



LABOR AND EMPLOYMENT

BALCH & BINGHAM LLP

BULLETIN April 12, 2004

Alabama • Georgia • Mississippi • Washington, D.C.

The Alabama Supreme Court Defines the Statute of Limitations for Alabama Age Discrimination in Employment Act Cases

On April 2, 2004, the Alabama Supreme Court clarified the time limits within which an employee must file a claim under the Alabama Age Discrimination in Employment Act, Ala. Code § 25-1-20 et seq. (“AADEA”). When the Alabama Legislature enacted the AADEA, it did not include a specific statute of limitations, but instead adopted the statutes of limitations authorized by the federal Age Discrimination in Employment (except that a plaintiff is not required to file an EEOC charge prior to filing suit under the AADEA). Ala. Code § 25-1-29. Based on this confusing language in the AADEA, various state trial courts and federal courts have applied at least four different limitation periods for AADEA claims, running the gamut from 90 days to two years.

In *Byrd v. Dillard’s, Inc.*, No. 02-14145, the Alabama Supreme Court resolved the issue by requiring a plaintiff to meet either of the following two time limits:

- (1) A plaintiff can file an AADEA claim in state court within 180 days from the occurrence of the alleged unlawful practice; or
- (2) A plaintiff can file a charge with the EEOC within 180 days from the occurrence of the alleged unlawful practice and then, after receiving notice that the EEOC has dismissed the charge, must file the AADEA claim in the state court within 90 days.

What does this mean for employers who are waiting to see if an employee will sue them for age discrimination under either the AADEA or the federal age discrimination law? If 180 days expire without the employee filing either an EEOC charge or a lawsuit under the AADEA, then the claim is time-barred absent some type of tolling of the statute of limitations. If an EEOC charge is filed within 180 days of the applicable adverse employment action, then the employer will have to wait until 90 days after the employee’s receipt of a Notice of Right to Sue from the EEOC before the limitation period expires under both the AADEA and the federal age discrimination law.

- ANTITRUST
- APPELLATE
- BANKRUPTCY, RESTRUCTURINGS & CREDITORS’ RIGHTS
- BUSINESS LITIGATION
- CASUALTY LITIGATION
- CIVIL RIGHTS LITIGATION
- CLASS ACTION LITIGATION
- COAL AND NATURAL GAS
- CONDEMNATION, LAND USE AND WATER RIGHTS
- CONSTRUCTION
- CONSUMER FINANCIAL SERVICES
- CORPORATE & SECURITIES
- ECONOMIC DEVELOPMENT
- INCENTIVES
- EDUCATION
- EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION
- ENERGY AND UTILITY LITIGATION
- ENERGY REGULATION & TRANSACTIONS
- ENVIRONMENTAL & NATURAL RESOURCES
- ENVIRONMENTAL LITIGATION
- FEDERAL GOVERNMENTAL RELATIONS
- FINANCE, LENDING AND LEASING
- FINANCIAL INSTITUTION FORMATIONS, MERGERS & ACQUISITIONS
- FINANCIAL INSTITUTIONS
- FINANCIAL PRODUCTS & SERVICES
- FINANCIAL SERVICES LITIGATION
- GAMING
- HEALTHCARE
- INSURANCE INDUSTRY LITIGATION
- INSURANCE INDUSTRY REGULATION
- INTELLECTUAL PROPERTY
- LABOR & EMPLOYMENT
- MERGERS & ACQUISITIONS
- NUCLEAR ENERGY
- PRODUCTS LIABILITY
- PUBLIC FINANCE
- REAL ESTATE
- REAL PROPERTY/TITLE INSURANCE LITIGATION
- SPORTS AGENCY & REGULATION
- STATE AND LOCAL GOVERNMENT LITIGATION
- STATE GOVERNMENTAL RELATIONS
- TAX
- TECHNOLOGY LAW COUNSELORS
- TELECOMMUNICATIONS
- WILLS, TRUSTS, ESTATES AND WEALTH MANAGEMENT



LABOR AND EMPLOYMENT

BALCH & BINGHAM LLP

BULLETIN April 12, 2004

Alabama • Georgia • Mississippi • Washington, D.C.

