

PUTNEY, TWOMBLY, HALL & HIRSON LLP

ESTABLISHED 1866

COUNSELORS AT LAW

521 FIFTH AVENUE

NEW YORK, NEW YORK 10175

(212) 682-0020

TELEFAX: (212) 682-9380

putneylaw.com

120 WOOD AVENUE SOUTH
SUITE 600
ISELIN, NEW JERSEY 08830
(732) 632-2505
TELEFAX: (732) 632-2506

1205 FRANKLIN AVENUE
GARDEN CITY, NY 11530
(516) 746-0070
TELEFAX: (516) 746-0599

2500 NORTH MILITARY TRAIL
SUITE 465
BOCA RATON, FLORIDA 33431
(800) 935-8480
TELEFAX: (561) 750-6602

COUNSEL
CHARLES J. GROPPE
ALEXANDER NEAVE
LOUIS A. TRAPP, JR.

DANIEL F. MURPHY, JR.
MICHAEL T. McGRATH
THOMAS A. MARTIN
WILLIAM M. POLLAK
DUSTAN T. SMITH
JAMES E. McGRATH, III
CHRISTOPHER M. HOULIHAN
THOMAS M. LAMBERTI
STEPHEN J. MACRI
HARVEY I. SCHNEIDER
MARY ELLEN DONNELLY
JOSEPH B. CARTAFALSA
GEOFFREY H. WARD
ANDREA HYDE
E. PARKER NEAVE
MARK A. HERNANDEZ
JAMES M. STRAUSS
PHILIP H. KALBAN

June 23, 2008

CLIENT ADVISORY

Supreme Court Holds That State Retirement Plan Does Not Violate The ADEA By Treating Employees Differently Based, In Part, On Age

On June 19, 2008, the United States Supreme Court, in the case of Kentucky Retirement Systems v. EEOC, ruled that Kentucky's retirement plan ("Plan") for state and county employees who occupy "hazardous positions," *e.g.*, law enforcement officers, firefighters, paramedics and correctional system workers, does not discriminate against employees who become disabled after age 55 in violation of the Age Discrimination in Employment Act ("ADEA").

Factual Summary

The Plan provides two routes through which employees become eligible for retirement benefits. First, an employee becomes eligible after 20 years of service. Second, an employee becomes eligible after only 5 years of service provided that the employee is at least 55 years old. Eligible employees receive a pension equal to the years of service multiplied by 2.5% of final preretirement pay. However, when an employee becomes disabled in the line of duty, the employee becomes eligible immediately. If a disabled employee is not already eligible for retirement benefits, the Plan imputes the minimum number of years necessary to make the employee eligible for retirement. The Plan then uses the sum of the imputed years and the years of service to calculate the employee's pension.

Charles Lickteig, a hazardous position worker, became eligible for retirement at age 55, continued to work, became disabled and then retired at age 61. The Plan calculated his annual pension on the basis of his actual years of service (18 years). It did not impute any additional years because Lickteig had already been eligible for retirement

benefits. The EEOC argued that the Plan violated the ADEA when it failed to impute additional years solely because Lickteig became disabled after he reached age 55.

The Supreme Court's Decision

The Court ruled that the Kentucky Plan, which “(1) lawfully makes age in part a condition of pension eligibility, and (2) treats workers differently in light of their pension status,” does not discriminate “because of age” for several reasons. First, as a matter of logic, a plan can make a decision because of pension status and not age, even if pension status is itself based on age. Second, *all* employees are promised retirement benefits should they become disabled prior to the time they are eligible for retirement benefits. This is similar to other approved programs, including disability insurance provided by the Social Security Administration, that calculate disability benefits using a formula that takes account of age. Third, there is a legitimate “non-age-related” rationale for the disparity between the number of years imputed for disabled employees over age 55 and those under age 55, which is to treat a disabled employee as though he or she had become disabled after he or she became eligible for retirement benefits. The Plan merely aims to make all disabled employees eligible for retirement benefits. According to the Court, the resulting disparity “turns upon pension eligibility and nothing more.” Fourth, in certain cases the Plan can work to the advantage of older employees. For example, if one employee becomes disabled at age 45 after 10 years of service and another at age 40 after 15 years of service, the older employee would have 10 years imputed whereas the younger employee would only have 5 years imputed. Fifth, the Plan does not rely on the stereotypes about the work capacity of “older” workers that the ADEA sought to eradicate. Finally, the difficulty of finding a solution that could both address the disparity and provide disabled employees with adequate benefits further suggests that the Plan was not motivated by age.

The Court also adopted the following rule for ADEA claims of disparate treatment based on pension status: “Where an employer 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.”

We invite your questions regarding the significance of the Kentucky Retirement Systems decision.

PUTNEY, TWOMBLY, HALL & HIRSON LLP