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United States District Court, N.D. California.

Ronald ARNETT, et al., Plaintiffs,
v.
CA EMPLOYEES' RETIREMENT, et al., Defendants.

No. C95–03022 CRB. | March 2, 1998.

Opinion

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

BREYER, J.

***1** Before the Court are defendants' motions to dismiss plaintiffs' disparate impact claim under the Age Discrimination in Employment Act ("ADEA"). Plaintiffs allege that the California Public Employee Retirement System ("PERS") industrial disability retirement allowance improperly discriminates on the basis of age. The Court previously dismissed plaintiffs' disparate treatment claim with prejudice but granted plaintiffs leave to amend the complaint to allege a disparate impact claim under the ADEA. (Hon. Saundra Brown Armstrong). The Court, having read the briefs and declarations submitted by the parties, GRANTS defendants' motions for the reasons articulated by the Court at the hearing on these matters and for the reasons stated herein.

The PERS Disability Retirement Allowance Does Not Violate the ADEA

a. *Background*
Plaintiffs are a class of California employees subject to the PERS provisions in California Government Code sections 21406 et seq., section 21417, and related sections of the code. The plaintiffs' allegations focus on the cap imposed under the PERS disability retirement allowance. *See* California Government Code § 21417. In essence, that section limits an employee's disability allowance under PERS to the *lesser* of 50 percent of final compensation or an amount determined by a formula which calculates the service pension an employee would have earned had they worked until retirement age. Various other provisions provide the projected retirement age, which ranges from age 55 to age 65 depending on the class of job which the employee held.[1]

For example, the plaintiffs contend that an employee who was hired at age 40 and became injured soon thereafter would receive approximately 40 percent of final compensation as disability retirement. Conversely, an employee hired at age 25 who immediately became injured would receive the full 50 percent allotted by the PERS disability program. Overall, the provisions operate so that as the age at hiring increases, the percentage disability allowance decreases. Plaintiffs contend that these provisions work to "deprive these individual plaintiffs and other members of the class of public safety officers hired after reaching the age of 40 of equal employment opportunities and benefits, and to otherwise adversely affect their status as former employees entitled to industrial disability benefits." (Complaint, ¶ 60).

"A disparate impact claim [under the ADEA] challenges employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." *Rose v. Wells Fargo & Co.,* 902 F.2d 1417, 1423–24 (9th Cir.1990) (quotations omitted). A motion to dismiss should not be granted unless it appears beyond a doubt that the plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45–46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). For purposes of such a motion, the complaint is construed in a light most favorable to the plaintiff and all properly pleaded factual allegations are taken as true. *Everest and Jennings, Inc. v. American Motorists Ins. Co.,* 23 F.3d 226, 228 (9th Cir.1994). All reasonable inferences are to be drawn in favor of the plaintiff.

b. ***Cognizability of a Disparate Impact Claim Under the ADEA***

***2** For the purpose of defendants' motions to dismiss, the Court assumes that the plaintiffs may challenge age discrimination under a disparate impact analysis. Although the Ninth Circuit has yet to address this issue in detail, previous decisions have permitted plaintiffs to state such a claim under the statute. *See, e.g., Mangold v. California Public Utilities Commission,* 67 F.3d 1470, 1473–74 (9th Cir.1995); *EEOC v. Local 350,* 998 F.2d 641, 648 n. 2 (9th Cir.1993). Accordingly, the Court assumes, without actually deciding, that a disparate impact claim is cognizable under the ADEA.

c. ***The Cap on Disability Allowance Does Not Discriminate on the Basis of Age***

The plaintiffs' focus their argument on the cap imposed by section 21417. As noted, that section prevents employees hired over the age of 40 from receiving the 50 percent disability allowance provided to employees who start at a younger age. Plaintiffs contend that this bar creates a disparate impact which constitutes impermissible age discrimination.

Initially, an anomaly exists in the plaintiffs' argument that section 21417 discriminates against employees hired over age 40. Although the PERS provisions affect older workers, they also sharply limit the potential disability allowance of those employees who are hired in their twenties. For example, section 21413 sets a 50 percent limit on the disability allowance of an employee hired at age 25. Absent this provision, that employee would be eligible to receive approximately 80 percent of their final salary.[2] Thus, the 50 percent cap imposed by 21413 and similar sections markedly limits a 25 year old's disability allowance. The Court finds it hard to reconcile this impact on younger employees with the plaintiffs' claim that the PERS disability program impermissibly discriminates against older workers.

