ROBINSON & COLE LLP
Labor, Employment & Benefits

ADEA Prohibits Discrimination on the Basis of Older Age, Not Simply Age

A collective bargaining agreement eliminated General Dynamics Land Systems' obligation to provide health benefits to employees who retired after the agreement was ratified, except as to current employees who were at least 50 years old. Faced with the prospect of losing post-retirement health benefits, a group of employees in their 40s filed a claim of age discrimination with the Equal Employment Opportunity Commission. The EEOC decided that the arrangement violated the Age Discrimination in Employment Act.

In General Dynamics Land Systems, Inc. v. Cline (2/24/04) the U.S. Supreme Court ruled that the ADEA is intended to prevent discrimination against older employees in favor of younger employees. It does not prohibit employers from treating older employees better than younger employees, even if the younger employees are also over 40. To the extent the EEOC adopted a contrary position, the court ruled that the EEOC did not properly interpret the ADEA.

Under ERISA, a Working Owner of a Business May Qualify as a Participant of a Pension Plan

Dr. Raymond Yates was the president and sole shareholder of a professional corporation that maintained a profit sharing plan for its employees. Both Dr. Yates and his wife also were participants of the plan. In accordance with the plan terms, Dr. Yates took a loan from the plan, which he ultimately repaid shortly before filing for bankruptcy. When the bankruptcy trustee attempted to recover the loan repayment, Dr. Yates argued that the loan repayment was protected under ERISA and could not be touched by the creditors. In response, the bankruptcy trustee argued that Dr. Yates was not an employee, and thus, not a participant of the plan for ERISA purposes. In Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon (3/2/04), the U.S. Supreme Court ruled that the working owner of a business may qualify as a participant of an ERISA-governed plan as long as the plan covers one or more employees other than the owner and his or her spouse.

Firing from Later Job May Result in Denial of Front Pay Award under Title VII

Wendi Sellers sued the U.S. Department of Transportation claiming sex discrimination and retaliation in violation of Title VII. Sellers worked as a Federal Aviation Administration air traffic control specialist. She claims that a fellow employee made unwanted sexual advances and sexually assaulted her at her home. A jury ruled in her favor and the court awarded her $800,000 in noneconomic compensatory damages, $345,000 in back pay, and $27,000 in interest. The noneconomic damages award was reduced to $300,000 under the Title VII damages cap. Because of the acrimony between the DOT and Sellers, the court decided that reinstatement was inappropriate and that front pay would be awarded. The DOT offered evidence that, after her termination, Sellers began working for a bank and was fired after admitting that she tried to process an unauthorized loan application in the name of her husband's former wife. The court awarded Sellers $638,000 in front pay. The DOT claimed that the front pay award was improper or excessive and appealed.

In Sellers v. Mineta (2/24/04) the U.S. Court of Appeals for the Eighth Circuit remanded the case back to the trial court for a determination on whether Sellers' discharge from the bank would have barred her reinstatement under the FAA's work rules, thereby rendering an award of front pay inappropriate. As explained by the appeals court, the evidence of Sellers' misconduct was relevant not only to the question of whether she should be reinstated, but also to the question of whether front pay was warranted.

Insurance Agents are Administrative Employees, Exempt from Overtime under the FLSA

Five insurance agents sued Allstate Insurance Company seeking overtime compensation under the Fair Labor Standards Act. The lawsuit was certified as a collective action and over 2,300 agents joined the lawsuit. Allstate claimed that the insurance agents were administrative employees, exempt from the overtime rules of the FLSA. Six employees were chosen as test cases for purposes of discovery and motions testing the merits of their claims. The trial court found that the six insurance agents were administrative employees and, accordingly, dismissed their claims. The employees appealed.

