

Supreme Court Rules ADEA Extends to Small Government Employers

Labor & Employment Law Update

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On Tuesday November 6th, slightly over five weeks after hearing oral arguments, the Supreme Court, by an 8-0 vote, ruled that small government units are covered under the Age Discrimination in Employment Act (ADEA) regardless of their size. In so doing, the Supreme Court resolved a circuit court split between the 9th Circuit and the 6th, 7th, 8th and 10th Circuits, where the latter courts ruled that the ADEA's requirement of at least 20 employees for coverage of private-sector employers also applied to state and local governments.

In *Guido v. Mount Lemmon Fire District*, the plaintiffs worked for a small fire protection district in Arizona. When its two oldest employees were laid off to offset fiscal challenges, they sued alleging that their termination violated the ADEA. The District Court dismissed their claim because their employer did not meet the 20 employee threshold. The Ninth Circuit, however, reversed and the case made its way to the Supreme Court.

Writing for the Supreme Court, Justice Ruth Bader Ginsburg examined a series of amendments affecting both Title VII and the ADEA. Specifically, Justice Ginsburg noted that as originally enacted both laws imposed liability only on private sector employers defined to include a person "engaged in industry affecting commerce whose employees met a numerical threshold." In 1972, Title VII was amended to expand its coverage by defining "person" to include "governments, governmental agencies [and] political subdivisions" *if they had fifteen or more employees*. Then, in 1974, the ADEA was also amended. However, unlike Title VII's 1972 amendments, for the ADEA Congress specifically added "a state or political subdivision of a State" to the definition of "employer" without qualifying it with an employee numerical threshold. Justice Ginsburg found that the use of the phrase "also means" as it related to the definition of employer was "additive" rather than "clarifying." Accordingly, this meant that for the ADEA Congress actually created a separate category of employer.

In the decision, the Court acknowledged that the ADEA was now given a broader reach than Title VII, but that this disparity was a "consequence of the different language Congress chose to employ." The Court also dismissed warnings about the impact on small government services noting that for 30 years the EEOC has consistently interpreted the ADEA to cover government employers of any size

and that a majority of state statutes prohibit age discrimination by local governments of any size.

The Supreme Court's first decision of this term impacts small government employers like Mount Lemmon Fire District in that they will no longer be able to escape liability under the ADEA based on the numerical threshold. Newly minted Justice Brett Kavanaugh did not take part in the decision because arguments took place shortly before his confirmation.

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