Act of 1986. That law amended the Employee Retirement Income Security Act (ERISA), Internal Revenue Code, and Public Health Service Act to provide continuation of group health coverage that otherwise might be terminated.

  COBRA provides certain former employees, retirees, spouses, former spouses, and dependent children with the right to temporary continuation of health coverage at group rates. This coverage, however, is available only when coverage is lost due to certain specific events.

  The relationship to phased retirement plans is that, at most companies, health benefits exist only for full-time employees. An employee who elects to participate in a phased retirement program may qualify for COBRA due to a reduction in working hours. Generally, the part-time employee would be covered under COBRA for only 18 months. Obviously, employer and employee have to assess this factor carefully, especially for an employee entering such a plan before he or she is eligible for Medicare at age 65. The employer may want to make health coverage a continued benefit under the phased retirement program.

In December 2007, the federal Equal Employment Opportunity Commission (EEOC) issued new regulations that allow employers to curtail health benefits for employees over age 65 when they are receiving Medicare, without exposure to liability for age discrimination claims under ADEA. To the extent that the coverage the employer provides to employees under age 65 is more comprehensive than that afforded under Medicare, the employer may be required to supplement Medicare coverage for employees receiving those benefits. So long as employees, in effect, have substantially the same health care coverage, the savings on premiums may well have the effect of making phased retirement a very attractive option for both employer and employee.

We now turn to a slightly different example of phased retirement. In higher education, the question of the elderly worker is complicated by federal law and the concept of faculty tenure. Under federal law dating from the early 1990s, colleges and universities may not raise the issue of retirement with a faculty member. In effect, a university official may not ask an aging faculty member, subtly or otherwise, "John, have you thought about retiring?"

The long-established principle of university tenure presumes continuing employment at an institution until retirement or resignation. It is intended to safeguard the academic freedom of tenured faculty members to express their scholarly viewpoints without fear of termination. This form of position security does not hold true entirely for a tenured faculty member who also is in an administrative position at the university. Such a person may be relieved of an administrative position but may maintain employment by returning to a tenured faculty position.

If a faculty member wishes to enter into a formal phased transition-to-retirement agreement—for example, reducing his or her work commitments and corresponding compensation—that wish normally will be granted for a specified period.

We must note that some legal questions hover temporarily over the phased retirement scene, as IRS regulations first proposed by the U.S. Department of the Treasury in 2004 were still not fully formulated or adopted as of the end of 2007. These will be covered in more detail in Chapter 8's discussion of obstacles to keeping the elderly in the workforce.

We now turn to the problems facing employers (and employees) in dealing with differing age groups in the workplace.

5 A DIFFERENT DIVERSITY

Usually, when the word "diversity" comes up in seminars and public forums, it refers to a striving for racial or gender balance.

But nowadays it also may signify the need to accommodate within the workplace the aspirations, backgrounds, and work habits of differing age groups—from the baby boomers through Generation X and the youngest cohort, Generation Y, now described by some as the "millennials."

We often hear the phrase "the older generation has lived to work, while the younger generations work to live." This saying expresses the generalization that, for many in previous generations, the workplace held a primary focus in life, while for younger generations a job is a necessity that enables one to have time and resources for one's "real life" of activities outside the workplace.

Like most glib analyses, this generalization does not apply to everyone in each generation. But human resources professionals have found that recognizing this generational difference in workplace attitudes can help to smooth relations on the job, especially as more members of the older generation seek to remain at work while aging.

Phyllis Hartman, a human resources consultant based in Pittsburgh, recently framed a generational description for use in a workshop in Vermont. Here are its essentials:

Boomers

Citing a survey by the American Association of Retired Persons (AARP), Hartman says that boomers want flexible scheduling, a chance to use their talents effectively, and a feeling that they are making a difference.

