Employment Law Alert

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Employers May Favor Older Employees In Benefit Plans

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In a recent United States Supreme Court decision, the Court held that an employer can provide more favorable retirement benefits to its older employees over its younger employees. It is well-settled that the federal Age Discrimination in Employment Act (“ADEA”) protects workers aged 40 and over from discrimination in favor of younger workers. However, until now, the question of whether the ADEA prohibits employers from giving preferential treatment to older employees went unexamined by our country’s highest court. The Supreme Court, in General Dynamics Land Systems, Inc. v. Cline, No. 02-1080 (Feb. 24, 2004), held that the ADEA does not prohibit employers from treating their older workers more favorably, and as such, reverse age discrimination lawsuits cannot be brought under the ADEA. Similarly, as discussed further below, while the New Jersey Law Against Discrimination (“NJLAD”) differs from the ADEA in that New Jersey state courts have allowed younger employees to sue for reverse age discrimination, NJLAD does not affect the operation of terms or conditions of a bona fide retirement, pension, employee benefit or insurance plan. Thus, the General Dynamics decision likely would have been decided the same way under New Jersey state law. In the absence of a New Jersey case directly addressing this issue, however, New Jersey employers should consult with counsel before making changes to their retirement benefit plans.

In General Dynamics, the plaintiffs were employees in their 40’s who claimed they had suffered a form of reverse age discrimination because they were too young to receive full retiree health benefits, which General Dynamics was offering to workers age 50 and over. The employees at two of General Dynamics’ facilities were subject to a collective bargaining agreement. Before 1997, the company had made full retiree health benefits available to all employees who retired with 30 years of seniority with the company. However, the agreement the company and the union negotiated in 1997 stated that only employees who were at least 50 years old would be eligible for those benefits. Approximately 200 employees who were in their 40’s filed a class-action lawsuit against the company, alleging that the collective bargaining agreement violated their rights under ADEA because the employees lost the right to retiree health benefits solely on the basis of their age.
Although the Equal Employment Opportunity Commission (“EEOC”) agreed with the employees, the Federal District Court in Ohio dismissed the lawsuit, stating that no court had ever granted relief under the ADEA for reverse age discrimination. The district court held that the ADEA was intended to protect older workers who were discriminated against in favor of younger workers, and not to protect workers 40 and over who were treated differently because they were younger relative to their co-workers in the protected class. The employees appealed the dismissal, and in a divided panel decision, the Sixth Circuit Court of Appeals reversed the lower court’s ruling, holding that reverse discrimination claims were permitted under the ADEA, and reinstated the lawsuit. The appellate court found that Congress had intended to bar any discrimination based on age against workers 40 years of age and over, even if an older worker were favored by the discrimination. The company appealed that ruling, and the United States Supreme Court agreed to hear the case.

In late February, the Supreme Court reversed the appellate court’s decision, concluding that the ADEA was designed to protect workers 40 and over from discrimination because they were older relative to other workers. The Court held that the ADEA does not prohibit employers from favoring those relatively older over their younger colleagues. The Court first examined the purpose and history of the ADEA, and determined that the ADEA had been enacted to protect a relatively older worker from discrimination in comparison to a relatively younger person. The Court reasoned that, if Congress had been worried about protecting the younger worker against the older worker, it would not have ignored everyone under 40, to whom the ADEA does not apply. Thus, the Court found that the 40-year-old age threshold makes sense as encompassing a class of workers requiring protection against preference over their juniors, not as defining a class that might be threatened by favoritism toward seniors. The Court concluded succinctly that “[t]he enemy of 40 is 30, not 50.”

Unlike the ADEA, the NJLAD protects those aged 18 and over. Thus, in contrast to the ADEA, which protects only those employees aged 40 and over from being discriminated against in favor of a younger worker, the NJLAD also protects those workers who are discriminated against because they are “too young.” Indeed, several years ago, the New Jersey Supreme Court recognized that an employee whose employment was terminated because his employer thought he was “too young” for a vice president position had stated a cause of action. Therefore, the analysis the United States Supreme Court utilized in determining that ADEA does not support reverse age discrimination claims is inapplicable to the NJLAD. Consequently, despite the United States Supreme Court’s favorable ruling for employers generally, New Jersey employers will still need to be concerned about treating employees differently based upon their age, whether old or young.
However, the NJLAD is subject to certain express exceptions, including one with respect to employee benefits. The NJLAD is not intended to interfere with the operation of terms or conditions of a *bona fide* retirement, pension, employee benefit or insurance plan. Therefore, a complaint like the one the employees brought in *General Dynamics*, in which an employee claimed reverse age discrimination based on a denial of benefits, may result in the same outcome under the NJLAD. That is because, despite the fact that the NJLAD prohibits reverse age discrimination claims, the statutory language suggests that it does not apply to *bona fide* benefit programs. Nonetheless, New Jersey employers should tread carefully and seek the advice of counsel, before making distinctions based upon age or any other protected class in matters affecting the terms and conditions of employment, including retirement benefits. Multi-state employers should likewise consult with counsel with respect to the specific state laws that may apply to their workers.

If you have any further questions regarding how the federal or state anti-discrimination laws may affect your workplace, or any other employment practices or compliance issues, please do not hesitate to call Martha L. Lester, Chair of the Employment Law Practice Group, or David M. Wissert, Julie Levinson Werner, or Michele Contreras Sadati, members of the Employment Law Practice Group, at (973) 597-2500.

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