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Supreme Court Holds That "Me Too" Evidence May Be Admissible

A recurrent issue in employment discrimination cases is whether "me too" evidence—testimony by other employees that they have been discriminated against by supervisors who did not make the decision being challenged by the plaintiff—can be introduced to prove discrimination against the plaintiff.

In a unanimous decision, the United States Supreme Court in *Sprint/United Management Co. v. Mendelsohn*, No. 06-1221 (Feb. 26, 2008), left the door open for plaintiffs to present "me too" evidence. The Court ruled that such evidence is neither categorically admissible nor inadmissible. Rather, the trial judge must engage in a fact-specific inquiry in each case to determine whether that evidence is relevant and admissible.

The case involves Ellen Mendelsohn, a former manager at Sprint, who alleged that the company violated the Age Discrimination in Employment Act when it terminated her at age 51 in a company-wide reduction in force that affected nearly 15,000 employees. At trial, Mendelsohn sought to present evidence from five former Sprint employees who were prepared to testify that they were subject to and/or observed age discrimination by supervisors other than Mendelsohn's.

On Sprint's motion, the trial judge excluded the other employees' testimony because, among other reasons, none had the same supervisor as Mendelsohn. The Tenth Circuit Court of Appeals reversed (466 F.3d 1223) based on its conclusion that the trial judge wrongly applied a *per se* rule that only evidence involving the plaintiff's supervisor was relevant and admissible.

The Supreme Court disagreed, concluding that the trial court had not necessarily applied a *per se* rule and sent the case back to the trial court to clarify the reason for excluding the "me too" evidence. Importantly, the Supreme Court stated that it would have been error for the trial court to apply a *per se* rule and that the relevance of evidence of discrimination by other supervisors "depends on many factors including how related the evidence is to the plaintiff's circumstances and theory of the case." The Supreme Court's decision clearly provides plaintiffs with the opportunity to argue that "me too" evidence is admissible in certain cases. As a corollary, the decision likely will result in additional pretrial disputes over the discoverability of such evidence.

If you have questions about this decision, please contact Bruce R. Alper (312-609-7890), Jennifer L. Milos (312-609-7872), or any other Vedder Price attorney with whom you have worked.

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