

PARTNERS ALLEGED TO BE EMPLOYEES IN AGE DISCRIMINATION CASE

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In a widely publicized settlement, the Chicago-based law firm of Sidley Austin LLP agreed to pay 27.5 million dollars to 32 former partners to resolve an age discrimination case. The age discrimination case was brought by the Equal Employment Opportunity Commission (“EEOC”) on behalf of the former partners following an investigation. According to the EEOC, the investigation revealed that Sidley had a mandatory partner retirement age of 65 and that many of the 32 partners had been told that their status was being downgraded from partner to “special counsel” or “counsel” and that their pay would be reduced by about 10% as they got older. According to the partners, the decision was not performance-driven but entirely age-based.

The EEOC contended that the 32 lawyers had been partners in name only because they had no voice in the firm’s management. Rather, Sidley was run by a management committee and an executive committee that made all of the major decisions, including who made partner and how profits would be divided. As the 32 “partners” had no real voice in hiring, firing and salary decisions, the EEOC contended that they were “employees” entitled to protection under the Age Discrimination in Employment Act.

Although the case was resolved prior to any judgment, the lessons to be derived from the EEOC allegations are clear. Any partnership that is run by a committee or managing partner and excludes other partners from important managerial decisions runs the risk that those excluded partners will be deemed employees subject to all of the protections provided under various employment laws. Such a determination would have an impact beyond mandatory retirement provisions and would call into question, for example, leave policies, disability policies, profit-sharing plans, partner fines and penalties and other practices common in partnership arrangements. Accordingly, partnerships that are operated in this manner are advised to consult with legal counsel on the proper treatment of non-managerial partners.

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