The AARP survey divides boomers into five groups:

- Strugglers: have no savings; enjoy group camaraderie and food/banquet recognition; and relish any stipends, reimbursements for expenses, discounts for medicine, and discount cards/certificates/coupons.
- Anxious: while financially stable, they are concerned about health care; seek family opportunities; like special projects; are résumé builders; like opportunities to meet new people and potential employers; welcome stipends and reimbursement for expenses, including health care expenses; and like to accrue points/dollars cashed in for services or prescription discounts.
- Enthusiasts: have no plans to continue work but demonstrate high-impact personalities and leadership traits, like to design their own opportunities, and involve themselves in case-oriented projects and recreational and social activities. While they are self-esteem builders, they like media recognition and such rewards as cruises, trips, cultural activities, education reimbursements, and gift certificates to trendy restaurants.
- Self-reliants: have sufficient dollars but want to continue work; therefore, they seek fulfilling opportunities to use their time and skill in challenging positions and self-directed assignments, asking only for reimbursement of expenses or for recognition in the form of dollars given to their charity of choice.
- Traditionalists: if they continue to work, they will rely on social security and Medicare, but expect support for other medical expenses and exchange of services.

Generation X

Behind the boomers comes Generation X, comprising those born after 1960.

- Their preferences: diversity, global thinking, balance, technoliteracy, fun, informality, self-reliance, pragmatism
- Their basic approaches: go around authority, don't let the media label you, get a life, politics makes things worse, do it your way, a need for the newest computer hardware

Generation Y

Next is Generation Y, those born after 1980, sometimes called "Generation Why," because this group frequently values structure with reasons, expressed as "Why?" Its members also are called "millennials," because they are coming into the workforce in the first decade of the 21st century.

- They are put off by political extremes.
- They like to work with bright, creative people.
- They appreciate support from the older generation.
- They are connected to both their peers and their parents.
- Technology to them is a physical extension of their being.
- They want recognition for the part they are playing.
- Life and work are "an instant everything."
- They like organizations with social responsibility.

Characteristics of generation Y include:

- Optimism
- Practicality
- Belief in civic duty and morality
- Confidence
- Achievement orientation
- Sociability
- Belief in diversity
- Street smarts

Hartman highlights the millennial generation's desire for musical, video, and computer stimulation. A study by the Fort Lauderdale, Fla., staffing firm Spherion, published in *HR Magazine*, noted that 90 percent of 18–24-year-olds feel that listening to an iPod while working improves their job satisfaction and productivity. Susan Revillar Bramlett, a human resources generalist for a defense research contractor and a "millennial" herself, confirms this phenomenon: "The constant stimuli from video and computer games have caused millennials to be bored if there isn't enough information coming in to keep our brains busy."

Fortunately for the sake of workplace diversity, Hartman also finds some cross-generational commonalities, as deduced from a 2007 survey on the future of the labor force survey by the Society for Human Resource Management. She notes that:

- All groups want an environment that is fair, ethical, and straightforward.
- They believe success depends on the use of computers, willingness to learn, and the ability to meet deadlines, get along with people, and speak clearly and concisely.
- They expect personal contact when the message is important.

Taking all these factors into consideration, Hartman asserts that today's workplace presents a new human resources challenge that requires:

- Creative sourcing—using the method that fits the target group, rather than assuming that one box fits all;
- Alternative rewards and different approaches for different workers;
- Flexible or fluid scheduling;
- Partnering opportunities rather than a traditional hierarchy or team approach;
- Orientation—training for each group to help them operate together effectively;
- Customized, continuous training opportunities;
- Diversity training, which may be different for each group; and
- Becoming involved in the workforce development effort.

Hartman finds a saving grace in the fact that most astute employers learned long ago that not everyone is the same and that each employee's background and attitude are factors in creating a collaborative workforce. But now, more than ever, handling the diversity in age groups will be instrumental in effective human resources management.

The question of work ethic can be the biggest obstacle. "The idea that younger people don't have a work ethic—yes, they do. It's just not the same as the one held by the older generation," Hartman maintains. "For example, young people don't expect to stay with the same company as the older generation did."

For most employers, prior experiences with racial diversity and affirmative action can help them respond to the new need to blend age groups together. Also, many employers have seen the benefits of incorporating employees with disabilities into the workforce since the passage of the federal Americans with Disabilities Act in 1990. These experiences can help them create a suitable environment for older employees as well.

But diversity can have its troublesome aspects, too. Hartman cites the case of a woman on Medicare supplemental insurance who complained that the company was paying $300 for medical insurance for others but only $150 for her, since Medicare supplemental was cheaper. She wanted the company to give her $150 each month to make up the difference—and threatened to sue for it. Even though she had no legal claim, such a threat can poison the environment for other elderly employees.

