

Supreme Court Ruling Makes Proving Age Discrimination More Difficult

The U.S. Supreme Court held today [6/18/09] in *Gross v. FBL Financial Services, Inc.*, that employees who sue their employers for age discrimination must prove that age was the cause of an employment decision, even if they have some evidence that age was a factor in the decision. This 5-4 decision makes it harder for employees to prove age discrimination under the Age Discrimination in Employment Act (ADEA). Under the ADEA, an employer can't take an adverse employment action against an employee because of his age.

In the case, Jack Gross sued his employer, claiming he was demoted in violation of the ADEA. At the trial, the district court instructed the jury to return a verdict for Gross if he proved, by a preponderance of the evidence (i.e., the claim more likely than not was true), that he was demoted and his age was a "motivating factor" in the decision. The court further told the jury that age was a "motivating factor" if it played a part in his demotion. It also instructed the jury to enter a verdict in favor of Gross' employer if it proved that it would have demoted him regardless of his age.

The jury returned a verdict in favor of Gross. However, the Eighth U.S. Circuit Court of Appeals reversed the jury's decision, holding that the jury had been improperly instructed under a standard established by the U.S. Supreme Court in *Price Waterhouse v. Hopkins* for cases under Title VII of the Civil Rights Act of 1964.

The Supreme Court held that an employee who files an ADEA disparate treatment claim must prove, by a preponderance of the evidence, that age was the "but for" cause of an adverse employment action (i.e., "but for" the employee's age, he wouldn't have been demoted). The Court also ruled that the employer doesn't have to show that it would have had taken the same action regardless of age, whether or not the employee produces evidence that age was a motivating factor in the employment decision.

The Court also held that the *Price Waterhouse* standard doesn't apply in this case since Title VII is significantly different from the ADEA regarding the burden of persuasion. The Court noted that although Title VII was amended to explicitly authorize discrimination claims when an improper consideration was "a motivating factor" in an adverse employment action, the ADEA wasn't similarly amended. The Court stated: "The ordinary meaning of the ADEA's requirement that an employer took adverse action 'because of' age is that age was the 'reason' that the employer decided to act." Therefore, an employee must prove that age was the "but for" cause of an adverse employment decision.

Four of the Supreme Court's "liberal" justices dissented from the opinion. In his dissent, Justice John Paul Stevens noted that the Court and Congress had previously rejected the "but for" standard. He stated: "Given this unambiguous history, it is particularly inappropriate for the Court, on its own initiative, to adopt an interpretation of the causation requirement in the ADEA that differs from the established reading of Title VII." He also noted that he "[disagreed] not only with the Court's interpretation of the statute, but also with its decision to engage in unnecessary lawmaking."

This ruling is a favorable decision for employers since employees must prove that their age was the cause of an adverse employment action instead of just one of the factors in the adverse decision. The Court's decision may end up being especially important since the number of age discrimination claims has been rising.