

# U.S. Court Holds No Foreign Law Exception to the ADEA and Title VII in GM Bias Case

**International Labor and Employment Law** on April 3, 2019

On January 30, 2018, Shawn Wang (“Plaintiff”), filed suit against GM (China) Investment Co., Ltd. (“GMCIC”) and General Motors (GM) alleging, among other things, age discrimination in violation of the Age Discrimination and Employment Act (“ADEA”) and race and national origin discrimination under Title VII. Plaintiff, a naturalized U.S. citizen, was a GMCIC employee in Shanghai, China until he was terminated. GM filed a motion to dismiss arguing that it was required to terminate Plaintiff in order to comply with China’s mandatory retirement age law. On March 5, 2019, the Eastern District of New York denied the motion to dismiss the suit.

## **Background**

Title VII and the ADEA each contain a “foreign law” exception that shields employers from liability for actions involving an employee in a workplace in a foreign country. The exception applies where compliance with Title VII and the ADEA would otherwise cause the employer, or a corporation controlled by the employer, to violate the laws of the country where the workplace is located. To receive protection, the employer’s conduct in question must be necessary in order to avoid violating a foreign law.

Chinese law creates a mandatory retirement age of sixty years old for male employees. Upon reaching sixty years of age, an employee’s labor contract is terminated.

## **Decision**

After reviewing Chinese case law, the Court noted that, although an employee's labor contract is terminated on his sixtieth birthday, the law permits the individual to continue his relationship with his employer as an independent contractor. The Court continued by pointing out that, under Chinese case law, contracts entered into by parties to create independent contractor relationships are not subject to the statutory retirement age. Accordingly, under Chinese law, the Court found that it would have been lawful for GMCIC to maintain a working relationship with Plaintiff as an independent contractor.

Next, the Court turned to GMCIC's retirement policies which expressly stated that the company could, at its discretion, continue an individual's employment after reaching retirement age on a year-to-year basis until the age of sixty-five. Indeed, in response to Plaintiff's EEOC charge, GM indicated that, in rare instances, where GMCIC's business needs require the services of a former employee, the company will enter into independent contractor relationships for those services.

Ultimately, the Court held that GM did not meet their burden in demonstrating that they would have violated Chinese law by continuing a working relationship with Plaintiff beyond his sixtieth birthday. The Court held that, contrary to GM's contentions, the law would have permitted GMCIC to maintain an independent contractor relationship with Plaintiff.

On April 5, 2019, GM filed a motion seeking certification of an interlocutory appeal to the Sixth Circuit. In its motion, GM argued that certification for the appeal was appropriate because the foreign law exceptions present novel legal issues for which there is no guidance from the Sixth Circuit. Resolution of these issues on appeal, GM argued, would advance the litigation by facilitating settlement, narrowing the issues, or causing Plaintiff's claims to be dismissed.

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