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FALL 2017

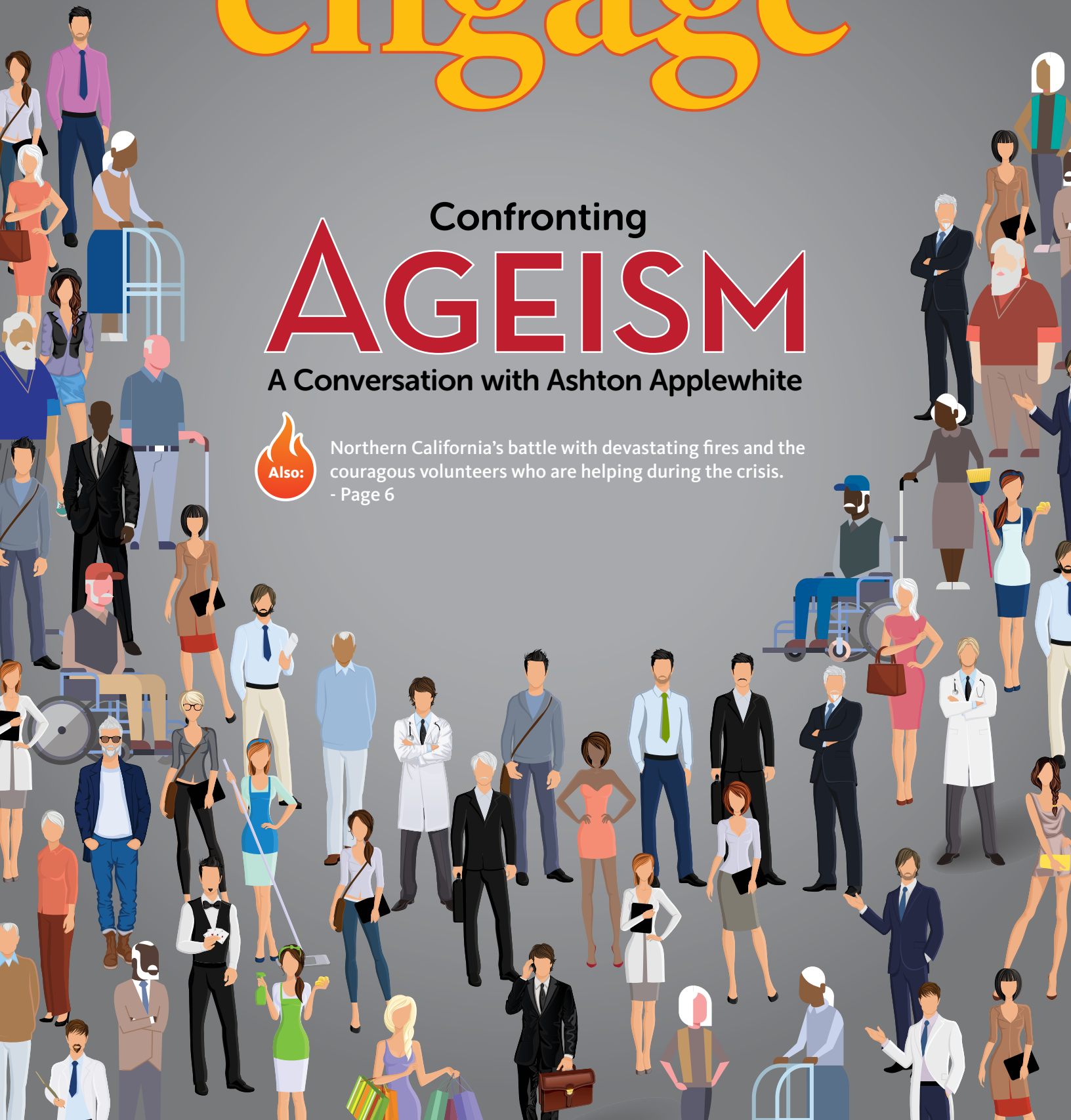
LeadingAge California  
**engage**<sup>TM</sup>

Confronting  
**AGEISM**

A Conversation with Ashton Applewhite



Northern California's battle with devastating fires and the  
courageous volunteers who are helping during the crisis.  
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# A Note From The Editor

## Eradicating Prejudice and Stereotypes of Aging Adults

In this, our Fall 2017 issue of *Engage Magazine*, we explore the pervasiveness and impact of ageism. We are thrilled to have author Ashton Applewhite, whose new book, “[This Chair Rocks: A Manifesto Against Ageism](#),” is a witty and well-researched read that dismantles the myths of growing older. In her interview with Robin Douglas, she has a frank conversation on her views of ageism and what we need to do to change deeply held preconceptions. Robin also sat down with Kirsten Jacobs, LeadingAge’s Associate Director of Dementia and Wellness to talk about LeadingAge’s anti-ageism campaign and efforts to realize the vision of “An America Freed from Ageism.”

Terry Wills with Cook Brown LLP focuses in this issue’s Legal Corner on aging in the workplace and the practices all employers need to avoid regarding age discrimination. In Membership Matters, LeadingAge California Member Front Porch highlights their initiatives to address stereotypes of older adults and what was learned at a recent San Diego region meeting.

Brenda Klütz outlines a new member benefit – an online Technical Assistance Library, on a variety of issues for every member type. These Technical Assistance Briefs provide answers on commonly asked questions and will serve as a repository for all official guidance documents from LeadingAge California. In addition, policy staff is always available to answer your call should you need assistance.

