
AGE DISCRIMINATION IN EMPLOYMENT ACT - NEW YORK

Abramson v. Board of Educ. of Middle Country School Dist. No. 11

United States Court of Appeals, Second Circuit - June 7, 2013 - Fed.Appx. - 2013 WL 2450579

"These cases are controlled by Auerbach v. Board of Education of the Harborfields Central School District, 136 F.3d 104, 107 (2d Cir.1998), which interpreted the Age Discrimination in Employment Act's ("ADEA's") safe harbor provision for retirement incentives. The Court held that a retirement incentive plan is consistent with the ADEA if it '(1) is truly voluntary, (2) is made available for a reasonable period of time, and (3) does not arbitrarily discriminate on the basis of age.'"

"The School District's retirement incentive plan is almost identical to the one at issue in Auerbach, and easily passes its three-part test. The incentive was plainly voluntary; all three of the employees here independently chose not to accept. It was available for a reasonable amount of time; the employees had until February 1 in their final year of service to make their retirement election—a full month more than the teachers had in Auerbach. Finally, the provision does not enable arbitrary discrimination. Every employee who had worked the minimum number of years required under the plan was given the opportunity to accept the incentive, and employees who chose to decline (like the plaintiffs) were able to 'continue to work as valued employees in the School District without any corresponding loss of benefits or job status.'"

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