

VIEWPOINT

"The force of public opinion cannot be resisted when permitted freely to be expressed." — Thomas Jefferson, Nov. 4, 1823

'OK Boomer'

While it's intended to be humorous, using the phrase in a workplace environment can raise age discrimination concerns.

I don't have a horse in this race. As a Gen-Xer and experienced employment lawyer, I am personally and professionally staying out of the generational dispute between the baby boomers and the millennials.

Apparently "ok boomer" has been around for at least a decade, but gained popularity last fall as an expression of building frustration millennials have with jibes from baby boomers about millennials' perceived lack of work ethic, over-confidence, entitlement and unwillingness to stick with a particular job.



Michael Kelsheimer

Interestingly, the phenomenon of looking at younger generations with disdain is millennia old – dating back to ancient Greek plays. Is the disdain warranted? Maybe, but older generations should

be careful about casting stones as millennials take aim at baby boomers for allegedly causing or failing to halt incurable national debt, global warming and a myriad of other sins they feel saddled with.

In 19 years as an employment lawyer, here's what I've observed. There are hard workers and slackers in every generation. The differences we perceive are of our own making. If baby boomers wanted millennials to be different, they should have raised their kids differently to facilitate that change. People and generations are different. They grow up in a different time. Things change, and, to my observation, the pace of change is accelerating at such a rate that the new normal is itself constant change. Millennials are adapting to that – hence the growth of the "gig economy," of freelancers that don't want to be permanent employees.

Now, the employment lawyer's dilemma – do these differences create problems and discrimination in the workplace? In a lot of cases, yes. And, in my view and experience, age discrimination is the most pervasive type of discrimination in the American workplace. Business owners are much more sensitive to differences such as color and sex, and that heightened sensitivity puts them on a higher level of alert to catch and root out discrimination based on these characteristics.

Age discrimination is more subtle, and the economic loss from age discrimination against older workers is disproportionately high when compared to losses from other forms of discrimination. A young worker who loses his or her job from explicit or hidden race or sex bias is much more likely to quickly find another job than an older worker terminated because he or she makes too much, doesn't have the same level of energy and hustle as younger workers, or simply doesn't identify with their younger counterparts.

When you get them alone in a bar, talking under the shield of attorney-client privilege, many business owners and executives – young and old – are leery of hiring older workers. They muse: How long will they continue to

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work? Can they keep up with the new technology? Can they handle a younger supervisor? Will they fit in with our younger workers?

When they lose their jobs, these older workers often must suffer a demotion to find new work or take a job that pays less, but, certainly, it takes longer for them to replace their current job, which increases the economic loss without even considering the emotional toll.

Making matters worse, the subconscious prejudices we all have that play into all kinds of discrimination seem more pronounced with respect to age. Forget the in-your-face bias about the "Peter Pan" millennials or the "boomer" generation. People simply don't realize that they identify better with workers closer to their age who were raised in the same generation. They subconsciously choose those workers over workers of other generations.

If you doubt me, check out Harvard's "Project Implicit" on the internet. Take one of those internet-based personal bias tests. You'll surprise yourself. There are implicit biases we have that make us susceptible to forms of discrimination that we don't even realize – which makes it that much harder to identify and fix.

What should employers take from this story? Innocuous jabs between the generations may not be harmless. Boomers may be intentionally or subconsciously biased against millennials. Millennials are clearly tired of it and may now be intentionally or subconsciously biased against boomers. Attention must be given to putting everyone on even ground, lest you have to call me to help with a lawsuit that could cost tens or hundreds of thousands.

Now, in a funny quirk – or perhaps another societal problem millennials have been saddled with by boomers – the age discrimination laws only work one way. You can't discriminate against workers over 40, but the law doesn't do anything to protect younger workers from discrimination by older workers. Thank goodness we Gen-Xers are out of this!

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