

# PUBLICATION

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## Unanimous Supreme Court Sides with Public Employees in Age Discrimination Fight

November 19, 2018

**In its first ruling of the new term, the United States Supreme Court unanimously sided with the Ninth Circuit in holding that the Age Discrimination in Employment Act (ADEA) applies to all states and political subdivisions regardless of the number of people the public entity employs. Justice Ruth Bader Ginsburg wrote the opinion, ultimately rejecting an Arizona fire district's argument that the ADEA should not apply to state entities or political subdivisions that employ less than 20 people. The high court's decision resolved a significant circuit split among the Sixth, Seventh, Eighth, and Tenth Circuits, on one side, and the Ninth Circuit, on the other.**

The case, *Mount Lemmon Fire District v. Guido*, arose when the fire district laid off its eldest full-time firefighters. The firefighters, then 46 and 54 years old, sued alleging their termination violated the ADEA. Citing budget concerns and the ADEA's numerosity language, the 12-person fire district maintained it was too small to qualify as an "employer" under the statute.

The ADEA provides that "employers" may not discriminate against any job applicants or employees, over 40 years old, on the basis of their age. The ADEA originally applied only to private employers, but in 1974, Congress amended the definition of "employer" to read as follows:

The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees. . . . The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State. . . .

29 U.S.C. §630(b).

In a seven-page opinion, the Court focused on the phrase "also means" and questioned whether the 1974 amendment added new categories to the definition, or if it merely clarified that a state and its subdivisions are a type of "person." Pointing to the ordinary meaning of "also means," the Court noted that it is additive rather than clarifying. The Court acknowledged the phrase "also means" appears throughout the U.S. Code and has a similar additive effect. The Court shot down the fire district's argument that the ADEA should be interpreted similarly to Title VII, which applies only to employers with 15 or more employees, regardless of whether the employer is private or public.

In rejecting the Fire District's warning that applying the ADEA to small public entities would risk a serious blow to small public employers fending off age discrimination lawsuits, the Court emphasized that the EEOC has consistently applied the ADEA in a manner consistent with the Court's ruling and that a majority of state laws already prohibit age discrimination by public entities regardless of size.

In light of this decision, small public employers should revisit their antidiscrimination policies and procedures, along with severance and settlement agreements, to ensure compliance with the ADEA.

For more info on this case or other ADEA issues, please contact any member of Baker Donelson's [Labor & Employment Group](#).