Hartman says employers who want to keep older employees have a concern that the employee's level of performance may begin to decline. Responding to such a decline can be difficult, especially because some people show the effects of aging earlier than others. Several safeguards can be helpful, however. One is an objective evaluation system with clear performance benchmarks, coupled with specific training to keep the employee up to par. For example, relative to the software-savvy younger generations, older employees may need more extensive training on new technology as the company modernizes its equipment.

Employees can establish contracts with older employees for a set time period, with a prescribed review at renewal time to be sure the contract is working well for both sides. The objective should be to recognize, prize, and use the older employee's abilities.

6 THE STATE'S ROLE

Pennsylvania's state government plays a role in elderly workforce development through training programs operated by the Pennsylvania Department of Aging.

The commonwealth's overall approach is clearly stated in a 2007 proclamation by Governor Edward G. Rendell declaring September 23–29 as "Employ Older Workers Week." The proclamation says that:

- By 2012, Pennsylvania's most experienced workers (ages 45 to 64) will account for 40 percent of the commonwealth's labor force compared to just 36 percent in 2002.
- As the commonwealth's labor force continues to age during the next decade, the number of skilled replacements will not be adequate to meet the needs of the commonwealth's employers. It will become increasingly important to keep Pennsylvania's older residents actively involved in the labor force, at least part time.

- Due to the technological advancements in today's rapidly changing economic environment, the retraining of older workers in these emerging technologies will become critical to the commonwealth's future success.
- A recent survey of 240 companies from across America were asked what they thought were the benefits of hiring older workers. Ninety-seven percent of employers said older workers are thorough and reliable; 94 percent said older workers do not miss work because of bad health; 88 percent said older workers have low turnover rates; 85 percent said older workers adapt to change well; and 81 percent said older workers want to learn new things.
- The Pennsylvania Department of Aging, through its Senior Community Service Employment Program, is committed to promoting the benefits of employing older workers and providing training opportunities for income-eligible older individuals.

The Senior Community Service Employment Program (SCSEP) is a system of part-time training opportunities for unemployed individuals age 55 and older who meet certain eligibility requirements (such as having income less than 125 percent of the poverty level). They are paid minimum wage during their training period. Rocco Claroni, director of the Department of Aging's Consumer Community Services Support Division, described the process: "Once an individual is eligible for an SCSEP position, he or she receives an assessment of his or her skills, talents, training, work history, and capabilities. From the assessment, an individual employment plan is developed that identifies appropriate training and employment goals and a series of action steps to achieve the goals. That leads to on-the-job training at a community service agency. For example, if the participant's employment goal is to be a clerk/typist, the individual may be placed as a receptionist at a community service agency. The agency will provide the SCSEP participant with training in Microsoft Word, Excel, PowerPoint, etc. From this training, the individual will have a better chance of obtaining an unsubsidized job."

Pennsylvania Secretary of Aging Nora Dowd Eisenhower contends that SCSEP helps to sustain the well-being of elderly people as well as their communities: "AARP researchers report that 86 percent of people between the ages 45 and 70 feel that staying in the workforce keeps them healthy, and 69 percent say they hope to work during traditional retirement years. The SCSEP program provides an avenue for these talented and motivated individuals to continue to contribute to their communities."

People wishing to enter this program should contact their local Area Agency on Aging, which can either provide such services directly or refer the applicant to an SCSEP provider in his or her county. SCSEP providers are listed in an appendix to this *Issues* brief (see page 28).

Statewide, SCSEP served 1,058 people in 2006, successfully placing 30 percent of them in unsubsidized jobs. The average hourly wage was $8.47. In addition, some Area Agencies on Aging also provide employment services to older Pennsylvanians who do not qualify for SCSEP or who may seek full-time employment rather than a community service assignment.

A second state-supported route to employment for the elderly is through the local Pennsylvania CareerLink offices around the state. In addition, the Department of Aging is involved in several relevant initiatives. During the 2007–08 fiscal year, it is funding a consultant who is working with the South Central Workforce Investment Board's Healthcare Industry Partnership to identify its key issues related to the older workforce and to develop common approaches to these issues. The consultant will develop tools that can be used by other health care partnerships throughout Pennsylvania to deal with such issues as generational gaps, succession planning, knowledge transfer, training an older workforce, and changing employer practices to deal with older workers.

