Combatting Discrimination Against the Elderly
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What is Discrimination?
- The unequal treatment of a person for a reason which has nothing to do with legal rights or ability
- Age discrimination refers to the unfair treatment of an individual based upon their age
  - Most often arises in employment settings
  - Only the forms of age discrimination that are prohibited by law are “actionable”

Tribal Elders
- By many tribal laws people may be defined as elders by age 55
- The average age of retirement in the United States is 65
- Many tribal elders choose not to retire early or perhaps financial status does not enable them to retire early
- These factors make discrimination in employment increasingly problematic for tribal communities
Quick Facts

• The Supreme Court has determined that states have no authority to regulate conduct by the tribes unless specifically authorized by Congress.
• Congress has specifically exempted tribes from several familiar employment laws.
• Ordinarily, tribal court has primary jurisdiction over claims arising from commercial transactions with the tribe, including employment.

Age Discrimination in Employment Act

• Federal law originally enacted in 1967 that, in relevant part:
  • prohibits discrimination in hiring, promotion, assignment, compensation, discharge, and in the working environment against persons who are age 40 and over.
  • Indian tribes are not excluded from the definition of employer

EEOC

• Equal Employment Opportunity Commission
• Enforces the ADEA and other forms of discrimination such as:
  • Age
  • Disability
  • Gender
  • Race
  • Religion
  • Etc.
• The application of the Age Discrimination in Employment Act has been questioned because the law is silent as to Tribes.
• The Act was found not to apply to the tribes in:
  • EEOC v Karuk Tribe Housing Authority
  • EEOC v Fond du Lac Heavy Equipment and Construction
  • EEOC v Cherokee Nation

Absent federal protections …then what?

• Consider whether there is a need for Tribes to develop codes that protect elders from the type of discrimination such as that set forth in the ADEA
• Provide a tribal forum for elders to bring grievances if they are being discriminated against

Tribal Employment Policies

• Can reinforce the rights of elders to be gainfully employed
• Can be applied to tribal businesses & private businesses
• Could be made a pre-requisite to attaining a business license for example
• Can provide for an administrative forum for enforcement of acceptable employment practices
### Tribal Code provisions

- Employment protections that are legally enforceable in tribal courts
- Can be applied to all tribal businesses
- Can be applied to the tribal government in employment (would require a waiver of tribes sovereign immunity)