We hope you enjoy this issue of *Engage*. Winter 2018 will be our Women’s Issue, focusing on the role women play in the aging services field and their experiences as recipients of aging services.

We wish you a warm and wonderful holiday season and watch for our next issue in February!



**Eric Dowdy**

**Editor-in-Chief**

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## Confronting **AGEISM**

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# From The CEO

## When Disaster Preparedness Counts

The Northern California wildfires took everyone by surprise – the speed, the magnitude, the devastation, and by many accounts, the worst fire disaster in California’s history. At least 41 people have died with dozens more still missing and feared dead, more than 5,700 homes and buildings were destroyed, and more than \$3 billion in damages. And that is just in the north; other areas are also deeply impacted. Yet, our members snapped into action with disaster-preparedness plans – evacuating residents quickly, communicating needs to others who could help, and working around the clock to help assure safety for as many as possible. Our members are resilient and giving



– by volunteering to assist, by providing beds for the evacuees and those who lost homes, by contributing goods and services, and by donating to our fund at [leadingageca.org/ca-fires-and-disaster-recovery-fund](http://leadingageca.org/ca-fires-and-disaster-recovery-fund). By uniting as a community, we have helped members, residents, employees and their family members find safe haven in the midst of terrible tragedy and provide monetary support. Despite resident evacuations, loss of homes by employees and at least one death of an employee’s mother, Mary Stompe with PEP Housing in Santa Rosa in Sonoma County said they were able to set up an emergency hub in

their parking lot, collect socks and underwear to distribute to fire victims, and open their own homes to those who lost theirs. “...everywhere you go, restaurants are offering free meals to evacuees, haircuts, everything.” And this is just one story. There are countless others as we continue to learn of the devastation.

Thank you to Mary and staff, and to so many others for their outpouring of support in the midst of an emergency and such loss. Our hearts go out to the thousands who lost relatives and friends, homes, businesses and so much more. So, emergency preparedness does count, and we never know when it will next take us by surprise, and cause us to snap into action. A special thanks to our LeadingAge California team for creating a command center for responding to requests the day after the fires broke out, to help facilitate transfers of evacuees and to share information about member needs, and for setting up our disaster recovery fund.

– **Jeanne P. Martin**  
President & CEO





# Have **YOU** Heard?

**PEP Housing** opened [Sun House Senior Apartments](#) in Ukiah, Calif.

**Rowntree Gardens** was voted again to *U.S. News & World Report's* [Best Nursing Homes](#).

**Eskaton Lodge Gold River** was featured on Fox's Studio40 for Fall Prevention Month.

**Institute on Aging** was honored with an [Innovation Award](#) for their Veterans Benefits Protection Project by the National Association of Area Agencies on Aging.

**Openhouse** [broke ground this fall](#) on a brand new

building which will add an additional 79 LGBT-welcoming senior-only apartments to the Openhouse community and Bob Ross LGBT Senior complex on Laguna St. in San Francisco.

**AlmaVia of San Francisco** welcomed Pamela Hamilton as their new [Executive Director](#).

**Front Porch** welcomed Ed Salvador to their company's [leadership team](#) as Chief Financial Officer in October.

**Casa Dorinda's** program, "Creating Community through Staff Integration and Artistic Expression" was chosen to receive the International Council on Active Aging's ICAA [Innovators Achievement](#) Award.



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# Confronting AGEISM

## A Conversation with Ashton Applewhite

Defined as “prejudice or discrimination on the basis of a person’s age,” ageism is deeply ingrained in our society, and is often referred to as one of the last acceptable prejudices in America. From the well-intentioned “ma’am” to more serious issues such as discrimination in the workplace, ageism is the one form of prejudice we all experience at some point in our lives, regardless of where we fall on the spectrum of aging. Ashton Applewhite, author of “This Chair Rocks: A Manifesto Against Ageism” discusses how ageist language and stereotypes can affect the way we view our own aging process, what sparked her interest in the topic to begin with, and how we can challenge those perceptions within ourselves and others on a day-to-day basis.

### How did you become interested in writing about ageism?

I realized – in hindsight, which is how I figure out most things – that I started writing about aging because I was afraid of getting old. I was looking for something to get my teeth into, and my mother-in-law suggested I write about something she and her husband, who were booksellers in their 80s at the time, got asked all the time: “So when are you going to retire?” That seemed like a safe, upbeat way to start looking at old age. So, I started interviewing people over 80 who work, and started learning about longevity. It was very easy to find people in their 80s and 90s who were in the world in all kinds of interesting ways, which didn’t surprise me. What did surprise me was that everything I thought I knew about longevity was way, way off base; not nuanced enough, and way too negative.


I am not a Pollyanna; aging involves real challenges. But we have such a one-sided view of it that’s entirely about decline. The point is that we need to tell both sides of the story. There are good and bad things about every age.

Even if you don’t know what ageism is, or haven’t given a second thought to how the way aging is culturally framed makes it harder to age well, you know that the process is different from the way it’s portrayed. It’s different and it’s better. That’s why no one, no matter how apprehensive about the years ahead, actually wants to be younger! Unless they could take their present-day consciousness along with them.

