



BALCH & BINGHAM LLP

Alabama • Mississippi • Washington, D.C.

LABOR AND EMPLOYMENT BULLETIN

March 5, 2004

- 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
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- TECHNOLOGY LAW COUNSELORS
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SUPREME COURT'S RULING THAT "REVERSE" AGE DISCRIMINATION IS NOT ACTIONABLE UNDER ADEA HAS IMPACT ON EARLY RETIREMENT BENEFITS

Resolving a recent split among federal appellate courts, the United States Supreme Court ruled last week that so-called "reverse age discrimination" – that is, an action preferring older workers to younger workers – is not actionable under the Age Discrimination in Employment Act of 1967. The case is *General Dynamics Land Systems, Inc. v. Cline*, No. 02-1080 (February 24, 2004).

In 1997, an amendment to the employer's collective bargaining agreement eliminated the company's obligation to provide health insurance for all future retirees, except for those who were at least 50 years old at the time of the amendment. A group of plaintiffs between the ages of 40 and 49 sued under the ADEA, claiming that the employer's action discriminated against them on account of age.

The Supreme Court upheld the District Court's dismissal of the plaintiff's claims. The Court reasoned that Congress intended only to strike at discrimination that benefited younger workers to the detriment of older workers. "[W]e think [it] is beyond reasonable doubt," the Court wrote, "that the ADEA was concerned to protect a relatively old worker from discrimination that works to the advantage of the relatively young."

Employers often rely on early separation or retirement benefits as a means to voluntarily reduce their workforces. The Supreme Court's decision provides employers with flexibility in offering early retirement or severance benefits to employees over a certain age, without risking potential ADEA liability arising from claims by employees who are forty or over but not old enough to be eligible for the benefits. Employers should remain mindful of other laws that are applicable to reductions in force, including the Employment Retirement Income Security Act ("ERISA") and the Worker Adjustment and Retraining Notification Act ("WARN").



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EEOC INVITES COMMENTS ON NEW "JOB APPLICANT" GUIDANCE

In the March 4, 2004 Federal Register, the EEOC, the OFCCP, the Department of Justice, and the Office of Personnel Management published new proposed guidance concerning when statistics on online job applications must be maintained under the 1978 Uniform Guidelines on Employee Selection Procedures.

The proposed guidance provides for a three-factor test for determining when the race and gender of an internet job applicant must be recorded under the Uniform Guidelines.

Comments on the proposed guidance must be submitted within the next 60 days. Please contact us for further information.



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