

Employment Law in a Multigenerational Workplace



Presentation for:

**United States District Court
for the District of Puerto Rico**

March 27, 2026

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Introductions



Amy Oppenheimer
Founding Partner

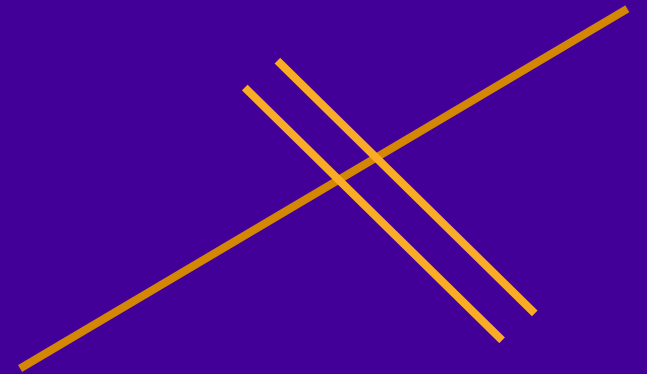


Danielle Drossel
Partner



Madeline Buitelaar
Attorney

KEY LEARNING OBJECTIVES



Goals and Objectives

- Improve our understanding of intergenerational workforce dynamics
- Set out and discuss the legal standards (and where policy violations fit in)
- Provide practical strategies for managing an intergenerational workforce

Through:

- Lecture
- Case studies
- Demonstrations
- Q&A

The Law vs Policy

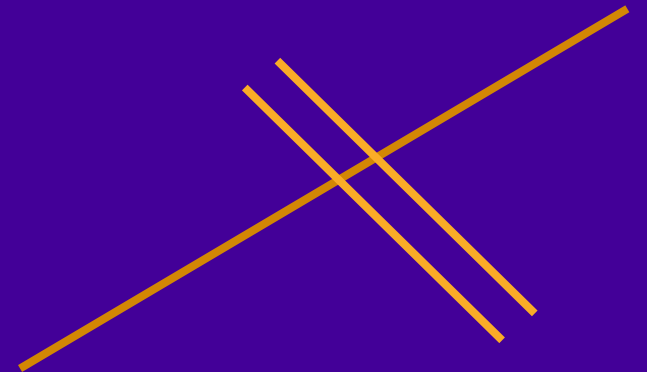
Policies are informed by the law but are broader than the law

Violations of policy might include:

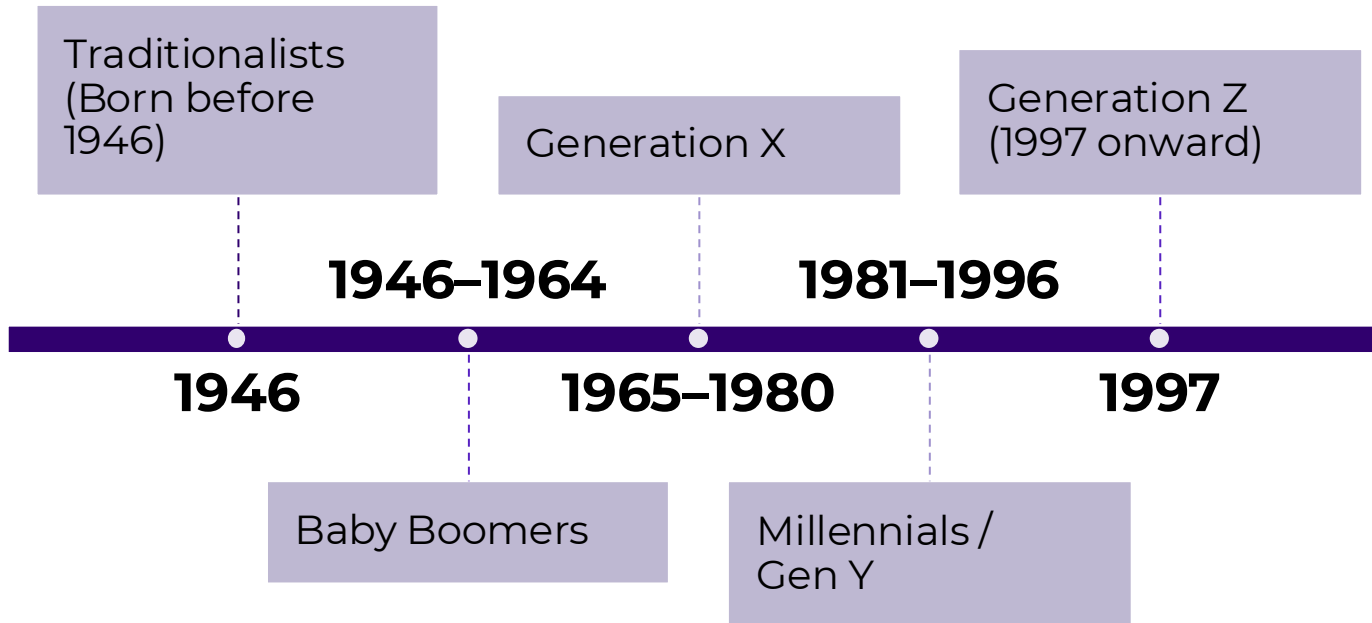
- Age related comments
- "Microaggressions"
- Questions about/discussions of retirement