The Department of Aging is participating in the Pennsylvania 2020 Vision Project, surveying the employment needs in all the commonwealth's agencies during the upcoming years. The Department of Labor and Industry, which tracks employment needs in key industry clusters throughout the commonwealth, also is involved. Those planning to address workforce needs in these clusters have been directed to include older workers in their thinking. The trucking, mining, and utility sectors have received particular attention with regard to retaining, attracting, or replacing older employees.

In 2006, the commonwealth resolved one legislative issue that had impeded employment opportunities for the elderly. Until then, an individual receiving social security payments would lose half of that entitlement if he or she applied for and obtained unemployment compensation. This policy discouraged older employees from accepting jobs from which they might be laid off. However, the General Assembly eliminated this restriction by passing Act 80 of 2006.

In our next chapter, we turn to interviews with employers and labor leaders who have been directly involved with the issue of elderly people in the workforce.

7 VIEWS FROM THE TOP

Originally, we had hoped to include a roundtable discussion with local executives in this publication, but most of those whom we contacted declined interviews. Those who did respond, from both management and labor, provided valuable insights. Following are highlights from the interviews.

Charles Hammel III speaks from the standpoint of a company that already has a formal diversity policy covering not only the elderly but also the disabled, gays, and lesbians. He is president of PITT OHIO EXPRESS, headquartered in Pittsburgh's Strip District.

"People nowadays at 65 are as healthy as 50-year-olds 40 years ago," Hammel comments. "As the generations come along, we look at things differently from what our parents did—or what the younger generation will do."

At the same time, Hammel cautions, age can bring a reduction in capacity. "Take an older truck driver getting in and out of the back of a truck; there's the danger of a fall." The answer, he suggests, is to have a conversation with the employee and help him or her move to another position in the company, such as becoming a sales representative or an office worker. Companies simply "shouldn't kick elderly workers to the curb," Hammel emphasizes.

Yet he understands why companies sometimes try to retire elderly workers. A problem can arise when a younger person appears to be much more productive than the elderly person sitting in the next chair. That issue can become complicated if the younger person is an overachiever versus someone working at an acceptable rate, Hammel explains.

As for health benefits, PITT OHIO EXPRESS doesn't have a retiree health plan on the grounds that it would impose a "ball-and-chain" cost unfair to current employees.

What about a government health insurance plan? Hammel feels that costs imposed by the American health care system hurt him when he competes with rivals in Canada, where the government pays for a national health plan. But he is more concerned about the minimum wage, which "pushes costs offshore," and workers' compensation: "There's a lot of fraud and doctor shopping in workers' comp, and it's difficult to get enforcement." For Hammel, keeping elderly workers on the job clearly is not among his leading challenges.

Tony Pietranton believes a reassessment of current restrictions on government benefits for the elderly is necessary to keep needed older workers from retiring. He is human relations director for TRACO, a manufacturing company located in Cranberry Township, Butler County, Pa.

His corporation had rapid growth in the 1980s, which meant hiring a lot of younger workers. Of TRACO's 118 employees, the majority are hourly employees involved in physical jobs that require dexterity and strength.

TRACO sees its pinch coming on "the other side"—in white-collar jobs like finance, marketing, sales, and engineering—where "the company really needs to retain the intellectual capital that people gain over time." As those people reach retirement age, many would like to keep working but fear losing government benefits because of legal restrictions for the elderly.

Pietranton describes one man "with great institutional memory. We are trying to keep him." In these cases, TRACO offers such "carrots" as part-time or other alternative work schedules. Switching these needed people to research, where their experience can best be used, is another possibility.

Martin Beichner is CEO of AccuTrex Products, Inc., a job shop in Canonsburg, Pa., that manufactures sheet metal fabrications, shims, metal stampings, and gaskets for other companies on a custom basis.

The labor force at AccuTrex is predominantly younger, averaging about 40 years of age. Thus, the company is not worried at this point about the prospect of being left shorthanded as elderly workers retire. Beichner is generally satisfied with the status quo in laws and regulations. He believes a major factor in retaining AccuTrex's good workforce is its employee stock option plan (ESOP). Under this plan, 25 percent of the taxes that ordinarily would go to the federal government are retained as part of the ESOP package for worker benefits. Occasional talk of changes in ESOP legislation is thus worrisome for him.

