

CLIENT ALERT

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Supreme Court Rejects "Reverse" Age Discrimination Claim Under ADEA

In a decision that will allow employers to give preference to older employees when making decisions regarding benefits, in *General Dynamics Land Systems, Inc. v. Cline, et al.*, the U.S. Supreme Court held that the Age Discrimination in Employment Act of 1967 ("ADEA"), which prohibits discrimination against an individual age forty or older on the basis of that individual's age, does not forbid an employer's preference for older employees over younger employees.

Factual Background

In 1997, General Dynamics Land Systems, Inc. ("General Dynamics") renegotiated its collective bargaining agreement with the United Auto Workers, under which General Dynamics agreed to provide full retirement health benefits only to those retirees age fifty and over by July 1, 1997, whereas the prior agreement obligated General Dynamics to provide retirement health benefits to retirees who had thirty years of seniority. Dennis Cline, age forty-five, along with 195 other workers, ages forty to forty-nine, filed charges with the Equal Employment Opportunity Commission ("EEOC") claiming that the agreement violated ADEA because it discriminated against them with respect to compensation, terms, conditions, or privileges of employment, because of their age. The EEOC agreed. When the parties' efforts to resolve the matter informally failed, the plaintiff employees filed suit against General Dynamics under ADEA and state law. The district court dismissed the action, identifying the ADEA claim as one of "reverse discrimination," upon which, "no court had ever granted relief under the ADEA."

The Sixth Circuit

In a 2-1 decision, the Sixth Circuit Court of Appeals reversed, ruling that the plain

language of ADEA controlled, *i.e.*, ADEA's provision prohibiting "discriminat[ion] ... because of [an] individual's age," is so clear that if Congress had meant to limit ADEA's coverage to protect only the older worker against the younger, Congress would have said so. Although the Sixth Circuit acknowledged a conflict between this ruling and prior rulings from other Circuits, it criticized the prior rulings for paying too much attention to the "generalized language" of the Congressional findings incorporated in the ADEA.

The Supreme Court granted *certiorari* to resolve this conflict among the Circuits regarding the plain meaning of ADEA's prohibition of discrimination based on an individual's age.

The U.S. Supreme Court

The Supreme Court reversed the Sixth Circuit's decision, holding that ADEA's text, structure, purpose, history, and relationship to other statutes illustrated that Congress intended "to protect a relatively old worker from discrimination that works to the advantage of the relatively young."

In reaching this decision, the Supreme Court reasoned that the Sixth Circuit's expansive view of ADEA's prohibition did not "square with the natural reading of the whole provision prohibiting discrimination." The Supreme Court recognized that "Congress's interpretive clues" spoke almost unanimously to an understanding of discrimination as directed against workers who are older than those receiving better treatment. From this premise, the Supreme Court proceeded to reject all three arguments asserted by the plaintiff employees and the EEOC in favor of their position that ADEA's age discrimination prohibition works both ways.

First, the Supreme Court held that the argument of the employee plaintiffs and the

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EEOC — that ADEA's age discrimination prohibition works both ways — was flawed in two respects. Initially, it erroneously assumes that the word "age" has the same meaning wherever it appears in ADEA, and, second, that argument for uniform usage ignores the cardinal rule that statutory language must be read in context "since a phrase gathers meaning from the words around it." Simply put, the word "age" has different meanings depending on where it appears within the text of ADEA. Specifically, in the context of ADEA's prohibition of "discrimination against any individual ... because of [an] individual's age," "age" means "old age" when teamed with "discrimination." By contrast, "age" in the context of the affirmative defense when age is a bona fide qualification readily shows that "age" means "comparative youth."

Second, although the Supreme Court had given weight in the past to Senator Yarborough's views on ADEA construction, in light of his status as a sponsor of the statute, his single remark made during the 1967 Congressional debates and hearings

on ADEA that "[t]he law [ADEA] prohibits age being a factor in the decision to hire, as to one age over the other, whichever way [the] decision went," could not stand, "against a tide of context and history, not to mention 30 year of judicial intervention producing no apparent legislative qualms."

Lastly, the Court found no need to decide how much deference, if any, should be given to the EEOC's regulation interpreting ADEA's age discrimination prohibition, 29 CFR 1625.2(a)(2003) ("[I]f two people apply for the same position, and one is 42 and the other is 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor.") because it "is clearly wrong." Deference to an agency's interpretation is only necessary when "the devices of judicial construction have been tried and found to yield no clear sense of congressional intent." The Supreme Court found no such ambiguity here, stating that "regular interpretive method left no question." In this regard, the Supreme Court summarized that the word "age" as used in ADEA's provision

prohibiting "discriminat[ion] ... because of [an] individual's age," takes on a definite meaning within ADEA, a statute it viewed as "structured and manifestly intended to protect the older from arbitrary favor for the younger."

Conclusion

While General Dynamics may allow an employer to favor older employees over younger employees without violating ADEA, it is important to recognize that the case was decided in the context of employee benefits. Prior to making any decision with regard to an employee or group of employees based on age, albeit a decision favoring older employees, a prudent employer will consult with counsel to review pertinent considerations, including, but not limited to whether the decision will violate ADEA and/or applicable federal and state anti-discrimination laws.

We send these Alerts to our clients and friends to provide information on recent developments in the law. The Alerts, however, should not be relied on for legal advice in any particular matter.

IMMIGRATION NEWSFLASH

Personal Appearances Required For U.S. Passport Applicants Under 14 Years Of Age

The U.S. Department of State released public notification on February 5, 2004 that minors under the age of 14 who wish to apply for a U.S. passport will now be required to appear in person at a U.S. passport agency office. In addition, their parents will be required to submit documentation of parental relationship and consent in addition to other documentation typically required for passport issuance. This new rule covers all regular, official and diplomatic passports for children under the age of 14, even if the child previously held a U.S. passport. The purpose behind the new regulation, according to the Bureau of Consular Affairs, is to enhance the accurate identification of passport applicants and to provide assistance in the prevention of international child abductions and trafficking.

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