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LEGAL ALERT



## Legal Alert: Supreme Court Rejects "Mixed Motive" Age Discrimination Claims

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The U.S. Supreme Court has issued a decision that could have a significant impact on employers defending Age Discrimination in Employment Act (ADEA) claims. In *Gross v. FBL Financial Services, Inc.* (June 18, 2009), a 5-4 decision, the Court held that to prevail on an ADEA claim, the individual claiming discrimination must prove that age was the "but-for" cause of the alleged adverse employment action – i.e., that the employer would not have taken the adverse employment action but for the individual's age.

This decision means that individuals suing for disparate treatment under the ADEA can no longer prevail by showing that the employer acted with "mixed motives," one of which was the individual's age. Before this decision, many courts permitted individuals bringing age discrimination claims to show that age was one of the reasons for the adverse employment action and required employers to prove that they would have taken the adverse action regardless of age. By rejecting this burden-shifting process, the Court's decision should make it easier for employers to defend ADEA claims.

In *Gross*, the Court distinguished ADEA claims from discrimination claims brought under Title VII. The Court first recognized mixed motive claims in Title VII cases in its 1989 decision in *Price Waterhouse v. Hopkins*. In 1991, Congress amended Title VII to specifically authorize discrimination claims in which an improper consideration was "a motivating factor" for an adverse employment decision. Congress did not, however, amend the ADEA when it amended Title VII to authorize mixed motive claims. Because of this, and based upon the language of the ADEA, which prohibits discrimination "because of" an individual's age, the Court declined to adopt the mixed motive burden-shifting framework for ADEA cases.

Accordingly, the Court held, "a plaintiff bringing a disparate-treatment claim pursuant to the ADEA must prove, by a preponderance of the evidence, that age was the 'but-for' cause of the challenged adverse employment action. The burden of persuasion does not shift to the employer to show that it would have taken the action regardless of age, even when a plaintiff has produced some evidence that age was one motivating factor in that decision."

### Employers' Bottom Line:

This decision is good news for employers because it likely will make it easier to defend age discrimination claims by clarifying that the complaining individual has the burden of proving that the employer subjected him or her to

an adverse employment action because of age.

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