INTERGENERATIONAL WORKFORCE OVERVIEW

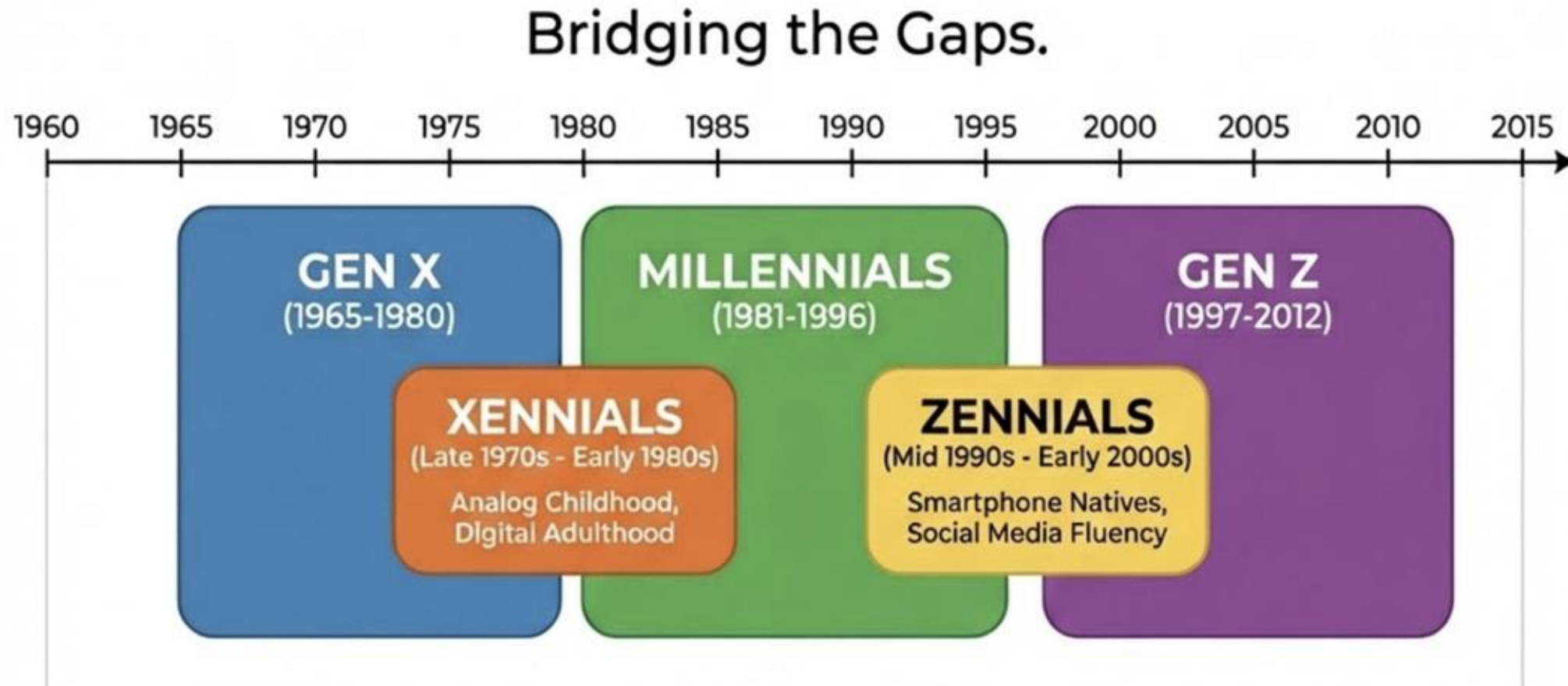


Who makes up an Intergenerational Workforce?



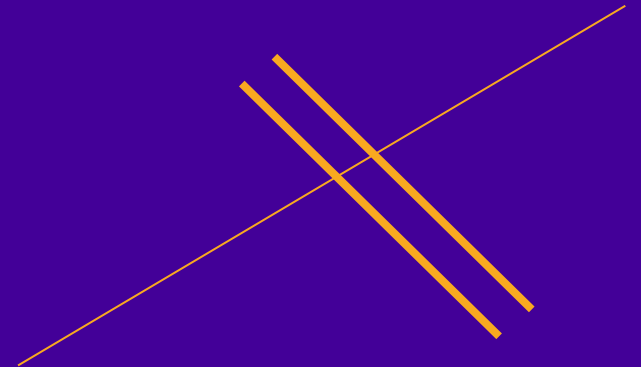
But that's not all

Let's take a look at **micro-generations**:



Defining Key Terms

- Stereotyping
- Implicit Bias
- Microaggressions



STEREOTYPES

The human mind must think with the aid of categories. . . .Once formed, categories are the basis for normal prejudice. We cannot possibly avoid this process. Orderly living depends on it.

- Gordon Allport

Stereotyping is the unfortunate by-product of the otherwise immensely useful human ability to conceive the world in terms of categories.

Stereotyping achieves the desirable effect of allowing us to rapidly perceive total strangers as distinctive individuals.

But stereotypes are not distributed equally. People are not stereotyped by the members of their own in-group.

Implicit Bias: How biased do you think you are?



1	2	3	4	5	6	7
Strong preference for young	Moderate preference for young	Slight preference for young	No preference	Slight preference for old	Moderate preference for old	Strong preference for old

A random sample believes . . .

