

## U.S. Supreme Court Rejects Reverse Age Discrimination Theory

In a strongly worded, broadly reaching opinion, the Supreme Court yesterday held that it's lawful to favor older workers over younger workers, even if the younger workers are age 40 or above, and thus protected by the Age Discrimination In Employment Act ("ADEA"). That federal law prohibits employers from "discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." The Supreme Court's decision, *General Dynamics Land Systems, Inc. v. Cline* (Feb. 24, 2004), means that age-based distinctions in employee benefits and other facets of employment are lawful under the ADEA, so long as they benefit relatively older employees within the protected age group.

### The Facts And Decisions Below

General Dynamics employees were represented by the United Auto Workers. General Dynamics and the UAW had negotiated a collective bargaining agreement which eliminated the company's duty to provide health benefits to subsequent retirees, except those at least 50 years old as of the agreement. Employees ages 40-49 sued, claiming that the agreement violated ADEA's prohibition against distinctions "because of ... age."

A federal district court in Ohio labeled the plaintiffs' claim one of "reverse age discrimination," and ruled that the ADEA recognized no such claim. The U.S. Court of Appeals for the Sixth Circuit reversed, holding that the statute's plain language prohibited discrimination of any kind against employees age 40 or above – whether the beneficiaries of that discrimination were older or younger workers in the protected age group. The Sixth Circuit also relied on an interpretive regulation by the EEOC prohibiting age-based distinctions of any kind. The appeals court noted that although its ruling was contrary to prior decisions by the First and Seventh Circuit Courts of Appeals, those other courts had paid too much attention to the "hortatory, generalized [legislative] findings incorporated in the ADEA."

### The Supreme Court's Majority Opinion

In a sweeping opinion authored by Justice Souter, a six-justice majority ruled that the Sixth Circuit had erred: that Congress had obviously intended to protect older employees *as against younger employees*, and that the 40-49 year-olds at General Dynamics could not rightly claim they were victims of age discrimination. For the past decade or more, the Supreme Court has been reluctant to rely on legislative history as the primary tool for statutory construction. In this case, however, Justice Souter, joined by

Justices Breyer, Ginsburg, O'Connor, Rehnquist, and Stevens, began by analyzing the minutiae of ADEA legislative history – statements from single members of Congress during 1967 hearings. The majority went on to discuss the ADEA's purpose, as reflected in introductory provisions of the statute itself. Later, the Court pointed to "common experience" and "social history" as additional grounds for its conclusion that the ADEA protects older workers as against younger workers but not vice versa. Finally, the majority repudiated the EEOC's position, refusing to defer to the agency since its interpretation was "clearly wrong."

### **The Dissents**

Justice Scalia wrote a brief dissent, citing the other dissent with approval and arguing for deference to the EEOC's "entirely reasonable" interpretation. In a lengthy dissent, Justice Thomas, joined by Justice Kennedy, opined that the majority had erred in both its holding and its analysis. For these dissenters, a proper analysis begins and ends with the plain language of the statute. Justice Thomas found further (albeit unnecessary) support for the plaintiffs' position in EEOC's interpretation, as well as in a statement by a sponsoring senator indicating the ADEA should be viewed as a two-way street: one protecting old against young and young against old alike. The dissenters also criticized the majority's use of the phrase "social history" – a seemingly new and undefined method of statutory interpretation.

### **Significance For Employers**

- The Court's decision removes doubts about the validity (under ADEA) of age-based retiree medical distinctions favoring older workers. Thus, ERISA and other legal questions aside, a company can limit retiree medical benefits to a subset of older employees in the protected age group without violating the ADEA.
- Similarly, the Court's decision validates age-based distinctions favoring older workers in the context of early retirement or exit incentive programs. These programs, sometimes called voluntary separation programs (or "VSPs"), commonly offer enhanced severance as a retirement inducement to older workers. The latest ruling clarifies that those benefits could be limited to an older cohort, *e.g.*, those age 55 and above, consistent with the ADEA.
- A handful of state courts have held that state age discrimination laws (including New Jersey and Washington's) protect younger workers as against older workers. Thus, a New Jersey employer with an older client base could not hire an older candidate over a younger one due to the older candidate's age. Whether such state laws are preempted by ERISA with regard to employee health and welfare benefits (like health insurance or severance pay) is a subject on which employers should obtain legal counsel.



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