Age Discrimination in Employment Act Does Not Exclude Small Units of Local Government

A unanimous Supreme Court has held that Congress did not intend to establish a minimum government size rule to be used in determining coverage under the Age Discrimination in Employment Act of 1967 (ADEA). This is an important decision because it highlights a disparity in the coverage of small governmental units under the ADEA and Title VII of the Civil Rights Act of 1964.

In this case, Mount Lemmon Fire District v. Guido, the fire district, a political subdivision in Arizona, laid off its two older firefighters, when it was faced with a budget shortfall. They filed claims under the ADEA, and the fire district defended on the ground that it was too small and had less than twenty employees and was therefore not covered by the statute. The ADEA's definition of employer states:

> The term 'employer' means a person engaged in an Industry affecting commerce who has twenty or more employees .... The terms also means (1) any agent of such a person, and (2) a State or political subdivision of a State ....

Under this definition, question is whether the number twenty (20) applies to both persons engaged in interstate commerce and political subdivisions.

Title VII of the Civil Rights Act of 1964 did not initially cover public employers but covered private employers with fifteen or more employees, and was amended in 1972 to include governmental units that employed fifteen or more employees. Two years later, Congress amended the ADEA to cover state and local governments and enacted the definition shown above. At the same time, Congress amended the Fair Labor Standards Act (FLSA) to apply to all governmental employers without regards to their size. Whether the twenty employee limit in the ADEA has divided the federal courts, so this court decision now resolves that question.

Focusing on the words "also means," the Court held that they add to the definition rather than clarify it, and that Congress intended to place political subdivisions under the ADEA without creating a minimum number to be met for jurisdictional purposes. Notably, there is no difference in the employer size requirement for the FLSA and ADEA – both do not have a numerical minimum, and the Court used this to hold that the state and local governments are covered by the ADEA regardless of their size. However, there is a disparity between small employer for governmental units under Title VII – fifteen (15) employees, and this may be a reason why Congress might be lobbied to change the jurisdictional limits of the ADEA and maybe even the FLSA.

The fire district warned that applying the ADEA to small governments might affect vital public services, but the Court rejected this argument by noting that the EEOC has for at least thirty years applied the ADEA to small units of governments without regard to their number of employees. Now that the Court has issued the decision the age discrimination claims of the two laid off firefighters can proceed to litigation.

ASHER, GITTLER & D'ALBA, LTD.
200 West Jackson Boulevard, Suite 720
Chicago, IL 60606 – 312.263.1500

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