Plaintiffs argue however, that section 21417 unfairly limits older employees' disability allowances, barring those hired after 40 from reaching even the 50 percent cap imposed on younger workers.[3] Plaintiffs contend that this disparity evidences the discriminatory impact of the provision because the employee's age at hire is the only variable considered in the cap. The Court finds this argument unpersuasive. The entire PERS disability allowance operates in the same manner as the PERS service pension program, a provision with which the plaintiffs do not take issue. Indeed, both the Seventh and Eighth Circuits have upheld similar pension provisions in the face of age discrimination claims. *See Quinones v. City of Evanston,* 58 F.3d 275, 278–79 (7th Cir.1995) (holding that the ADEA "preserves employers' right to distinguish among employees by the years of service, even though years of service are related to age"); *Atkins v. Northwest Airlines Inc.,* 967 F.2d 1197, 1201 (8th Cir.1992).

In bringing this claim, plaintiffs ignore the foundation for disability-related provisions. Because the employee has been disabled, employers must base pension calculations on certain factors which could not be know at the time of the disability, e.g., actual age at retirement. Unless the employer wishes to provide a uniform disability allowance for all employees, such provisions must utilize a hypothetical retirement age. An employee's age at hire must necessarily factor into this equation, whether the retirement age is set at 55 or 95. In all cases using this system, the younger the employee's age when they start work, the greater the pension they will receive upon suffering a disability.

***3** Although the PERS disability provisions do limit the allowance received by older workers and do so based solely and explicitly on the age of those workers, those provisions are entirely permissible under the applicable age discrimination regulations. To hold differently would run counter to the standard, accepted practice in this area. *See Quinones,* 58 F.3d at 278–79. The plaintiffs do not state a basis for a disparate impact claim under the ADEA.

d. ***The Provisions Address a Legitimate Business Interest***

Alternatively, the state's articulated purpose in enacting this provision, reducing future retirement costs, comports with nondiscriminatory goals accepted under the ADEA. Employees may not use a disparate impact claim to attack employment practices which are justified by business necessity. *See Abbott v. Federal Forge, Inc.,* 912 F.2d 867, 875 (6th Cir.1990). In *Abbott,* the court upheld an employer's moratorium on hiring older workers who demanded credit for past seniority pension benefits. The court held that "[m]inimizing the cost of labor is a legitimate business consideration." *Id.* In doing so, the court stressed that a cost saving measure can still impose a disparate impact if it "systematically and adversely affects older employees or employment applicants." Here, the legislature asserted cost-saving concerns as its basis for enacting the PERS provisions. *See* Analysis of Senate Bill No. 434, dated May 1, 1979, prepared by the Legislative Analyst, State Defs.' Req.

for Jud. Notice Ex. A. The plaintiffs do not contend that the provisions have not achieved this purpose. As the PERS provisions do not systematically affect older workers, the Court finds that they were enacted for a legitimate business necessity. Accordingly, plaintiffs are unable to state a claim for disparate impact under the ADEA.

IT IS SO ORDERED.

Footnotes

[1] Section 21362 provides the formula for calculation of the service pension for local safety members: years of service, multiplied by two percent, multiplied by a statutory multiplier determined by age at retirement. The number provided by this formula indicates the percentage of final compensation received by a local safety member upon normal retirement. Section 21413 provides that a local safety member shall receive a disability retirement allowance of 50 percent of their final compensation. Section 21417, however, modifies the disability allowance by capping that amount at the *lesser* of 50% or an amount calculated by the potential years of service from the age the employee was hired, multiplied by two percent, multiplied by the statutory multiplier. For the purposes of this motion, the court will utilize the parameters set forth by the parties in their pleadings; the parties assumed that retirement age was set at 55 and that the statutory multiplier was 1.35. For numerical examples, see footnotes two and three.

[2] This amount is calculated by subtracting 55, the hypothetical retirement age, from 25, the employee's age at hire, multiplied by two percent, multiplied by the statutory multiplier; (30 x 2% x 1.35 = 81%).

[3] E.g., (55−40=15), thus 15 x 2% x 1.35 = 40.5%.