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# EMPLOYMENT SERVICES ALERT

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## It's Unanimous: Federal Age Discrimination Law Applies to Public Employers Regardless of Size

By Monica Frantz, Attorney

In a unanimous ruling issued this week, the U.S. Supreme Court held that the Age Discrimination in Employment Act ("ADEA") applies to all state and local government employers, even those with fewer than 20 employees.[i] The ADEA protects employees and job applicants who are 40 years of age or older from employment discrimination based on age. While the ADEA only applies to private employers of 20 or more, the Supreme Court has decided it applies to political subdivisions of any size.

The case arose from a lawsuit brought by two firefighter captains in Arizona who claimed the Mount Lemmon Fire District illegally discharged them because of their age. The plaintiffs—John Guido and Dennis Rankin—were 46 and 54, respectively, when they were fired in 2009. In defending against the fire captains' federal lawsuit, the fire district argued that it was too small to qualify as an "employer" under the ADEA, because the law does not apply to public entities with less than 20 employees. Siding with the fire captains, the lower courts held that the ADEA applies to subdivisions of any size, and the Supreme Court agreed.

The high court's decision turned largely on an interpretation of the language of the ADEA statute. The statute defines an "employer" as "a person engaged in an industry affecting commerce who has 20 or more employees" for much of the preceding year. The statute further states that an employer "also means . . . a State or political subdivision of a State." The Supreme Court reasoned that, based on the phrase "also means" as used in the statute, the ADEA covers two distinct types of employers: (a) employers engaged in an industry affecting commerce that employ 20 or more employees; and (b) states and political subdivisions regardless of the number of workers employed. Justice Ruth Bader Ginsburg delivered the Court's opinion, explaining that the phrase "also means" is additive rather than clarifying. The Court concluded that the text of the statute "leave[s] scant room for doubt that state and local governments are 'employer[s]' covered by the ADEA regardless of their size."

The Supreme Court's ruling could have negative implications for small public entities. As Justice Ginsburg pointed out, the Court's decision means that the ADEA has an even broader reach than Title VII. The ruling creates added exposure to age discrimination claims for small public entities, and, as a result, may lead to higher employment practices liability rates. An employer who is found to have violated the ADEA could be on the hook for lost wages and liquidated damages in the same amount as the lost wages, as well as court costs and attorneys' fees. If you are a public entity of any size, now is the time to ensure that your employment policies and practices are up to date and in compliance with all federal, state, and local laws.

If you have any questions about this topic or any other labor and employment matter, please contact one of the listed Roetzel attorneys.

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[ii] *Mount Lemmon Fire Dist. v. Guido, et al.*, Slip Opinion No. 17-587 (November 6, 2018).