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A Briefing on Recent Legal Decisions Impacting the Workplace

Court Finds Machine's "Defeat" of Employee Was Not Age Discrimination

A recent Federal court of appeals found that an employer did not discriminate against an employee who was over the age of forty (40) when it fired the employee and then "replaced" him with the implementation of a new streamlining technology, because the technology, not a younger employee, performed the employee's job duties subsequent to his termination.

Introduction

There is no doubt that the increased use of technology in business has increased efficiency, streamlined workflow, and thus, increased companies' profitability. One consequence of the increased use of technology in business is that the workplace has changed—many tasks that traditionally were performed by people, such as manufacturing and data analysis, can now be performed automatically by computers and even robots. Indeed, one local hospital system is implementing the use of robots to perform tasks that historically have been performed by nurses. For all of the good that comes from maintaining a technologically advanced business, one downside for workers is the risk of being "replaced" by machines.

The battle of man vs. machine is a common theme in American folklore. For example, Paul Bunyan, perhaps America's most noteworthy mythological lumberjack, and his trusty companion, Babe the Blue Ox, cleared the "Northwoods" at an incredible clip for the benefit of the locals. In one parable, a classic battle of "man vs. machine" pitted Bunyan with his "big ax and old foggy ways" against a slick-talking salesman and his "new-fangled contraption", a steam-powered chainsaw, in a logging contest. Although both felled trees at a rate many today would consider alarming, ultimately, the chainsaw-wielding salesman prevailed by one-quarter inch of timber, forcing a deflated Bunyan to move on and ply his wares in Alaska.

This tale speaks to many in the modern workforce. For example, what happens if a company implements a new technology that causes a worker over the age of forty (40) to lose his job, while a younger employee is engaged to oversee the performance of the technology? Does this constitute age discrimination? Recently, a Federal appeals court weighed in on the issue.

The Case

Thomas Gortemoller, an individual over the age of forty (40), worked for International Furniture Marketing, Inc. ("IFM") in the company's product-design process. His responsibilities focused on six primary duties: (1) conducting research to determine what new product to produce, (2) creating specifications and working with designers on product, (3) selecting designs produced by IFM's designers, (4) developing and merchandising product, (5) traveling overseas to look at product, and (6) traveling to market to sell product and evaluate the competition.

IFM terminated Gortemoller and streamlined its product-design process by implementing a

web-based computer program called “Design Net”, which allows salespeople to communicate directly with designers about what products are needed and allows customers to provide feedback directly to salespeople and designers. Todd Evans, an employee under the age of forty (40) who had worked for IFM for eight (8) years, was selected to oversee the streamlined process, but he did not take over Gortemoller’s duties. In fact, no one did, as Design Net was able to do so.

Gortemoller filed suit against IFM in which he alleged that his termination was in violation of the Age Discrimination in Employment Act (“ADEA”), the Federal law which prohibits employers from discriminating against employees who are at least forty (40) years old on the basis of their age. The district court found in favor of IFM and dismissed the suit and Gortemoller appealed.

Analysis

The appeals court also affirmed the dismissal of the suit. In order to make an initial showing of age discrimination, Gortemoller was required to show that: (1) he was a member of a protected class, (2) he was subjected to adverse employment action, (3) he met IFM’s legitimate job expectations, and (4) he was replaced by or otherwise lost his position to a younger individual.

In finding that the Gortemoller did not meet his burden, the court noted that while the parties agreed that he met the first three elements, the Court concluded that Gortemoller failed to establish that he was replaced by or otherwise lost his position to a younger individual because no individual, including Evans, assumed Gortemoller’s duties after his termination and the implementation of Design Net. Further, the court noted that the younger Evans performed only one duty that Gortemoller had performed - traveling overseas to look at products - a duty that Evans also had performed prior to Gortemoller’s termination. Thus, the court held, Gortemoller was neither replaced by, nor did he lose his position to Evans. In effect, the court found, that Design Net, not Evans, replaced Gortemoller.

Impact on Employers

The court recognized employers’ legitimate business interest in streamlining its processes through the use of technology. Obviously, the unfortunate consequence of this technology was that Gortemoller lost his job. Importantly, as this case highlights, the focus in a “machine over employee” situation in the context of an ADEA claim is who or what replaced the employee’s duties. If the technology replaces all of the employee’s duties, it is unlikely that a violation of ADEA will have occurred. On the other hand, if a younger individual is engaged to fulfill some or all of the job duties of the terminated employee, there could be enough evidence to support a finding of age discrimination by the employer. Thus, prior to implementing new technology in the workplace that could endanger the positions of workers over the age of forty (40), it is imperative for employers to closely assess whether it is the new technology or younger workers that will effectively replace workers over the age of forty (40).

If you have any questions about the impact of implementing new technologies in your company’s workplace or about responding to claims of age discrimination, please contact Vanessa L. Smith, Esq. or another of Vantage Legal’s attorneys at 312.440.0602.

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