



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office**

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DETERMINATION

Respondent

IBM Corporation
c/o Alison B. Marshall, Esq.
Partner
Jones Day
51 Louisiana Ave. NW
Washington, DC, 20001

Charging Parties’ EEOC Charge Numbers (Amended)

430-2019-00626	520-2016-02973	520-2016-02994	520-2018-04720	541-2018-02866
433-2018-02866	520-2016-02974	520-2016-02995	520-2019-01305	541-2018-03431
433-2018-03485	520-2016-02975	520-2016-03319	520-2019-02106	551-2017-01130
450-2018-06667	520-2016-02976	520-2016-03391	520-2019-02362	551-2018-01672
451-2017-00048	520-2016-02978	520-2016-03422	520-2019-02592	560-2016-01229
451-2018-04006	520-2016-02979	520-2016-03423	520-2020-03595	560-2016-01509
451-2019-00005	520-2016-02980	520-2017-00068	523-2016-00799	520-2016-03433
451-2019-00008	520-2016-02982	520-2017-00087	523-2018-01040	520-2017-01225
451-2019-00136	520-2016-02984	520-2017-00203	523-2018-01319	541-2016-01553
510-2016-03889	520-2016-02986	520-2017-00818	523-2018-01980	520-2016-03392
510-2017-02206	520-2016-02990	520-2017-00983	525-2018-01267	
510-2019-00820	520-2016-02992	520-2017-01501	531-2016-02066	
520-2016-02972	520-2016-02993	520-2018-04032	541-2015-01642	

On behalf of the U.S. Equal Employment Opportunity Commission (“Commission”), I issue the following determination on the merits of the subject charge filed under the Age Discrimination in Employment Act (ADEA) of 1967, as amended, Respondent IBM is an employer within the meaning of the ADEA. All requirements for coverage have been met.

Charging Parties allege they and a class of similarly situated individuals were discharged based on their age. Individual Charging Parties also alleged discrimination based on national origin, sex, race, retaliation, and disability.

Respondent denies discriminating against Charging Parties. Respondent asserts that Charging Parties were discharged as part of a series of Resource Actions designed to reduce headcounts and decrease costs. Respondent contends there was no centralized decision-making, and that each individual manager was responsible for selecting individuals in his or her group that would be laid

off. Respondent offered various reasons for selection for layoff including performance, relevant skills, utilization, and consolidation of services.

The Commission's investigation reveals that Respondent conducted Resource Actions analyzed by the EEOC between 2013 and 2018 that had an adverse impact on employees in the protected age group (PAG). The investigation uncovered top-down messaging from Respondent's highest ranks directing managers to engage in an aggressive approach to significantly reduce the headcount of older workers to make room for Early Professional Hires. Analysis shows it was primarily older workers (85.85%) in the total potential pool of those considered for layoff. Evidence uncovered older employees who were laid off and told that their skills were out of date, only to be brought back as contract workers, at a lower rate of pay with fewer benefits. EEOC received corroborating testimony from dozens of witnesses nationwide supporting a discriminatory animus based on age. See above for a list of Charge Numbers covered by this Determination.

Based on the above, Respondent's asserted defense does not withstand scrutiny and the Commission has determined that there is reasonable cause to believe that Respondent has discriminated against Charging Parties and others on account of their age.

Based on the above, the evidence obtained during the investigation was insufficient to establish a violation of Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Americans with Disabilities Act of 1990, as amended, based on national origin, sex, race, retaliation, and disability.

This determination is final. The ADEA requires that, if the Commission determines that there is reasonable cause to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that violations have occurred, the Commission now invites Respondent to join with it in an effort toward a just resolution of this matter.

Disclosure of information obtained by the Commission during the conciliation process may only be made in accordance with the ADEA and the Commission's Procedural Regulations.

A commission representative will contact each party in the near future to begin conciliation. If you decline to enter into conciliation discussions, or when the Commission's representative is unable to secure an acceptable conciliation agreement, the Director shall so inform the parties, advising them of the court enforcement alternatives available to aggrieved persons and the Commission.

On behalf of the Commission:

Judy Keenan, Director
New York District Office

Date _____