Strong preference for young people over old – 0%

Moderate preference for young over old – 0%

Slight preference for young people over old – 5%

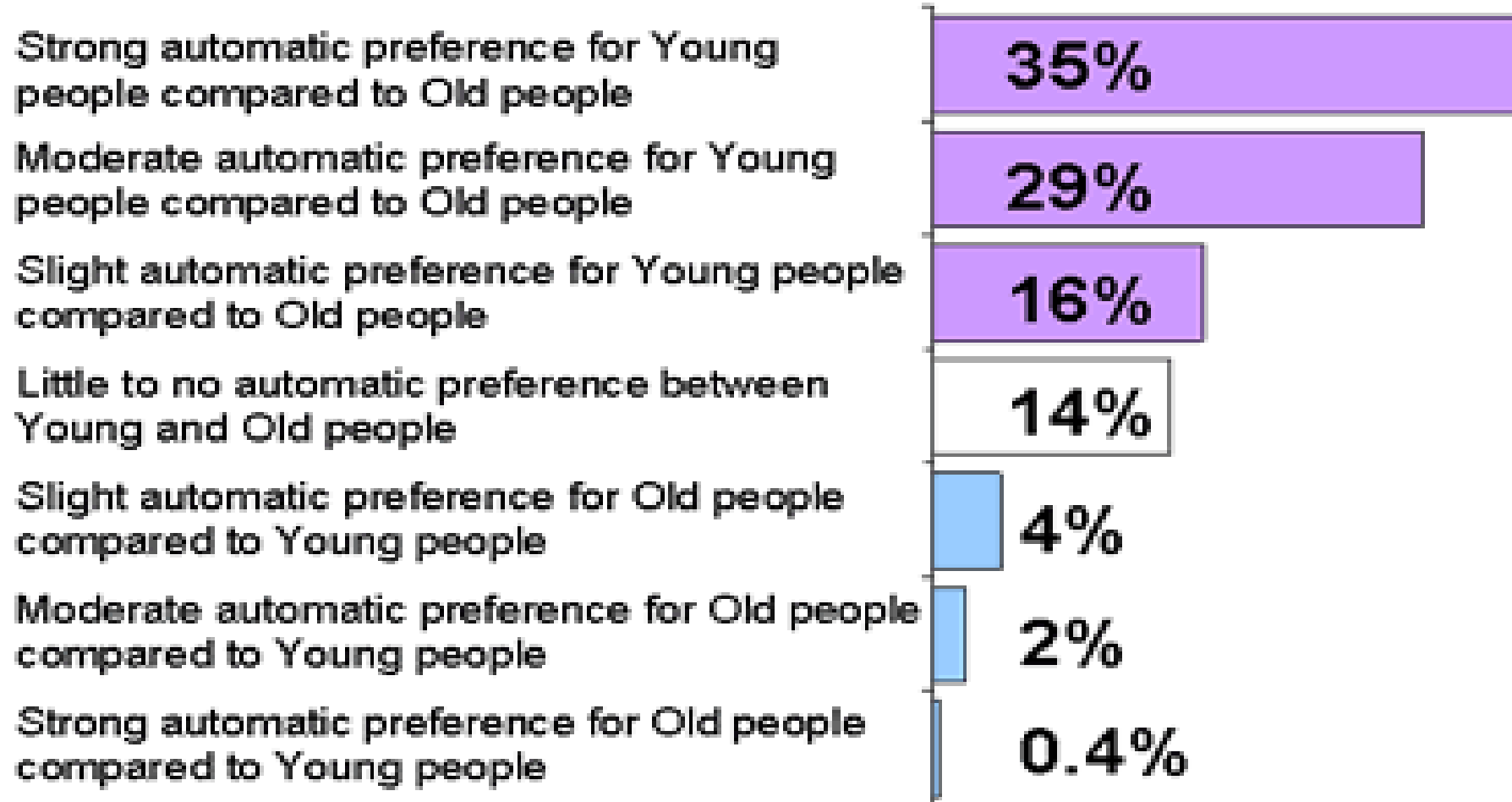
No preference between young and old – 37%

Slight preference for old people over young – 28%

Moderate preference for old over young – 30%

Strong preference for old people over young – 0%

Percent of web respondents with each score



[Click for detailed summary](#)

Implicit Association Test (IAT)

Words and faces (black/white, old/young, etc):

Joy, love, peace, wonderful, pleasure, glorious, laughter, happy
Agony, terrible, horrible, nasty, evil, awful, failure, hurt

Or words and words:

Gender science:

Male: man, boy, father, male, grandpa, husband, son, male

Female: girl, female, aunt, daughter, wife, woman, mother

Science: biology, physics, chemistry, math, geology, astronomy

Liberal arts: philosophy, humanities, arts, music, history, English

The Implicit Association Test

—
Taken by over two million of people.

Subjects first rate themselves on how they view their own biases.

Subjects then take the IAT.

There is a significant difference between the two ratings.

People have far more bias than they realize.

See: www.implicit.harvard.edu

Greenwald, Anthony G. & Krieger, Linda Hamilton, *Implicit Bias: Scientific Foundations*, 94 California Law Review 945 (2006).

Microaggressions: What are They?

Oxford Dictionary Definition: A statement, action, or incident regarded as an instance of indirect, subtle, or unintentional discrimination against members of a marginalized group such as a racial or ethnic minority.

OIG Definition: “an external manifestation of unconscious bias.”

- Calling women “honey,” “sweetheart,” or “dear.”
- Telling an African American person: “You’re so articulate.”
- Complimenting someone of Latinx or Asian descent: “You speak English so well!” even though English is their first (and/or only!) language.
- Mistaking the only two African/Asian American people for each other.
- Telling a transgender colleague they don’t “look” transgender.
- Speaking more slowly to an older person.
- Men constantly talking over and interrupting women.