**Did your research bring up any beliefs or stereotypes of your own that you didn’t know you had?**

Oh my gosh, yes! I started out biased in






every imaginable way, thinking of late life as one big, avalanche of badness. For one, I assumed that old people were depressed because your body falls apart, society ignores you, and surely you grow more and more afraid of dying.

But early on, I learned that the older people are, the less they fear dying. I heard it anecdotally from the people I interviewed, I heard it from geriatricians, and then I encountered research about it. As for depression, older people enjoy better mental health than the young or middle-aged. We get better at coping with negative emotions thanks to changes that occur in the older brain. And the knowledge that time is short helps older people live in the present, which is what makes us happy.

I'd say my least favorite stereotype is that older people are alike. All prejudice is based on stereotypes, which are always wrong of course. They make even less sense when it comes to aging, because the longer we live, the more different from one another we become. We age at different rates, physically, cognitively, and socially. When you can't label the members of a group as alike in some way, it becomes much harder to be prejudiced against them.

### **How do negative messages about aging in our society affect how we view our own aging process?**



Ageism is a form of discrimination that all of us, at some point, will encounter – and we face it when we're young as well. "Kids are like that," for example. Millennials face a hard time getting established in the


workforce, where older people face tremendous discrimination. Women are doubly discriminated against, in the workforce and in the dating world, by the double whammy of ageism and sexism: the idea that the most important thing about you is how you look and that to age is to cease to be attractive.

There's a double standard; the idea that aging devalues women and enhances men – we all know the "Silver Fox" archetype – but eventually, men, too, face age bias. It's often the first form of discrimination that white men encounter. I am hoping, and I do think, that some of those men are going to become radicalized and become important voices in this movement. It's difficult because it's very uncomfortable to acknowledge that you're biased – even if it's against yourself. And that's inherently what ageism is – a prejudice against your future self.

But for those men who are able to say, "Oh! All that stuff that people of color and women have been writing about all those years is real!" – I think there is going to be some energy coming from that.

### **Ageism is almost like the last acceptable "ism" in our society. Do you think this can change?**

Yes, it is changing! Are you familiar with the term intersectionality? It's the idea that different forms of discrimination compound and reinforce each other, which is why everywhere in the world, the poorest of the poor are older women of color. There's more awareness of that in the culture now, especially among younger



people, and a conviction that diversity is here to stay and it's a good thing. Most people don't include age on the list when I ask them criteria for diversity – most say gender, race, disability. But when I say, "How about age?" everyone says "Oh, obviously." Hitching age to the diversity sled, so to speak, is not a big ask; it makes intuitive sense from a personal and social justice perspective. People understand that racism and sexism and homophobia aren't acceptable – even if we have a long way to go on those fronts – especially racism. But if we want to be a society where access to opportunity isn't determined by what you look like, gray hair and wrinkles count. I think the ground is plowed and the culture is ready for this.

And the stakes are high. Our response the challenges and opportunities of population aging, will be very different if we look at them from an ageist lens perspective rather than one of age equality.

### **I find a lot of parallels between the anti-ageism and current "body positive" movements.**

A lot! I'm glad to hear you say that. If women can say, you know what, my butt is not the size of a postage stamp, but I look beautiful and I'm going to wear a bikini and go out there and be fine with it in the world, we can do that with wrinkles and other signs of aging. I think women judge each other and ourselves much more harshly than the world does, and I think the body acceptance movement has a lot to teach us about rejecting

conventional beauty norms and being our full, messy, complicated powerful selves in the world.

### Are there cultures that you know of where older adults still play a more respected role?

There are still cultures that venerate their older members – those with a tradition of ancestor-worship, Confucianism, for example. Urbanization plays a part; often young people move to cities for work, leaving parents and children behind, which creates age segregation – and segregation contributes to prejudice. In small communities there's less ageism because everyone's role is more visible, whether you're tending livestock or just keeping an eye on things. Everyone benefits from mixed-age communities and having friends of all ages. Integration breaks down barriers. Capitalism also plays a part. In a capitalist culture our worth is often equated to how much money we make, which disadvantages the old and the young. If you're not going to a job but you're enabling someone else to do so, you're contributing to their productivity.

Colonial America was a gerontocracy, where older people held most of the power – a very frustrating situation for young people. If you had to wait for older people to die before you could advance in your job, acquire property, or otherwise acquire social capital, that's not ideal either. What we want is to recognize the very real

differences between youth and age without organizing them into a system of social inequity – a



society of age equality, in which neither group has more power. In the workplace for example, we need to acknowledge seniority but also make it possible for younger people to move ahead in their jobs.

It's not all ageism. Longer lives are a new phenomenon, and it takes time for society to catch up – sociologists call it "structural lag." It's going to take time for institutions and the workplace to adapt and for roles to evolve for older people. What we want is for those solutions to not be framed by ageism, but to be framed by the idea that aging does not strip you of value as a human being.

### In your book you mention that "autonomy requires collaboration." What are some of the drawbacks to "aging in place" and staying in the home as long as possible?

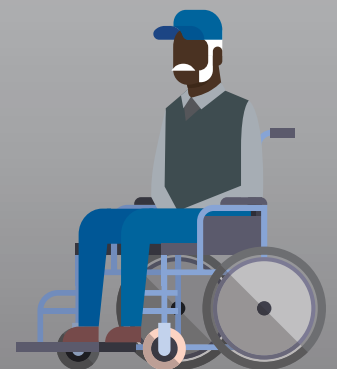
Bill Thomas, the geriatrician who invented the Eden Alternative, would like to replace the phrase "aging in place" with, "aging in community." All too often, aging in place is a recipe for social isolation, and the thing that has the most effect on how we age is not health or wealth. It's social networks.