Beichner, like many other executives, also is troubled by the rising cost of health care and therefore health insurance. "There is no good way for us to control that factor," Beichner says. "It just keeps growing."

Mounting "legacy costs"—that is, commitments to retiree pensions and health benefits—have changed management's attitudes toward elderly workers, according to **Jack Shea**, president of the Allegheny County Labor Council, AFL-CIO.

Shea recalls the many times when, as a young negotiator, he would bargain against mandatory retirement clauses in union contracts. "We wanted people to have the right to work as long as they wished," he says, "so that companies couldn't pick and choose who would stay on."

At the same time, many workers wanted to retire early and reap the benefits they had accrued. "But now these legacy costs are so high that companies are walking away from them. And for that reason some of the older workers want to get back into the workforce to earn wages again," Shea explains. "With companies walking away from their commitment, the American dream of retiring early with those pension checks coming in has turned into the American nightmare."

So things may balance out again. "Normally, older workers have the experience and the knowledge and can help the new folks coming in, no matter what industry you are talking about. So companies are more willing to keep them. And, at the same time, some of the older workers, seeing the diminishing retiree benefits, want to stay on."

It's tougher than ever for unions to bargain for benefits for retirees, Shea explains. Companies are trying to eliminate defined benefits from collective bargaining agreements, substituting 401(k) arrangements. But for many workers, even with their private or credit union savings, that may not be enough. "Nowadays, it's not a question of 'Do I want to retire?' but 'Can I afford to retire?'" Shea comments.

As for employers realizing that they need to keep elderly workers, Shea says the trend is affecting not just blue-collar workers but architects, engineers, and government workers as well. "Employers can't afford to lose their expertise. Companies really are scratching their heads about losing those brains through retirement."

In our region, Shea adds, the trick is how to get more people into the workforce. He believes that spiraling health care costs, if not controlled, will cause many small companies to go under. "We are like someone who asks, 'Aunt Millie, why is your rug so lumpy?' The answer is that she has consistently pushed the dirt under it."

Universal health care, then? "I don't know how it will come, but every day we are coming closer to it," Shea predicts.

Ron Airhart of the United Mine Workers of America (UMWA) offers his perspective on the workforce issues. Previously with the UMWA office in Lucernemines in Indiana County, Pa., Airhart recently became executive assistant to the UMWA secretary-treasurer at the union's international headquarters in Fairfax, Va.

He proposes that federal training programs be opened up beyond youth from low-income families to include middle-class young people, too. Because of income limits, "we are training some students who don't want to be trained and excluding middle-class people who would love the opportunity." In particular, mining families' income often makes their children ineligible for training, Airhart says. Couple this situation with shortfalls in federal funding for training programs and the shortage of mining employees is compounded.

UMWA conducts training programs at numerous locations, including its Ruff Creek training center near Washington, Pa., which recently received a $5 million training grant. If eligibility rules were broadened, he contends, the mining sector could attract not only young people but also middle-aged and dislocated workers who would like to get into underground mining because of its wages and benefits. Changing eligibility requirements would make it easier for employers to allow older workers to retire while keeping their ranks filled with experienced people, Airhart asserts.

Yet another view comes from **Leonard Boehler**, president of MBA Masonry of Springdale, Pa. Speaking at a Three Rivers Workforce Investment Board seminar on the subject of the elderly in the workforce, Boehler described the strength limit of masons and bricklayers as they grow older. Because masonry work becomes more strenuous as the worker ages, bricklaying is an easier option. But Boehler says that his company's best use of older employees is as training mentors to "the younger guys," passing on tricks of the trade learned from their years of experience. He finds that this assignment meets with approval from members of both age groups.

We now turn to some of the legal obstacles still remaining for those who want to keep elderly people functioning productively in the workforce.

OBSTACLES FOR WORKFORCE ELDERLY

Given the number of factors that support keeping the elderly in the workforce, what are some of the obstacles?

In Chapter 3 we noted concerns related to legal liability for age discrimination and offered suggestions for avoiding problems in this area. We also have noted that experience in dealing with employees who have disabilities can carry over into the area of ADEA compliance.

