

**THE NEW JERSEY SUPREME COURT AFFIRMS THE  
RIGHT OF YOUNGER EMPLOYEES TO SUE FOR AGE  
DISCRIMINATION**

**March 1999**

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## **The New Jersey Supreme Court Affirms The Right Of Younger Employees To Sue For Age Discrimination**

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In February 1998, we distributed a White Paper entitled Age Discrimination Development Gives Rights to Younger Employees, in which we reported that the New Jersey Superior Court's Appellate Division -- the State's intermediate court of appeals -- had held that employees under age 40 could sue for age discrimination under the New Jersey Law Against Discrimination ("LAD"). *Sisler v. Bergen Commercial Bank*, 307 N.J. Super. 333, 704 A.2d 1017 (1998). On February 24, 1999, the New Jersey Supreme Court affirmed that decision, and held that the LAD -- in stark contrast to the federal Age Discrimination in Employment Act -- authorizes individuals under age 40 (but at least age 18) to sue for age discrimination. Accordingly, the defendant in that case, Bergen Commercial Bank, now faces the unusual prospect of a trial in which a jury will determine whether the bank discriminated against a 25-year-old employee because of his youth.

The prospect of youthful employees suing for age discrimination raises serious concerns. For example, although the Supreme Court stated that the LAD does not prohibit an employer from considering such "reasonable standards" as education, maturity, and business or personal judgment, there can be no doubt that youthful plaintiffs and their attorneys will attempt to argue that the consideration of such factors really is a proxy for age (i.e., youth) discrimination.

The Supreme Court recognized that its decision in *Bergen Commercial* would be controversial. Nonetheless, the court concluded that if it had "mistakenly construed the legislative intent, the Legislature remains free to amend the LAD to specify a minimum qualifying age for the law's protection." Accordingly, you should contact your state legislative representatives or your local chamber of commerce or other industry organizations if you feel strongly that the Supreme Court's ruling should be legislatively revisited.

Given the practical reality of the *Bergen Commercial* decision, employers would be wise not to consider or refer to the age of any person, even if under age 40, as a reason for an employment action. Rather than referring to the person's age or "youthfulness," the employer should refer to a perceived lack of training, experience, maturity or judgment if, in fact, such factors are the real reasons for an employment action. Although this approach may not eliminate all lawsuits, it should help insulate the employer from liability given that the Supreme Court stated that "[t]he fact that many legitimate reasons for rejecting, terminating or promoting an employee have a strong and natural correlation with age does not render those reasons suspect for purposes of the LAD."

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