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Technology

## The Lawyer Who Took On Uber Is Suing IBM for Age Discrimination

Shannon Liss-Riordan says the company has wrongfully terminated thousands of workers for being too old. Can she make it stick?

By

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*Pedestrians walk past IBM offices in New York. Photographer: Craig Warga/Bloomberg*

Shannon Liss-Riordan has been compared to “a pit bull with a Chihuahua in its mouth.” In a career spanning almost 20 years, the Boston-based lawyer has gone after corporations that have either harmed consumers or their own employees. She’s represented workers against Amazon, Uber and Google and has styled her firm as the premier champion for employees left behind by powerful tech companies.

Now Liss-Riordan, 49, is gunning for International Business Machines Corp.

On Monday, she filed a class-action lawsuit on behalf of three former IBM employees who say the tech giant discriminated against them based on their age when it fired them. “Over the last several years, IBM has been in the process of systematically laying off older employees in order to build a younger workforce,” the former employees claim in the suit.



*Shannon Liss-Riordan in 2013. Photographer: Bill Green/Boston Globe via Getty Images*

In the last decade, IBM has fired thousands of people in the U.S., Canada and other high-wage jurisdictions in an effort to cut costs and retool its workforce after coming late to the cloud computing and mobile tech revolutions. A newer crop of tech giants has outpaced the company in size, revenue and prestige, and Big Blue is pushing to get back in the game.

The waves of firings spawned a legion of disaffected former employees who congregate online to air their grievances and swap stories. To them, the firings are a mockery of the values they signed up for when joining the company. IBM has argued change in its workforce is necessary to stay fresh and competitive.

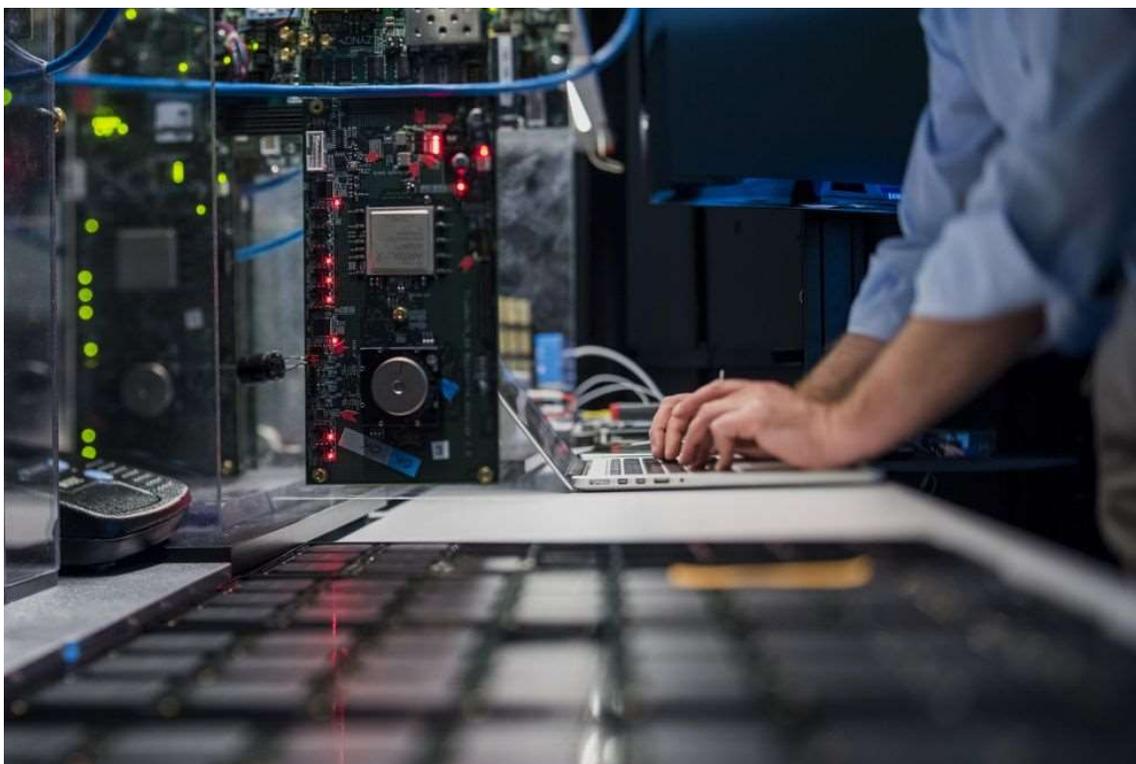
“Changes in our workforce are about skills, not age,” IBM spokesman Ed Barbini said in an emailed statement. “In fact, since 2010 there is no difference in the age of our U.S. workforce, but the skills profile of our employees has changed dramatically. That is why we have been and will continue investing heavily in employee skills and retraining—to make all of us successful in this new era of technology.”

But the company is under mounting pressure to change its behavior. In March, ProPublica published a damning [report](#) making the case that IBM systematically broke age-discrimination rules. Meanwhile, the Equal Employment Opportunity Commission has consolidated complaints against IBM into a single, targeted investigation, according to a person familiar with it. A spokeswoman for the EEOC declined to comment.

