



# Legal Advisory

IDEAS AND STRATEGIES FOR YOU AND YOUR BUSINESS / FOURTH QUARTER 2009

*inside*

## CARING FOR PARENTS

Discussing the issue frankly and openly

## Appealing Your Tax Assessment

## How to Prevent Office Violence

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## Legal Briefs

## SUPREME COURT RULES ON AGE DISCRIMINATION

The U.S. Supreme Court has sided with the employer in a significant new case involving an age discrimination claim. Employers and employees should take note of the controversial outcome.

Background: Under the Age Discrimination in Employment Act of 1967 (ADEA), an employer is essentially barred from discriminating against employees who are age 40 or older. But the ADEA does not expressly define what constitutes discrimination for this purpose. Each case is decided on its own merits.

If an employee prevails in an age discrimination claim, he or she may receive back pay and benefits, plus attorney's fees may be tacked onto the award. Other damages may be awarded if the court finds the violation to be "willful."

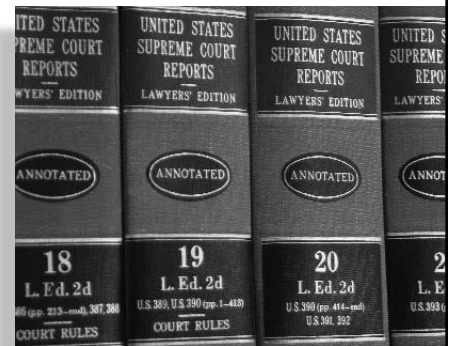
Facts of the new case: As part of a corporate restructuring, a manager at a financial services firm was demoted when he was in his mid-50s. He eventually was assigned to re-

port to a younger employee who had previously reported to him. Subsequently, the former manager sued the firm for age discrimination.

The firm argued that the shift of responsibilities was related to the restructuring and not based on age. After a jury awarded the plaintiff almost \$50,000 in compensatory damages, an appeals court overturned the verdict. The case made it all the way up to the Supreme Court where the highest court in the land ruled in favor of the employer by a narrow 5-4 margin.

Key point: The demoted employee failed to prove that age was the primary factor—and not just one of several factors—resulting in the reassignment to a lower position in the firm. In the majority opinion, Justice Thomas said that the burden of proof does not shift to the employer to show that it would have taken the action regardless of age, even though the plaintiff has

*(see Age discrimination on next page)*




## ELDERCARE PLANNING WITH "KID GLOVES"

**O**ften, the roles of parents and children will reverse, especially if a parent falls ill. As a result, sensitive legal and financial issues may arise. It is easy to ignore the situation and hope it goes away, but that is not realistic.

It is generally better to discuss "eldercare planning" frankly and openly with your parents. Include siblings and anyone else who should be involved. Here are four steps you might follow:

1. Take it slowly. It is usually not necessary to cover everything in one or two sittings (unless the parties live far apart). In most cases, your relationship won't change overnight, but slowly over time.
2. Be gentle. If you hit your parents with a barrage of information, they may be overwhelmed. Instead of opening up, the lines of communication can close. You might start by showing your parents a relevant clipping from a newspaper or magazine. If you give them time to talk with friends, they will find out that others are in the same position.
3. Emphasize that you have your parents' best interests at heart. If they are like most elderly people, they will want to maintain their independence for as long as they can. You may be able to provide some options that allow them to keep a degree of control over their lives and finances.
4. Ask the critical questions. Then you can begin to plot a course of action. Some typical questions are:

- Do you have a will, power of attorney, living will or similar document? Where is it located? Have you prepared a letter of instructions?
- Do you have life insurance and disability insurance policies? Who are the insurers and for how much?
- Are you covered by a pension plan or other retirement plan? Do you have IRAs? Who maintains them and what is the value? Who are the beneficiaries?
- Do you receive Social Security benefits? How much? Are the benefits directly deposited into your bank account?
- Are you receiving income from other sources, such as annuities, stocks and bonds, certificates of deposit? What are they and how much?
- What are your real estate investments? Is any property owned as a "life estate" where ownership ends at death?
- Do you have any other assets? What is their value, and where are they located? How about bank accounts and safe deposit boxes?
- Have you already transferred some of your assets? To whom did you give them and how much?


