

## U.S. Supreme Court Rules the ADEA Applies to All Public Entities

Pennsylvania Employment Alert

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On November 6, 2018, in *Guido, et al. v. Mount Lemmon Fire District*, the United States Supreme Court held that the Age Discrimination in Employment Act ("ADEA") applies to all political subdivisions - clarifying that public entities do not need to meet any numerical employee threshold. However, the Supreme Court determined that under the statutory intent of the ADEA, 20 employees or more were still required for private entities to qualify as an employer under the ADEA. For the full opinion of the Court, click the following link: [https://www.supremecourt.gov/opinions/18pdf/17-587\\_n7ip.pdf](https://www.supremecourt.gov/opinions/18pdf/17-587_n7ip.pdf)

In determining whether the ADEA applied to a fire department that had less than 20 employees, the Supreme Court analyzed the definition of "employer" set forth in 29 U. S. C. section 630(b), which states:

[t]he term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: Provided, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

Looking at the statutory language of the term also contained within the definition of employer, the Supreme Court concluded that the intent of Congress was to have the ADEA apply to two (2) different categories of individuals:

1. Those who work in the private sector and employ 20 or more employees; and
2. Those who work in the public sector, regardless of the number of employees retained.

While noting that Title VII only applies to public entities if they meet certain numerical employee criteria, the Supreme Court determined Congress' intent under the ADEA was clear. The Court analogized the ADEA to the Fair Labor Standards Act, which uniformly is enforced against all public entities regardless of the number of individuals they employ. In applying this standard, the Supreme Court unanimously determined that the ADEA applied to the fire department in the Guido case.

Comment: If you are a political subdivision with less than 20 employees, the ADEA applies to your public entity, and you should contemplate the necessary steps you will need to take to ensure compliance with the ADEA.

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