Microaggression

“A Thousand Mosquito Bites”

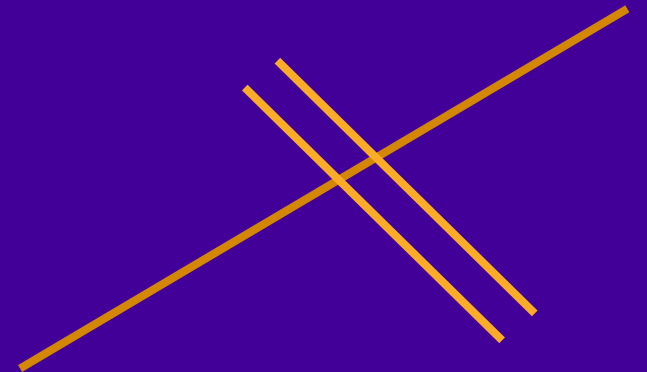
- Each microaggression, by itself, inflicts little pain.
- But daily microaggressions over the life of a career, can have a very painful effect.
- Why?
 - Because it is an aggression based on gender, race, etc., the recipient knows it is wrong. Because it is “micro,” the recipient may feel pressured to dismiss it, or risk being labeled “hyper-sensitive.”
- Because these daily injuries are never addressed or resolved, their cumulative effect is magnified.

Final Thoughts on Microaggressions

- We are (most of us) products of our "time"
- Adjusting to new language can be challenging
- Some "microaggressions" are about our own group



CHALLENGES & BENEFITS OF MULTIGENERATIONAL WORKFORCES



Challenges in a Multigenerational Workplace

- Miscommunication often arises from differing communication preferences among generations.
- How do you handle adapting to change in an ever-evolving technological landscape?
- Conflicting values or expectations can create workplace tension and misunderstandings – how do you maintain shared values?



Benefits of a Multigenerational Workforce

- Combines broader skill sets for enhanced problem-solving abilities.
- Fosters increased innovation through diverse perspectives.
- Encourages greater adaptability to changing work environments.
- Supports cross-generational mentorship and continuous learning.

Potential Pitfalls

What are the circumstances surrounding cases that we see escalate into formal investigations?

Typically, it is a confluence of factors.

Let's take a look
...

Example 1: Cloud Clash and Hashtag Hostility

Situation

Older employee (~60) filed complaint against younger supervisor (~40) over forced tech transition to cloud platform.

Key Issues

- Perceived bias
- Communication breakdown
- Cultural clash

Escalating Evidence

- Supervisor's social media mocked "old people" using phrases the complainant had used in Slack
- Supervisor cited repeated project execution failures

Outcome

- Partial finding: Tech shift not discriminatory
- Social media tone contributed to hostile environment

Example 2: PIP or Prejudice?

Complaint Summary

Older employee (60+) alleged differential treatment and hostile environment by supervisor and colleague (both under 40).

Key Allegations

- Unjust Performance Improvement Plan (PIP)
- Targeting via tech use, meeting behavior, and email oversight
- Perceived lack of support compared to younger peers

Key Evidence





- PIP aligned with documented performance concerns
- Oversight practices applied department-wide
- No direct evidence of age-based bias
- Emotional impact likely shaped perception

Findings




- No evidence of age-based targeting
- PIP based on documented concerns
- Supervisor's actions applied consistently
- Perceptions likely shaped by impact of critical feedback

What are the lessons?

Problems stemmed from

-  Lack of mentorship
-  Inappropriate comments
-  Unclear expectations
-  Communication breakdown

What was helpful here?

-  Progressive discipline
-  Evidence of training
-  Documentation of all sorts: Emails, Slack messages, Twitter screenshots

How do seemingly innocuous communication issues escalate?



Monday Morning Slack Exchange

Danielle 10:30 am



Madeline, I need the Q3 sales deck finalized and shared with me by noon tomorrow. Please confirm receipt.

Madeline 11:32 am

np! It's on my radar



Should be gtg way before then

Danielle 11:33 am



Madeline, this is critical deliverables. What does "gtg" mean? Please use professional language. Is the current draft finalized, yes or no?

Madeline 2:50 pm

Sorry – "gtg" = good to go.



No stress – it's almost done

Will circle back soon



Danielle 2:52 pm



Madeline, I feel very stressed. "Almost done" is not the same as finalized. Do not use emojis when discussing deadlines. I need a clear update by 2 PM today.

Analysis of the Miscommunication

The friction in this exchange stems from several common generational communication gaps:

	Formality	Specificity	Tone Signals	Use of Emojis
Madeline (Employee, 25)	Abbreviations and informal language signal efficiency and friendliness.	Uses phrases like “on my radar” or “will circle back” without fixed timelines.	Casual reassurance (e.g., “No stress!”) intended to reduce tension.	Emojis used as quick confirmation or positive acknowledgment .
Danielle (Boss, 50)	Expects full words, proper grammar, and a professional tone.	Requires clear status updates with yes/no answers and deadlines.	Casual tone interpreted as lack of urgency or seriousness.	Emojis viewed as inappropriate for deadlines or critical deliverables.

