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Tenth Circuit Weighs in on Reductions in Force: Takeaways for Employers

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The Tenth Circuit affirmed summary judgment in favor of Spirit AeroSystems in a discrimination case related to a 2013 reduction-in-force (RIF). The plaintiffs had alleged that the company targeted older workers in a discriminatory fashion under the Age Discrimination in Employment Act (ADEA). The unanimous three-judge panel found insufficient evidence to support allegations of systemic age discrimination. The ruling provides a good reminder to employers how important planning, documentation, and fairness is during a RIF.

Court's Key Findings: The panel acknowledged some evidence suggesting Spirit was aware of its aging workforce but concluded it did not demonstrate actionable age discrimination: *"Individually or collectively, the former employees' evidence doesn't support an inference of an ageist operating procedure,"* the court stated.

The plaintiffs argued that internal slides referencing healthcare costs and salaries demonstrated discriminatory intent. However, the court clarified that considering costs often correlated with age is permissible, provided decisions are not based on age itself. Additionally, Spirit's collection of demographic data was deemed non-discriminatory, as there was no evidence managers involved in the RIF had access to this information.

Policy Exemptions and Statements: Spirit's exemption of new hires from layoffs and the reduction of tenure-based protections for senior employees were defended as business decisions to preserve recruitment pipelines and streamline operations. The court found these policies uniformly applied and not indicative of age discrimination.

Alleged age-biased statements from executives were also dismissed, as they lacked direct links to RIF decision-making or were taken out of context.

Expert Testimony and Rehiring Claims: The court rejected expert analyses that failed to control for key age-neutral factors like performance and versatility. Similarly, claims regarding Spirit's refusal to rehire laid-off employees were dismissed, as the uniform process for reassessing eligibility was found neutral and non-discriminatory.

Best Practices for HR and Legal Counsel:

This case highlights the importance of robust planning and compliance in implementing RIFs, and maintaining overall fairness and objectivity during

the decision-making process. Along with seeking assistance from counsel during the RIF process, employers should consider the following key steps and practices:

1. Explore Alternatives to a RIF: Evaluate options such as hiring freezes or voluntary retirement programs to minimize involuntary terminations.
2. Document Rationale for the RIF: Clearly document financial, business, or operational requirements driving the need for a RIF or restructure.
3. Use Objective Criteria: Base layoff decisions on clear, performance-related metrics to avoid potential biases, rather than ambiguous factors like “attitude” or “potential.” When comparing “apples to apples” have clearly defined criteria such as tenure, educational level or skills, performance ratings, existence of prior disciplinary actions, attendance issues, etc.
4. Analyze Adverse Impact: Assess the RIF's impact on protected groups and consider adjusting where appropriate. Some review of the scoring or decision process may be necessary to ensure that the choices were based on fair assessment of the objective criteria used.
5. Comply with Legal Obligations: Ensure adherence to WARN Act, ERISA, and state laws, with proper documentation and notices.
6. Communicate Transparently: Notify affected employees professionally and empathetically while providing clear explanations.
7. Support Transition: When able, consider offering severance, outplacement services, and other assistance to affected employees in exchange for signing a separation agreement and release.
8. Maintain Morale: Reassure remaining employees with prompt, clear communication about future plans and potential incentives.

By adhering to these best practices, HR and legal teams can reduce litigation risks and maintain organizational stability.

Conclusion:

The Tenth Circuit's decision highlights the high evidentiary burden plaintiffs face under the ADEA. While the plaintiffs raised questions about Spirit's cost-cutting measures, the court found no deliberate policy targeting older workers. “A factfinder couldn't reasonably infer that Spirit had an ageist pattern or practice in firing older workers or in refusing to rehire them,” the panel concluded. By following the RIF process steps outlined above, employers can set themselves up for having an effective and fair RIF that is more likely to deter discrimination claims.

The case is *Raymond et al. v. Spirit AeroSystems Holdings et al.*, case number 23-3126, in the U.S. Court of Appeals for the Tenth Circuit. Read the full decision here.

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