

Burden of Proof in Age Discrimination Cases

July 2009

The U.S. Supreme Court recently ruled that employees bringing age claims under the Age Discrimination in Employment Act always have the burden of proving that age was the “but for” reason for any adverse action. *Gross v. FBL Financial Services, Inc.*, No. 08-441 (June 18, 2009). The Court stated that even when the plaintiff can show that both legal and unlawful discriminatory reasons played a part in an employer’s decision, the burden never shifts to the employer to prove it would have taken the same action regardless of the employee’s age.

This means age discrimination will be more difficult for employees to prove in so called “mixed motive” cases than in similar cases involving violations of Title VII. In gender, race, national origin or religion cases under Title VII, if plaintiffs can show that in addition to legitimate reasons a protected characteristic played some role in the employer’s decision, the burden shifts to the employer to prove it would have taken the same adverse action absent the protected characteristic. This lessens the plaintiff’s burden of proof.

The Court based its decision on differences in the texts of the two statutes, and also expressed a concern on the difficulty juries have had with the shifting burden analysis required under Title VII. Some members of Congress have reacted unfavorably to the Court’s decision and have indicated they will seek legislation to overturn it.

For more information contact scott@schaffer-law.com or (860) 216-1965.

www.schaffer-law.com