Background Information

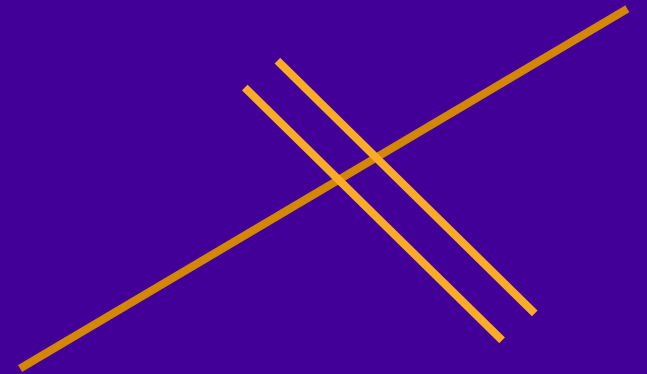
Some young people, particularly those in Generation Z, perceive punctuation in texts, especially a period at the end of a sentence, as a sign of anger or passive-aggressiveness because they see proper punctuation as an unnecessary emphasis on a casual message. Texting has developed its own conventions, and for younger generations, ending a text with a period can feel abrupt and cold, while a lack of punctuation is more neutral and friendly.



Why are periods perceived negatively?

- For younger texters, punctuation is less about grammar and more about conveying emotional tone.
- A period can make a short, simple message seem more forceful and emphatic, like "slamming a door" in a conversation, according to one source.
- The absence of punctuation in casual texting is the norm for many young people, making its presence stand out as a deviation from the expected.
- Studies, like one from Binghamton University, have found that ending a text with a period makes the message seem less sincere and more negative compared to one without a period

LEGAL LANDSCAPE



The Federal Framework: Key Statutes Governing Age Bias



Age Discrimination in Employment Act (ADEA, 1967): the primary federal law that safeguards workers who are 40+ years of age.

Older Workers Benefit Protection Act (OWBPA, 1990): provides safeguards for benefits when age discrimination is involved.

Executive Order 11478: requires federal agencies to implement policies that promote equal employment opportunities.

Key Supreme Court Interpretations of ADEA:

- ***Gross v. FBL*:** but-for causation
- ***Smith v. City of Jackson*:** disparate impact allowed
- ***Meacham v. Knolls Atomic Power Lab*:** RFOA defense

Age Discrimination in Employment Act (ADEA) Overview

29 U.S.C. §§ 621-634

- Protects employees **40 and older**
- Applies to **employers with 20 or more employees**
- **Prohibits discrimination** in hiring, firing, compensation, and other terms
- Requires charge filing with the **Equal Employment Opportunity Commission (EEOC)**
- **Remedies:** back pay, reinstatement, liquidated damages (willful)

Older Workers Benefit Protection Act (OWBPA)

(1990 Amendment to the ADEA)

Purpose: ensures valid waivers in severance and early retirement programs.

Key Requirements:

- Employees must be given **21 days to consider** (45 days in group layoffs)
- **7-day revocation period**
- Agreement must be written in **plain language**
- Must specifically **reference ADEA rights**
- Must advise employee **to consult an attorney**

“Plain Language” – Or Not?

“Employee hereby irrevocably and unconditionally releases, acquits, and forever discharges Employer, its predecessors, successors, assigns, officers, agents, employees, insurers, benefit plans, and affiliated entities from any and all claims, demands, causes of action, liabilities, obligations, damages, costs, and expenses of any nature whatsoever, whether known or unknown, suspected or unsuspected, accrued or unaccrued, including but not limited to those arising under federal, state, or local statutory, common law, or regulatory authority, to the fullest extent permitted by law.”

OWBPA Test:

“Written in a manner calculated to be understood by the average employee.”

- One sentence
- 110+ words
- Fourteen commas
- Zero clarity

Interplay Between ADEA and State Age Discrimination Laws

Key Area	ADEA (Federal)	State Laws
Coverage	Protects employees aged 40 and older.	Most protect employees 40+; some states extend to all ages.
Causation Standard	Requires 'but-for' causation.	Many states use “motivating factor” or mixed-motive framework.
Remedies	Back pay, reinstatement, and liquidated damages (for willfulness).	May allow additional remedies, including compensatory and punitive damages.
Enforcement	EEOC administers and enforces the ADEA.	Enforced by state fair employment agencies.
Filing Requirements	Charge must be filed with the EEOC within 180/300 days.	State filing deadlines may differ; dual filing often available.
Employer Coverage	Applies to employers with 20 or more employees.	Some states apply protections to employers with fewer than 20 employees (threshold varies)

Puerto Rico Law 100: Overview

Puerto Rico's principal employment discrimination statute.

- Applies to **all employers**, regardless of size.
- Prohibits discrimination based on age and other protected categories
- Provides private right of action and reinstatement remedies

Generally viewed as more plaintiff-friendly than the ADEA.



Burden of Proof – *Jimenez Soto*

Jimenez Soto v. Carolina Catering Corp. (2025)

The Puerto Rico Supreme Court clarified that:

- Law 100 claims are analyzed under the ***McDonnell Douglas*** burden shifting framework.
- Plaintiffs retains the ultimate burden persuasion.

What Still Makes Law 100 Different



Employer Coverage: no minimum employee threshold



Remedies: mandatory double damages



Arbitration: Law 100 claims may be compelled to arbitration where Federal Arbitration Act applies (*Tucker v. Money Group, LLC*)

Causation Standard – Private Sector

***Gross v. FBL
Financial Services,
Inc. (2009)***

U.S. Supreme Court held that in ADEA cases, the plaintiff must prove that age was the **determinative (“but-for”) cause** of the adverse employment action.

Causation Standard – Federal Employees

Babb v. Wilkie (2020)

Unlike in the private sector, where the “but for” causation standard applies, federal employees need only show that age was ***a factor*** in the process, even if not determinative of the final outcome.

Disparate Impact

Smith v. City of Jackson (2005)

U.S. Supreme Court held that **disparate impact claims** are allowed under the ADEA, but they are narrower than under Title VII.