Develop a plan that satisfies the main objectives while taking all the factors into account. State laws vary, so obtain professional assistance. 

## SUPREME COURT RULES ON AGE DISCRIMINATION

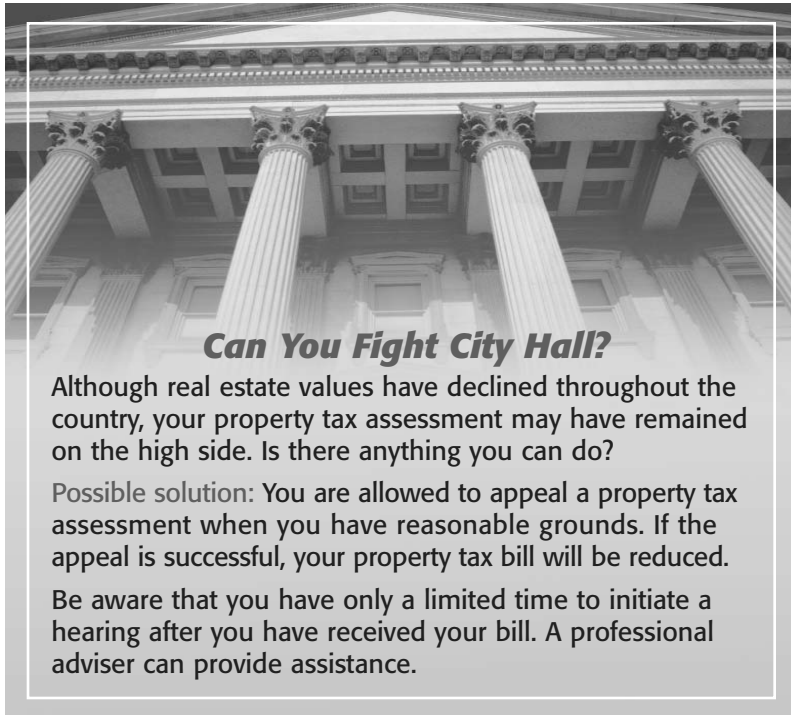
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produced evidence that age was a motivating factor in the employer's actions.

However, a strong dissent, written by Justice Stevens, pointed to prior case precedents and federal civil rights laws in this area. Several members of Congress also voiced their disagreement with the majority opinion.

In the past, business owners often settled age discrimination claims out of court in order to avoid drawn-out legal battles over the nature of demotions or layoffs. If the new case stands, it will become more difficult to prove that age discrimination was the primary factor resulting in a demotion or termination of employment. Net effect: The Supreme Court's decision could discourage employees from pursuing ADEA claims in the future. 





### **Can You Fight City Hall?**

Although real estate values have declined throughout the country, your property tax assessment may have remained on the high side. Is there anything you can do?

Possible solution: You are allowed to appeal a property tax assessment when you have reasonable grounds. If the appeal is successful, your property tax bill will be reduced.

Be aware that you have only a limited time to initiate a hearing after you have received your bill. A professional adviser can provide assistance.

## **FIVE WAYS TO CURB WORKPLACE VIOLENCE**

**V**iolent incidents in the workplace can range from minor confrontations between workers to hostage crises. In fact, according to a recent report by the Occupational Safety and Health Administration, homicides are the third leading cause of fatal occupational injury in the United States.

There are several potential legal consequences for employers to consider. For one thing, employees who are injured at work may file workers' compensation claims. Furthermore, if an outsider is injured by an employee, the company may be sued for negligent hiring. And if an employee shows signs of increasing desperation, the employer may be found liable for having kept the employee on the job.

Employers are also vulnerable to discrimination lawsuits initiated by protected minorities. For instance, guidelines established by the Equal Employment Opportunity Commission and the Americans with Disabilities Act of 1990 prevent employees with mental problems from being removed because of a "speculative" or "remote" risk they will become violent.

The best approach to minimizing workplace violence may be to address the problems before they escalate. Here are five practical suggestions:

1. Identify job applicants likely to lose their temper and become violent. While you cannot question a job candidate about arrest records, you can ask about criminal convictions. Or you can simply ask the applicant if he or she has had any prior personality conflicts with supervisors. If you get a heated response, it may be a tipoff.