Liss-Riordan, a partner at Lichten & Liss-Riordan in Boston, expects many former IBM employees to join her lawsuit. “A lot is at stake for IBM—how they’re going about making these decisions for their workforce really needs to be addressed and re-assessed,” Liss-Riordan said in an interview. “It will be in the thousands of people who will be affected. We think IBM should pay these employees.”

If she’s successful, IBM may be on the hook for hundreds of millions of dollars in damages and may take a hit to its reputation as a company once renowned for being among the world’s most benevolent employers.

IBM is hardly the only big company that has fired people in an effort at reinvention. General Electric Co. has cut thousands of workers and sold off entire business units. But in a departure, IBM has stopped disclosing the number of people it has cut in the U.S. or how many it employs. The company says it’s still hiring, but there’s no indication how many of those open slots get filled every year.



*A system engineer tests chips at the IBM Almaden Research Center in San Jose, California.  
Photographer: David Paul Morris/Bloomberg*

In interviews, more than a dozen recently laid off employees say near-constant, rolling firings have created an atmosphere of confusion and fear in many parts of the business, particularly for older employees who feel they're the most likely to be terminated. Former managers say significant amounts of their time were spent figuring out who to let go next. Other workers talk of constantly reading the tea leaves, swapping gossip about what division could be hit next and trying to transfer to a more favored group in time to avoid getting cut.

For most of the last two decades, Belinda Kromer's life revolved around her job at IBM. She criss-crossed the American southwest selling mainframe computers, the data-crunching behemoths that have been crucial to IBM's success for decades. For the single mom, spending half her time on the road wasn't easy, but the job paid well and helped put her son through college. Kromer, who was pulling down about \$115,000 a year not including bonuses, planned to work right till she was 70.

But last year IBM fired Kromer. Her father had died a week earlier. Kromer says she had just received a glowing review from her manager but was told her skills were no longer relevant. Now 65 and tethered to the small Texas town where she owns a home and still supports her son, she struggles with her new status ("Getting up in the morning and not logging into your computer is a weird thing if you've done it for 17 years") and is having a hard time finding work. In August, she applied for a retail job at her local Lowes home improvement store. "They told me I was overqualified."

Kromer won't be participating in the lawsuit. She's one of thousands of employees who signed away their right to sue; Kromer did it so she would get a 401(k) match for her final year of employment. Workers typically agree not to sue IBM over age discrimination, individually or in class action lawsuits. It's a policy common in corporate America and one that was recently affirmed in a May 2018 Supreme Court ruling.

But over time, IBM has decreased the amount of severance it offers to just one month in most cases, say former employees interviewed for this story, who spoke on condition of anonymity for fear of professional repercussions. For some, the offer was so inconsequential they decided to leave the money on the table and retain their right to sue later. These are the people Liss-Riordan is counting on. "IBM was offering people that it's been letting go a very, very stingy severance," she says. "We expect there are many others who didn't think that was adequate."

One of those people is Edvin Ruis. He joined IBM in 2003 during the \$2.1 billion acquisition of Rational Software, where he'd been working at the time. The first firings came barely a year later, but he held on. The work his department was doing seemed to be in high demand, and Ruis, who's now 59, wasn't ready to retire. Still, in March 2018, the firing machine found him. Managers refused to give him a reason besides vague mentions of his skills not being up to date, Ruis says.

“When I got the notice, I was pretty bitterly shocked that it was one month and they were even asking me to sign away all my rights,” he recalls. Ruis initially filed a complaint against IBM to the EEOC, but withdrew it to sue the company instead, Liss-Riordan says.

Liss-Riordan is a formidable lawyer, but the case her firm is best-known for hasn't been an unalloyed victory. A high-profile drive to get Uber to recognize drivers as employees resulted in an initial \$100 million settlement but was subsequently blocked by a federal judge. Liss-Riordan is still going after Uber, including filing a separate lawsuit against co-founders Travis Kalanick and Garrett Camp.

Class action lawsuits are drawn-out processes, and there's no guarantee this case will be successful, or even be certified in the first place. Moreover, age discrimination is a tough issue on which to hang a class-action. For a court to allow Liss-Riordan to represent fired IBM employees as a class, she'd need to show that age discrimination affected all the employees in the lawsuit, says Michael Willemin, an employment lawyer with Wigdor LLP who isn't involved in any IBM-related cases.

Liss-Riordan believes the evidence is there. The ProPublica story surveyed more than 1,000 workers and cited internal IBM documents that, among other things, mentioned a strategy of “correcting seniority mix.” The company also fired people for not having the necessary skills for their work, but then re-hired them as contractors in similar positions, ProPublica reported.

A high-profile lawsuit could damage IBM's reputation even if the plaintiffs don't win. Other former employees may be emboldened to start private lawsuits or arbitration drives, pushing up legal costs for the company, Willemin says. “You have a potential nine-figure liability,” he says.