Of course, people want to stay at home, but are there supports? Is there community? Because otherwise, it's not going to help you in the long run. As an anti-ageism activist, I worry that a lot of the desire to "age in place" is motivated by denial. "I'll just put in a ramp or hire someone to mow the lawn, and everything can stay the same." The fact is that nothing stays the same, and it's best to prepare for that while we have a lot of options.

So make sure it's not just wishful thinking, because things do change. There are also some really cool community models being developed for communal living, sharing with younger people, and new kinds of housing. There's a huge market; baby boomers don't want to end up in grim nursing homes, and all kinds of interesting new models are emerging. I'm a fan of mixed-age communities because I think it's healthier. And when we are in contact with people of all ages, we're less likely to be ageist ourselves, just as when we're in contact with people of all races, we're less likely to be racist.

### What is your definition of "successful aging?"

Waking up in the morning! A lot of people think you're aging successfully if you can continue to look and act like a younger version of yourself. That's an impossible and punishing standard – not to mention expensive. There's also a giant class bias. Not everyone can afford the gyms, the personal trainers, vacations, or even access to healthy food that defines successful aging in a certain socioeconomic niche. People without access to those services are aging as best they can too. You don't have to jump out of airplanes or do the limbo, and most of us don't want to. It's okay to just sit on the porch swing.



# SCENE



**1** PEP Housing opened Sun House Senior Apartments in Ukiah, Calif. in August.

**2** The 2017-18 EMERGE Class held their second session of the year, "Leading Change and Innovation," at Hillcrest in LaVerne, Calif. in September.

**3** At the LeadingAge National Annual Leadership Meeting (L-R): Scot Sinclair, O'Connor Woods; Jeannee Parker Martin, LeadingAge California; Katie Sloan, LeadingAge; Kathryn Roberts, LeadingAge; Roberta Jacobsen, Front Porch; Jasmine Borrego, TELACU.

**4** Bethany Center Senior Housing's Annual Ping Pong tournament for affordable housing seniors in San Francisco. Shown (L-R): Jessica McCracken, vice president of programs and development with Bethany Center resident Dinh Hue Deng, Assemblymember David Chiu and Jade Wu, field representative for Assemblymember Phil Ting.

**5** Mike Rambarose, LeadingAge Connecticut board of directors with Sherri Peifer, Eskaton at the 2017 Global Ageing Conference.





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- James W. Graunke, Solheim Lutheran Home
- Christina Cerrato, Episcopal Communities and Services

*\*Organization names shown for identification purposes only.*

# Ageism Awareness

In early September the San Diego regional members gathered together for a conversation on Ageism Awareness, hosted by Pam Ferris and Carl Measer at the beautiful Seacrest Village in Encinitas. Presenters Roberta Jacobsen, president of Front Porch and director on the LeadingAge national board, and Jen Dixon, director of Communications and Online Strategies at Front Porch, moderated a lively discussion about positive and negative words and images that are used in conjunction with aging, including an exercise to encourage those in attendance to combat ageism by creating awareness, addressing it, engaging in ongoing conversations, telling authentic stories, and ultimately changing perceptions and behaviors.

by Lee Ratta, Front Porch SVP  
Organizational Advancement Group

Front Porch is joining LeadingAge and many other national senior serving organizations to draw attention the important issue of ageism. But first, we need to bring awareness to the cause within ourselves and our organizations.

*Awareness is the first step toward change.* When Roberta Jacobsen asked the Front Porch communications team to take a new look at the cause of combating ageism, it sparked many conversations.

Ageism is not a new topic around Front Porch. For years, ageism was explored in the context of spirituality and well-being. Promoting well-being and positive experiences of aging inspires our celebration of individuals in community and our storytelling culture. But not until recently have we explored the topic of ageism in the context of social justice. With Roberta's leadership, we have joined the national movement toward anti-ageism in a meaningful way. Last spring we invited two theologians from Fuller seminary to talk with our executive leadership team about positive and negative portrayals of aging in film and popular culture.

That information along with the exceptional support materials offered through LeadingAge and the Frameworks organization helped Front Porch embark on an effort to raise awareness about ageism. First, we needed to identify ageist beliefs and behaviors within ourselves and challenge it in our organization.

What we explore with staff and residents is: What is ageism, what does it look like, why is it important, and what can we do about it. We outlined the topic in an interactive presentation that includes great information from LeadingAge, as well as author Ashton Applewhite's TEDTalks, thought-provoking exercises and movie clips. Importantly, we created a video about the misconceptions of aging through the lens of our residents. We asked them what ageism looks like and feels like. As always, when we hear the voice of our residents we learn so much.

We've used this presentation as a conversation starter with our staff, our ethics board of directors and ethics representatives, and we plan to continue the conversation through our Front Porch University curriculum. We have a long way to go but our belief is that if we challenge ourselves to recognize

ageism as a social justice issue with devastating effects on our well-being as we age, and armed with the knowledge that positive portrayals of the aging experience can have positive effects on how we age, the effort is essential to who we are and what we stand for as individuals, as an organization, and as a field of service.

