

Eighth Circuit Holds Law Firm Partner Not “Employee” Covered by ADEA

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On December 3, 2019, the U.S. Court of Appeals for the Eighth Circuit affirmed the decision of the District Court for the Eastern District of Missouri holding that a former equity partner at a law firm was not an “employee” covered by the Age Discrimination in Employment Act (“ADEA”).

Joseph S. von Kaenel was an equity partner at the law firm of Armstrong Teasdale LLP.

At issue in this case was the firm’s partnership agreement, which contained a mandatory retirement provision requiring that equity partners, upon turning 70 years old, retire from the firm unless the managing partner permitted an exception. The partnership agreement also entitled an equity partner to severance benefits for two years following retirement, so long as the partner did not engage in the private practice of law following his/her retirement.

In November 2014, the plaintiff turned 70 years old and subsequently retired from the Firm under its mandatory retirement policy. Because plaintiff engaged in the private practice of law following his retirement, he was not entitled to the severance benefits outlined in the partnership agreement. Plaintiff then sued his former firm alleging that the firm’s mandatory retirement provision violated the ADEA. The district court granted judgment on the pleadings in favor of the firm, based in part on the fact that the Missouri state court had already found that von Kaenel was not an employee under the Missouri Human Rights Act, and plaintiff appealed.

The Eighth Circuit, in a case of first impression, held that “von Kaenel’s role as equity partner at Armstrong Teasdale was not simply a title that carried no legal significance”, but rather supported the notion that he was not an “employee” entitled to the protections of the ADEA. In reaching this decision, the court relied on the factors set forth by the U.S. Supreme Court in *Clackamas Gastroenterology Assocs, P.C. v. Wells*, 538 U.S. 440, 450 (2003). In *Clackamas*, the Supreme Court explained that the issue of whether shareholders were employees covered by the Americans with Disabilities Act turned on several factors, including: (1) whether the organization can hire or fire the individual or set rules and regulations for the individual’s work; (2) whether and to what extent the organization supervises the individual’s work; (3) whether the individual reports to someone higher in the organization; (4) whether and to what extent the individual is able to influence the organization; (5) whether the parties intended the individual to be an employee, as expressed in written contracts or agreements; and (6) whether the individual shares in the profits, losses, and liabilities of the organization.

The Eighth Circuit, in “prob[ing] the actual circumstances of von Kaenel’s relationship with the firm,” pointed to the following facts as evidence that plaintiff was not an “employee” of the firm: (1) plaintiff was required to make a capital contribution and sign the partnership agreement upon becoming a partner; (2) plaintiff had the ability to vote on changes to the partnership agreement, including the mandatory retirement provision and the admission of new partners to the partnership; (3) plaintiff’s compensation arrangement included sharing in the firm’s profits and losses; (4) plaintiff’s health insurance premiums and 401k contributions were deducted from partner distributions; (5) plaintiff’s practice group leader did not review plaintiff’s substantive work; (6) while other members of the firm set attorneys’ hourly rates for clients, plaintiff had once requested – and was approved for – a reduced hourly rate for a particular client; and (7) as an equity partner, plaintiff could only be expelled from the firm by vote of the partners or by operation of the mandatory retirement provision.

This decision is notable because it is the first at the Circuit Court level to find that a law firm partner was not an employee protected by a federal employment discrimination statute. Of course, we will continue to monitor this case, and others, on this important issue for law firms and other partnerships.

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