

PRESS RELEASE - FOR IMMEDIATE RELEASE

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**US SUPREME COURT DECISION ON AGE DISCRIMINATION WILL ADVERSLY
AFFECT AGING WORKERS IN TODAY'S ECONOMY**

In the midst of the furor over other happenings at the United States Supreme Court, a recent United States Supreme Court decision that will affect over 44% of the United States population by severely curtailing the ability of workers aged 40 and above to prove age discrimination at their employment has been largely ignored. In the case of Gross v. FBL Financial Services, Inc., 126 S. Ct. 2343 (June 18, 2009), the Court held, by a 5-4 vote, that in order to prove that a person was discriminated against under the ADEA (the Age Discrimination in Employment Act), that person must prove that his firing or demotion occurred only because of his age. Prior to this decision, following well-established United States Supreme Court precedent in its interpretation of Title VII discrimination actions based upon race, sex or religion, it was necessary only to show that a person's age was one consideration among others for his firing or demotion. In other words, under the Gross decision, it is not enough to show that an employee's age was one of several factors used to fire or demote him, as was true under existing precedent; an employee must show that but for his age, he would not have been fired or demoted.

One extraordinary aspect of this opinion is that the question the Supreme Court ruled upon was not the question submitted to the Court. The question the Court originally agreed to consider was whether a person could prove discrimination by direct or circumstantial evidence when a person's age was one factor among others for his demotion or firing. According to Justice Stevens' spirited dissent, the Court's opinion requiring "but-for" causation was issued without the benefit of briefing on the causation issue either by the parties, interested friends of the court or the United States agency charged with administering the ADEA.

The majority opinion focused on textual differences between the ADEA and Title VII, but Justice Stevens found that the Court's interpretation of the statute at issue amounted to "unnecessary lawmaking." Justice Stevens explained that the majority decision was "particularly

inappropriate” because “on its own initiative” the Court adopted “an interpretation of the causation requirement in the ADEA that differs from the established reading of Title VII.”

In today’s economy, older workers can be especially susceptible to termination or demotion because of their age, simply because of the enormous economic pressure upon companies to improve their bottom line. Unless legal incentives remain to prevent their removal, replacing older workers with younger workers can save a company a great deal of money both in terms of pay and benefits, at a time when many older workers’ entire life’s savings have been wiped out by the recent stock market difficulties. While many companies choose to do the right thing in spite of these pressures, the Gross decision will help many other companies who desire to meet the bare minimum required under the law to engage in age discrimination more freely and openly, as long as they can manufacture companion motives for a person’s termination or demotion in addition to their age.

The duty of the United States Supreme Court, subject to exceptional circumstances not existing here, is to follow the law as it is written and as it has been interpreted under previous courts. The Gross decision departs from this tradition, and will create more difficulties in the interpretation of the ADEA in the future.

Note: US population figure in article is based on information released by the Population Division of the US Census Bureau.

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