

Electronic Alert

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U.S. Supreme Court Holds ADEA Applies to All Public Employers

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Public employers with 20 or fewer employees take note: in its first opinion of the 2018-2019 term, the Supreme Court ruled in *Mount Lemmon Fire District v. John Guido* that the Age Discrimination in Employment Act (ADEA) applies to all employers that are a State or political subdivision of a State regardless of the number of employees they employ.

Two firefighters sued the Mount Lemmon Fire District for age discrimination under the ADEA after the Fire District laid them off. The Fire District sought to dismiss the lawsuit on the basis that it was too small to be a covered “employer” within the ADEA’s definition of the term as it employs fewer than 20 employees. However, the ADEA includes the following definition of an employer:

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....

Focusing on the “also means” language, the Court held that the ADEA was intended to apply to all public employers without a consideration of the number of employees that they have.

What does this mean for Oregon employers? In Oregon, the state age discrimination law already offers greater protection than the ADEA in that all employers, whether private or public, are covered if they employ one or more employees. Additionally, Oregon’s age discrimination law protects individuals who are 18 years of age or older, whereas the ADEA only protects individuals who are 40 years of age or older. However, even in Oregon, smaller public employers should still be mindful of the Court’s holding especially when offering a settlement or severance agreement to an employee. Specifically, all public employers regardless of size should include a release waiver of claims under the ADEA and comply with the requirements of the Older Workers Benefit Protection Act (OWBPA) to effectively release a claim under the ADEA. The OWBPA requires that any waiver of an ADEA claim:

- Be in writing and be understandable;
- Specifically refer to ADEA rights or claims;
- Not include a waiver of rights or claims that may arise in the future;
- Be in exchange for valuable consideration more than the employee is otherwise entitled to receive;
- Include advice in writing to consult with an attorney; and
- Provide the individual at least 21 days to consider the agreement and at least 7 days to revoke the agreement after signing it.

Note that waivers in the context of a reduction in force of two or more employees have additional requirements. For more information or specific questions, contact Gabrielle Hansen at ghansen@barran.com or (503) 276-2112 or Nicole Elgin at (503) 276-2109.