The next phase of our ageism awareness campaign will be to involve residents in conversations and action plans. We will soon debut a social media campaign called "This is Me" that focuses on the unique stories of the individuals who live and work in our communities. It is a way to break down barriers, stereotypes and connect with each other in meaningful ways.

As not-for-profit organizations we have the unique ability to be great agents of change and to embrace and share what we all know to be true, that age is just a number and that by telling the positive, inspirational stories of the individuals we serve could change the way we see our ourselves, each other and the world.



Brenda Klütz has 30 years of experience in California state service; with over eight years of working in the Legislature as a consultant on Aging and Long-Term Care issues and 15 years with the Department of Health Services serving as the Assistant Deputy Director and Deputy Director. Currently, she provides LeadingAge California members technical support on issues related to reimbursement, licensing, and regulation interpretation.

# Dear BRENDA



Departing from the usual format for this column, this edition will cover the technical assistance available as a benefit to all LeadingAge California Members.

**Many communities have requested information, clarification, asked questions, and help resolving complex challenges. While we address the needs of these individual members/communities, we believe that other members would find this information helpful.**

Accordingly, we have embarked on a new initiative to provide **Technical Assistance Briefs** on a wide variety of subjects. Under no circumstances will the original requestor be identified. This initiative is in very the beginning stages, but will be increasingly-populated as questions, concerns and issues arise. The Technical Assistance Briefs can be found at [leadingageca.org/techresources](http://leadingageca.org/techresources) (members must be signed in to view), and organized by the types of services provided in your community:

Housing • Home and Community-Based Services • Assisted Living • CCRCs • Skilled Nursing Facilities • PACE • General Interest [Such as the Abuse and Neglect Reporting Guide].

**The subjects covered thus far are:** End of Life Option Act • Skilled Nursing Facility/Nursing Facility Medicare Emergency Preparedness Rule • RCFE Absentee Notification Plans/Elopement Policies and Procedures • Resident Representation on Nonprofit CCRC Boards of Directors • Abuse and Neglect Reporting Guide

**Coming soon are Technical Assistance Briefs on:** • Use of Referral Agencies by Multi-level Communities • Providing SNF Optional Services on an Outpatient Basis • Language Barriers in Providing SNF and Services

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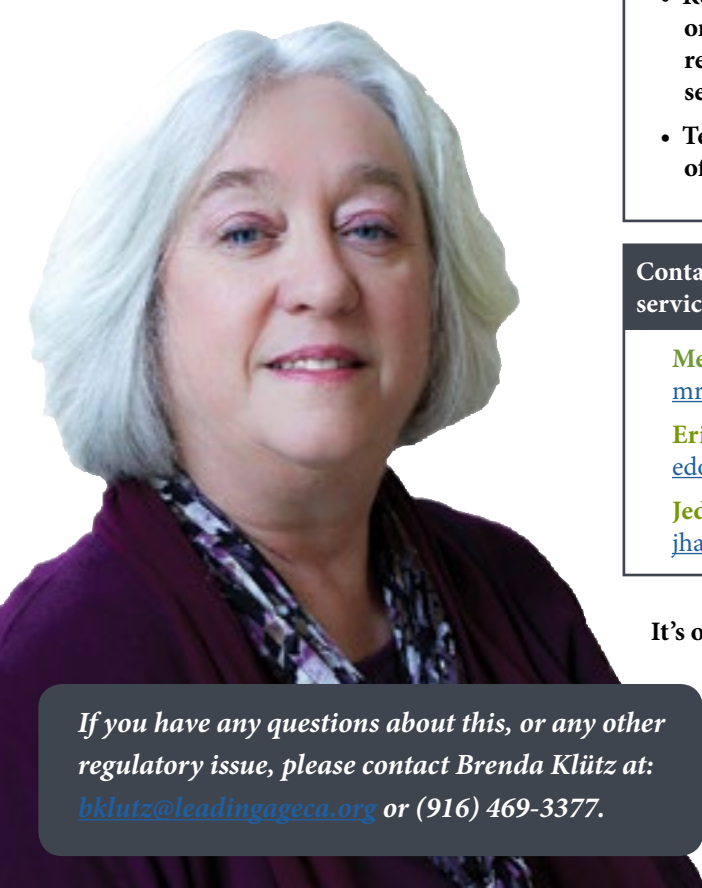
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**It's our pleasure to address any questions or concerns!**

**NOTE:** LeadingAge California Technical Briefs should not be considered legal advice and is intended for general information purposes for its members.

*If you have any questions about this, or any other regulatory issue, please contact Brenda Klütz at:*  
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# People IN FOCUS



## Kirsten Jacobs

Associate Director, Dementia and Wellness  
LeadingAge

Kirsten Jacobs with LeadingAge talks about LeadingAge's anti-ageism campaign, An America Freed From Ageism. Members can access resources and additional information on the topic by visiting [leadingage.org/ageism](http://leadingage.org/ageism). Watch the video interview [here](#).

### How did LeadingAge's anti-ageism campaign originate?

Our Board of Directors started recognizing that ageism was one of the challenges that everyone in this field was encountering, so they decided it was time to address that by adopting a really big and bold vision, An America Freed From Ageism.

### What have your outreach efforts been like?

Since the adoption of the vision, we have initiated an internal task force to start addressing ageism. We have developed tools and in-person education as well as distance learning and online education. We are also really excited that we have initiated a partnership with Virginia Commonwealth University. They are developing a training video that can be utilized by providers of aging services along with a companion "conversation piece" for that video. So, that is forthcoming in the year ahead.

