

COURT HOLDS U.S. EMPLOYEES ABROAD COVERED BY DISCRIMINATION LAW



On Tuesday, reversing a lower court decision, the D.C. Circuit Court of Appeals held that the State Department was not exempted from the U.S. discrimination law on employees abroad, as inferred from the Department's reading of the Basic Authorities Act.

In the instant case, John R. Miller Jr. was working as a safety inspector at the U.S. embassy in Paris when he was made to retire upon reaching the age of 65. Miller sued the department holding that his forced retirement violated the provisions of the Age Discrimination in Employment Act. While admitting that Miller had been fired due to his age, and in line with French practice of mandatory retirement at the age of 65, the State Department submitted that Miller was hired under the Basic Authorities Act and the department was exempt from applying the U.S. Discrimination law in such a case.

The State Department also read out relevant portions of the Basic Authorities Act to make its claim that it was exempt from the ADEA to facilitate hiring of U.S. citizens abroad. The department lawyers also argued that if U.S. discrimination laws were made applicable to hiring U.S. citizens abroad, then it would hamper the hiring of foreign citizens by U.S. authorities, as foreign employees might claim the same protection.

However, after reversing the lower court decision in favor of the State Department, Judge Merrick Garland wrote for the D.C. Circuit, "Even if the State Department were correct in reading this ambiguous passage as relating to State Department hiring, it is unclear how allowing the United States to discriminate against its own citizens on the basis of their age — or disability, race, religion, or sex — would promote the hiring of U.S. workers abroad."

However, Judge Brett Kavanaugh dissented from the majority opinion and held that the Basic Authorities Act, "expressly authorizes the State Department to contract with American workers in foreign locations...notwithstanding statutory provisions such as the ADEA that relate to the performance of contracts and performance of work in the United States."

However, as the law is interpreted by the court for now, U.S. citizens working for the State Department abroad can claim protection of U.S. discrimination laws, and the State Department cannot rely on any exemption due to hiring an U.S. citizen under the Basic Authorities Act.