

Pennsylvania District Court Conditionally Recognizes Novel “Over-50” Class

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The U.S. District Court for the Western District of Pennsylvania has denied an employer’s motion to certify various questions for interlocutory appeal in relation to the grant of conditional certification of a class of employees over the age of 50 in an Age Discrimination in Employment Act (“ADEA”) lawsuit filed against it. Specifically, in *Karlo v. Pittsburg Glass Works, LLC.*, No. 10-1283, slip op. (W.D. Pa., July 20, 2012) (Barry Fischer, J.), the defendant sought leave to certify three questions for appeal in relation to the conditional certification.

In rejecting the defendant’s motion to certify the novel issue as to whether the sub-grouping of those “over-50” was permitted under the ADEA, the Court reminded the parties that its certification remained conditional in nature, thus its ruling permitted only that the plaintiffs could provide notice and take discovery as to the putative class members. The Court emphasized that the sub-grouping holding potentially could have no bearing on the next stage of certification proceedings, in the event that evidence uncovered during discovery lead to the expansion of the class to include all members of the over-40 class, or, alternatively, to the demise of the class altogether. Given such possibilities, the Court found the question as to the permissibility of its sub-group holding did not rise to a “controlling question of law” appropriate for certification for interlocutory appeal. Accordingly, for the time being at least, the discovery shall proceed with the conditional certification in place and any remaining concerns post-discovery to be addressed at the final certification stage.

As an increasing percentage of the workforce is in the age protected over-40 class, this approach may be a sign of things to come, and certainly a sign of seemingly ever-increasing pressure to expand the bases upon which employers may be sued.

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