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RJ Reynolds Job Seeker Can Claim Disparate Impact

By **Carolina Bolado**

Law360, Miami (November 30, 2015, 8:06 PM ET) -- The Eleventh Circuit reinstated an age discrimination collective action against R.J. Reynolds Tobacco Co., CareerBuilder LLC and recruiter Pinstripe Inc., ruling Monday that job seekers can pursue disparate impact claims against the tobacco company.

A Georgia federal judge had **dismissed** Richard Villarreal's complaint alleging that the tobacco company's hiring criteria — and its narrow concept of who would be an ideal candidate for a "territory manager" — had a disparate, negative impact on job seekers who are over 40 years old.

But a majority of the appeals court found Monday that the language of the Age Discrimination in Employment Act was unclear on whether it allows disparate impact claims by not just current employees but also job seekers, saying the U.S. Equal Employment Opportunity Commission, the agency tasked with enforcing the law, has consistently interpreted the statute to cover job seekers' claims.

"We owe deference to these standards to the extent they are reasonable, and they are," the Eleventh Circuit said.

The appellate panel added that Villarreal's claims, which were filed 2 1/2 years after he first applied for a job with R.J. Reynolds, were timely despite being filed well after the 180-day statutory limit. The Eleventh Circuit said Villarreal, who applied for the job in 2007, was entitled to equitable tolling because he did not know that he had been discriminated against until April 2010, when he learned about the allegedly discriminatory hiring practices.

The appeals court said mere suspicion of discrimination does not trigger the statute of limitations.

"Instead, the clock does not begin to run until she has enough information to support her cause of action," the Eleventh Circuit said.

Villarreal, of Cumming, Georgia, had applied six times for the management position with R.J. Reynolds between 2007 and March 2012, starting when he was 49 years old, according to court documents.

He applied for the first time on Nov. 8, 2007, after seeing an ad on CareerBuilder.com. He was never offered the post because, according to the lawsuit, R.J. Reynolds instructed its recruiting firm to look for prospects who were fresh out of college and would adjust easily to change.

Recruiters were also told to "stay away from" anyone with eight to 10 years in sales, and Villarreal was weeded out since he had been out of college for years and had too much experience, the complaint states.

Later, the tobacco company and Pinstripe further developed their profile of the dream job candidate, based on findings that the most successful new hires who took that position had little or no experience. Of all the people hired for the post from September 2007 to July 2010, just 1.85 percent of them were over 40.

In May 2010, Villarreal filed an age discrimination complaint with the EEOC, which issued notices of the right to sue to Pinstripe, CareerBuilder and R.J. Reynolds.

U.S. Circuit Judges Charles R. Wilson and Beverly B. Martin and U.S. District Judge C. Roger Vinson sat for the Eleventh Circuit.

Villarreal is represented by John J. Almond and Michael L. Eber of Rogers & Hardin LLP, James M. Finberg and P. Casey Pitts of Altshuler Berzon LLP, Shanon J. Carson and Sarah R. Schalman-Bergen of Berger & Montague PC, and Todd M. Schneider of Schneider Wallace Cottrel Brayton Konecky LLP.

R.J. Reynolds and Pinstripe are represented by Eric S. Dreiband, Alison B. Marshall, Nikki Lynn McArthur and Deborah A. Sudbury of Jones Day.

The case is Villarreal v. R.J. Reynolds Tobacco Co. et al., case number 15-10602, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by Dan Prochilo. Editing by Edrienne Su.

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