- The **burden is on employee** to identify specific policy that causes disproportionate impact on employees age 40+
- The employer can **defend** the policy if it's based on a **reasonable factor other than age (RFOA)** – a lower standard than “business necessity” under Title VII.

RFOA as an Affirmative Defense (Post-*Smith* Refinement)

Meacham v. Knolls Atomic Power Laboratory (2008)

In disparate impact cases under the ADEA:

- Employer may defend policy if based on a **reasonable factor other than age (RFOA)**
- RFOA is an **affirmative defense**
- The employer must show the factor was **objectively reasonable**, not merely rational.
- Standard is more lenient than Title VII “business necessity”

Replacement By Someone “Substantially Younger”

***O’Connor v.
Consolidated Coin
Caterers Corp. (1996)***

Clarified that plaintiffs need not show replacement by someone under 40. Courts often consider gaps of 5-10 years potentially significant, but the inquiry is context-specific.

How Courts Interpret “Substantially Younger”

Caldrone v. Circle K Stores, Inc.
(9th Cir. 2025)

An age difference of less than 10 years doesn't automatically preclude a showing of “substantially younger” if the plaintiff can show additional evidence of age bias (e.g., remarks by leadership indicating a preference for younger staff).

Modern Statutory Interpretation

Bostock v. Clayton County **(2020)**

Discrimination “because of sex” includes sexual orientation and gender identity.

Broader Implications:

- Reflects the Court’s **textualist approach** to employment statutes. Courts increasingly focus on statutory text, not legislative assumptions.

Key Legal Concepts

Disparate Treatment

- Deliberate decisions based on age
- Requires "but for" causation under ADEA (private sector)

Disparate Impact

- A policy or practice that unintentionally or neutrally impacts employees aged 40 and over disproportionately
- The employer may **justify** the policy if it is founded on a **reasonable factor other than age (RFOA)**
- Discriminatory intent not required

Hypothetical – *The Modernization Mandate*

Facts Summary

- Head of a private school launches modernization initiative following accreditation issues.
- Curriculum redesign and technology transformation systems implemented
- Changes lead to resignations of 12 long-tenured faculty (mostly 40+)
- Several older teachers placed on performance plans
- Younger teachers receive extended training
- Leaders are overheard making comments:
• “Veteran teachers are stuck in their ways” /
• “They’re resistant to change”

Do these facts support an inference of unlawful age discrimination? Or do they reflect legitimate institutional reform?



Disparate Treatment – Intent

- Age-coded comments tied to leadership
- Differential application of performance standards
- Comparator evidence (younger vs. older teachers)

Causation:

- ADEA – would same decision have occurred absent
- FEHA – was age a substantial motivating factor

Disparate Impact – Structure & Effect

- Neutral modernization policy
- Disproportionate effect on teachers over 40

Employer Defenses:

- RFOA (ADEA)
- Business Necessity (FEHA)

Key Takeaways



1

Intent vs. Impact: The absence of intent does not immunize from disparate impact liability. But inconsistent enforcement can shift analysis toward disparate treatment

2

Age-Coded Language Signals Mindset: Phrases like “stuck in their ways” and “resistant to change” can function age-coded proxies for “younger” and can be used as circumstantial evidence of bias

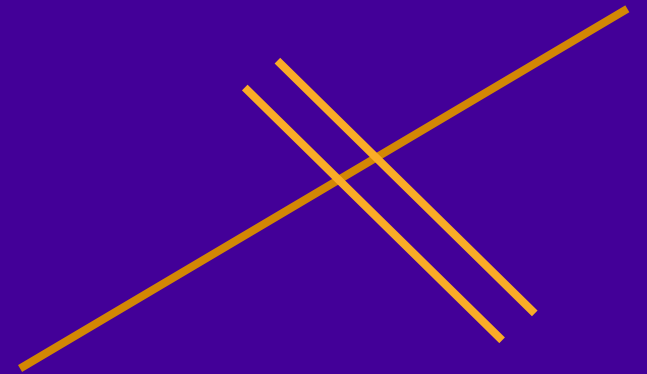
3

Comparators Matter: When similarly situated younger employees receive coaching while older employees are escalated to discipline, comparator evidence strengthens a disparate treatment claim

4

Documentation & Design Matters: Courts examine whether modernization criteria were clearly defined, consistently applied, and supported by contemporaneous documentation

ROLE PLAYS AND APPLICATIONS





“Really, Bad Bunny?” — Pop Culture, Generational Gaps, and Inclusion

A faculty meeting is discussing Spirit Week activities at a private high school.

- **Madeline** (Younger Employee) proposes a "Bad Bunny Day."
- **Amy** (Senior Employee) objects, asking why they should change what has always worked ('70's day, pajama day, etc.)
- **Danielle** (Principal) mediates their conversation.

Do these facts reflect a harmless communication gap, or do they indicate underlying bias and a potential for a hostile environment?



