



Supreme Court ADEA Cases Address Disability Pension Provision and Downsizing

The Supreme Court recently handed down two rulings on disparate treatment and disparate impact claims brought under the Age Discrimination in Employment Act (ADEA). In one case, the Court held that a retirement plan does not automatically violate ADEA by adding additional years of service only for employees who become disabled before becoming eligible for normal retirement benefits. In an unrelated case, the Court ruled that employers – not employees – have the burden of showing that layoff or other employment decisions that disproportionately affect older workers are not based on age and proving that their decisions are justified by “reasonable factors other than age.”

Kentucky Retirement Systems v. EEOC

In [Kentucky Retirement Systems v. EEOC](#), the Equal Employment Opportunity Commission challenged the Kentucky public employee retirement plan, alleging that it discriminates against employees on the basis of age. For employees in hazardous jobs, the plan provides for normal retirement eligibility after 20 years of service or after at least five years of service if the employee is age 55 or older. If an employee becomes disabled before normal retirement eligibility, the plan provides for disability retirement benefits based on actual years of service plus additional years of service up to normal retirement age (capped by the employee's actual years of service). Employees who become disabled after becoming retirement-eligible are not given additional years of service. The EEOC argued that the plan's differing treatment of individuals based on their pension status is discriminatory on its face. The U.S. Court of Appeals for the Sixth Circuit agreed, holding that the plan's benefit formula violated ADEA.

Supreme Court Upholds the Plan Provision

Although ADEA generally prohibits an employer from discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment due to age, it expressly allows age to be taken into account when designing pension plans. In *Kentucky Retirement Systems*, the Court concluded that a pension plan that conditions pension eligibility in part on age and treats employees differently based on their pension status for purposes of a disability benefit does not automatically discriminate on the basis of age. For an ADEA

claim to succeed, there must be proof that age – not pension status – actually motivated the employer’s decision (i.e., here, to limit additional years of imputed service).

The Court found that pension status was not a proxy for age in the Kentucky plan, which had a “clear non-age rationale” for the disparity (i.e., to treat disabled employees as though they had reached normal retirement status before becoming disabled), and so did not violate ADEA.

The Court identified several factors to consider in determining whether the differential treatment based on pension status is in fact discrimination because of age –

- whether the specific benefit is offered to all employees on the same nondiscriminatory terms when they are hired, regardless of age
- whether there is a clear non-age rationale for the plan design or policy
- whether the benefit or policy only disadvantages older workers or whether the disadvantage results from a non-age-related factor, such as years of service
- whether the underlying assumptions in designing the plan or employment policy are based on negative assumptions relating to age or assumptions relating to non-age factors.

Significantly, this decision does not change the general rule that a policy that facially discriminates on the basis of age is sufficient to show disparate treatment under ADEA. Rather, as the Court emphasized, it decided a very distinct case of differential treatment based on pension status which turns, in part, on age.

BUCK COMMENT. *This case clarifies that differential treatment based on pension status does not automatically correlate with age discrimination, but recognizes that discrimination can be shown where pension status is a proxy for age or a plan design is impermissibly motivated by age. To minimize potential exposure to age discrimination claims, employers should exercise particular caution in structuring benefit plans or programs that take age into account, such as phased retirement programs, or that base eligibility on pension status.*

Meacham v. Knolls Atomic Power Laboratory

Clifford Meacham and other employees were laid off from Knolls Atomic Power Laboratory as a government project wound down. To prepare for required cuts in Knolls’ workforce, its managers were asked to rate their subordinates on “performance,” “flexibility,” and “critical skills.” Those scores, coupled with points for years of service, were then used to determine who would be laid off. Of the thirty-one salaried employees who were laid off, thirty were over age 40. The employees sued under ADEA, alleging that Knolls designed its reduction-in-force process to eliminate older employees and that the process had a disproportionately negative impact on employees over age 40. The employees succeeded on the disparate impact claim, but the U.S. Court of Appeals for the Second Circuit reversed.

The Supreme Court's Ruling

ADEA prohibits employment decisions that disparately impact older employees unless based on “reasonable factors other than age” (RFOA). In a 7-1 decision, the Supreme Court concluded in [Meacham v. Knolls Atomic Power Laboratory](#) that the RFOA exception is an affirmative defense, which the employer must prove by showing that its actions were motivated by non-age factors and that those factors were reasonable. Significantly, the Court declined to decide whether a policy or practice that confers broad discretion on individual managers to make layoff selections in a reduction-in-force may constitute an RFOA.

BUCK COMMENT. *As a result of this decision, employers can expect increased scrutiny of layoff and other employment decisions, particularly those that include large discretionary and subjective components. Because age – unlike race or sex – often correlates with reasonable employment factors, it may be harder and more costly for employers to defend ADEA claims going forward.*

Conclusion

The *Kentucky Retirement Systems* case provides helpful insight into the ADEA issues involved with pension plan design and will be particularly helpful when employers review existing plans and consider retirement program changes. The *Meacham* case underscores the importance of careful advance planning of a reduction-in-force, including the employee selection process. Buck's consultants are available to discuss how these rulings may impact your current and future plan designs or other employment arrangements and to assist you in structuring employment policies and practices to support downsizing and other employment actions.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.