### What are some examples of ageist language?

The thing we've discovered at LeadingAge is that once you start paying attention and start recognizing that ageism is discrimination or bias against older adults – actually against anyone based on age – you start noticing it everywhere. It's in the subtle things that we say, like, "I'm having a senior moment." More covert examples can often show up in a compliment, like, "You look great for your age!" or "She's 100

years young." Things that aren't intended to be negative but really imply that young is good and old is bad.

### How do these messages influence us throughout our own aging process?

We know from research that children as young as three to six years old start understanding those stereotypes about older adults, so those messages are ingrained by the time we make it to our 60s, 70s, 80s and 90s. We know from research – especially research done at Yale by Dr. Becca Levy – that ageism has an impact on both physical and mental well-being, so her research has told us that people with negative stereotypes about aging often have memory problems, cardiovascular problems, etc. On the flip side, people with more positive self-perceptions of aging actually live up to 7.5 years longer than those with less positive self-perceptions of aging. I think that is why our colleagues at VCU who we're collaborating with refer to ageism as a public health crisis.

### How can we combat ageism on a daily basis?

In the aging services field, we can start thinking about ageism as a part of our work rather than as an additional challenge. If we address ageism, perhaps advocacy on Capitol Hill, advocacy at our state capitols, recruitment or retention or staff training, or marketing, would all get easier. Taking small steps can have a big impact in a much larger way.

### What does an America Freed From Ageism look like to you?

For me, it means an America where aging is a normal part of life – it's not something that we try to avoid or combat. By addressing ageism we embrace a really wide spectrum of the "lived" experience. So, it's the older adult who's living with dementia; it's the 60 year-old who's been living with a chronic disease for much of their life; it's the 90 year-old marathon runner. We give people the support and the opportunity live vital and engaged lives, regardless and because of, their lived experience. I hope that that's the experience that my three year-old has as he gets older, but certainly there's lots of opportunity for growth at this point.





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# AGED REPRESENTATION



By Caroline Cicero, PhD, MSW, MPL • USC Leonard Davis School of Gerontology

United States Senator Dianne Feinstein, (D-CA) recently announced she will run again for office in 2018, feeding a debate in the media about whether, at age 84, she is too old to run, win, and serve a full six-year term in the Senate. If she wins the June primary and the final election in November 2018, she will be 91 years old when her term ends. Meanwhile, 41 year-old U.S. Congressman Ro Khanna, from California's 17th District in Silicon Valley, called Ms. Feinstein "out of touch" with many issues, including encryption and the debate between Apple and law enforcement over unlocking the suspects' iPhones following the 2015 San Bernardino mass shooting that killed 14 people and seriously wounded 22 more. Although some of Congressman Khanna's rhetoric against Senator Feinstein is motivated by in-party political differences, his language and his tone suggest that the octogenarian's age makes her technologically limited and therefore unfit for office. [1]

Whether or not one supports Senator Feinstein's political views or Representative Khanna's opinions about her tech savvy and pertinence, her advanced age forces Californians to consider how we feel about older people's relevance. Print and digital media have been following Senator Feinstein's announcement with an abundance of coverage on whether she is too old for the job, but how are octogenarian women generally portrayed on our television and computer screens?

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According to the US Census, California is home to 4.8 million adults aged 65+, including 660,000 aged 85+. It is also home to two major media industries

that both academic researchers and investigative journalists have found to discriminate against older adults and women – Hollywood and Silicon Valley. Both the entertainment industry and the tech industry prefer hiring workers younger than 50, for their most noteworthy roles, according to research. The intersection of age and gender are especially discriminatory. Older women behind the scenes and on our big and small screens are underrepresented and often invisible.

Dr. Stacy L. Smith and her research team at the University of Southern California's Media, Diversity, and Social Change Initiative (MDSCI) track the instances of speaking roles for older adults in film and television. Their 2017 Report entitled *Inequality in 900 Popular Films: Examining Portrayals of Gender, Race/Ethnicity, LGBT, and Disability from 2007-2016* tells the story of age bias and other intersecting demographic traits. [2] Showing the lack of older roles for women in movies, the report counts women as older when they reach 40. In the top grossing films of 2016, only 26 percent of characters aged 40+ were women, while 74 percent were men, a trend that was steady since 2007. The MDSCI studied television roles too. In 72 unique shows assessed in *Seniors on the Small Screen: Aging in Popular Television Content*, less than 10 percent were characters aged 60+, 10 percent below the representation of people age 60+ in the general population. Furthermore, older adults constituted only 8 percent of series regulars. Women were cast in less than 30 percent of all roles for characters 60+, and more than half of shows examined had no female characters age 60+. [3]


[1] <http://www.politico.com/story/2017/10/09/dianne-feinstein-primary-challenge-ro-khanna-243605>

[2] [http://annenberglab.usc.edu/sites/default/files/Dr\\_Stacy\\_L\\_Smith-Inequality\\_in\\_900\\_Popular\\_Films.pdf](http://annenberglab.usc.edu/sites/default/files/Dr_Stacy_L_Smith-Inequality_in_900_Popular_Films.pdf)

