

OKSNER Update 12-17-07

I understand the president Friday signed H.R. 4343, which includes: "(2) PROTECTION FOR COMPLIANCE- An action taken in conformance with this section, taken in conformance with a regulation issued to carry out this section, or taken prior to the date of enactment of this section in conformance with section 121.383(c) of title 14, Code of Federal Regulations (as in effect before such date of enactment), may not serve as a basis for liability or relief in a proceeding, brought under any employment law or regulation, before any court or agency of the United States or of any State or locality."

According to my analysis: The "Protection for Compliance" clause of H.R. 4343, the Fair Treatment for Experienced Pilots Act, provides that actions taken in conformance with 13 CFR 121.383(c), the age 60 rule, may not serve as a basis for liability "under any employment law or regulation." But our class-action suit, Oksner v. Blakey, does not assert liability under the ADEA or any other "employment law or regulation." On the contrary, this suit asserts liability on the ground that the age 60 rule is unconstitutional as a violation of the equal protection component of the due process clause of the Fifth Amendment. We seek monetary damages against the government and certain past and present FAA officials because it was their unconstitutional actions that harmed our plaintiffs and other class members. We rely on longstanding Supreme Court doctrine that allows claims for monetary damages against individually named defendants whose acts violate plaintiff's constitutional rights. We also rely on the widely-recognized legal right to claim monetary damages for interference with plaintiffs' economic interests. Our class action is not a suit against an employer, is not brought "under any employment law or regulation," and so is not disabled by The "Protection for Compliance" clause, 49 USC 44729(e)(2). That clause bars suits against airlines for having complied with the age 60 rule, but it does not bar our suit against the government and FAA officials for having enforced the unconstitutional rule.

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