2. Check references carefully. At that time, try to find out how the applicant has handled stressful situations with previous employers, but keep your questions work-related. If there have been problems in the past, it can send up a red flag.

3. Watch out for employees who might lose control. And it's not just the vocal employees you have to worry about (although they are also capable of violence). It is often the quietest employees or the "loners" who cause the most damage. Some of the typical danger signs are

- ◆ Sudden changes in behavior
- ◆ Shortness of temper
- ◆ Marked decline in work productivity
- ◆ Carelessness on the job
- ◆ Chronic complaints of illness

4. Try to alleviate tensions at work before they explode. For example, you might speak in private to an employee who seems to be experiencing difficulties with coworkers. Similarly, you can alert a supervisor to potential dangers.

5. Increase security measures. It may be necessary to control access to the workplace by electronic means. If a worker is fired, make sure you get back any keys and identification materials. You might also ask to be notified if the former employee appears on the premises.

Of course, there are no guarantees. As a last resort, an employer may need to seek a restraining order against an ex-employee or take other precautions. 



## NEW CREDIT CARD CHANGES IN STORE

**T**he new Credit Card Accountability, Responsibility, and Disclosure Act of 2009 represents a comprehensive overhaul of legal practices in the credit card industry. With a few exceptions, the changes are scheduled to take effect on February 22, 2010. Here is a roundup of several key provisions.

**Rate increases:** Effective August 20, 2009, rates cannot be raised in the first year after a credit card is issued (six months for promotional rates). But rates may be increased on a new balance if the cardholder receives advance notice of 45 days (currently 15 days). A credit card issuer cannot raise the interest rate on an existing balance unless the payment is late by 60 days or more. Effective August 20, 2010, if the cardholder has missed the 60-day deadline, the issuer must restore the lower rate once he or she provides six consecutive on-time payments.

**Extra fees:** Cardholders will not face fees for exceeding their personal limit unless they allow the issuer to approve “over-the-limit transactions.” Issuers cannot charge more than one such fee per billing cycle. Payment received by the due date (or the next business day if the credit card company is not accepting payments that day) will not trigger a late fee.


**Student cards:** College students and other individuals under age 21 generally will not be able to obtain a credit card unless they have a cosigner or they can demonstrate an ability to pay.

**Double-cycle billing:** The new law ends the practice of double-cycle billing. Credit card companies will no longer be allowed to go back to the previous billing cycle to calculate interest.

**Payment allocation:** Current industry practice is to apply amounts above the minimum monthly amount to low-interest balances first. Under the new law, payment must first be applied to the balance with the highest interest rate charge.

**Payment deadlines:** Card companies must send statements to debtors at least 21 days before payment is due. This provision took effect August 20, 2009.

**Gift cards:** The law prohibits gift cards from expiring for at least five years. Issuers cannot assess inactivity fees unless the card goes unused for one year. These rules take effect on August 22, 2010.

Remember that this is only an overview. Seek professional guidance for your situation. 



## BRIEFS

**Pregnant Pause**—During a job interview, an employer allegedly asked a female job applicant if she planned to have children. She demurred. But when she became pregnant as an employee, the company downsized her. Several months later, it hired a male replacement. **Result:** A District Court in California ruled there was sufficient evidence of discrimination to send the case to trial.

**S Corporation Loans**—Generally, you can increase your tax “basis” by lending money to an S corporation, but not always. **New case:** An S corporation owner borrowed funds from his partnership and then lent the money to the S corporation. The corporation paid the partnership an equivalent amount in rent. Because the owner did not actually provide the funds, he could not increase his basis in the S corporation stock.

**Quick Response**—Fast action can thwart sexual harassment claims. In a new case, a Dallas police sergeant claimed that a coworker called her “darling” and engaged in unwanted touching. The department promptly investigated the matter and subsequently required counseling for the coworker. **Result:** A Texas District Court dismissed the case because the conduct was corrected soon after the incident.

**No Thaw from ICE**—U.S. Immigration and Customs Enforcement (ICE) is ratcheting up its efforts to deter illegal employment. On July 1, 2009, it issued 652 notices of inspection to businesses—more than it had sent out in all of 2008. This activity goes hand-in-hand with an initiative launched earlier in the year that aims enforcement efforts at employers, rather than the workers themselves.