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Retirement Plan That Considered Age Did Not Violate ADEA

5/7/2012 By William D. Deveney

A pension plan that used age as one of several factors to calculate employees' retirement benefits did not violate the Age Discrimination in Employment Act (ADEA) or the Employee Retirement Income Security Act (ERISA), according to the 8th U.S. Circuit Court of Appeals.

Before it declared bankruptcy in September 2005, Northwest Airlines provided retirement benefits to its pilots through a pension plan, under which pilots received retirement benefits up to 60 percent of their final average earnings depending on their years of service. After the airline declared bankruptcy, the airline and the pilots union were able to save the existing pension plan from termination by effectively freezing benefits under that plan as of Jan. 31, 2006. Aided by mutually sought legislation, the airline and the pilots union then negotiated a proposed restructuring agreement to replace the frozen plan. The new agreement calculated a "target percentage" of the pilot's projected final average earnings to be provided as a retirement benefit using a pilot's age and years of service.

The majority of the pilots voted in favor of the new agreement, and the airline and the pilots union both filed a declaratory judgment action in federal district court, requesting that the court declare that the plan complied with ERISA. But a group of older pilots, all of whom would receive no contributions under the new agreement (or smaller contributions than under an earlier proposed agreement), counterclaimed, arguing that the final agreement violated the federal ADEA, as well as parallel provisions of ERISA and several state laws prohibiting age discrimination.

The older pilots argued that the use of a pilot's projected final average earnings to determine contribution levels was "inextricably linked to age" and thus violated the ADEA and ERISA. Congress had enacted parallel provisions of the ADEA and ERISA as part of the 1986 Omnibus Budget Reconciliation Act (OBRA), which prevented employers from discontinuing or reducing allocations to an employee's retirement account "on account of the attainment of a specified age" and "require[d] a plan to provide for benefit accruals and contributions with respect to an employee's years of plan participation after normal retirement age." Because the applicable provisions of the ADEA and ERISA are "to be interpreted in a consistent manner," the plan was either lawful under both provisions or under neither.

The district court granted summary judgment for the airlines and the pilots' union, and the 8th Circuit affirmed. The 8th Circuit observed that the Supreme Court had previously concluded that "as a matter of pure logic, age and pension status remain 'analytically distinct' concepts." Therefore, the Supreme Court had previously held that an employer who "adopts a pension plan that includes age as a factor, and that employer then treats employees differently based on pension status, a plaintiff, to state a disparate-treatment claim under the ADEA, must adduce sufficient evidence to show that the differential treatment was 'actually motivated' by *age*, not pension status."

In the case before it, the 8th Circuit found that the contributions of all of the pilots were based on their projected final average earnings, which could not be calculated without the use of age—but that did not mean that the older pilots' contributions had been reduced *because of* their age. The 8th Circuit observed that there were several factors in the plan that could reduce an older pilot's projected final average earnings regardless of age, including seniority and flight/seat position at the start of the calculation, the number of annual pay increases before retirement and benefits acquired under the frozen pension plan. The 8th Circuit also found that none of the rationale for the adoption of the new plan rested "on any stereotype about the work capacity of 'older' workers relative to 'younger' workers." Accordingly, the 8th Circuit held that the new plan did not violate the ADEA or ERISA.

Northwest Airlines, Inc. v. Phillips, 8th Cir., No. 11-1730 (Apr. 9, 2012).

Professional Pointer: Retirement benefits plans must be designed to avoid liability under the various federal and state laws that prohibit age discrimination. Although an employee's age at the beginning of their plan participation may not impact their retirement benefits, if for no reason other than the mere length of plan participation before retirement, care must be taken to ensure that the retirement benefit is not determined because of the participant's age.

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