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A Compliance Check Newsletter

EEOC WINS JURY VERDICT OF NEARLY \$400,000 FOR OLDER WORKER FIRED BY CASKET COMPANY

A federal jury has awarded \$397,948 in backpay and damages to a 56-year old veteran foreman of a Baltimore, Maryland-based wholesaler of burial caskets who was fired due to age discrimination after three decades of work for the company, the U.S. Equal Employment Opportunity Commission (EEOC) announced recently.

The EEOC's lawsuit said that Fred W. Kuehnl, who upholstered the interior of caskets and served as foreman of the Warfield-Rohr Casket Company's trimming division for 29 years, was fired due to ageism.

"Although it took over five years, it feels good when you know that you were right," said Kuehnl after the verdict was delivered following a four-day trial. "I feel vindicated for the discrimination I suffered because of my age." In addition to the nearly \$400,000 in lost wages, the EEOC is requesting that the court also award equitable relief to Kuehnl, including front pay and an injunction prohibiting the company from future acts of age discrimination.

The EEOC asserted in the suit that prior to terminating Kuehnl, CEO Ayres made numerous inflammatory age-based remarks and indicated that a younger employee could better serve the company. Despite Kuehnl's superior experience and qualifications as a long-time employee of the division, he was forced to train his 33-year old replacement prior to his termination. Kuehnl testified that when he told Ayres that he planned to work until age 65, the CEO remarked in a derisive tone, "We will see about that."

The lawsuit was initially filed by the EEOC in September 2001 under the Age Discrimination in Employment Act of 1967 (ADEA) and dismissed in 2003 by U.S. District Judge William M. Nickerson on a grant of summary judgment for the employer. The EEOC then successfully appealed to the U.S. Court of Appeals for the Fourth Circuit, which overturned the dismissal in April 2004 and sent the case back to the lower court for trial.

Gerald S. Kiel, Regional Attorney for the EEOC's Baltimore District Office, said: "Mr. Kuehnl was a dedicated and loyal employee who worked diligently for 29 years at Warfield-Rohr Casket Company without a single write-up of poor performance. Nevertheless, he was discriminated against and fired because the CEO thought he was too old, even though he contributed to the company's success and profitability for decades."

Noting that it is rare for an age discrimination lawsuit by the EEOC to go to trial, Regina Andrew, who represented the agency in the case, said, "This verdict is significant because the jury found that the firing of Kuehnl was willful and in reckless disregard of the federal law prohibiting age discrimination in employment. Employers must heighten their awareness to age-related issues and refrain from making employment decisions based on myths and stereotypes about older workers."

The Focus

OSHA Offers Pocket Card for Excavation and Trenching

A new OSHA safety information pocket card, Safety in Excavations or Trenches, will help workers and employers understand safe trenching practices and the federal requirements for construction excavation safety. The cards are printed in English on one side and Spanish on the other.

The cards can be downloaded from OSHA's web site on the publications page or can be ordered by calling OSHA's publications office at (202) 693-1888.

"This new card provides practical, yet critically important, information that can help save lives," said Acting Assistant Secretary of Labor for OSHA Jonathan L. Snare. "We know that construction excavation can be dangerous work and that's why it important that we make every effort to provide these workers the tools they need to stay safe on the job."

The new pocket-sized card explains that excavations or trenches five feet deep or greater require a protective system. It also highlights OSHA's requirements that excavation or trench walls must meet at least one of the following criteria:

- Sloped for stability
- Cut to create stepped or benched grades
- Supported by a system made with posts, beams, shores or planking and hydraulic jacks
- Supported by a trench box
- An exit ladder must be within 25 feet of workers

Excavating is recognized as one of the most hazardous construction operations. OSHA recently revised construction excavation standards to make them easier to understand, permit the use of performance criteria where possible, and provide construction employers with options when classifying soil and selecting employee protection methods.

DOL YouthRules!

Every year, millions of teens work in part-time or summer jobs. Federal and state rules regarding young workers were developed to help strike a balance between ensuring sufficient time for educational opportunities and allowing appropriate work experiences.

YouthRules! was launched by the U.S. Department of Labor to increase public awareness of Federal and State rules concerning young workers. The YouthRules! web page (located at www.youthrules.dol.gov) is a gateway providing quick access to information about labor laws that apply to young workers. The web page includes information about the hours youth can work, the jobs youth can do, and how to prevent workplace injuries.