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# Unanimous Supreme Court: ADEA Applies to All State Employers, Regardless of Size

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In its first opinion of the 2018 term, the U.S. Supreme Court held in *Mount Lemmon Fire Dist. v. Guido*, No. 17-587, slip op. at 1-7 (November 6, 2018) that the Age Discrimination in Employment Act ("ADEA") applies to all political subdivisions of states, regardless of size, rejecting an argument that the 20-employee jurisdictional threshold applicable to private employers also applies to state government employers.


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## Background

In *Mount Lemmon*, the employer, a political subdivision of the State of Arizona, laid off two firefighters, both of whom were over age 40. The two employees sued the Fire District under the ADEA, which prohibits covered employers from discriminating against employees and applicants on the basis of age. The ADEA applies to private employers, provided the employer employs 20 or more employees. The ADEA also applies to states and political subdivisions. However, the language of the statute relating to state employers does not specifically reference the 20-employee requirement:

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

The Fire District argued to the district court that it was not subject to the ADEA because it did not employ 20 or more employees. The district court agreed, and the matter went to the Ninth Circuit, which reversed, finding that the plain meaning of the statute is unambiguous and that it applies to all state employers, regardless of the number of employees it employs.

The Ninth Circuit's decision created a circuit split, with the Ninth Circuit directly at odds with the Sixth, Seventh, Eighth, and Tenth Circuits, each of which held separately that the 20-employee minimum applies to political subdivisions just as it does private sector employers. The Supreme Court granted *certiorari* to resolve this split and determine whether the ADEA's 20-employee minimum also applies to the "State or political subdivision of a State" language in the statute.

## The Parties' Arguments

*Mount Lemmon* presented a straightforward statutory interpretation case, with the decision turning on the meaning of the words "also means" in the statute. The Fire District argued the ADEA's text, context, and statutory history establish that the 20-employee minimum under Section 630(b) applies to small political subdivisions. Specifically, it contended that the first sentence of the section defines "employer" to include only political subdivisions with at least 20 employees, and that the words "also means" signal "clarification rather than addition." The employees argued that "also means" instead signals a new category of employers subject to the ADEA, and thus the absence of the 20-employee minimum means that it does not apply to any of the categories listed after the phrase, including state employers. At oral argument, the Justices signaled their skepticism with the Fire District's arguments and asked many pointed questions revealing their dissatisfaction with its suggested construction of the statute.

## The Supreme Court's Decision

It was therefore little surprise that Justice Ginsberg, who authored the unanimous 8-0 decision (Justice Kavanaugh did not participate in the consideration or the decision of the case), explained that the words "also means" in Section 630(b) of the ADEA add new categories of employers not subject to the 20-employee threshold, thereby affirming the Ninth Circuit's interpretation that the plain meaning of the statute is unambiguous and that the statute applies to all state employers, regardless of the number of employees employed.

The Court provided several reasons for its holding that the ADEA applies to all state employers, regardless of size. First, the Court explained that the plain meaning of the phrase "also means" is "additive rather than clarifying," which creates a separate category of "employer" under the ADEA. Further, the Court noted that the words "also means" appear in the U.S. Code with an additive meaning dozens of times, including in 12 U.S.C. §1715z-1(i)(4) (relating to low income housing), which the Court found particularly instructive and used to illustrate its reasoning. In addition, the Court held that "the text of § 630(b) pairs States and their political subdivisions with agents, a discrete category that, beyond doubt, carried no numerical limitation."

Accordingly, the Court rejected the Fire District's interpretation in part because it would lift the 20-employee restriction from the agent portion of the statute, a reading the Court found would be "strange." The Court also rejected the Fire District's argument that ADEA should be interpreted in line with Title VII. Rather, the Court reasoned that a "better comparator" for the ADEA is the Fair Labor Standards Act ("FLSA"), which categorizes States and political subdivisions as employers regardless of size, because the ADEA was modeled after the FLSA in many respects. Finally, the Court rejected the argument that applying the ADEA to small public employers would negatively impact vital public services, reasoning that these concerns were unfounded because the U.S. Equal Employment Opportunity Commission has interpreted the ADEA to cover all political subdivisions for over 30 years, and a majority of States already prohibit age discrimination by political subdivisions of all sizes.

## Looking Forward: Impact of this Case and More Contentious Employment Cases on the Horizon

Given the concerns of many that our current politically divisive climate will infiltrate the Supreme Court, it is notable that the first case decided by the Court for the 2018 term was a unanimous decision. Further, considering the conservative majority of the current Court, it is interesting that the Court unanimously (albeit without one of its key conservative voices participating) interpreted the statute in a way that expands employee protections. It is also noteworthy that the Supreme Court agreed with the Ninth Circuit on this issue, despite the contrary interpretations by many other circuits.

*Mount Lemmon* however was arguably the least contentious employment case on the Supreme Court's docket this term, as here the Court's task was a rather mundane issue of statutory interpretation rather than having to wrestle with deep ideological or policy issues. Although the decision may result in more age discrimination cases being filed against state and local government employers, the scope and reach of this decision is rather narrow, considering it only impacts public employers and has no effect on the private sector.

In the coming months, the Supreme Court will decide three more employment cases where unanimous results are far less likely. First, in *New Prime, Inc. v. Oliveira*, No. 17-340 (argued Oct. 3, 2018), the Court will decide whether Section 1(a) of the Federal Arbitration Act ("FAA"), which only applies on its face to "contracts of employment," also applies to independent contractor agreements. The Court also will decide in that case whether the application of the Section 1(a) exemption is a threshold issue that courts should decide before ordering arbitration in a case, even when the parties' agreement clearly grants the arbitrator, not the court, such jurisdictional decision-making power. The Court also will decide *Henry Schein v. Archer & White Sales, Inc.*, No. 17-1272 (argued Oct. 29, 2018), which involves whether the FAA allows a court to choose not to enforce an agreement delegating questions of arbitrability if the court decides that the claim was "wholly groundless." Finally, in *Lamps Plus, Inc. v. Varela*, No. 17-988 (argued Oct. 29, 2018) the Court will have an opportunity to further flesh out its 2010 decision in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010), and decide whether the FAA precludes a state-law interpretation of an arbitration agreement that would allow class arbitration based only on general, commonly used language in arbitration agreements and not on express contract language.

Unlike *Mount Lemmon*, these three cases will have a more direct impact on private employers and promise to involve more in-depth legal analysis that will likely yield more polarized results driven by the Justices' ideological leanings.

*Melissa Legault contributed to this post.*

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