Another submerged rock that many don't like to discuss is the cost of employer-paid health insurance—along with the huge problems that result when companies reduce or cast off entirely their health care obligations. We will return to this issue in Chapter 10.

Aside from issues of compliance and cost, only one major policy change appears to be needed. That change concerns the Internal Revenue Service regulations regarding phased retirement plans that were still not finalized as of the end of 2007. Even though these regulations are not yet on the books, lawyer William Buck of Leech Tishman Fuscaldo & Lampl, LLC, suggests that employers and employees contemplating individual phased retirement plans bear them in mind to avoid having to amend their plans too greatly at a future point.

The proposed regulations would apply to both for-profit and non-profit organizations and would require that phased retirement plans:

- Be in writing and voluntary.
- Apply only to persons age 59½ years or older. (An exception applies to some governmental agencies with prescribed terms of service, such as 30 years, where the individual might be younger than 59½. For example, Federal Bureau of Investigation agents and air traffic controllers may reach retirement at an earlier age because of the stress in their jobs.)
- Reduce the employee's hours by at least 20 percent.
- Have no lump sum or "bonus" payment for entering the plan.
- Not be written for a "key employee." Obviously, the definition of this term may vary from company to company, but the assumption is that a key employee doubtless would be receiving other benefits, such as stock options, and therefore wouldn't deserve another break.
- Permit the employee to continue to accrue other benefits, such as 401(k) plans and pension rights.
- Have an annual review of work hours—in other words, an audit of how the plan is working out.

THE ENVELOPE, PLEASE

We now return to consider responses to the scenarios presented in Chapter 1.

Scenario 1: Tom is 63 and would like to retire but realizes his pension and social security won't stretch to cover the retirement style he had anticipated. He senses that his employer would just as soon see him leave. Is he in danger of losing out all the way around?

Employers often want people to leave not because of their age so much as the expense of keeping an employee at the top of the salary scale. They want the expertise but can't afford it full time and may feel they don't have the profit margin to support a part-timer. Tom's best bet might be to sit down with his superiors to explain his circumstances—including his expertise—and see if some kind of phased retirement plan is possible.

Scenario 2: Mary, age 64, needs to keep working for financial reasons but would prefer to work fewer hours. Dare she make that suggestion to her boss?

Mary should not be hesitant, provided she can still perform the essential functions of her job.

Scenario 3: Dick also wants to keep working and knows that his workmate in the same job classification, Harry, has a similar desire. What really gnaws at Dick is the suspicion that their employer plans to ditch him and retain Harry.

Again, an open conversation with Dick's employer may be the best way for Dick to determine the employer's intentions and plan his life accordingly.

Scenario 4: Same scenario, except that Harry is 10 years younger. Would Dick have a legal case if he is pushed into retirement and Harry stays?

On its face, yes. Although it would seem that Dick has a prima facie case of age discrimination, he might not win in court, as his employer would attempt to present a legitimate business reason for the adverse employment decision. Again, Dick might be wise to approach his employer and inquire about a phased retirement plan.

Scenario 5: Employer Frank, in sizing up employees who are in their 60s, realizes he would like to keep Jane for her abilities but would just as soon see Betty retire. Can he maneuver that result without laying the organization open to a lawsuit by Betty?

Perhaps, if he has thorough documentation of their performance. Refer to Chapters 3 and 5, where we discussed the value of ongoing evaluation systems as a means for employers to avoid discrimination claims.

Scenario 6: Trucking company employer John realizes that one of his good drivers, Jim, is losing the strength to wrestle freight items in or out of his truck. But he can tell that Jim loves his work; is still proud of his driving abilities; and has no intention of accepting a new assignment, let alone retiring.

John could fashion a mentoring option for Jim, assuring him that it is the best way for both the company and Jim to use his experience. He should never threaten firing but may suggest a phased retirement plan. As a last resort, John may reassign Jim to some other position, but he must be careful not to frame the new role as less meaningful.

10 OBSERVATIONS

Clearly, the time is now and the way is open for organizations of all kinds, for-profit and nonprofit alike, to take concrete steps toward incorporating the elderly more fully in their workforce.

Many people approaching normal retirement age wish to continue in some earning capacity. At the same time, many companies facing an employee crunch have reasons to retain experienced elders, perhaps as mentors to younger workers. The fit is obvious.