Part 2: Reset & Reframe

Pause

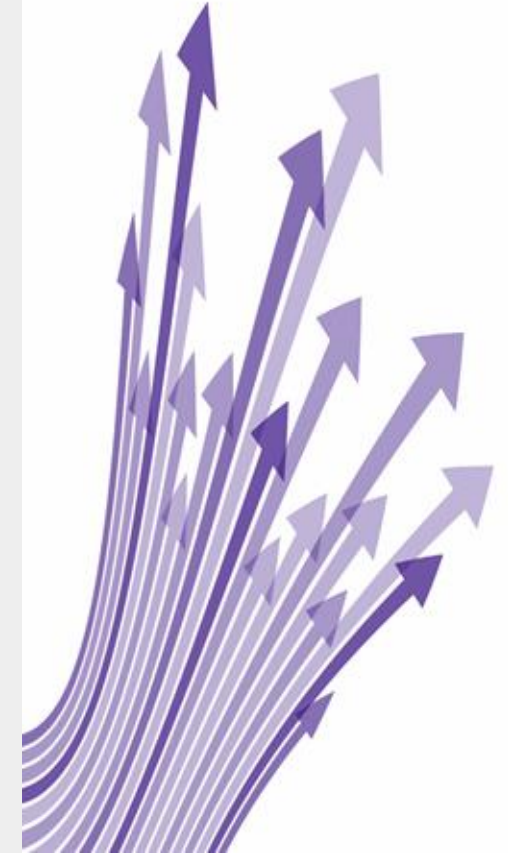
Acknowledge Impact

Recenter on Criteria

Apply Standards Evenly

The Promotion Decision: Value of Experience vs. "New Direction"

- **Amy (Senior Associate, 50s)**, respected for her 20 years of experience and dependability, inquires about a missed Senior Counsel promotion.
- **Danielle (Managing Partner, late 40s)**, explains the promotion went to **Chloe** (5 years tenure).



Discussion Questions

What language could be perceived as age-coded?

If you were plaintiff's counsel, what would your theory of the case be?

If you were defense counsel, what would you want in the record?

What it Highlights

Stereotyping: The implicit idea that "new energy" and "forward-facing" are proxies for youth, leading to the perception that experience and stability are less valuable.

Lack of Transparency: Vague and subjective explanations ("certain... energy," "new direction") for a career decision, which can easily be interpreted as a mask for discriminatory intent, increasing the risk of an age claim.

Systemic Bias: The pressure on a firm's *brand image* (i.e., presenting as "dynamic") overriding objective performance metrics and long-term loyalty, which disproportionately affects older, highly experienced employees.

Part 2: Reset & Reframe

Slow Down

Clarify Criteria

Avoid Coded Language

Document Rationale

“Professional Image” — Tattoos, Dress Codes & Generational Identity

- A millennial, supervising attorney, Danielle, insists that attorneys “should look professional” and asks a Gen Z employee to modify her attire and hide her tattoos
- The new, younger attorney, Madeline, argues that her appearance is part of self-expression and that clients “don’t care about that anymore.”



Discussion Questions

If the policy applies equally to everyone, does that eliminate discrimination risk?

Where could disparate impact arise in appearance policies?

Debrief: Legal/HR and Cultural Angle

Legal/HR Angle: Policies must be consistently applied and nondiscriminatory. While tattoos are not a protected characteristic, selective enforcement (e.g., based on gender or culture) can raise equity concerns.

Cultural Angle: Generational differences heavily influence the perception of "professionalism." Managers must balance the institutional brand with newer employees' expectation

Part 2: Reset & Reframe

Clarify Policy

Affirm Consistency

Recognize Impact

Apply Evenly

Mentoring while navigating the Technology Gap

Facts Summary

- **Amy (Senior Partner, 60s)**, who is a litigation expert, expects to teach the associate "the old-fashioned way."
- **Madeline (New Associate, 20s)**, hired for her expertise in legal tech and AI discovery tools, attempts to show Amy the new AI discovery platform.



Discussion Questions

What was this conflict really about?

What strengths does each employee bring that the other may not see?

How can leaders frame reciprocal mentoring so it enhances rather than threatens authority?

What it Highlights

Ego and Status Anxiety: The threat a senior employee feels when a junior challenges their expertise, particularly with technology, leading to resistance to new methods.

The Reverse-Mentoring Taboo: The stigma and discomfort associated with a junior employee attempting to teach a senior employee.

Perception of Respect: A clash between the expectation of deference to seniority and the expectation of embracing new knowledge and efficiency, regardless of the source.