Hollywood's top products neglect representation of millions of Californians, including those in Senator Feinstein's age cohort and those 10, 20 and 30 years younger. In addition, the lack of older characters on screen is disappointing given that adults aged 50+ watch the most traditional television shows. In fact, they are not out of touch with screen content, as they watch 15 hours more per week than 35 to 49 year olds and 27 more hours per week than 18 to 34 year olds. [4]

Paving the way for more writing, directing, and producing roles could help this misrepresentation. Dr. Smith's team found that when older women were behind the camera, as show-runners, writers, and directors, there were increases in older women on screen. Moreover, the MDSCI found that portrayal of end-of-life issues for older characters doesn't echo reality, as older people on screen typically die from violence or accidents rather than the true leading causes of death such as heart disease and cancer. While older adults do not see realistic issues their cohorts face portrayed on screen, younger people are not given the opportunity to see authentic lifespan situations whether,

comedy or drama. However, do we need to see our own problems and concerns on screen, or should our down time be an escape from reality?

Consider whether the best screen stories are timeless and age inclusive. While some hearken fantasylands and involve time travel, other stories are compelling precisely because they are unremarkable and universal. In Netflix's recent release, *Our Souls at Night*, directed by 38 year-old Ritesh Batra and based on Kent Haruf's bestselling novel, screen veterans Jane Fonda, 79, and Robert Redford, 81, play ordinary widowed neighbors looking for companionship. The film is a beautiful portrayal of aging in a small western town. There are no flashy special effects. The two grandparents use their life experiences to engage the younger generation. Model trains, marshmallows, pies, a dog, and a pickup truck help build bridges and pass the time. . . until the two octogenarian companions are separated by a distance. They then know exactly how to connect, and their iPhones ensure they are not "out of touch" with the things that matter most. 

[3] [http://assets.uscannenberg.org/docs/Seniors\\_on\\_the\\_Small\\_Screen-Dr\\_Stacy\\_L\\_Smith\\_9-12-17.pdf](http://assets.uscannenberg.org/docs/Seniors_on_the_Small_Screen-Dr_Stacy_L_Smith_9-12-17.pdf)

[4] <http://www.nielsen.com/us/en/insights/news/2016/television-is-still-top-brass-but-viewing-differences-vary-with-age.html>

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# AGE DISCRIMINATION

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## AND THE AGING WORKFORCE

COOK | BROWN LLP

By Terry Wills, Cook Brown LLP

This year the Age Discrimination & Employment Act (ADEA), the federal law protecting workers from age discrimination turns 50, prompting questions from employees and employers about the status of our workforce and age discrimination in 2017.

### **Boomers Not Retiring**

Baby boomers and other “mature” employees are increasingly deciding to work longer either due to necessity or desire. The Pew Research Center reports that about 18.8 percent of people over 65 were working in 2016. The National Council on Aging estimates that, by 2019, over 40 percent of people over age 55 are expected to be actively working.

There are a number of factors impacting the aging population’s decision to remain part of the workforce:

- Delayed retirement due to economic circumstances (likely cause by the recent economic downturn)
- Later in life child bearing which in turn requires a longer work life
- A healthier aging population choosing to work because it is physically possible
- Bored or unfulfilled retirees electing to re-enter the workforce

### **Grey Ceiling**

For those out of work or seeking advancement, older job seekers often report difficulty in obtaining positions and promotions due to a perception by hiring managers and HR personnel that they are less capable, less flexible and less tech savvy than their younger counterparts. In addition, some companies may view an older employee as too expensive to retain. Salaries and benefits (ie. vacation, healthcare coverage and life insurance) for employees with longevity are certain to be costlier than for those new to the organization.

Aging service organizations face particular challenges in employing older workers. The industry, like many others, is suffering a severe shortage of skilled and qualified employees. By necessity, the value and availability of older workers makes them candidates to fill needed positions. However, a maturing workforce brings with it the potential increase in disabilities and work related injuries. Those employees with limitations require careful interaction and assessment of restrictions to determine whether reasonable accommodations can be made under disability discrimination laws. Workers’ Compensation also

protects against taking action based on an injury, so legal review is necessary before terminating an employee on leave or after an injury to avoid claims of discrimination under Labor Code section 132a.

### **Age Discrimination Under California Law**

In its simplest form, age discrimination is treating an applicant or employee differently in hiring, firing, layoffs, demotions, promotions, benefits because of their age. In California, the law governing age discrimination in employment is the Fair Employment & Housing Act. In order to establish a prima facie case of age discrimination, an individual must establish that he/she was (1) at least 40 years old, (2) performing satisfactorily, (3) discharged, and (4) either replaced by substantially younger employee with equal or inferior qualifications or discharged under circumstances otherwise “giving rise to an inference of discrimination.” Once these facts are presented, the employer then can offer “legitimate non-discriminatory” reasons for taking action.

The case of *Cheal v. El Camino Hospital* is instructive for managers and supervisors considering a termination of an older employee based on performance. Cheal, 61, worked in the hospital’s nutrition services department for 21 years holding the position of dietetic technician registered, or “Diet Tech.” Her performance evaluations noted a rating of “Meets Standards,” which Cheal declared was the highest category of performance in the Hospitals’ evaluations. In the year before her termination a younger supervisor was brought in and began accusing Cheal of numerous shortcomings. After written warnings for failure to conform to the hospital’s dietary procedure and incorrectly preparing one or more menus for a patient, a hospital manager told Cheal that she was no longer considered competent to perform her duties as a diet clerk or diet tech, and that she could either take another position in the nutrition services department, accept a severance package, or be discharged. She was later terminated and sued for age discrimination.

