



Employment Law News Alert

Informing clients and friends of the firm about legal trends, news or items of interest.

Supreme Court Places the Burden Squarely on Plaintiffs to Prove Age Discrimination Under the ADEA



On June 18, 2009, the Supreme Court handed down an important decision placing the burden on plaintiffs in Age Discrimination cases (“ADEA”). Writing for the Court, Justice Thomas clarified that the ADEA is not subject to the same burden shifting analysis as Title VII.

NOW, an employee has to prove that age was **the only reason (not a reason) he or she was fired, demoted or suffered some other work setback.**

Petitioner, Jack Gross, worked for FBL Financial since 1971 and as of 2001, he was the Claims Administration Director. At age 54, he was reassigned to a project coordinator position and many of his duties were shifted to a younger employee who had reported directly to Gross. Gross filed suit alleging that his reassignment was based, in part, on his age. The jury was instructed that it must find for Gross if it found that his “age was a motivating factor” for what Gross characterized as a demotion to project coordinator. The jury was also instructed that age would qualify as a “motivating factor if it played a part or role in [FBL’s] decision to demote” him. Furthermore, the jury was instructed that FBL had to prove by a “preponderance of the evidence” that it would have demoted Gross regardless of his age. FBL challenged the jury instructions on appeal.

The issue in this matter was whether it was proper in an ADEA matter to shift the burden of persuasion to the defendant in a mixed motive case. Mixed motives cases are those where the employer’s decision is based on both permissible and impermissible considerations. Specifically, in Title VII cases, once the plaintiff demonstrates that discrimination was a “motivating” or “substantial” factor, the burden of persuasion then shifts to the employer to show that it would have taken the same action regardless of the impermissible consideration.

The Court in this matter ruled that the burden shifting analysis under Title VII does not apply to ADEA cases. The court reasoned that Title VII is materially different from the ADEA with respect to the burden of persuasion. The ADEA provides that “[i]t shall be unlawful for an employer . . . to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age.” The Court, relying on the “because of” portion of the ADEA found that an employee’s age may not be the “reason” for the employer’s action. “It follows, then, that under 623(a)(1), the plaintiff retains the burden of persuasion to establish that age was the ‘but-for’ cause of the employer’s adverse action.” Therefore, a plaintiff must prove by a preponderance of the evidence (which may be direct or circumstantial) that age was the “but-for” reason for the employer’s adverse action.

This is an important decision for employers because, at least in ADEA mixed motive cases, it removes the burden of persuasion from the employer to demonstrate that it would have made the same decision regardless of the impermissible consideration of the employee's age. After the passage of Ledbetter and the expansion of ADA and the FMLA this year, it's nice to see a win for employers.

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Esperanté Building • 222 Lakeview Avenue - Suite 210 • West Palm Beach, FL 33401

Phone: (561) 659-3300 • Fax: (561) 659-1911

www.schwarzberglaw.com