

Employment Practices Liability

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SCOTUS Holds That the ADEA, Like the FLSA, Applies to All Public Employers Regardless of Size

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On November 6, 2018, in a unanimous 8-0 decision, the United States Supreme Court affirmed the judgment of the Ninth Circuit Court of Appeals in *Mount Lemmon Fire District v. Guido*, that the term “employer” under the Age Discrimination in Employment Act (ADEA) as an entity that employs more 20 or more employees and state or local government entities regardless of the number of employees. This language constitutes a distinction from the definition of employer from other civil rights statutes (for example, the Americans With Disabilities Act and Title VII of the Civil Rights Act of 1964), and therefore, we are left with differing definitions of employer applicable to state or municipal entities.

Factual Backgrounds: Plaintiffs John Guido and Dennis Rankin, full-time firefighters, were terminated by the defendant, which was faced with a budget shortfall. Plaintiffs, at 46 and 54 years old, respectively, were the two oldest full-time firefighters in the District. They sued the defendant, alleging a violation of the Age Discrimination in Employment Act of 1967 (ADEA), as amended. The defendant filed a motion to dismiss on the grounds that it did not qualify as an employer under the ADEA because it had too few employees. The District Court agreed and granted summary judgment for the defendant, and the Ninth Circuit reversed.

Court’s Analysis: The United States Supreme Court affirmed the Ninth Circuit’s decision and held that the twenty-employee minimum of the ADEA does not apply to political subdivisions. Crucial to the Court’s holding was the determination that the words “also means” in § 630(b) are additive rather than clarifying. Defendant argued that the ADEA should be interpreted in the same way as Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., which defines an employer, either public or private, as “a person engaged in an industry affecting commerce who has fifteen or more employees.” Unlike Title VII, however, where Congress amended the act to include state and local government entities by adding them to the definition of “person” under the statute, the Congressional amendment to the ADEA added public entities directly to the definition of employer.

Thus, the Court held that “§ 630(b)’s two-sentence delineation, and the expression, ‘also means’ at the start of the second sentence, combine to establish separate categories: persons engaged in an industry affecting commerce with [twenty] or more employees; and States or political subdivisions with no attendant numerosity limitation.” The Court noted that the same 1974 enactment that amended the ADEA also amended the Fair Labor Standards Act (FLSA) to reach all government employers regardless of their size. The Court determined that the FLSA was a better comparator for the ADEA than Title VII.

Conclusion: This decision means that public employers will not be able to dispose of suits brought pursuant to the ADEA on the basis that it employs fewer than twenty employees. Previously, the EEOC had interpreted the ADEA to apply to small public employers, but only the Ninth Circuit among circuit courts had held the same. Of course, it is critical for employers to refrain from terminating or otherwise discriminating against employees on the basis of age or any other protected class. Employers should seek legal advice if there is any question as to the legality of an employment decision.

Robin Kallor is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including the selection process, discrimination and harassment related issues and frequently conducts neutral workplace investigations. If you have questions about this legal update, please contact us at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Carolyn Field, CIRMA Communications Supervisor at cfield@ccm-ct.org.

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