



LABOR & EMPLOYMENT DEPARTMENT

ALERT

NEW JERSEY'S HIGHEST COURT PROVIDES ADDITIONAL JOB PROTECTION TO WORKERS OVER AGE 70 WHO ARE UNDER CONTRACT

By Lisa I. Fried-Grodin

On June 1, the New Jersey Supreme Court held that refusing to renew the contracts of employees over the age of 70 based on their age violates the New Jersey Law Against Discrimination (NJLAD). In issuing its ruling in *Nini v. Mercer County Community College*, the court held that an exception under the NJLAD that permits employers to refuse to “accept for employment” employees over the age of 70 (over-70 exception) is limited to initial hires and does not apply to the renewal of contracts for existing employees of that age. Rather, the court held that refusing to renew the contract of an employee over the age of 70 based on age is equivalent to terminating or forcing that employee to retire based on age, which is prohibited under the NJLAD.

Although the court noted that the over-70 exception (which also permits employers to refuse to promote employees over the age of 70) was created to relieve employers from the financial and organizational costs associated with hiring and promoting individuals who are not likely to be long-term employees, the court rejected Mercer County Community College’s argument that an employee with an existing contract stands in the same shoes as a job applicant when his or her employment contract expires. Rather, the court noted that as to protection under the NJLAD, an existing employee with

an employment contract is similarly situated to an existing at-will employee, not a job applicant. Extending the over-70 exception to contract employees would permit disparate treatment of contract employees compared to at-will employees, the court said, and would permit employers to place their aging employees under contract to deprive them of the NJLAD’s protections.

Rose Nini, a dean for Mercer County Community College who had worked for the college for 26 years, was 72 years old when the college informed her that it would not renew her contract. She sued the college, alleging age discrimination and retaliation. Nini alleged in her lawsuit that when the college president notified her that her contract was not being renewed, he also told her she had no right to be working at her age and that people who have been in a job for 25 years “lose their effectiveness.” The college alleged that it did not renew Nini’s contract because she micromanaged her staff, produced inconsistent and unclear financial reports and was untrustworthy.

The lower court dismissed the claim, treating the college’s nonrenewal decision as a decision not to rehire her, which it held was permissible under the over-70 exception. The New Jersey Appellate Division reversed on the ground that the over-70 exception does not equate

contract non-renewal with hiring a new employee. In affirming the Appellate Division's decision, the state's highest court noted that the NJLAD's prohibitions against age-based termination and mandatory retirement of workers based on age demonstrate the legislature's intention to protect existing, older employees "from being forced out of the workforce based solely on age."

There has been divergent case law regarding the scope of the over-70 exception. Now the New Jersey Supreme Court has made it clear that employers cannot

simply refuse to renew the contract of an employee over the age of 70 because of his or her age. The case also highlights the importance of having legitimate, non-discriminatory reasons for employment decisions.

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