

Supreme Court Increases Burden of Proof in Age Discrimination Cases

by Joette S. Doran, Esq.

The U.S. Supreme Court recently held in that the Age Discrimination in Employment Act does not allow a worker to establish discrimination by showing that age was one motivating factor for the employer's action. Instead, the majority held, employees must show that age was the decisive factor behind the employer's adverse job action. In *Gross v. FBL Financial Services, Inc.*, 129 S.Ct. 2343 (2009), 54-year-old Gross was a claims administration director until he was reassigned to the position of claims project administrator. Many of his previous duties were transferred to the newly-created position awarded to an employee in her early 40s, who Gross once supervised. Gross saw this as a demotion and sued the employer for age discrimination under ADEA. The jury returned a verdict Gross but the appellate court overturned the jury verdict and instructed that age discrimination must be presented with direct evidence sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action. The U.S. Supreme Court considered whether a plaintiff must present direct evidence of discrimination in order to obtain a "mixed-motive" jury instruction in a non-Title VII discrimination case. The Supreme Court held that the statutory language of Title VII is materially different than the ADEA. Unlike



Title VII, the ADEA does not authorize a "mixed-motive" cause of action. Instead, the ADEA makes it unlawful for an employer to make an adverse employment decision "because of" an employee's age. The Supreme Court interpreted "because of" to mean that age must be the determining factor in a decision.

For additional employment information, please visit our Web site at—
www.joettedoran.com.

This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.

Ms. Doran is licensed in Illinois, all Illinois federal courts and is a member of the Federal Trial Bar. She is the past chairperson of the Employment Law Committee for the Northwest Suburban Bar Association, a past president of Barrington Area Professional Women and a member of the National Employment Lawyers Association.