

Training Can Be a Valuable Defense.

A recent case involving the University of Wisconsin illustrates that the training of employees in the basic elements of employment discrimination law can be an important defense in combating a claim of a willful violation of the law. In *E.E.O.C. v. Board of Regents of the University of Wisconsin System*, 288 F.3d 296 (7th Cir. 2002), the University decided, for financial reasons, to eliminate several positions in its University Press division. The incumbents in those positions were all over the age of 40 years and within the protected class of employees established by the Age Discrimination in Employment Act (ADEA). After the director of the University Press terminated the employment of these individuals, he transferred the responsibilities of those persons to younger existing employees or to newly hired employees under the age of 40.

The employees who lost their jobs sued the University, alleging age discrimination. A jury found in favor of the former employees on the claim of discrimination. It further found that the discrimination was willful, that is, committed with reckless disregard as to whether or not the conduct was prohibited by the ADEA, thereby entitling the employees to additional damages. In evaluating the finding of willfulness the appellate court noted that none of the decision-makers had been given any employment law training and did not seem to know the age at which the ADEA provided protection to the employees. The court stated that “leaving managers with hiring authority in ignorance of the basic features of the discrimination laws is an extraordinary mistake from which a jury can infer reckless indifference.”

The lessons to be learned from this case are obvious. Even though attending training sessions in sexual harassment law or other employment discrimination law may be viewed by some as a questionable commitment of time and energy, such attendance serves two important objectives. First, such attendance may provide a defense to a claim similar to the case discussed above that limits or avoids an award of damages. Second, and perhaps more importantly, such attendance may provide the information needed to avoid creating liability in the first place, thereby eliminating the long and expensive litigation process.