

Jenner & Block

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Thursday, February 01, 2007 --- U.S. age discrimination laws were created to protect workers from unfair treatment because they are too old—but does it protect workers from discrimination if they are too young? That was the unusual question brought to the U.S. Supreme Court by a firm with experience in precedent-setting cases: Jenner & Block.

In the case, Jenner & Block represented defense contractor General Dynamics, which was accused by a class of younger workers of violating the Age Discrimination in Employment Act of 1967. General Dynamics had entered a collective bargaining agreement with a union which eliminated the company's obligation to provide retirement health benefits to current workers, except workers at least 50 years old.

The plaintiff workers, who were at least 40 and thus covered by the ADEA, also wanted to recoup the benefits when they retired, but lost a district court decision in 2000. The Sixth Circuit reversed the decision in 2002, saying that Congress didn't mean to limit the ADEA's coverage to protect just older workers.

Two years later, the Supreme Court ruled in favor of General Dynamics, saying, "Congress' interpretive clues speak almost unanimously to an understanding of discrimination as directed against workers who are older."

"In respect to federal age discrimination claims, the Court said there's no such thing as reverse age discrimination," said Carla Rozycki, co-chair of Jenner's Labor and Employment group. "There's nothing unlawful about discriminating in favor of an older worker, and therefore against a younger worker relatively."

The case shows Jenner & Block's diverse structure compared with other firms. While many firms would allow one attorney to represent the client through each phase, Jenner brought in a member of its Appellate and Supreme Court practice for the high court hearing.

For the district and appellate phases of the case, Jenner & Block brought Craig C. Martin from its ERISA practice because the case involved retiree benefits and Rozycki because her employment expertise included age discrimination claims.

"Our organization doesn't quite match the way other groups are organized," Rozycki said. "Depending on the demands of a particular case, we can

handle a variety of aspects by assigning litigation attorneys whose expertise best fits the demands of the particular case.”

The many facets of employment law are divided into several groups at Jenner & Block, with about 50 litigators working overall in the labor and employment, ERISA and trade secrets practice groups. Rozycki said about 10 attorneys work on traditional labor litigation like age discrimination, wage and hour laws, and harassment claims. The labor and employment group’s attorneys are based in the firm’s Chicago office, though the firm works on cases nationally. The firm also has offices in Dallas, New York and Washington, D.C.

The group handles a wide range of labor and employment-related litigation, including National Labor Relations Board proceedings, defending discrimination charges and claims regarding the Americans with Disabilities Act and Family Medical Leave Act.

The firm also conducts internal company matters, such as internal harassment claims, employee terminations, and non-competition agreements and other restrictive contracts.

Its clients include employers in manufacturing operations, banking and other financial services, retail operations and educational institutions.

Rozycki joined the firm in 1997. She said one of the reasons she joined the firm was its commitment to not-for-profit organizations.

Jenner attorneys are renowned for their pro bono work, for which they have received many awards. Since 1994, the firm said it has been nationally ranked in the top 10 for the most number of pro bono hours served. The firm’s pro bono work includes representing detainees in Guantanamo Bay, inmates on death row and foreign refugees seeking asylum.

Those with little experience in those types of practice areas, like Rozycki, participate in public service in other ways.

Since 2000, Rozycki has been on the board of directors for AgeOptions, a not-for-profit agency in Cook County, Ill. that provides funds for senior nutrition programs, transportation, housekeeping and other services to older people.

“I think the issue is particularly personal,” Rozycki said. “Everyone is a caregiver at some point in their life, such as when you have aging parents. The kind of information the aging network makes available is really amazing. It is something everybody needs at various points of life.”

While she enjoys the nonprofit work, she also enjoys the challenges of her day job.

Rozycki said she sees litigation over retiree issues, harassment, wages and

hours increasing, especially with a recent Supreme Court ruling that eases standards on Title VII retaliation claims, making it easier for plaintiffs to get past summary judgments.

But with the courts and the Equal Employment Opportunity Commission urging parties to settle disputes, more employers are trying to avoid litigation, Rozycki said.

“One of the trends that we’ve seen and that will continue is the increased early use of alternate dispute resolution, mediation to resolve claims,” Rozycki said. “Many clients have been there and know how disruptive this kind of litigation can be in terms of time and emotion.”

Rozycki said a number of years ago, the firm successfully mediated over 40 race discrimination case settlements over a 6-month period for one client. The challenge in that case was to set guidelines, because one case could set a precedent for other cases.

“The process of a successful mediation requires the attorney and client to plan ahead and be prepared to show that they have a good defense on the merits and also to have a plan as to what is a logical approach to settlement,” Rozycki said. “And to have a decision in mind by the client on what would be a successful outcome.”

Companies also turn to Jenner & Block because of its own successful work environment. The firm gives its employees diversity awareness training, has a diversity committee that focuses on diversity at the firm and sponsors a legal diversity job fair.

The firm has won many awards from civil rights organizations, including the Human Rights Campaign, the Lesbian & Gay Bar Association of Chicago and the Mexican American Legal Defense and Education Fund.

Perhaps the best award is how clients view the firm.

“In this day and age, employers look increasingly to their law firms to represent a diverse population of lawyers, just as companies do,” Rozycki said. “Model employers want to have their law firm reflect the same values that they seek to endorse.”