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LEGAL ALERT



Legal Alert: Court Rules in Favor of Employer on Corporate Pilots' Age Discrimination Claims

5/12/2008

A federal court in Texas has held that a group of corporate pilots failed to show they were subjected to age discrimination when they were forced to retire at age 60. See *EEOC v. Exxon Mobil Corp.* (N.D. Tex, April 28, 2008). In ruling for the employer, the court held that the employer's policy is a bona fide occupational qualification (BFOQ) and does not violate the Age Discrimination in Employment Act (ADEA). The court also held that the employer's reliance on the Federal Aviation Administration (FAA)'s age 60 rule is probative of a BFOQ because the work performed by the corporate pilots is congruent with the work performed by commercial pilots in all material ways.

In this case, several pilots who were required by company policy to retire when they turned 60 filed charges of discrimination with the EEOC, claiming their terminations violated the ADEA. The ADEA prohibits employers from discriminating against employees who are age 40 and older on the basis of age; however, the law permits an employer to discharge an employee on the basis of age when age is a BFOQ.

The EEOC found that the company discriminated against the pilots in violation of the ADEA and subsequently filed suit on behalf of the pilots, seeking, among other things, an order prohibiting Exxon from enforcing its mandatory retirement policy. In our September 2007 Airline Newsletter, we discussed the court's decision denying this request.

At the time the lawsuit was filed, Exxon's mandatory retirement policy mirrored the FAA's rule for commercial pilots, which prohibited them from flying past age 60. Since the lawsuit was filed, Congress passed the Fair Treatment for Experienced Pilots Act (FTEPA), which raised the mandatory retirement age for commercial pilots to 65, subject to certain limitations for international flights. Exxon has since altered its retirement policy to mirror the new rule enacted by Congress.

In its recent order granting judgment in favor of Exxon, the court noted that the passage of the FTEPA does not change its analysis from the earlier order denying the preliminary injunction. In order to prevail on a BFOQ defense, an employer must show that the age limit is reasonably necessary to the essence of the business. The employer must also demonstrate that all or substantially all of the individuals excluded from the job are in fact disqualified, or that some excluded individuals possess a disqualifying trait that cannot be ascertained except by reference to age because it is

impossible or highly impractical to deal with employees on an individualized basis.

Exxon argued that its reliance on the FAA's rule prohibiting pilots from flying after they reach a certain age is probative evidence that its mandatory retirement age is a BFOQ. In addressing this issue, the court examined the congruity between the occupations at issue and the weight of the evidence supporting the FAA rule's rationale. Here, the court focused on whether the safety concerns that motivate the FAA rule are equally applicable to Exxon and its aircraft.

The court noted that the aircraft flown by Exxon pilots, including four Bombardier Global Express jets and five Bombardier Challenger 300 jets, are similar in terms of speed and range to those flown by commercial pilots. The court also found that Exxon's pilots are substantially similar to commercial pilots in terms of experience, qualifications and job responsibilities. Further, the court held that the fact that Exxon's aviation department may have a different purpose than commercial airlines is not a material difference.

Accordingly, the court held that the vast majority of safety concerns that apply to commercial airline pilots apply with equal force to Exxon's pilots. "Most fundamentally, a concern that as a pilot's skills deteriorate with age the risk of an accident increases applies to both commercial pilots and Exxon's pilots."

The court concluded that the work performed by Exxon's pilots is congruent with the work performed by commercial airline pilots in all material ways. Consequently, the court found the FAA's age-related rule to be highly probative of Exxon's BFOQ defense. Thus, the court held that Exxon established its BFOQ defense and, accordingly, granted judgment in favor of the company on the pilots' age discrimination claims.

If you have any questions regarding this decision or other labor or employment related decisions, please contact the Ford & Harrison attorney with whom you usually work.