

Alabama Age Discrimination in Employment Act *Prima Facie* Case Requirements

The Alabama Age Discrimination in Employment Act (AADEA) protects workers 40 and older from discriminatory employment decisions based upon age. The act is modeled after the federal Age Discrimination in Employment Act (ADEA), except that a plaintiff need not first file a timely complaint with the federal Equal Employment Opportunity Commission (EEOC) or with a state entity equivalent to the EEOC as a condition to bringing suit under the AADEA. However, a plaintiff may, if he/she wishes, choose to file a complaint with the EEOC and subsequently file suit in state court alleging a violation of the AADEA. In any event, a party bringing an action under the AADEA is only entitled to one recovery of damages. Any damages assessed in one court will offset an entitlement to damages in any other state or federal court. As is the case under the ADEA, the plaintiff is entitled to a trial by jury of issues of fact in an action for recovery of amounts owed as a result of an AADEA violation.

In a recent ruling, the Alabama Court of Civil Appeals rendered only the second Alabama appellate court decision on the merits in a case involving the AADEA. *Lambert v. Mazer Discount Home Centers, Inc.*, CV-07-2019 (Ala.Civ.App. Sept. 25, 2009) In this case, Lambert had been employed by Mazer for almost 29 years and had worked his way up to the position of vice president of marketing. In that capacity, he was responsible for purchasing items to be sold in the building supply and kitchen-and-bath departments, for seeking out and negotiating the purchase of closeout merchandise, and for planning and purchasing advertising for Mazer products and stores.

During early 2006, problems arose in the kitchen-and-bath department where Lambert was responsible for ordering activities. On several occasions, popular cabinets were not in stock, while at the same time the department was overstocked with items that would not sell. Mike Mazer, president of Mazer, expressed to Lambert his displeasure regarding the ordering problems. Additionally, Mike became increasingly dissatisfied with the way Lambert handled his advertising duties, having concluded that Lambert was not being proactive in looking for new and more effective ways to advertise. He also complained that Lambert was taking too much time at lunches with advertising contacts.

In May 2006, Mike's dissatisfaction with Lambert reached the point that he terminated Lambert's employment. After discharging Lambert, Mike divided and reassigned Lambert's duties to existing personnel. The executive vice president (who was older than Lambert) assumed Lambert's advertising duties, while the location manager (who was younger than Lambert) was promoted to purchasing manager and took over purchasing responsibilities for the kitchen-and-bath department. Mike himself (who was older than Lambert) took over Lambert's deal-buying function.

Lambert sued Mazer in state court alleging he had been discharged in violation of the AADEA. Mazer moved for a summary judgment, which was granted based on the trial court's determination that Lambert had failed to establish a *prima facie* case of age discrimination since he had not been replaced by a younger employee. A *prima facie* case in this context is one in which the employee's evidence is sufficient to defeat the employer's motion for summary

judgment (that is, a judgment rendered by the Court without the necessity of a trial). Lambert appealed to the Alabama Supreme Court which referred his appeal to the Alabama Court of Civil Appeals for decision.

The Court of Civil Appeals first noted a 2007 Alabama Supreme Court decision holding that federal cases applying the ADEA should govern the application of the AADEA. Under the federal decisions, a plaintiff's *prima facie* case requires proof that (1) the plaintiff was a member of a protected group, (2) the plaintiff was discharged, (3) the plaintiff was replaced with a person outside the protected group, and (4) the plaintiff was qualified to do the job.

However, the court noted that the federal courts do not always require proof that the plaintiff was replaced by a younger individual, particularly in cases involving a reduction in the workforce or the elimination of positions by an employer. In such cases, alternatively, a *prima facie* case may be established by demonstrating that (1) the plaintiff was in a protected group and was adversely affected by an employment decision; (2) the plaintiff was qualified to assume another position at the time of the discharge or demotion; and (3) there was evidence by which a fact finder might reasonably conclude that the employer intended to discriminate in reaching the decision at issue. The court decided that it would use the alternative *prima facie* test. Under that test, the only element in contention was whether there was evidence supporting a finding that Mike intended to discriminate based on age in terminating Lambert.

The court noted that, in deciding whether an age-discrimination plaintiff has presented enough evidence to carry the burden of presenting a *prima facie* case, courts have considered circumstantial evidence of discrimination, including comments made by employers that indicate an age-related bias. In this regard, Lambert testified that Mike had said he desired someone younger and more energetic to fill a position then held by a 65 year old employee and that the 65 year old "wasn't very active." Regarding another employee over 40, Mike had stated the employee was "past his prime" and also characterized him as not "active." The court noted, however, that those statements, which could certainly be perceived as derogatory and inappropriate, were not made regarding or directed toward Lambert. The comments were made about other employees and did not directly bear on the decision to discharge him. They were characterized by the Court as "stray remarks," which were inadequate to prove a discriminatory intent.

Lambert also relied on what he termed Mike's "conflicting testimony" regarding the reason for Lambert's discharge. In a 2008 deposition in a suit brought by another discharged employee, Mike was asked why Lambert was discharged, and he responded it was due to a "reorganization." When asked if there were any other reasons for discharging Lambert, Mike replied "no." The court found that Mike's comment in an unrelated case that he discharged Lambert because of restructuring was nothing more than a shorthand way to explain the changes in the Mazer management team and did not indicate that Mike was disavowing a performance basis for the discharge decision.

Lambert's final argument that he had produced sufficient circumstantial evidence of his age as a motivating factor for his discharge was Mazer's redistribution of Lambert's duties to a

younger employee. Although the court agreed that reassigning the duties of a discharged employee to a younger worker might evidence age discrimination, under the facts in this case it did not. At best, the court concluded, Lambert's evidence simply indicated that Mazer selected one younger person and two older persons to take over the tasks Lambert could no longer, in Mike's judgment, adequately perform. The mere fact that one of the persons to whom one-third of Lambert's duties were reassigned was younger than Lambert did not point to an age-based motive for Lambert's discharge. Therefore, the court held, Lambert did not prove a *prima facie* case of age discrimination under the AADEA, even based on the alternative test.

Though the employer ultimately won this case, it had to go through two levels of litigation to do so. The age-biased remarks attributed to the company's president certainly complicated the employer's defense. While it is not always possible for employers such as the University to prevent a discrimination case from being filed, an employer should at least be able to avoid incriminating comments and attitudes by supervisors through an emphasis on training and educational efforts.