As the baby boom generation approaches retirement status, whether at 62, 65, 70, or an indeterminate age, there are challenges and opportunities for workforce policy to move in new directions. It is surprising that so few human resource departments have begun to pay attention to this emerging shift in the status of aging employees.

Anxiety over antidiscrimination laws and regulations undoubtedly accounts for reluctance in some quarters to grapple with the issue. But, as explained in Chapter 3, the framework of law is established and contains safeguards for both employers and employees, with tested systems concerning recruitment, retention, and retirement already in place.

One important policy area lacking established law is in regard to federal regulations governing phased retirement plans. Though first proposed in 2004, as of the end of 2007 regulations still had not been finalized and publicly announced. Perhaps Pennsylvania's congressional delegation might push the executive branch for action.

At the state level, legislators may wish to ensure sufficient continued funding for the Pennsylvania Department of Aging's Senior Community Service Employment Program, discussed in Chapter 6.

Although most of the concern about retiree benefits focuses on the private sector, the public sector is not immune to worries, because many governmental entities face precariously large and underfunded pension liabilities.

Research for this *Issues* brief repeatedly brought to the surface the problems and costs of health insurance, especially in plans where employers match employee contributions. Ever-escalating medical/hospital costs increasingly threaten the corporate balance sheet. Some firms have dropped their health insurance plans entirely. Those businesses who want to retain health plans find themselves at a competitive disadvantage. Firms involved with international competition particularly feel the impact of vying with firms from countries where the government picks up health care costs. The uncertain future of health benefits can greatly affect elderly employees' retirement decisions.

Many businesspeople dislike discussing the problem of spiraling health care costs because it raises for them the specter of some kind of government-based universal health care plan. To many, that is a slide into socialism. For others, there is the fear that the corporate share of taxation to support universal health care coverage will be greater than the savings achieved by moving away from today's private insurance systems.

Advocates of universal health care coverage, as well as those seeking the still more expansive goal of a single-payer system, must become more specific about the costs to the business sector as compared to the financial advantages of such prospective changes.

Perhaps the 2008 national campaign will move us toward a resolution of the ongoing national health care debate. More than any other single factor, health costs may determine the trend of employer and elderly employee decisions about whether to work full time, cut to part time, or retire completely.

APPENDIX

Following is a list of Senior Community Service Employment Program (SCSEP) providers in Western Pennsylvania. Warren and Forest counties do not have an SCSEP provider. Individuals seeking SCSEP services in those two counties should call Evelyn Sanchez at 610-925-5600, extension 107.

County: **Allegheny**
Gerald Miklos
Allegheny County Area Agency on Aging
441 Smithfield Street, Second Floor
Pittsburgh, PA 15222-2219
412-350-6809
Gerald.Miklos@county.allegheny.pa.us

County: **Armstrong**
Deborah Reesman, Project Director
Armstrong County Area Agency on Aging
326 Water Street, Suite 1
Kittanning, PA 16201
724-548-3290
dlreesman@co.armstrong.pa.us

Counties: **Beaver, Centre, Clarion, Clearfield, Crawford, Elk, Indiana, Jefferson, Lawrence, McKean, Mercer, Venango**
Gayle Davis
Experience Works, Inc.
817 South Market Street
Mechanicsburg, PA 17055-4720
814-938-5057
Gayle_Davis@experienceworks.org

County: **Butler**
Edith Kelly
Lutheran Service Society of Western Pennsylvania
424 North McKean Street
Butler, PA 16001
724-283-9002
ekelly@lsswpa.org

County: **Erie**
Sandra Hansbrew, Project Director
Greater Erie Community Action Committee
18 West 9th Steet
Erie, PA 16501
814-459-4581
shansbrew@eriecareerlink.org

Counties: **Fayette, Greene, Washington**
Matt Uram
Southwestern Pennsylvania Area Agency on Aging
150 West Beau Street
216 Plaza Building
Washington, PA 15301
724-228-7080
muram@swpa-aaa.org

County: **Westmoreland**
Bill Magda, Director of Continuing Education Grants
Life Long Learning Center
Westmoreland County Community College
College Station and Armbrust Road
Youngwood, PA 15697-1895
724-925-4027
magdaw@wccc.edu

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