



PENSION ELIGIBILITY IN AGE DISCRIMINATION CASES – The Struggle to Apply *Hazen Paper Test* in the Public Sector

International Municipal Lawyers Association
2016 Annual Conference
September 29th, 2016
San Diego, CA

THE SILVER TSUNAMI


- By 2020, 25 percent of the United States workforce will be comprised of workers age 55 and older
- Older workers are



- coming out of retirement
- opting out of retirement all together
- living longer

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA), 29 U.S.C. § 623

“It shall be unlawful for an employer...to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.”



ADEA protects employees who are at least **40 years old** with limited exceptions:

- Elected officials and their personal staff, policymaking appointees, and immediate advisers

- Independent Contractors



Hazen Paper v Biggins, 507 U.S. 604 (1993)

NO ADEA CLAIM:

- If pension or compensation concern is motivating factor
- Even if correlated with age
- UNLESS employer “targets” older employees and uses factor as a proxy for age

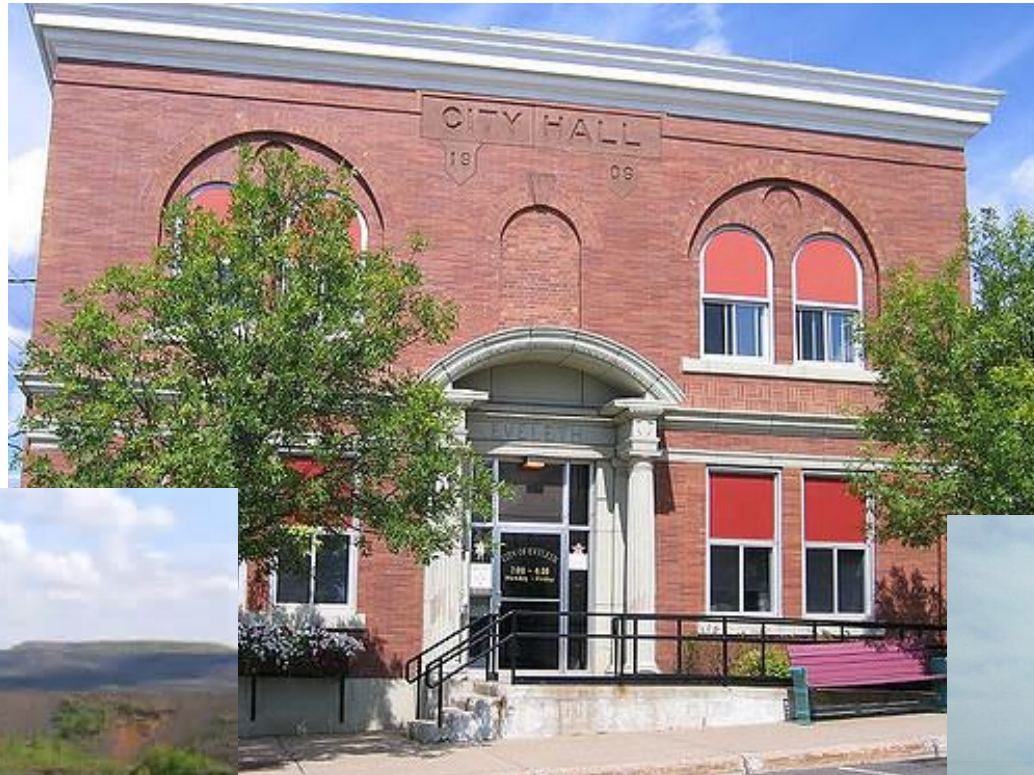




“We do not preclude the possibility that an employer who targets employees with a particular pension status on the assumption that these employees are likely to be older thereby engages in age discrimination.”

507 U.S. at 612-613.

Illustrative Case – *Hilde v. City of Eveleth*, 777 F.3d 998 (2015)





“[I]n a position as important as Chief of Police, it would make sense for the commission to ensure that its selected candidate would remain for some time.”

Hon. Richard H. Kyle, U.S. District Judge



AGE – LENGTH OF
SERVICE – SALARY –
RETIREMENT PLANS –
LONGEVITY – COSTS
CONCERNS



Total membership for state- and locally-administered pension systems reached **20 million members** in 2015.
(U.S. Census Bureau)



The average age at which non-retired Americans expect to retire has increased from 60 in 1995 to 66 in 2014.



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