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LEGAL ALERT



Legal Alert: Supreme Court Finds State Disability Pension Plan does not Violate ADEA

6/25/2008

The U.S. Supreme Court recently held that Kentucky's disability retirement program, which imputes years of service to employees who become disabled **before** becoming eligible for a regular pension, but does not do so for employees who become disabled **after** becoming pension eligible, does not violate the Age Discrimination in Employment Act (ADEA). See *Kentucky Retirement Systems v. EEOC* (June 19, 2008). In its five to four decision, the Court rejected the argument of the Equal Employment Opportunity Commission (EEOC) that such a plan automatically discriminates because of age. The Court found that Kentucky's plan distinguishes among employees based on pension status, not age. In such cases, a person challenging the plan must present evidence that the different treatment was "actually motivated" by age, not pension status, which the EEOC failed to do.

Background: Under Kentucky's retirement plan, policemen, firemen and other employees in "hazardous positions" can retire after either working for 20 years or working for 5 years and reaching age 55. The pension under the normal retirement plan is calculated by multiplying the employee's years of service times 2.5% times final pre-retirement pay.

Under the disability retirement provision, an employee who has worked for five years or becomes disabled in the line of duty is eligible for immediate retirement. In calculating that employee's benefits, the state adds a certain number of ("imputed") years to the employee's actual years of service. The number of imputed years equals the number of years that the disabled employee would have had to continue working in order to become eligible for normal retirement benefits, i.e., the years necessary to bring the employee up to 20 years of service or to at least 5 years of service when the employee would turn 55 (whichever number of years is lower). However, an employee who continues to work beyond the normal retirement age and becomes disabled is not entitled to imputed years of service in making the pension calculation.

Charles Lickteig, an employee who continued to work after reaching retirement age and then became disabled, filed an EEOC charge claiming the way the state calculated his pension payments was discriminatory. The EEOC subsequently sued the state, claiming the plan violates the ADEA because it imputes years of service to employees who become disabled before reaching age 55, but not to those who become disabled after reaching this age. The EEOC claimed the only reason the state refused to impute years of service in calculating Lickteig's benefits was because of his age,

which violates the ADEA.

The trial court ruled in favor of the state and the Sixth Circuit reversed this decision. The Supreme Court agreed to review the case and reversed the Sixth Circuit's decision.

Supreme Court Decision

In holding that Kentucky's disability pension plan does not violate the ADEA, the Court relied on its earlier decision in *Hazen Paper Co. v. Biggins*, 507 U.S. 604 (1993), in which it held that where a plaintiff claims age-related "disparate treatment" – that is, intentional discrimination because of age – the plaintiff must prove that age actually motivated the employer's decision. The Court held that Kentucky's pension plan permissibly makes age, in part, a condition of pension eligibility.

The Court further held that, considering the following circumstances, the disability pension plan's difference in treatment was not actually motivated by age:

- The disability retirement benefit is offered to all hazardous position workers on the same nondiscriminatory basis when they are hired.
- There was a "clear non-age-related" rationale for the disparity at issue in this case – to treat "a disabled worker as though he had become disabled after, rather than before, he had become eligible for normal retirement benefits."
- Age played a part in the disability calculation only because the normal retirement rules themselves permissibly include age as a consideration.
- The disability pension plan could work to an older employee's advantage in some situations – a fact that reinforced the determination that the plan is not an effort to discriminate because of age.
- The plan does not rely on any of the sorts of stereotypical assumptions that the ADEA sought to eradicate.
- If the plan is found to violate the ADEA, the state would either have to make severe cuts in benefits provided to employees who become disabled prior to becoming pension eligible or it would have to increase the benefits available to disabled, pension-eligible workers, while lacking any clear criteria for determining how many extra years to impute for those pension-eligible workers who already are 55 or older.

Taking all of these factors into consideration, the Court held that the plan does not, on its face, create treatment differences that are "actually motivated by age." The Court emphasized that this decision does not change the rule that a statute or policy that facially discriminates based on age is sufficient to show disparate treatment under the ADEA. Instead, this case dealt with differential treatment based on pension status, where the pension status, as permitted by the ADEA, turned, in part, on age.

The Court rejected the EEOC's argument that the disability pension plan violates the requirements of the Older Workers Benefit Protection Act (OWBPA), which amended the ADEA to prohibit age-based disparities in the provision of employee benefits unless such disparities are justified by

cost-savings. The Court found the OWBPA's cost-justification requirement inapplicable to its determination that the plan's differentiation among employees was not actually motivated by age. Additionally, the Court was not persuaded by the EEOC's regulation and compliance manual provision, which state that such plans automatically violate the ADEA.

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.