

### Sixth Circuit Will Not Expand Landmark Title VII Case of *Bostock v Clayton County* to ADEA Claims

#### Employers in the Sixth Circuit Gain Predictability in the Test for Determining Claims Under the ADEA

By: John T. Below, Member, Workplace Law Practice Group

The case of *Pelcha v. MW Bancorp Inc.*, 6th Cir., No. 20-03511, 1/12/21, published opinion, involved a former bank teller claiming age (ADEA) discrimination against her former employer, Watch Hill Bank. Because plaintiff Melanie Pelcha failed to show that the bank's stated reason for firing her—insubordination—was actually a pretext for age bias, the Sixth Circuit affirmed dismissal of her age claim. For background, Melanie Pelcha's supervisor instituted a new policy requiring written requests for any time out of the office. When Pelcha wanted to take a few hours off, she resisted this policy and initially told her supervisor that a written request wasn't required under the employee handbook. Pelcha eventually submitted a written form, but after the deadline put in place. The bank fired Pelcha for insubordination. The bank obtained summary judgment on Pelcha's Age Discrimination in Employment Act claims based on the fact Pelcha could not establish that "because of her age" she was terminated. The U.S. Court of Appeals for the Sixth Circuit agreed and affirmed summary judgment. Notably, the court stated that the ADEA prohibits employers from terminating employees "because of such individual's age." The court rejected Pelcha's argument that under the recent landmark U.S. Supreme Court case, *Bostock v Clayton County*, 140 S. Ct. 1731 (2020), dealing with Title VII, that an ADEA plaintiff need only show their age was one of multiple factors in their termination, instead of the sole reason. The takeaway is that in the 6<sup>th</sup> Circuit, ADEA claims are still judged under a "but-for" or "sole reason" standard, not the expanded "one of multiple factors" test set forth under *Bostock* for Title VII claims.

Contact any member of **Bodman's Workplace Law Group** for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

<b>WORKPLACE LAW PRACTICE GROUP</b>	<b>AARON D. GRAVES</b>   <i>Chair</i> 313.392.1075 <a href="mailto:agraves@bodmanlaw.com">agraves@bodmanlaw.com</a>	<b>JOHN T. BELOW</b> 248-743-6035 <a href="mailto:jbelow@bodmanlaw.com">jbelow@bodmanlaw.com</a>	<b>JOHN C. CASHEN</b> 248.743.6077 <a href="mailto:jcashen@bodmanlaw.com">jcashen@bodmanlaw.com</a>
	<b>GARY S. FEALK</b> 248-743-6060 <a href="mailto:gfealk@bodmanlaw.com">gfealk@bodmanlaw.com</a>	<b>STEVEN J. FISHMAN</b> 248.743.6070 <a href="mailto:sfishman@bodmanlaw.com">sfishman@bodmanlaw.com</a>	<b>JOHN DAVID GARDINER</b> 616.205.3123 <a href="mailto:jgardiner@bodmanlaw.com">jgardiner@bodmanlaw.com</a>
	<b>MELISSA M. TETREAU</b> 248.743.6078 <a href="mailto:mtetreau@bodmanlaw.com">mtetreau@bodmanlaw.com</a>	<b>BRENT R. SCOTT</b> 616.205.3317 <a href="mailto:bscott@bodmanlaw.com">bscott@bodmanlaw.com</a>	<b>REBECCA C. SEGUIN-SKRABUCHA</b> 313.393.7594 <a href="mailto:rseguin-skrabucha@bodmanlaw.com">rseguin-skrabucha@bodmanlaw.com</a>
	<b>KATHERINE F. CSER</b> 248.743.6031 <a href="mailto:kcser@bodmanlaw.com">kcser@bodmanlaw.com</a>	<b>MICHELLE L. KOLKMEYER</b> 248.743.6031 <a href="mailto:mkolkmeier@bodmanlaw.com">mkolkmeier@bodmanlaw.com</a>	<b>DAVID B. WALTERS</b> 248.743.6052 <a href="mailto:dwalters@bodmanlaw.com">dwalters@bodmanlaw.com</a>
			<b>KAREN L. PIPER</b>   <i>Of Counsel</i> 248.743.6025 <a href="mailto:kpiper@bodmanlaw.com">kpiper@bodmanlaw.com</a>