



U.S. SUPREME COURT ALTERS AGE DISCRIMINATION ANALYSIS

The United States Supreme Court recently issued a decision, *Gross v. FBL Financial Services, Inc.*, which clarifies the burden of proof in age discrimination suits brought under the *Age Discrimination in Employment Act of 1967* (ADEA). The ADEA generally protects employees 40 years of age or older from employment discrimination based upon age.

Prior to *Gross*, claims under the ADEA were treated in the same manner as other federal discrimination claims. For example, where an employee was of a protected status pursuant to Title VII of the Civil Rights Act of 1964 (e.g. race), and could demonstrate that the employer's treatment of the employee was motivated at least in part by an illegal discriminatory intent, the burden of proof shifted to the employer to demonstrate that it would have taken the same action regardless of the employee's protected status.

In the recent Supreme Court case, *Gross v. FBL Financial Services, Inc.*, the Court held that the burden-shifting method described above does not apply to ADEA cases. In order to prove a discrimination claim under the ADEA, the employee must demonstrate that an employer took adverse action "because of" age, or that age was the "reason" the employer decided to act. The burden does not shift to the employer to prove that it would have taken the same action regardless of the employee's age. Therefore the employee must show that age was the "but-for" cause of the employer's adverse decision.

This decision will make it more challenging for employees over the age of 40 to successfully prove ADEA claims, and lessens the burden on employers defending their actions. This change may become important if continued budgetary restraints result in the layoff of a significant number of tenured teachers. Even with the burden of proof placed on the employee, employers are well advised to carefully review adverse employment actions involving employees over the age of 40 to minimize the chance of a successful ADEA claim. The attorneys at Scariano, Himes and Petrarca, Chtd. are ready to assist you in any discrimination claims that arise at your district, and will be monitoring any further changes in the law in this area.

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