



U.S. Supreme Court Rejects “Reverse” Age Discrimination Claims: Employers Retain Flexibility on “Early Out” and Retiree Health Care Benefits

by: Shareen R. Luze

Within the last few weeks, the Supreme Court of the United States ruled that it is not discriminatory for an employer (and, in this case, the employees’ union) to favor older employees over younger employees who are also in the protected age class (over 40) under the federal Age Discrimination in Employment Act of 1967 (ADEA).

General Dynamics Land Systems and the union representing its employees negotiated the modification of a former labor agreement provision which provided health benefits to all subsequently retired employees, to limit the benefit to then-current workers who were at least 50 years old. A group of employees who were then at least 40 years old and protected by ADEA, but under 50 and therefore excluded from benefits, claimed that the agreement discriminated against them because of their age in violation of the ADEA.

The Court found that the ADEA’s text, structure, purpose, history and relationship to other federal statutes show that the statute was not intended to prevent an employer from favoring an older employee over a younger one. Therefore, General Dynamic Land Systems’ renegotiated union contract did not violate the ADEA, even though it treated older employees more favorably than younger employees who were also protected by the Act.

Most states have legislation similar to the ADEA which protects employees in a designated age group. State law varies, however, so individual state statutes must be considered before revising or implementing early retirement severance agreements or retiree health benefits under the General Dynamics decision. For example, in Minnesota, the Minnesota Human Rights Act (MHRA) contains a prohibition on unfair employment practices based on age if the person is over the age of majority (21), whereas, under the ADEA, the protection extends only

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Barak J. Babcock
Alec J. Beck
John F. Bowen
Marc T. Chrismer
Charles E. Feuss
Robin N. Kelleher
Shareen R. Luze
Gregory L. Peters
Thomas R. Revnew
Douglas P. Seaton
Robert Grossman,
of counsel

7301 Ohms Lane
Suite 320
Edina, MN 55439
Tel 952-896-1700
Fax 952-896-1704
www.seatonlaw.com

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to individuals who are at least age forty. A strict application of the test applied under the ADEA to the Minnesota statute would mean that an employee could only prove a case of age discrimination if he or she were replaced by someone outside the protected age class, which, in Minnesota, would be a person under the age of majority. Minnesota courts have determined that this would not be an appropriate result and have, therefore, adopted a test that requires that the employee claiming age discrimination be replaced by a younger employee (possibly significantly younger), but not necessarily by a person under the age of majority.

Minnesota courts have generally, but not always, followed the interpretations of the federal courts in discrimination cases when similar Minnesota laws are involved. Since the MHRA's provision on age discrimination is significantly different, it is not certain what Minnesota courts will do with the General Dynamics issue, although we believe they are likely to follow it.

The U.S. Supreme Court has opened the door for employers to reevaluate or initiate employment or retiree benefits for older employees, even when that may mean less favorable treatment for younger employees who are still within the protected class. However, applicable state laws should be consulted, and advice of labor/employment counsel obtained, prior to adopting any changes that may have an adverse effect on members of a protected class.

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