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## Laid-off Circuit City workers allege age bias in suit

**Three accuse Circuit City of age bias. Employers are facing more such lawsuits.**

By Molly Selvin and Abigail Goldman

Times Staff Writers

April 6, 2007

A lawsuit by three older Circuit City Stores Inc. employees, alleging that the retailer violated California age discrimination laws by laying them off because they were earning too much, is part of a surge in age bias complaints from disgruntled baby boomers.

The lawsuit, filed this week, also reflects employers' contrasting attitudes toward older workers, experts say.

Plaintiffs Daniel Weidler, 57, Michael Yezback, 59, and Eloise Garcia, 66, all from Circuit City's Oxnard store, were laid off last week along with 3,400 other workers nationally. Those employees were earning "well above the market-based salary range for their role," according to a company statement, and will be replaced with lower-paid hires.

Valued for their skills and abilities to connect with customers, these more-experienced employees tend to earn more than younger, less-seasoned workers. Some employers are going out of their way to retain these veteran workers.

"These characteristics translate quite directly into important business outcomes," said Marcie Pitt-Catsoupes, director of the Center on Aging & Work at Boston College. And "there's a little bit of a bellwether of change in that employers are taking a second look at older workers."

But other employers, such as Circuit City, are letting them go to cut costs — prompting lawsuits from displaced employees contending that they are being picked on because of their age.

Diana Scott, a Santa Monica lawyer who represents employers, said she had seen a 50% rise in age bias cases over the last three years. Other lawyers have reported similar increases.

However, the lawsuit against Circuit City, filed Tuesday in Los Angeles County Superior Court, may face legal hurdles because of a recent appeals court decision upholding the retailer's requirement that workers must arbitrate employment disputes instead of filing in court.

The Richmond, Va.-based retailer laid off the workers in the face of stiff competition and falling sales. Displaced workers were told that they could reapply for jobs with the company at lower pay after 10 weeks, but there was no guarantee of future employment.

Los Angeles lawyer Gloria Allred, who represents the workers and is seeking class-action status for the case, said Circuit City's decision had an "adverse impact on older employees." That, she said, opens the way to the age bias claim under California law. Allred said she didn't yet know how many of the 621 laid-off California workers were 40 or older.

Circuit City spokesman Bill Cimino said the company did not comment on pending litigation.

California's Fair Employment and Housing Act, more stringent than those of most states,

protects workers age 40 or older. A 2002 amendment to the statute declares that the use of salary as the basis to terminate employees may constitute age discrimination if older workers as a group are negatively affected.

"Terminated employees in other states may or may not have any rights depending on their state law," Allred said. "But California is on the cutting edge of laws that protect employees' rights from age discrimination."

Allred added that this case could be pioneering. Her office has not found a published opinion dealing with this provision of California law, meaning that although there might be similar cases in trial courts around the state, none have reached the appellate court level at which it could establish legal precedent.

Plaintiff Garcia, who worked in customer service when she was terminated after more than 17 years at the Oxnard store, earned \$15.13 an hour, or just more than \$31,400 a year. Newer workers are said to make less than \$10 an hour.

Her performance review in October was full of the usual accolades she always earned, Garcia said, along with a raise of 10 cents an hour.

The day she was laid off, she thought she was being called in for a meeting of the store's entertainment committee, which organizes bake sales and other events for employees and charities.

"I couldn't believe it, after 17 1/2 years, that they were doing it," said Garcia, who lives with her grown son.

"You could tell they felt bad too. My supervisor was crying and she made me cry. It was awful. There was nothing they could do; they just said, 'I'm sorry, I'm sorry.' "

Garcia said she got eight weeks of severance pay from Circuit City but would have to find another job.

Although that will probably mean starting over at a new company for minimum wage, Garcia said she had no choice since she was still paying off medical bills from a fall she suffered a few years back.

The first hurdle for Garcia and the other plaintiffs is a California Court of Appeal decision last year that upheld Circuit City's policy of requiring workers to sign arbitration agreements and waiving their right to join class actions. An appeal is pending before the California Supreme Court.

"We'll have to see whether or not they are successful in raising that as a defense," Allred said. "If they are ... we would pursue those actions individually."

Garcia said she didn't remember whether she signed such an agreement.

Circuit City spokesman Cimino said there was a binding arbitration program for the company's employees, but declined to say when it was implemented or whether all Circuit City workers were bound by such an agreement.

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