

Labor and Employment E-news

August 13, 2008

Early Retirement Incentive Program Found to Discriminate on the Basis of Age

On August 5, 2008, the Michigan Court of Appeals issued its opinion in *Mona Shores Bd. of Educ. v. Mona Shores Teachers Educ. Assoc.*, No. 271592. In this decision, the Court made it clear that a collective bargaining agreement may not award greater early retirement benefits to retirees solely because of the age of the retiree.

In *Mona Shores*, the school board alleged that an early retirement incentive provision in the collective bargaining agreement between the school board and the teachers' association violated the Elliott-Larsen Civil Rights Act ("Elliott-Larsen") and the federal Age Discrimination in Employment Act ("ADEA"). Specifically, the relevant contract provision contained a sliding scale of early retirement benefits based solely on the age of the retiree at the time of retirement. For instance, teachers who retired before age 59 received greater benefits than teachers who retired between the ages of 59 to 64. Furthermore, teachers who retired after age 65 received no benefits at all.

After an arbitrator's ruling directing the school board to pay early retirement benefits to a terminated teacher, the school board filed suit seeking to vacate the arbitrator's award and asking the court to declare that the contract provision violated Elliott-Larsen and the ADEA. The trial court agreed with the school board and declared that the collective bargaining agreement provision violated the ADEA by unlawfully discriminating on the basis of age.

The Court of Appeals agreed with the trial court. The Court noted that teachers who retired at a younger age under the collective bargaining agreement would receive larger sums of money than those who retired between the ages of 59 to 64. While the incentive plan was voluntary, the plan still treated teachers who retired at a younger age more favorably than teachers who chose to retire at an older age. The Court of Appeals upheld the trial court's ruling vacating the arbitrator's award of early retirement incentive payments, and also enjoined the enforcement of the unlawful provision. However, the Court of Appeals remanded the case to the trial court to reinstate the part of the arbitrator's award that was unaffected by the unlawful provision.

In summary, collective bargaining agreements and retirement plans may not provide greater retirement benefits to younger retirees than older retirees if the award of benefits is based solely on the age of the retiree. Employers should review their retirement documents to ensure that benefits are not provided solely on the basis of age.

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If you have questions regarding Mona Shores or other employment-law matters, please contact your regular Butzel Long attorney, a member of the Butzel Long Labor and Employment Law Practice, or the author of this e-mail news alert.

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SAVE THE DATE ANNOUNCEMENT

Butzel Long's 21st Annual Labor and Employment Law Forum
Friday, 3 October 2008 at The Dearborn Inn - Dearborn, MI
Visit the Event section of www.butzel.com for details and online registration
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