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Eighth Circuit Says That Considerations Of Health Care Cost Savings Could Be Proxy For Age In ADEA Suits

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The Eighth Circuit recently concluded that an employer may violate the ADEA by terminating an older employee in order to reduce its health care premiums. *Tramp v. Associated Underwriters, Inc.*, 2014 WL 4977396 (8th Cir. 2014). Plaintiff Marjorie Tramp brought claims of discrimination and retaliation under the ADEA, arguing that Defendant Associated Underwriters, Inc. terminated her to reduce its health care costs and in retaliation for her refusal to rely on Medicare benefits in lieu of employer-sponsored benefits. In support of her claims, Tramp produced evidence showing that: (i) while negotiating insurance premiums, the Defendant repeatedly asked whether having younger employees would reduce its rates; and (ii) Tramp began receiving formal reprimands and was eventually terminated after she declined Defendant's request to rely on Medicare rather than the company's insurance plan. Defendant argued that her firing was part of a reduction-in-force and based on her poor performance.

The district court granted summary judgment in favor of Defendant. Relying on the Supreme Court's opinion in *Hazen Paper Co. v. Biggins*, 507 U.S. 604 (1993), the court found that health care costs are not a proxy for age because the two are "analytically distinct," meaning that Defendant could take health care costs into account without considering age. The Eighth Circuit reversed, concluding that considerations of health care costs could be a proxy for age and, regardless of whether age and health care costs actually are analytically distinct, there was an issue of fact as to whether Defendant believed that they were not analytically distinct and terminated Tramp for age-related reasons. Further, as to the retaliation claim, the Court found that, though a gap between an employee's protected activity and the employer's adverse act usually weakens the presumption of retaliation, Defendant's ongoing reprimands leading up to Tramp's termination fill in that gap, allowing a reasonable jury to find that Tramp was terminated for refusing to decline employer-sponsored health care insurance.

This article was written with contributions from Lindsey Chopin.

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