



Newspaper ad helps cement age discrimination case

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Old is gold

Business owners who want to avoid getting slapped with employment discrimination complaints better think twice about taking out advertisements that even hint at age. Or time, for that matter.

That was the message delivered in a recent MCAD ruling, which found evidence of age bias in an ad that announced: "A new era begins now."

In the case, Virginia DiIorio, a former employee of the Willowbend Country Club in Mashpee, alleged that she had been terminated from her job as a realtor and sales manager for the club because she was over the age of 50. After she and nine other 50-and-older employees were laid off in October 2005, Willowbend ran the "new era" ad in the Cape Cod Times to advertise job openings at the club.

The ad was a red flag for MCAD hearing officer Betty E. Waxman, who wrote in a 40-page decision that its reference to the start of a "new era" provided "direct evidence of age discrimination."

Waxman explained that the wording was similar to statements made by David Wood, Willowbend's general manager, about the need for "energy" and "enthusiasm" at the club.

"[All three references] serve as veiled references to, or code words for, age animus," Waxman wrote. "I draw from Wood's words and the content of the newspaper advertisement the 'highly probable inference' of age bias."

That inference will cost Willowbend \$265,000 in back pay and emotional damages.

But while the hearing officer seemed unequivocal that "new era" was code for age discrimination, MCAD's chairman, Malcolm S. Medley, says potential advertisers should not worry that a statement in an advertisement will lead to a discrimination lawsuit.

"I wouldn't put too much stock in the wording of the ad," he tells Lawyers Weekly. "It's really just a part of the picture. The statement by itself really doesn't mean a heck of a lot. But the statement, coupled with action that clearly supports a trend to add more youth to the workforce at the expense of employees who are in a protected category, I think that's evidence that would suggest to a hearing officer that there was intent to discriminate."

DiIorio's lawyer, Marc Redlich of Boston, agrees that the "new era" ad probably could not have cinched the age bias case by itself.

"[It] has to be seen in context with the other findings and evidence," Redlich says. "I think the best way I can summarize that is to say that there was clear evidence that terminating the older employees was a part of the general economic and marketing plan for the company. ... This is all part of the culture of youth that was implemented at the club."

Counsel for Willowbend, Lawrence M. Siskind of Brockton, did not return a call for comment.