THOMSON REUTERS
Westlaw®

SCOTUS settles circuit split over scope of age bias law

By Tricia Gorman

JULY 30, 2019

The Age Discrimination in Employment Act applies to state and local government employers regardless of their size, the U.S. Supreme Court ruled unanimously in November, resolving mixed federal circuit court findings.

Mount Lemmon Fire District v. Guido et al., No. 17-587, 139 S. Ct. 22 (U.S. Nov. 6, 2018).

The 8-0 decision affirmed a 9th U.S. Circuit Court of Appeals ruling that said the ADEA's 20-worker minimum threshold on private employers did not apply to public employers. *Guido v. Mount Lemmon Fire Dist.*, 859 F.3d 1168 (9th Cir. 2017).

Justice Brett Kavanaugh, who had just been confirmed in October, did not take part in the high court ruling.

While the decision settled a circuit split, Cooley LLP special counsel Helenanne Connolly suggested the ruling may enhance individual liability under the ADEA.

The decision in the 9th Circuit was different from that of appellate courts in four other circuits — the 6th, 7th, 8th and 10th — which previously ruled that the 20-employee minimum did apply to state and local government employers.

The high court, in a Nov. 6 opinion written by Justice Ruth Bader Ginsburg, agreed with the 9th Circuit that the language in the ADEA's definition of a covered employer showed that Congress intended for the 20-employee limit to apply to private and not public employers.

This means that Arizona's Mount Lemmon Fire District, which had 19 employees at the time it was sued, must still follow ADEA guidelines.

The court also rejected claims by the Fire District that applying the ADEA, 29 U.S.C.A. § 621, to smaller public entities would open them to "daunting financial exposure" and force cuts to vital public services.

AGE DISCRIMINATION CLAIMS

Fire Capts. John Guido and Dennis Rankin sued the Fire District in April 2013 in the U.S. District Court for the District of Arizona, alleging they had been terminated in 2009 because of their age.

At the time they were let go, Guido, 45, and Rankin, 50, were the district's oldest full-time employees, according to their suit, which sought compensatory damages for lost wages under the ADEA.

The issue of age discrimination soon became secondary to the question of whether the Fire District could be sued under the ADEA because it was a public entity with fewer than 20 employees.

U.S. District Judge James A. Soto granted summary judgment to the Fire District in 2014, finding that it did not qualify as an employer under the ADEA because it had fewer than 20 full-time workers. *Guido v. Mount Lemmon Fire Dist.*, No. 13-cv-216, 2014 WL 12725625 (D. Ariz. Dec. 12, 2014).

Guido and Rankin appealed, arguing that the law's 20-employee minimum applied only to private companies, not to state or local government employers.

A 9th Circuit panel agreed, reversing the trial court and disagreeing with decisions in the four other circuits.

It found that when Congress amended the ADEA in 1974 to include public employers and update its definition of an "employer," it applied the 20-worker minimum only to its definition of private "person[s] engaged in an industry affecting commerce." The

section defining public employers does not include a similar threshold, the appeals court said.

The Fire District appealed to the U.S. Supreme Court. In addition to asking the high court to resolve the circuit split regarding the ADEA, the fire company suggested the 9th Circuit's findings could negatively affect state agencies.

The high court conducted a detailed reading of the ADEA and determined that the employer provision was consistent with the court's definition of coverage under Title VII, Parker Poe partner Jonathan Crotty said.

Subjecting small state agencies to liability under the ADEA would devastate community service providers, the fire company said.

CONSISTENCY WITH TITLE VII

Regarding the initial assertion that the firefighters were let go because of their age, "based on this decision, state and local government entities should analyze the potential impact of age on employment decisions, regardless of the size of the employer," said Parker Poe partner Jonathan Crotty, who was not involved in the case.

The high court also conducted a detailed reading of the ADEA and determined that the employer provision was consistent with the court's definition of coverage under Title VII, Crotty said.

While the decision settled the circuit split, Cooley LLP special counsel Helenanne Connolly suggested the ruling may enhance individual liability under the ADEA.

The court did not fully address Mount Lemmon's contention that if the statutory language "adds a category of employer" not covered by the law's minimum threshold, then individual supervisors may be held independently liable for ADEA violations, noted Connolly, who also was not involved with the case.

"It is not hard to imagine an enterprising plaintiff employing the court's interpretation of the definition and asserting that individual employees constitute 'employers' and may be held individually liable for the full menu of ADEA damages," she said.

This article first appeared in the July 30, 2019, edition of Westlaw Journal Employment.