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United States Supreme Court Rejects Claim of "Reverse Age Discrimination"

On February 24, 2004, the United States Supreme Court decided the case of General Dynamics Land Systems, Inc. v. Cline, et al., and expressly rejected a claim alleging "reverse age discrimination." The Court held that the federal Age Discrimination in Employment Act ("ADEA") does not prohibit an employer from providing extra benefits to older workers. In other words, an individual over the age of 40, and therefore protected by the ADEA, may not file a lawsuit against his or her employer when the employer provides more favorable benefits to older workers.

In General Dynamics, a collective-bargaining agreement between the company and a union eliminated General Dynamics' obligation to pay health benefits to future retirees. However, the collective-bargaining agreement provided that health care benefits would be maintained for current employees over the age of 50 upon retirement. Consequently, a group of current employees over the age of 40, and thus protected by the ADEA, but under the age of 50, and therefore unable to qualify for health care coverage upon retirement, filed a lawsuit against General Dynamics claiming that the new policy violated the ADEA. The employees between the ages of 40 and 50 argued that the terms set forth in the collective-bargaining agreement amounted to "reverse age discrimination."

The Supreme Court ultimately found that the text, purpose, and history of the ADEA did not prevent an employer from favoring an older employee over a younger one. Rather, the ADEA was enacted to protect older workers from the hardships experienced in the employment context as a result of employers' unfair preferences for more youthful employees.

However, the California courts may not adopt the reasoning set forth in the General Dynamics case when interpreting the California statute prohibiting age discrimination, the Fair Employment and Housing Act ("FEHA"). Unlike the ADEA which aims to protect individuals from age discrimination, the FEHA seeks to protect individuals as well as *older workers as a group*. Thus, under the FEHA, California courts may not condone a situation where an employer discriminates based on age among employees over the age of 40.

Accordingly, under the ADEA, an employer may provide older employees with more favorable benefits than their younger coworkers without the risk of facing a lawsuit under the federal ADEA statute. California federal courts interpreting the ADEA must follow the

Supreme Court; however, California courts interpreting the FEHA may adopt a divergent conclusion. Therefore, California employers should consult an attorney before amending employment policies and benefits to ensure the changes comply with California state law.

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