
The U.S. Equal Employment Opportunity Commission

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ALL EEOC AGE BIAS CLAIMS AGAINST SIDLEY & AUSTIN TO GO FORWARD, FEDERAL APPEALS COURT RULES

Unanimous 7th Circuit Says EEOC Has Enforcement Authority To Obtain Money for Expelled Partners

CHICAGO - The U.S. Court of Appeals for the 7th Circuit, sitting in Chicago, ruled this morning that the U.S. Equal Employment Opportunity Commission (EEOC) has authority to obtain monetary relief for partners expelled from the giant international Chicago law firm of Sidley Austin (formerly known as "Sidley & Austin" and "Sidley Austin Brown & Wood") because of their age. (*EEOC v. Sidley Austin*, 7th Cir. No. 06-8002, *decision below affirmed* February 17, 2006.)

Today's unanimous ruling, written by Circuit Judge Richard Posner and joined in by Circuit Judges Frank H. Easterbrook and Diane P. Wood, came in response to a Sidley application to appeal from a lower federal court ruling by District Judge James B. Zagel which denied, for a second time, summary judgement and held that the EEOC could obtain monetary relief for "partners" expelled on account of their age or forced to retire. (*EEOC v. Sidley Austin Brown & Wood*, N.D. Ill. No. 05 C 0208, *filed* January 13, 2006.)

In holding that EEOC may obtain monetary relief in the case as well as injunctions, Judge Posner ruled that the U.S. Supreme Court's 2002 landmark decision in *EEOC v. Waffle House, Inc.* (534 U.S. 279) was controlling, writing that an earlier *North Gibson School Corporation* decision on which Sidley relied "is no longer good law [and] was scuttled by the Supreme Court in *EEOC v. Waffle House* . . . which held that the EEOC's claim for monetary relief for a victim of an alleged violation . . . was not barred . . ." The Seventh Circuit continued, "The reason there was no bar was . . . because [the EEOC's] enforcement authority is not derivative of the legal rights of individuals even when it is seeking to make them whole."

Sidley Austin Brown & Wood is the law firm which resulted from the merger of Sidley & Austin and New York-based Brown & Wood in May 2001. It recently changed its name to Sidley Austin LLP.

The EEOC lawsuit is a "class" age discrimination case brought, first, with respect to 31 former Sidley & Austin partners who were involuntarily downgraded and expelled from the partnership in October 1999 on account of their age, and, second, with respect to other partners who were involuntarily retired from Sidley & Austin since 1978 on account of their age, pursuant to a mandatory retirement policy. The ADEA prohibits employers with 20 or more employees from making employment decisions affecting employees over 40, including decisions regarding the termination of employment, on the basis of age. The ADEA also prohibits such employers from utilizing policies or rules which require employees over 40 to retire when they reach a particular age.

"Sidley's arguments about monetary relief and other remedies in this case have always been non-starters which cannot survive what the Supreme Court had to say in *Waffle House*," said EEOC Regional Attorney John Hendrickson. "Judge Zagel ruled twice in our favor on this issue. Now the 7th Circuit, which very seldom takes any kind of interlocutory appeal, has reached out and taken the appeal and affirmed Judge Zagel on all counts. So one of Sidley's last major defenses has been authoritatively and completely struck down there's nothing left of it. Now we can turn our full attention to the task of assuring that the jury requires Sidley to respond to the discrimination claims against it with significant and meaningful monetary and other relief."

Today's U.S. Court of Appeals decision by Judge Posner was the fifth significant decision in the history of the case, all of which have been in favor of the EEOC. Judge Zagel's District Court decision, which was affirmed by the Court of Appeals today, was entered December 20, 2005. (Case citation: 97 BNA Fair Employment Practices Cases 211.) Zagel had also ruled in favor of the EEOC on the identical issue on June 9, 2005 (Case citation: 2005 U.S. Dist. LEXIS 12196.) During the EEOC administrative investigation which predated the suit, Sidley refused to comply with an agency subpoena and forced the EEOC to seek court enforcement. The EEOC's position was upheld by the Federal District Court in Chicago in February 2002 (*EEOC v. Sidley & Austin*, N.D. Illinois No. 01 C 9635 [2/11/2002; District Judge Joan Humphrey Lefkow], 2002 WL 206485, 88 Fair Empl.

Prac. Cas. (BNA) 64.) Thereafter, Sidley elected to appeal, but the District Court decision was upheld in respects material to the EEOC. In an October 24, 2002 opinion written by 7th Circuit Judge Posner, Sidley was ordered to comply in significant part with the EEOC subpoena. (Case citation: *EEOC v. Sidley & Austin*, 315 F.3d 696 [7th Cir. 2002].)

In addition to Regional Attorney Hendrickson, EEOC has been represented by Supervisory Trial Attorney Gregory Gochanour and Trial Attorneys Deborah Hamilton, Laurie Elkin, and Justin Mulaire of the Chicago District Office. In the 7th Circuit, Deputy General Counsel James L. Lee, Acting Associate General Counsel Vincent J. Blackwood, Assistant General Counsel Carolyn L. Wheeler, and Appellate Attorney Jennifer S. Goldstein were on the brief for the EEOC.

On its Internet web site (www.sidley.com), Sidley & Austin describes itself as "a significant legal power in the international arena," with "about 1,500 lawyers practicing on three continents." The firm has offices in Chicago, Dallas, Los Angeles, New York, San Francisco, Washington, Beijing, Brussels, Geneva, Hong Kong, London, Shanghai, Singapore and Tokyo.

The EEOC is responsible for enforcing the nation's laws prohibiting discrimination in employment based on race, color, sex (including sexual harassment and pregnancy), religion, national origin, age, disability, and retaliation. Further information about the Commission is available on its web site at www.eeoc.gov.

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