ANTITRUST
APPELLATE
BANKRUPTCY, RESTRUCTURINGS &
CREDITORS' RIGHTS
BUSINESS LITIGATION
CASUALTY LITIGATION
CIVIL RIGHTS LITIGATION
CLASS ACTION LITIGATION
COAL AND NATURAL GAS
CONDEMNATION, LAND USE AND
WATER RIGHTS
CONSTRUCTION
CONSUMER FINANCIAL SERVICES
CORPORATE & SECURITIES
ECONOMIC DEVELOPMENT
INCENTIVES
EDUCATION
EMPLOYEE BENEFITS AND EXECUTIVE
COMPENSATION
ENERGY AND UTILITY LITIGATION
ENERGY REGULATION &
TRANSACTIONS
ENVIRONMENTAL & NATURAL
RESOURCES
ENVIRONMENTAL LITIGATION
FEDERAL GOVERNMENTAL RELATIONS
FINANCE, LENDING AND LEASING
FINANCIAL INSTITUTION FORMATIONS,
MERGERS & ACQUISITIONS
FINANCIAL INSTITUTIONS
FINANCIAL PRODUCTS & SERVICES
FINANCIAL SERVICES LITIGATION
GAMING
HEALTHCARE
INSURANCE INDUSTRY LITIGATION
INSURANCE INDUSTRY REGULATION
INTELLECTUAL PROPERTY
LABOR & EMPLOYMENT
MERGERS & ACQUISITIONS
NUCLEAR ENERGY
PRODUCTS LIABILITY
PUBLIC FINANCE
REAL ESTATE
REAL PROPERTY/TITLE INSURANCE
LITIGATION
SPORTS AGENCY & REGULATION
STATE AND LOCAL GOVERNMENT
LITIGATION
STATE GOVERNMENTAL RELATIONS
TAX
TECHNOLOGY LAW COUNSELORS
TELECOMMUNICATIONS
WILLS, TRUSTS, ESTATES AND
WEALTH MANAGEMENT

Age discrimination claims continue to be dangerous for employers, especially during reductions-in-force. An employer who plans to take any adverse action against an employee who is 40 years or older should: (1) create and maintain proper documentation evidencing the legitimate, non-discriminatory reasons for the action; (2) avoid making any age-related comments in the workplace; (3) ensure its policy against age discrimination is current; and (4) if a release will be obtained from the employee, follow the requirements of the Older Workers Benefits Protection Act.



LABOR AND EMPLOYMENT

BALCH & BINGHAM LLP

BULLETIN April 12, 2004

Alabama • Georgia • Mississippi • Washington, D.C.

BALCH & BINGHAM LLP
LABOR AND EMPLOYMENT CONTACTS

BIRMINGHAM, AL

Edward S. Allen	ellen@balch.com	205.226.3413
Leslie M. Allen	lallen@balch.com	205.226.3484
Brent Cobb	bcobb@balch.com	205.226.3477
Aaron L. Dettling	adettling@balch.com	205.226.8723
Jenelle R. Evans	jevans@balch.com	205.226.8760
Monica G. Graveline	mgraveli@balch.com	205.226.8722
Douglas B. Kauffman	dkauffman@balch.com	205.226.8758
N. DeWayne Pope	dpope@balch.com	205.226.3421
Lisa J. Sharp	lsharp@balch.com	205.226.8714
T. Dwight Sloan	dsloan@balch.com	205.226.3447
M. Jefferson Starling, III	jstarling@balch.com	205.226.3406
Christopher T. Terrell	cterrell@balch.com	205.226.8734

HUNTSVILLE, AL

David B. Block	dblock@balch.com	256.512.0105
----------------	--	--------------

JACKSON, MS

R. Pepper Crutcher, Jr.	pcrutcher@balch.com	601.965.8158
Armin J. Moeller, Jr.	amoeller@balch.com	601.965.8156
David M. Thomas, II	dthomas@balch.com	601.965.8157
Rusty Turner	rturner@balch.com	601.965.8159

ATLANTA, GA

Gregory A. Bailey	gbailey@balch.com	404.261.6020
Charles J. Gernazian	cgernazian@balch.com	404.261.6020
Cary Ichter	cichter@balch.com	404.261.6020

MONTGOMERY, AL

David R. Boyd	dboyd@balch.com	334.269.3132
William P. Cobb, II	pcobb@balch.com	334.269.3128
Charles B. Paterson	cpaterson@balch.com	334.269.3143
Dorman Walker	dwalker@balch.com	334.269.3138

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.