In Hogan v. Allstate Insurance Company (2/27/04) the U.S. Court of Appeals for the Eleventh Circuit agreed that the six insurance agents were administratively exempt from the overtime regulations. The agents' primary duties were to promote and sell Allstate's insurance products, to advise and service customers and potential customers, and to oversee the operations of their office and staff. The agents claimed that they lacked discretion because they were required to have an approved business plan, required to attend Allstate's training sessions, required to comply with Allstate's underwriting standards, and had to abide by Allstate's directions on office locations, office hours, and similar matters. The appeals court rejected the agents' claims. Instead, the appeals court ruled that the agents performed duties similar to administrative, rather than production tasks and that, while the agents acts were subject to Allstate's review, they had sufficient discretion and independent judgment to meet the test for the administrative exemption.

Male Employee Unable to Show Discrimination by Female Supervisor Trying to Eliminate "Good Old Boys Club"

Robert Steinhauer sued the Wisconsin Conservation Corps and its executive director, Laura DeGolier, claiming that he was terminated on account of his gender in violation of Title VII. He alleged that DeGolier made comments evidencing an anti-male animus, posted cartoons ridiculing and demeaning men, and made anti-male comments during discussions of co-worker divorces. He also alleged that DeGolier stated that she wanted to get rid of members of the "good old boys club." A number of male employees separated employment following DeGolier's appointment as executive director. Finding that the WCC had sufficient grounds to terminate Steinhauer's employment, the trial court dismissed his claims. In Steinhauer v. DeGolier (2/24/04) the U.S. Court of Appeals for the Seventh Circuit agreed with the dismissal, noting that Steinhauer's discrimination claims failed because he was replaced by another male and because he was unable to identify a similarly-situated female who was not terminated. The appeals court rejected his assertion that DeGolier's use of the phrase "good old boys club" was an inference that his gender motivated her employment decision.

Court Ordered to Reconsider Denial of Title VII Class Action Status

Twenty-seven current or former black employees of International Truck and Engine Corporation filed a lawsuit claiming that white employees displayed pervasive hostility toward them and their black co-workers and that, when black employees complained, the company's supervisors told them that nothing would be done, and their best option was to quit. The employees asserted that their claims should be certified as a class action and that they should recover damages and receive injunctive relief under Title VII. The trial court ruled that the employees' injuries were dissimilar; some employees may have been exposed to pervasive harassment and suffered great distress while others may have seen or heard little of the offensive comments. As a result, the trial court refused to certify the lawsuit as a class action.

In Allen v. International Truck and Engine Corporation (2/13/04) the U.S. Court of Appeals for the Seventh Circuit ruled that class treatment of the damages issues would be manageable and would impose less burden on the court than 27 separate trials. Accordingly, it remanded the case back to the trial court to be certified as a class action. The appeals court noted that the injunctive relief sought by the employees would be handled best on a class-wide basis. The appeals court also commented that the company's assertion that class certification was inappropriate because some workers might have liked being called "n--ger" and "jungle bunny," chuckled when other workers posted cartoons of black men being lynched and displayed nooses in the work place, or at least did not mind such

things, strained credulity.

Job Seekers Using the Internet Can Be "Job Applicants" for Purposes of Employers' Record-Keeping Obligations, according to an EEOC Proposed Guidance

Some, but not all individuals who use the Internet and related electronic data processing technologies are considered "applicants" for the purpose of employers' recordkeeping obligations, according to theproposed guidance issued by the Equal Employment Opportunity Commission. The EEOC also issued a question and answer document explaining the proposed guidance. An individual using the Internet to scout for jobs is an "applicant" (and thus, triggers the employer's record keeping obligations under the Uniform Guidelines on Employee Selection Procedures) if the following criteria are met: (1) the employer has acted to fill a particular position; (2) the individual has followed the employer's standard procedures for submitting applications; and (3) the individual has indicated an interest in a particular position. The guidance also makes clear that on-line recruitment and selection procedures, including the search criteria used and on-line tests administered, are subject to the same disparate impact analysis and considerations as more traditional hiring methods.