

Another Bad Right Turn By the Supreme Court

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The U.S. Supreme Court on June 18 again made a bad turn to the right that unfairly restricts the rights of victims of employment discrimination.

In the past year, Congress has twice had to enact laws reversing the court's narrowing of discrimination laws concerning workers with disabilities and back pay for women.

The Supreme Court's right wing is again guilty of judicial activism that will prevent many people from proving they are victims of age discrimination.

With all baby boomers now older than 40, the Age Discrimination in Employment Act should provide rights for the largest segment of workers and potential employees.

However, in *Gross v. FBL Financial Services*, the Supreme Court decision ignores precedent and requires that victims of age discrimination prove that "but for" their age, they would have been hired, or would not have been fired, denied promotions, disciplined, etc.

This is a higher standard than that imposed on other victims of discrimination, who must show that discrimination was a "motivating or substantial factor" in the decision.

There is no reason for this tougher standard.

As we get older, we become less marketable. When employers are reducing payroll by terminating the longest-serving workers, they may be discriminating because of age.

Since many older workers are paid more, they are let go because of their salaries. Proving age was the "but for" reason for termination will be impossible because the employer will be able to point to the salary savings as the real motive.

Let's hope for the sake of all baby boomers that Congress doesn't allow another wrong-headed right-turn by the Court that strips the protections we all hope to live long enough to enjoy.

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