Part 2: Reset & Reframe

Pause

Name the Tension

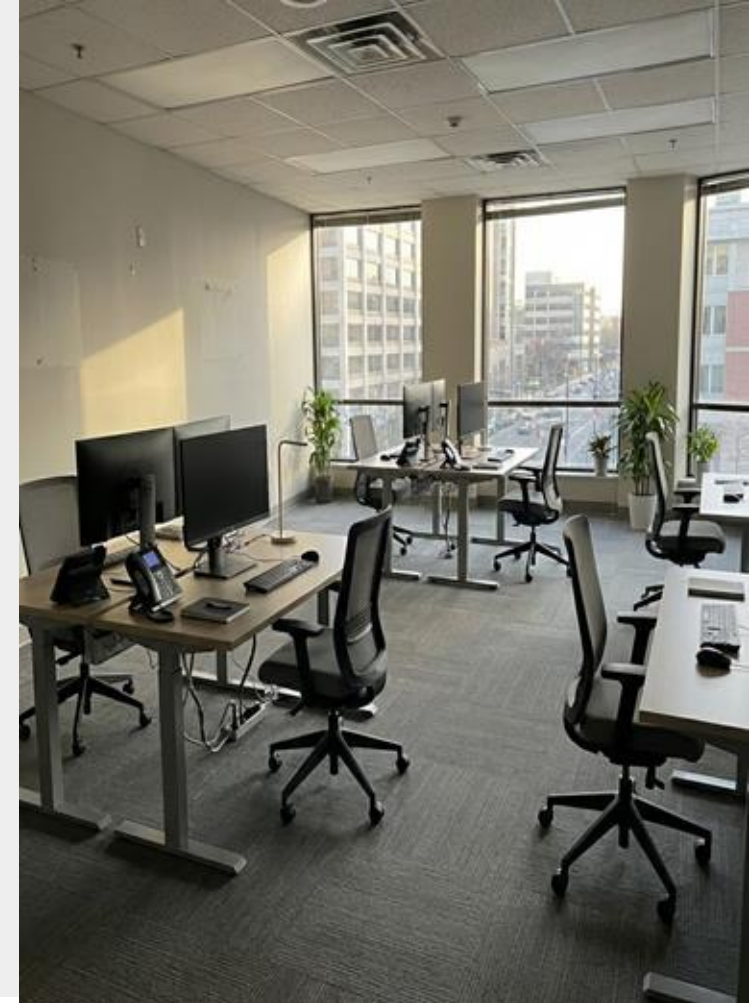
Rebalance Status

Refocus on Value

The Team Meeting: RTO, AI Mandate, and Generational Conflict

The issue: A Gen X manager implements policies on in-office work and mandatory AI use.

- **AMY**, a Gen X manager (40s). Firm, pragmatic, and focused on efficiency and collaboration. She believes in structured processes and in-person team-building.
- **MADÉLINE**, a Gen Z staff member (20s). Values work-life integration and flexibility.
- **DANIELLE**, a Baby Boomer staff member (60s). Deeply experienced and respects proven processes. She is cautious of unproven technology and fears AI could erode work quality and be a tool for biased evaluations.



Discussion Questions

How do we weigh individual's productivity differences with fostering a team?

What does team-building look like in 2026?

What could each person have done to make this a more constructive conversation?

Managerial Style and Trust: The top-down, command-and-control approach clashes with a desire for autonomy and data-driven policy.

Technology-Experience Divide: Skepticism from a long-experienced employee (Amy) clashes with a manager's prioritization of perceived progress (Danielle).

Bias and Fairness: The critical legal and ethical issue of **AI-driven evaluation** is raised and dismissed, risking employee mistrust.

Return-to-Office (RTO) Conflict: Clashes between a traditional view of office culture (collaboration, team cohesion) and a modern preference for flexible, output-based work arrangements.

Underlying Assumptions about Value: Characters define "valuable work" differently: modernization/collaboration (Danielle), flexibility/measurable output (Madeline), client relationships/proven expertise (Amy).

What it Highlights

Part 2: Reset & Reframe

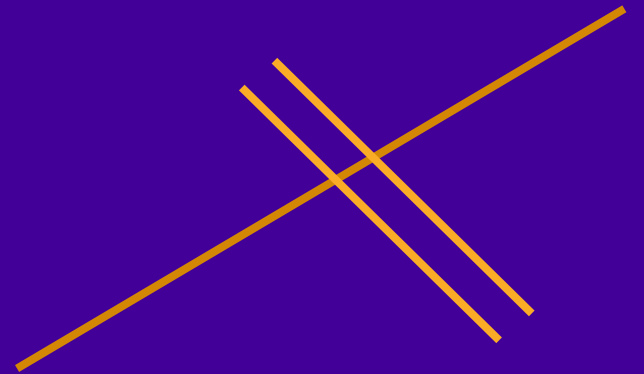
Maintain Direction

Acknowledge Concerns

Define Process

Increase Transparency

Wrap-Up



Strategies for Managing Intergenerational Workforces



Clear policies defining age-related bias



Training that includes ageism scenarios



Communication frameworks for tone & style



Coaching managers on inclusive leadership



Addressing microaggressions proactively



Legal alignment: documentation & consistency

Resources

- EEOC Guidelines, available at: <https://www.eeoc.gov/age-discrimination>
- U.S. Department of Labor ADEA Fact Sheet
- California Civil Rights Department (CRD) Resources, available at: <https://civildrights.ca.gov/>

Thank you!



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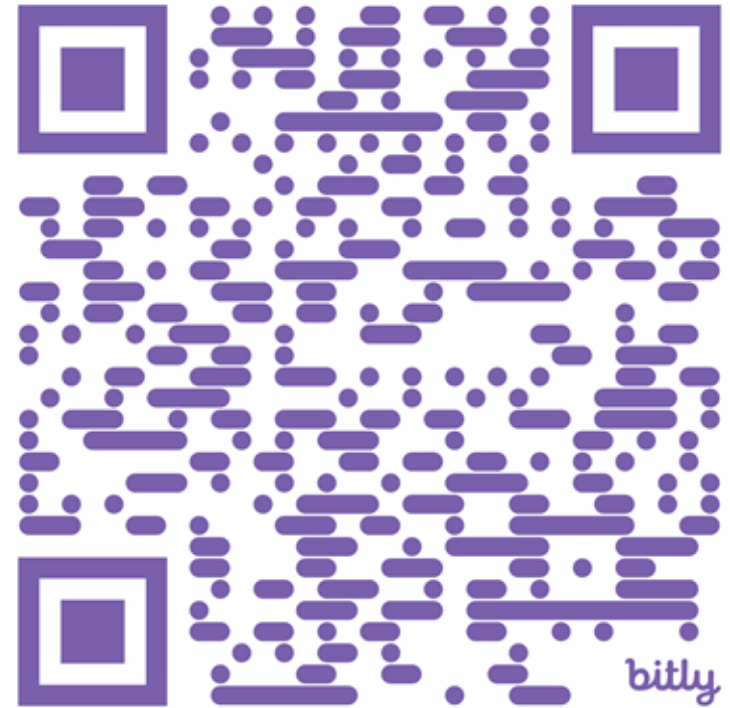
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