THE
NATIONAL LAW REVIEW

Size Doesn’t Matter, SCOTUS Rules: ADEA Applies Even to Small Political Subdivisions

Article By
Tibor Nagy Jr.
Hera S. Arsen
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Our Insights

- Labor & Employment
- Litigation / Trial Practice

- All Federal
- Arizona

Tuesday, November 6, 2018

On November 6, 2018, the Supreme Court of the United States ruled that the Age Discrimination in Employment Act of 1967 (ADEA) applies to all states and political subdivisions—regardless of their size. In an opinion that Justice Ruth Bader Ginsburg authored—which was unanimous save for Justice Brett Kavanaugh, who did not take part in the decision—the Court reasoned that a 1974 amendment to the ADEA extended its reach to public-sector employers by adding state and local governments to the definition of “employer.” However, this extension to public-sector employers did not include the size requirement that applies to other covered employers under the ADEA—namely, employers defined as “a person engaged in an industry affecting commerce who has twenty or more employees” *Mount Lemmon Fire District v. Guido*, No. 17-587, Supreme Court of the United States (November 6, 2018).

Background

When Arizona's Mount Lemmon Fire District laid off its two oldest full-time firefighters, the firefighters sued, alleging that the fire district violated the ADEA by firing them. The fire district argued that it did not qualify as a covered employer under the ADEA because it was too small.

The Definition of "Employer"

According to the ADEA's definitional provision in 29 U. S. C. §630(b), "employer" includes:

- "a person engaged in an industry affecting commerce who has twenty or more employees";
- "any agent of such a person"; and
- "a State or political subdivision of a State."

Question Presented

The Supreme Court agreed to hear the case to determine whether the numerosity specification in the definition of employer (i.e., 20 or more employees) applies only to "a person engaged in an industry affecting commerce" or whether it also applies to states and political subdivisions of states.

Holding

The Court held that the definition of employer in §630(b) establishes "separate categories: persons engaged in an industry affecting commerce with 20 or more employees; and States or political subdivisions with no attendant numerosity limitation."

The Court's Reasoning

According to the Court, the phrase, "twenty or more employees" is tied to §630(b)'s first sentence—"a person engaged in an industry affecting commerce." It does not, the Court reasoned, limit the law's application to public-sector employers.

The Court observed that when Congress amended Title VII of the Civil Rights Act of 1964 to cover public-sector employers, it did so in a way that extended the definition to only those public-sector employers with at least 15 employees. Two years later, when Congress amended the ADEA, it did not similarly restrict coverage to larger public-sector employers. In the wake of the ADEA amendment, federal courts were divided on the issue of whether the ADEA applies to small public-sector employers, and the Court agreed to hear the *Mount Lemmon* case to resolve the conflict.

Practical Impact

This decision resolves the issue of whether small public-sector employers are required to comply with the ADEA. The Court, in deciding that all public-sector employers must abide by the ADEA's requirements regardless of their size, discussed the fire district's policy arguments against applying the law to small employers. According to the Court, the fire district warned "that applying the ADEA to small public entities risks curtailment of vital public services such as fire protection." The Court disagreed. It noted that that "[f]or 30 years, the Equal Employment Opportunity Commission has consistently interpreted the ADEA as we do today." Moreover, "a majority of States forbid age discrimination by political subdivisions of any size; some 15 of these States subject private sector employers to age discrimination proscriptions only if they employ at least a threshold number of workers." The Court concluded that, despite this, "[n]o untoward service shrinkages have been documented."

Note that the relevant state law prohibiting age discrimination in Arizona is the Arizona Civil Rights Act. That statute's age discrimination prohibition uses the same definition of "employer" as Title VII, requiring a 15-employee threshold. In the proceedings leading up to the Court's decision, the fire district claimed that it had only 13 employees during the relevant timeframe—which would have exempted it from Arizona Civil Rights Act coverage.