



EEOC *News*

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EEOC WINS SUMMARY JUDGMENT ON LIABILITY IN BALTIMORE COUNTY PENSION CASE *Pension Plan Found to Be Discriminatory on the Basis of Age*

BALTIMORE – A federal judge has granted summary judgment against Baltimore County in favor of the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today. In so doing, the judge found that Baltimore County's pension plan, known as the Employee Retirement System (ERS), violates the Age Discrimination in Employment Act (ADEA) because the plan is inherently discriminatory. U.S. District Judge Benson Everett Legg also denied Baltimore County's motion for summary judgment.

The EEOC initially filed suit against Baltimore County in September 2007, charging that Baltimore County discriminated against Wayne A. Lee, Richard J. Bosse, Sr., and a class of similarly situated employees at least 40 years of age by requiring them to pay higher pension contributions than those paid by younger employees (Case No. BEL-07-2500, filed in U.S. District Court for the District of Maryland, Northern Division). The EEOC also named various county labor organizations as defendants who must negotiate with Baltimore County to effectuate the changes sought in its lawsuit. In January 2009, the Court awarded summary judgment in favor of Baltimore County.

After the EEOC appealed, the Fourth Circuit Court of Appeals vacated the entry of summary judgment and remanded the case to the District Court to decide whether Baltimore County's pension plan is supported by permissible financial considerations (*EEOC v. Baltimore County*, 385 F. App'x 322, 325 [4th Cir. 2010]). The District Court rejected Baltimore County's argument that the Supreme Court's decision in *Kentucky Retirement v. EEOC*, 554 U.S. 135 (2008) excused the pension practice. Noting that Baltimore County "was given an opportunity to conduct full discovery, including a comprehensive 30(b)(6) deposition of Buck Consultants, the actuarial firm that has been responsible for ERS since its creation," the District Court found that Baltimore County had failed to bring forward

non-age related financial considerations that justify the disparity in contribution rates between older and younger workers. The next phase of the litigation will determine damages.

“It is pretty rare that any plaintiff can win any claim against a pension plan,” said EEOC General Counsel David Lopez. “While some may have thought the *Kentucky Retirement* decision spelled the death knell for this case and others like it, our perseverance paid off in limiting the impact of that decision. The EEOC is prepared to vigorously litigate these cases, where necessary, to ensure compliance with the law.”

EEOC Regional Attorney Debra Lawrence said, “The county made older employees pay more than younger employees for the same retirement benefits, without any financial justification. Older employees felt the impact of this discrimination in every paycheck. Because more money is taken out of older employees’ paychecks to fund their retirement benefits, they receive less pay than younger employees doing the same job. With the court’s decision, we are putting an end to this unlawful practice.”

This resolution is the latest in a series of systemic suits the EEOC has brought against public employers alleging age discrimination in the provision of retirement benefits. [In several related cases against Minnesota state agencies, the federal agency challenged early retirement incentive plans that denied health benefits for those employees who chose not to retire earlier than age 55.](#) The Eighth Circuit agreed that the plan violated the ADEA. [In a case against an Arizona school district, the EEOC challenged a retirement plan that granted more compensation for unused leave to younger employees than to older employees.](#) These cases settled.

The EEOC enforces federal laws prohibiting employment discrimination. The EEOC’s Philadelphia District oversees Maryland as well as Pennsylvania, Delaware, West Virginia and parts of New Jersey and Ohio. Further information about the Commission is available at its website, www.eeoc.gov.

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