The court noted in overturning a decision to dismiss the case that there was evidence that other younger employees had made similar mistakes in following protocol for dietary menu planning and were not disciplined. The court of appeal found there were triable issues of fact as to whether age discrimination occurred and allowed the case to go to a jury.

*Cheal* tells us that extra care should be taken in evaluating decisions to terminate older workers for performance. At a minimum, HR and/or higher level executives should review any decision to separate an employee in the protected age category and assess the potential for unequal treatment.


### Layoffs & Severance

If an organization sees the need for job elimination, restructuring or layoff, there are guidelines to follow in order to help avoid violating age discrimination laws. First, evaluate the proposed layoff or reduction-in-force list to determine who is in the protected age classification (40+). If a disproportionate number of employees on the list are over 40, further evaluation is needed regarding the reasons for selecting each candidate (this may be done with legal counsel to help protect confidentiality and privilege). If a single employee over 40 is being

laid off, HR or management should review the business reasons provided by management and confirm that age did not play any role in the decision making process. For instance, if an employee was selected because of their higher salary, were there other younger individuals not selected with similar salaries or less qualified than the older employee? Another red flag is terminating a 40+ employee and then later replacing all or a portion of the position with one or more individuals under 40. If severance is to be offered, employers seeking waivers of age related claims must follow notice and waiting time requirements under the Older Worker Benefit Protection Act. For instance, a severance agreement and release for a single employee over 40 must include, among other things, a specific reference to the ADEA, a notice advising the employee to consult an attorney before signing the document, 21 days to consider and seven days to revoke the

agreement after signing. Additional requirements apply when severance is offered to two or more employees over 40. Specifically, the agreement has to contain 45 days to consider the agreement (plus seven days to revoke after signing); a notice containing, the class, unit or group covered by the severance program along with eligibility requirements; job titles and ages of all employees who were selected and/or eligible for the severance/layoff; the ages of all individuals in the same unit or group who were not eligible or selected for the severance/layoff.

This process can be confusing, so careful drafting with legal input is recommended.

While age discrimination in the workplace has improved over the last 50 years, it continues to be the subject of litigation and requires vigilance in order to avoid running afoul of legal obligations. 

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# Resources on Ageism

Visit [leadingage.org/ageism](http://leadingage.org/ageism) for more information.



**Article: BEGINNING THE CONVERSATION ABOUT AGEISM**

In this [November 2016 LeadingAge article](#), Jane Sherwin introduces LeadingAge's new vision, an America freed from ageism.



**Research: RESEARCH BY BECCA LEVY**

Levy's work explores the [impact of stereotypes](#) on individual health and well-being.



**Resource guide: COMMUNITY DIALOGUE GUIDE-PROMPTING DISCUSSION ABOUT AGE AND AGEISM**

This [brief guide](#) offers suggestions and discussion prompts for planning and carrying out community dialogues.



**Video: ASHTON APPLEWHITE – LET'S END AGEISM (TED TALK)**

Author and anti-ageism activist Ashton Applewhite urges us to dismantle the dread and mobilize against the last socially acceptable prejudice in this [August 2017](#) TED Talk.

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# 2017 Webinars

## **Executive Leadership Webinar Series: Through 2017**

LeadingAge California's 2nd Tuesday Leadership Series: A Robust Dialogue with Thought Leaders is a complimentary webinar series that takes place on the 2nd Tuesday of each month from 11:30 a.m.-12:30 p.m. throughout the year. Exciting thought leaders will discuss current events and topics of interest to executive leaders throughout California. These webinars can be used as a starting point for further discussion with your leadership team on how these issues will impact your respective communities.

## **LGBT Issues in Senior Living Webinar Series, Oct. 26, 2017 - February 22, 2018**

This four-part webinar series presents an overview of the unique issues and challenges facing LGBT older adults and how senior living providers can best meet the needs of LGBT residents. Tim Johnston, director of SAGE's national training initiatives, will explore everything from marketing to LGBT consumers, LGBT history and culture, and best practices for working with LGBT older adults.

## **Driving 5-Star & RoP Implementation Through a QAPI Approach - Webinar Series: Through 2017**

LeadingAge California has partnered with Proactive Medical Review and several other LeadingAge state associations to offer a 13-part webinar series throughout 2017 to assist California nursing homes with implementing the new nursing home Requirements of Participation (RoPs) and with quality improvement.

The series will approach and review the new rules through the lens of QAPI (Quality Assurance and Performance Improvement), with the goal of promoting understanding of the new rules while improving both quality and 5-star performance.

## **Diversity and Dementia Care Webinar Series, Oct. 12, 2017 - April 12, 2018**

Join us for a series of six webinars that address how to provide care that recognizes values, and is responsive to diversity – in cultural, sexual orientation, family support, and more – among people with dementia. You will learn about key factors to consider in meeting the needs of older adults with dementia – who are not just increasing in number but also in diversity. Taught by Dr. Cordula Dick-Muehlke, this webinar series promises to empower you with the knowledge to achieve person-centered dementia care that effectively responds to under-addressed aspects of diversity in those you serve.

**Visit [www.leadingageca.org/events](http://www.leadingageca.org/events) for more details and to register!**