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Employment Alert – *Babb v. Wilkie*

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On April 6, 2020, the United States Supreme Court held that “but-for” causation does not need to be proven in age discrimination employment claims against the federal government in [*Babb v. Wilkie*, Case No. 18–882](#). The federal-sector provision of the Age Discrimination in Employment Act of 1967 (ADEA), 88 Stat. 74, 29 U. S. C. § 633a(a), provides (with just a few exceptions) that “personnel actions” affecting individuals aged 40 and older “shall be made free from any discrimination based on age.” The Court’s ruling means that an individual only needs to show that age discrimination was a consideration – as opposed to the cause – in a less favorable personnel action than it would have made for a similarly situated person who is younger.

A couple important caveats:

- *Babb v. Wilkie* only applies to age discrimination claims against the federal government. The Court’s decision does not apply to private, state, and local government employers.
- The Court’s ruling does not mean that an individual only needs to show age was a factor to win their case. But rather, if an individual is unable to show their age was the causal factor (but-for) in a less favorable personnel action, they may still have some relief available to them – injunctions or other forward-looking relief. But-for causation is still necessary under section § 633a(a) for back-pay, compensatory damages, and other forms of relief related to the end of an employment decision.

There are some key takeaways for all employers even though *Babb v. Wilkie* was limited to age discrimination cases against the federal employment. During oral argument, the Court engaged in a discussion about whether oral comments would be actionable (“So calling somebody a ‘boomer’ and considering them for a position would be actionable?”). It is important that employers be mindful of their actions and behavior to all current and prospective employees and should prepare guidelines to ensure compliant employment practices.

Client Alert

Navigating nuanced labor and employment laws, which vary between jurisdictions, can easily lead to many pitfalls and mistakes. RSHC's highly experienced team of L&E attorneys are available to discuss and assist with preparation of hiring and promotion guidelines, enacting good workplace practices, and other L&E considerations.

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