

REVERSE DISCRIMINATION UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

The Age Discrimination in Employment Act ("ADEA") prohibits employers from defining the terms and benefits of an individual's employment based solely on his or her age. Individuals who are protected by the ADEA are those who are at least 40 years of age. The ADEA declares that "in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially regain employment when displaced from jobs." 29 U.S.C. § 621(a)(1).

Historically, no court has concluded that the ADEA provides a cause of action for "reverse discrimination." In other words, those who are under 40 have no claim under the ADEA for an employer's favorable treatment of an older worker. For the first time, however, the U.S. Supreme Court in Cline v. General Dynamics, will be asked to decide whether the ADEA provides a cause of action for employees within the protected class (over 40) for claims arising from their employer's more favorable treatment of older employees, also within the protected class. In that case, the plaintiffs are a group of General Dynamics Land Systems, Inc. ("General Dynamics") employees who are between ages 40 and 49. Prior to July 1997, General Dynamics and its employees were bound by a collective bargaining agreement which obligated General Dynamics to provide full health benefits to retired workers who had accumulated 30 years of seniority regardless of age. In July 1997, the parties entered into a new collective bargaining agreement which limited the requirement to provide full health benefits to retirees to those who were 50 years of age or older on July 1, 1997. The plaintiffs sued, alleging that the new collective bargaining agreement adversely affected General Dynamics' employees who were between ages 40 and 49, in violation of the ADEA.

The case was first presented to the United States District Court for the Northern District of Ohio. The District Court judge concluded that the new collective bargaining agreement "facially discriminates" against the plaintiffs by creating two classes of employees based solely upon age. However, the judge concluded that the ADEA does not recognize claims for "reverse discrimination" presented by "younger employees" against "older employees." The Judge reasoned that the ADEA was drafted to aid "older workers," not those who suffer age discrimination because they are too young.

The plaintiffs appealed to the United States Court of Appeals for the Sixth Circuit. Three Circuit Court Judges wrote three separate opinions, two of which reversed the District Court judge. The two judges in the majority concluded that the language of the ADEA "clearly and unambiguously forbids employers from defining the terms and benefits of 'any individual[']s' employment based solely upon his or her age." Specifically, the ADEA reads:

It shall be unlawful for an employer –

(1) to fail or refuse to hire or to discharge *any individual* or otherwise discriminate against *any individual* with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.

29 U.S.C. § 623(a)(1). "Any individual" is defined in the statute as "individuals who are at least 40 years of age." 29 U.S.C. § 631(a).

Highlighting the phrase "any individual," the Sixth Circuit judges concluded that the plaintiffs fell within the protected class because they were all over 40 and they were being denied an employment benefit solely because of age because they were under 50. Therefore, the Sixth Circuit concluded that the plaintiffs were protected by the clear language of the statute. Further, the District Court was unjustified in interpreting the statute to mean that the ADEA only prohibits discrimination against those in the protected class who are "older" than the favored employees. "If Congress wanted to limit the ADEA to protect only those workers who are *relatively* older," the Sixth Circuit wrote, "it clearly had the power and acuity to do so."

For the first time, therefore, a Court has concluded that the ADEA can prohibit age discrimination that favors older over younger protected employees. In a dissenting opinion, Circuit Judge Williams wrote, "the ADEA is not designed to protect the young as well as the old, or even the younger against the older." The problems of younger workers are not addressed by the ADEA. Circuit Judge Williams pointed out a significant problem with the majority's decision when considering "a common sense understanding of collective bargaining agreements." Specifically, the judge noted, "The majority's holding in this case potentially could have a devastating effect on the collective bargaining process, calling into question the validity of seniority and early retirement programs contained in collective bargaining agreements across the country."

In April 2003, the United States Supreme Court accepted jurisdiction of this case. The Court will hear the case during the 2003-2004 term, which commenced in October 2003.

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