

LOSAPS that Cease Accrual of Service Awards after Entitlement Age

Age discrimination in length of Service Award Programs (LOSAP) continues to be a hot topic. While the majority of our clients programs include provisions that preclude age discrimination, some do not include such provisions. The following chart is a summary of the options available for dealing with the purported age discrimination in a LOSAP, which prohibits senior active volunteers from continuing to earn LOSAP points. This summary is not intended to be an exhaustive list of options, risks and possible outcomes. Legal advice should be sought before any decisions about the resolution of this issue are made by a LOSAP sponsor.

SUMMARY OF SPONSOR OPTIONS

OPTIONS	RISKS	WORST CASE SCENARIO
1. Do nothing.	The EEOC ¹ takes legal action against the sponsor in the appropriate court of law.	The EEOC will likely find that age discrimination has occurred based on a current age discrimination case and a pending state court case. ² In addition to retroactive payments, the EEOC may impose interest charges and damages.
2. Implement PEA ³ prospectively with a resolution of the Sponsor's Governing Board.	Taxpayer sues over what might be considered by some a violation of state law because voter approval was not sought.	Taxpayer(s) sue and, win or lose, cost the sponsor money and create distrust amongst the government, taxpayers and volunteer organizations.
	The EEOC takes the case on behalf of a volunteer to court for the sponsor's failure to retroactively comply.	See YELLOW box above.
3. Implement PEA prospectively and retroactively by a resolution of the Sponsor's Governing Board.	Taxpayer sues sponsor over what might be considered a violation of state law because a program cannot be amended retroactively and voter approval was not sought.	See ORANGE box above.
4. Implement PEA prospectively with a resolution of the Sponsor and voter referendum.	Taxpayers turn the referendum down.	If the referendum fails to pass, it could result in having to freeze the program. If the voters reject providing service awards to older active volunteers, the program would continue to violate ADEA. ⁴
	The EEOC takes the case on behalf of a volunteer to court for the sponsor's failure to retroactively comply.	See YELLOW box above.
5. Implement PEA prospectively and retroactively by a resolution of the Sponsor and voter referendum.	Taxpayers turn the referendum down.	See GREEN box above.
	Taxpayers approve but sue over what might be considered a violation of state law because a program cannot be amended retroactively.	See ORANGE box above.

¹ EEOC: Equal Employment Opportunity Commission

³ PEA: Continuation of Post Entitlement Age accrual of service awards

² DiPiro, Heim & Smith vs. Clarence Fire Dist. #1, NYS Supreme Court, Erie County

⁴ ADEA: Federal Age Discrimination in Employment Act of 1967