



Supreme Court Finds No Discrimination In Controversial State Retirement System Plan

Insights

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In a 5-4 decision, the Supreme Court held that the Commonwealth of Kentucky's disability plan, which was not made available to persons already eligible for normal retirement benefits by virtue of their years of service (or age, plus years of service), was not discriminatory on its face, and did not violate the Age Discrimination in Employment Act (ADEA). The Court emphasized that it was dealing with the "quite special case" of different treatment based on pension status where pension status itself turns on age, noting that the ADEA permits an employer to condition pension eligibility upon age. The Court adopted the rule that, where an employer adopts a pension plan that includes age as a factor, and then treats employees differently based on pension status, the employee must come forward with evidence that the differential treatment was "actually motivated" by age, not pension status. *Kentucky Retirement Systems v. EEOC*.

Background: The Kentucky "Safety Net" Of Disability Based Retirement

Many public employers maintain benefit programs which provide retirement-like benefits to persons disabled in the line of duty. The purpose of such programs is to provide disabled employees the amount of benefit they would have been entitled to had they worked until normal retirement. These programs perform an important role in staffing hazardous occupations such as those in law enforcement and firefighting. The Kentucky benefit plan at issue in this case provided two types of retirement benefits – normal retirement benefits and disability-retirement benefits. Employees could become eligible for normal retirement benefits in two ways: after completing twenty years of service, regardless of age, or after reaching age 55 with at least five years of service. There is no rule that an employee must retire after reaching either milestone. Disability-retirement benefits are available to those employees with at least five years of service *but are not available to those who already qualify for normal retirement benefits when they become disabled*. An employee who becomes eligible for disability-retirement benefits before normal retirement is credited with additional years for purposes of calculating the disability-retirement benefits. The credit is the number of years until the employee would have reached age 55 or accrued 20 years of service, but no more than the number of years actually worked. For example, an employee who started at age 20 and became disabled at age 35 would be credited with five additional years of service. However, an employee who was over 55 at the time of disability and eligible for retirement would not be eligible for disability-retirement benefits.

Facts of the Case: The Kentucky Plan As Applied

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The case arose from an age discrimination charge filed by a deputy sheriff who joined the sheriff's department at age 44. His application for disability-retirement benefits at age 61 was denied because he had become eligible for normal retirement by virtue of having turned 55 and having worked five years. Had the deputy sheriff become disabled before he was eligible for normal retirement benefits, he would have been credited with additional years of service, thereby increasing his benefits.

The Equal Employment Opportunity Commission (EEOC) sued on the sheriff's behalf, claiming that the plan's treatment of disability-retirement benefits for employees who held hazardous jobs violates the ADEA by denying benefits or paying reduced benefits "because of age." A federal district court granted summary judgment to the state employer, finding that the EEOC failed to make a prima facie case of disparate treatment because it did not present evidence of discriminatory intent. The U.S. Court of Appeals for the 6th Circuit, sitting *en banc*, reversed the grant of summary judgment, finding that the Kentucky plan was facially discriminatory on the basis of age and, therefore, the EEOC did not need additional proof of discriminatory animus to establish a prima facie case.

The Supreme Court's Ruling: Narrow Victory For Public Employers

The Supreme Court determined that any distinction between categories of disabled employees in the Kentucky plan was not based on age. First, the Supreme Court noted age and pension status remain analytically distinct concepts. Second, the Court noted that, at the time of hire, the Kentucky plan offered disability retirement benefits to all hazardous position workers should they become disabled before eligibility for normal retirement benefits. Further, federal Social Security Disability Insurance calculates disability benefits using a formula that expressly takes account of age. Third, the Court noted that there was a clear non-age-related rationale for the disparity at issue "to treat a disabled worker as though he had become disabled after he had become eligible for normal retirement. Fourth, the Court noted that, although the Kentucky Plan placed a worker at a disadvantage in this case, it could work to the advantage of older workers in other circumstances. Fifth, the Court found that the Kentucky system does not rely on any of the stereotypical assumptions that the ADEA sought to eradicate "rather, it assumes disabled workers would have worked to the point at which they would have become eligible for a pension. Finally, the Court noted that the objective of providing each disabled employee with a sufficient retirement benefit suggests that age was not what actually motivated the Kentucky plan. Accordingly, the Court adopted the following rule:

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 come forward with sufficient evidence that the differential treatment was "actually motivated" by age, not pension status.

What Does This Mean For Employers?

In structuring its disability benefits system, Kentucky made a choice to not provide disability retirement benefits for those employees who are already eligible for normal retirement by virtue of having reached a service based *or* age based milestone to retirement. In other words, Kentucky

decided not to give a "safety net" to an employee who does not need one. The Supreme Court decided that such a system does not discriminate against workers who become disabled after becoming eligible for retirement based on age. The Supreme Court's decision confirms the approach of numerous public employers in determining eligibility for disability based retirement benefits for persons in hazardous occupations. Additionally, the Supreme Court's decision clarifies what evidence is needed in a case of disparate treatment discrimination under the ADEA involving pension plans. Unlike classifications on the basis of sex or race, which are routinely viewed as facially discriminatory without any further reflection about the underlying motive, that leap cannot be taken in the context of age discrimination unless the arbitrariness appears on the face of the policy. If it does not, the employee must prove that any differential treatment was "actually motivated" by age.

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