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EEOC Lawsuit Challenges Age-Based ESOP Divestment Rule

Key Updates

- The EEOC alleges that Scheels All Sports, Inc. amended its Employee Stock Ownership Plan (ESOP) so employees age 40 or older who failed to complete 1,000 hours in a year had to divest vested company stock, while younger employees who failed to complete 1,000 hours in a year were not required to divest.

Why It Matters

- The case highlights that ESOP terms may create employment-discrimination exposure when benefits or investment rights turn on a protected characteristic.

Next Steps

- ESOP companies should review age-based plan provisions and coordinate benefits and employment counsel before adopting or administering them.

On Sept. 30, 2026, the U.S. Equal Employment Opportunity Commission (EEOC) sued Scheels All Sports, Inc., alleging that an amendment to the company's Employee Stock Ownership Plan (ESOP) violated the Age Discrimination in Employment Act (ADEA) by requiring certain employees age 40 or older to divest vested company shares while allowing younger employees to retain theirs. The lawsuit, filed in the U.S. District Court for the District of Nevada (*EEOC v. Scheels All Sports, Inc.,*), raises questions about the intersection of ESOP plan design and federal age discrimination protections.

According to the complaint, participants who worked fewer than 1,000 hours in any year historically received no new ESOP allocation but retained vested shares regardless of age. A 2014 amendment allegedly required participants age 40 or older who did not meet the hours threshold to divest their accumulated shares.

The charging party, Jeri Fulgham, allegedly turned 40 in 2021, worked 794 hours that year and was informed in December 2021 that she would have to divest shares accumulated during 20 years of employment, too late for her to work the additional hours needed to avoid divestment. The EEOC alleges that the company justified the amendment with age-

Related People

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Related Capabilities

- Employee Stock Ownership Plans
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based stereotypes, that the board denied Fulgham's request for an exception, and that she was constructively discharged in February 2022. The EEOC seeks rescission of the amendment, restoration of the shares or compensation for lost appreciation, back and front pay, liquidated damages (based on its allegation that the conduct was willful), and injunctive relief. The allegations have not been adjudicated.

Age Discrimination Risks for ESOP Sponsors

The ADEA prohibits discrimination against employees age 40 and older when it comes to, in relevant part, compensation, benefits, and other terms, conditions or privileges of employment. The ADEA's protections against age discrimination extend to retirement benefits provided through qualified defined contribution plans, including ESOPs. Although certain age-based distinctions are permissible under the ADEA, employers generally may not impose less favorable terms or conditions on employees age 40 and older because of their age.

The EEOC's allegations underscore the importance of having an appropriate business rationale and documentation supporting those decisions when it comes to establishing and implementing divestiture policies. ESOP sponsors should carefully evaluate whether proposed restrictions on stock ownership or participation can be structured around legitimate, age-neutral criteria, such as hours worked or years of service, rather than age itself. Employers should involve both employment and benefits counsel before implementing plan changes that could disproportionately affect older workers.

Beyond the potential for individual age discrimination claims, this lawsuit also highlights the risk of litigation seeking relief for a broader group of affected employees under the ADEA. Here, the EEOC seeks relief for a class of "similarly aggrieved" individuals, including former employees who left soon after their shares were divested, former employees who continued working for some years afterward, and current employees who would have held vested shares but for the amendment. Consequently, ESOP sponsors should consider not only how plan provisions are structured and administered, but also their potential implications when applied consistently across a workforce.

ESOP Governance and Potential Financial Exposure

Although the complaint asserts ADEA claims rather than ERISA claims, it also raises plan-governance issues. An ESOP is a qualified defined contribution plan designed to invest primarily in qualifying employer securities, but qualified-plan status does not resolve whether an age-based provision in the plan complies with employment-discrimination laws or other laws outside of ERISA.

The distinction between plan design and administration is also important. Plan sponsors should distinguish the settlor decision to amend a plan from fiduciary and administrative acts implementing the amendment, valuing employer stock, and deciding claims or exceptions. A mandatory sale of vested stock is not necessarily a forfeiture if the participant retains the value at the time of sale. However, the alleged injury here is for the loss of future appreciation on the divested shares, not the value realized at the time of sale. Any separate claim arising from anti-cutback, vesting, distribution, valuation, or fiduciary arguments would depend on the plan terms and transaction mechanics which the complaint does not establish. The requested lost-appreciation and share-restoration remedies show how potential exposure may increase as privately held stock appreciates.

Steps for ESOP Sponsors

In light of the EEOC's allegations, ESOP sponsors should evaluate existing plan provisions and related administrative practices, with particular attention to distinctions

based on age and the potential consequences of mandatory stock divestiture. Key considerations include:

- **Review Age-Based Provisions.** Inventory plan terms and practices affecting allocations, retention of employer stock, diversification, distributions, part-time employees, and rehired employees that are age-based.
- **Coordinate Legal Review.** Involve ESOP and employment counsel before adopting or implementing any provisions that distinguish among participants by age or another protected characteristic.
- **Preserve and Test the Record.** Maintain amendment history, board and committee materials, participant communications, valuation records, and claims documentation, and model potential restoration or lost-appreciation exposure.

Looking Ahead

This early-stage case is a reminder that retirement-plan design can be scrutinized as compensation and as a term or privilege of employment. ESOP sponsors should review any facially age-based terms before a participant claim or agency inquiry arises.