

## FORMER EMPLOYEE TRIES TO PROVE YOUNGER WORKERS TREATED BETTER



Due to declining revenue, a company reduced the size of its workforce. When the company's marketing manager was let go, he filed a lawsuit, claiming that the loss of his job was because of his age. The courts, however, saw things differently. The man worked at ITW Air Management, which sells devices to clean, cool and maintain factory equipment. With the reduction-in-force policy in effect, the company laid off a marketing support worker – with less seniority than the complainant – in January 2009. Revenue continued to drop, and the plaintiff's position was eliminated a month later. The man took his suit to federal court, alleging a violation of the Age Discrimination in Employment Act (ADEA). The court did not believe that he had provided any "circumstantial evidence" that might suggest that younger employees were given preferential treatment, nor had he identified any such employees. The court likewise asserted that a reasonable jury would find no cause to render the layoff as pretextual. Accordingly, summary judgment was granted in favor of the company. To argue an ADEA claim, the man had to satisfy four points: he was a member of the protected class; he was discharged; he met the job qualifications; and he was singled out for discriminatory reasons. Appellate judges found that the plaintiff was unable to prove the final condition. He attempted to show that he had "superior" qualifications than younger employees in the same position by noting two younger co-workers: a regional sales manager and a national sales manager. In order to do this, the plaintiff had to prove that "all relevant aspects" of his job were "nearly identical" to the other



workers. In this, the man failed. The younger employees were full-time sales managers paid on commission, whereas the plaintiff was a marketing manager paid on salary who spent only half of his time in sales. Additionally, the plaintiff devoted the majority of his sales on an entirely different line of products than his co-workers. He furthered his argument by claiming that he "could have" sold the same products as the other employees due to his years of experience in sales, but the ADEA does not allow a person asserting capability as proof of identical positions. Similarly, the plaintiff claimed that he could perform the younger employees' jobs more proficiently, but again, this argument did not satisfy the ADEA requirement of showing that he worked the same position as others treated more favorably. His points involving his lengthier employment and more experience were likewise dismissed. Finally, the man noted that the regional sales manager was discharged a year after his layoff and that the other co-worker was assigned some of his prior duties. These arguments merely confirmed that the company's reduction-in-force was a necessity. Even after all of this, the plaintiff still had to prove that his layoff was a pretext for his age, which the man had been unable to do. The appeals court affirmed the district court's grant of summary judgment. Where can you find the most Sales Manager jobs? [Click here.](#)