

Amid Drive for Tech-Savvy Workforce, AT&T Faces Suit for Age Bias

By Charles Toutant

AT&T has been accused in an age discrimination suit of targeting older workers for dismissal allegedly as part of an AT&T program to increase its employees' technology skills, a program that plaintiffs said was infused with age-based stereotyping. The telecommunications company has conducted large-scale layoffs with the intent and effect of removing older employees and replacing them with younger workers, according to the suit, filed June 29 in U.S. District Court for the District of New Jersey. In addition, the company has wrongly told older workers that they cannot bring a complaint under the Age Discrimination in Employment Act if they accept a severance payment, the suit claims.

AT&T in a statement promised a "vigorous" defense to the claims and said it does not tolerate discrimination, including age discrimination.

The suit was filed by Stephen Console and Laura Mattiacci of



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Console Mattiacci in Moorestown. Console Mattiacci has had a string of victories in age discrimination suits recently, including a \$370,000 verdict on behalf of another AT&T employee in the Eastern District of Pennsylvania in January 2016 and a \$51.5 million verdict in a suit by an engineer for Lockheed Martin in the District of New Jersey in January 2017.

The New Jersey AT&T lawsuit says the company has divided its

termination process into multiple steps in a purposeful attempt to conceal discrimination. The first step, the suit says, is placement of some employees on "surplus" status. Second, those employees may land an alternative position, but after going through a selection process that is biased against older workers, the suit claims. Those who are unable to find another position were laid off, the suit claims.

The five named plaintiffs, which include three from New Jersey and one each from Florida and Arizona, brought the suit on behalf of themselves and on behalf of all former company employees over 40 who, since May 2015, received a letter notifying them of their “surplus” status and were then terminated on failing to secure another job, and who were offered a severance payment.

The plaintiffs say in the complaint that their claims are supported by public statements by the company CEO and other high-ranking officers about the company’s “Workplace 2020” program, which was aimed at improving workforce technology skills.

An AT&T company blog that was part of the 2020 plan expressed age-based stereotypes, the suit claims, and acknowledged that such stereotypes are considered in employment decisions. The blog characterized baby boomers as the workforce of yesterday, ascribed values to baby boomers, Gen X and

Gen Y workers, and said that the company takes such stereotypical “factors into account when planning for our workplace of the future,” the suit says.

The suit brings claims for disparate treatment and disparate impact under ADEA and for violation of the Older Workers Benefit Protection Act. The plaintiffs seek to proceed as a collective action under the ADEA and for compensatory and liquidated damages, attorney fees and costs.

“Any AT&T employee who signed an invalid release still may have the right to bring a federal age discrimination claim and keep the severance they were paid,” Console said in a statement. “Under the federal Age Discrimination in Employment Act (ADEA), in order for a worker to release their ADEA claims, information must be presented by the company in a group layoff that sets forth the ages and job titles of people laid off and not laid off. This is required by the

Older Workers Benefit Protection Act—it makes sense because this data helps an employee and their lawyer see if there was age discrimination in the terminations. Any release that does not set forth the required information is invalid.”

An AT&T spokesman, Marty Richter, said in a statement, “We are widely recognized for our commitment to diversity and do not tolerate discrimination of any kind, including for an employee’s age. We dispute and will vigorously defend any discrimination claims.”

In the earlier AT&T case in Pennsylvania, plaintiff John Gerundo was an executive who was dismissed at age 65, after 43 years with the company, after he was placed on surplus status. AT&T appealed Gerundo’s verdict to the U.S. Court of Appeals for the Third Circuit but the appeal was dismissed as settled in March 2017. In the Lockheed case, the company’s motion for judgment as a matter of law or for a new trial or remittitur is pending. ■