

**06-1037 KENTUCKY RETIREMENT SYS. V. EEOC**

DECISION BELOW: 467 F3d 571

LOWER COURT CASE NUMBER: 03-6437

**QUESTION PRESENTED:**

This Petition involves a public employee retirement plan that includes normal and disability retirement benefits. A member who is eligible for normal retirement benefits based on attained age plus a minimum service requirement, or based on service alone, is not eligible for disability retirement benefits. Because age may be a factor in determining eligibility for normal retirement, it is an indirect factor in determining eligibility for disability retirement. Moreover, the calculation of disability retirement benefits is based upon actual years of service plus the number of years remaining before the member reaches retirement age or eligibility based on years of service alone; age may thereby be an indirect factor in determining the amount of disability retirement benefits. The question presented in this Petition is accordingly:

Whether any use of age as a factor in a retirement plan is "arbitrary" and thus renders the plan facially discriminatory in violation of the Age Discrimination in Employment Act?

**EXPEDITED BRIEFING SCHEDULE**

**CERT. GRANTED 9/25/2007**