



# Supreme Court Hands Employers Victory In Age Discrimination Case

Insights

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On June 18, 2009, the Supreme Court held that the Age Discrimination in Employment Act (ADEA) does not authorize mixed-motive claims of age discrimination. The burden of proof is at all times with the plaintiff to establish that age was a "but for" cause of the adverse employment action. *Gross v. FBL Financial Services, Inc.*

While this may sound like a ruling on a technical, procedural issue, it is more than that. The Court's ruling not only limits the manner in which plaintiffs may bring claims under the ADEA, it also calls into question the continuing validity of the Court's *Price Waterhouse v. Hopkins* decision. For these reasons, it should be seen as a victory for employers.

## Background

In employment-discrimination cases, the burden of proof is on plaintiffs to establish that they were the victims of unlawful discrimination. But the Supreme Court recognized a "mixed-motive" framework in the 1989 Title VII case, *Price Waterhouse v. Hopkins*. There, a plurality opinion stated that the plaintiff had the burden of showing "by direct evidence" that an illegitimate factor (such as race or sex) played a role in the adverse employment action. If the plaintiff was successful in making this showing, the burden shifted to the employer to prove that it would have taken the same action regardless of the illegitimate factor. Lower courts applied the *Price Waterhouse* analysis in Title VII and non-Title VII discrimination cases, such as age discrimination.

In 1991, Congress amended Title VII to explicitly authorize "mixed-motive" discrimination claims. But Congress did not make similar changes to the ADEA. In *Desert Palace v. Costa* (a case argued by Fisher Phillips), the Supreme Court held that the 1991 Title VII Amendments eliminated the *Price Waterhouse* requirement that plaintiffs put forth "direct evidence" in "mixed-motive" cases to shift the burden of proof to the employer. Following *DesertPalace*, the Title VII discrimination plaintiff was only required to show by a "preponderance of the evidence" that an illegitimate factor was "a motivating factor" in the adverse employment action. It was then the employer's burden to prove that it would have taken the same action in the absence of the illegitimate motivating factor.

For years, lower courts have struggled in applying the *Price Waterhouse* and *Desert Palace* decisions in non-Title VII mixed-motive cases. While some courts held that the *Price Waterhouse*

"direct evidence" standard continued to apply, others interpreted *Desert Palace* broadly to eliminate the "direct evidence" requirement in all mixed-motive discrimination cases.

Today, in *Gross v. FBL Financial Services*, the Supreme Court resolved the conflict by holding that neither *Price Waterhouse* nor *Desert Palace* apply in non-Title VII discrimination cases. Instead, the Court held that mixed-motive claims are not available under the ADEA and other non-Title VII discrimination statutes.

## **Facts**

Jack Gross was 52 years old and had worked at FBL Financial Group for almost 15 years when, in 2001, the company decided to reorganize the claims department in which he worked. Mr. Gross was demoted from Claims Administration Vice President to Claims Administration Director, and his job responsibilities were transferred to an employee in her early forties.

Mr. Gross filed suit in federal court claiming that he was demoted because of his age in violation of the ADEA. The district court charged the jury that it was Mr. Gross's burden to prove that his age was a "motivating factor" in FBL's decision to demote him. But Gross was not required to present direct evidence of age discrimination, which would shift the burden to the employer to show that it would have taken the adverse action regardless of his age. The jury found for Mr. Gross, and awarded him \$46,945 in lost compensation.

FBL appealed the verdict to the U.S. Court of Appeals for the 8th Circuit. On appeal, FBL argued that the district court improperly allowed Mr. Gross to prove that age was a "motivating factor" by circumstantial, rather than direct evidence. The 8th Circuit, relying on *Price Waterhouse*, reversed the decision of the district court, and held that employees in ADEA mixed-motive cases must present direct evidence of age discrimination.

## **The Supreme Court's Decision**

The Supreme Court did not reach the question of whether direct evidence was required to trigger a mixed-motive analysis under the ADEA. Rather, in a 5-4 decision, the Supreme Court held that mixed-motive discrimination claims are simply not available under the ADEA. Chief Justice Roberts and Justices Alito, Kennedy, and Scalia joined in Justice Thomas' decision. Justices Breyer, Ginsburg, Souter, and Stevens dissented.

As Justice Thomas explained, the plain language of the ADEA does not authorize a mixed-motive age-discrimination claim. Under the ADEA, "the plaintiff retains the burden of persuasion to establish that age was the 'but-for' cause of the employer's adverse action." There is no burden-shifting framework, and, while Title VII was amended in 1991 to include "mixed-motive" claims, the ADEA was not.

Justice Thomas further called into question the validity of the Court's decision in *Price Waterhouse*, stating that "it has become evident in the years since that case was decided that its burden-shifting framework is difficult to apply. Thus, even if *Price Waterhouse* was doctrinally sound, the

framework is difficult to apply . . . Thus, even if *Price Waterhouse* was doctrinally sound, the problems associated with its application have eliminated any perceivable benefit to extending its framework to ADEA claims."

## **Conclusion**

The Court's decision is a victory for employers. Indeed, the decision makes clear that, in non-Title VII discrimination cases, the burden of proof at all times rests with the plaintiff. The employer is never charged with proving that an adverse employment action was legitimate. Rather, it is the plaintiff's burden to prove that the action was illegitimate.

The Court's ruling is also important because it calls into question the continuing validity of *Price Waterhouse* in any federal discrimination case. Given the decision today, as well as the Court's previous decision in *DesertPalace*, it appears that *Price Waterhouse* should no longer be applied in federal discrimination cases.

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