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Age discrimination case reiterates importance of promotion policies

A promotional decision may be legally challenged if made by an allegedly biased decision-maker after the employer deviates from its standard selection process

By [Dan Eaton](#) PUBLISHED: October 20, 2025 at 5:30 AM PDT

An employer that, without soliciting internal or external applications for an open management position, selects the only candidate who applied may face legal liability to older employees, or others in a protected classification, who previously had expressed interest in being promoted to the position. That's a lesson of the recent ruling of the U.S. Court of Appeals for the Ninth Circuit in *Caldrone v. Circle K Stores Inc.*

Background

Circle K is a chain of convenience stores and fuel stations. Brian Caldron, Joseph Celusta and Kathleen Staats were Circle K dealer business managers, advising fuel station operators on operational matters. They excelled as business managers. All expressed interest in being promoted to regional director, the next level.

In January 2020, the West Coast regional director position opened. Without soliciting applications, Circle K chose Miko Angeles. Angeles previously was Southeast regional director. When Angeles was named, he was 45.2 years old. Caldron, Celusta and Staats were 54.4, 55.8 and 56.9 years old, respectively. They sued Circle K for violating the California and federal age discrimination laws.

The Court of Appeals reversed summary judgment in Circle K's favor.

No opportunity to apply for promotion

Plaintiffs asserting a failure-to-promote claim based on age discrimination must initially show: (1) they were at least 40 years old; (2) they were qualified for the position sought; (3) they were denied the position; and (4) the promotion went to a substantially younger person.

A plaintiff generally cannot show they were qualified for a position for which they did not apply. No plaintiff applied to be the West Coast regional director. The Ninth Circuit held that didn't matter because Circle K did not announce the vacancy. "It makes little sense to require plaintiffs to demonstrate that they submitted an application when an employer declines to solicit applications and does not announce that a position is available."

The discrimination laws do not require an employer “to solicit applications, or, indeed, to use any specific process in deciding which employees to promote.” But plaintiffs’ inability to apply for the regional director job, combined with the other factors, was enough for plaintiffs to make an initial showing of age discrimination.

The Ninth Circuit previously has held that an age gap smaller than 10 years between the younger selected employee and an older plaintiff claiming bias is presumptively insubstantial. One plaintiff, Caldron, is only 9.3 years younger than Angeles.

Caldron overcame this presumption with evidence that George Wilkins, the Circle K executive who allegedly chose Angeles, told Celusta, another plaintiff, that Celusta was “out of touch,” “too old for this business,” and should “start thinking about retiring.”

Evidence that stated reason for promotion masked discriminatory motive

Plaintiffs having made an initial showing they were not promoted because of their age, Circle K then met its burden of articulating a nondiscriminatory reason for picking Angeles to be West Coast regional director: Angeles was the only one to express interest in that position and his experience as Southeast regional director made him uniquely qualified.

The Ninth Circuit concluded the plaintiffs had submitted sufficient evidence that, if believed, would meet their burden of showing Circle K’s stated reasons were a mask, or pretext, for age discrimination. There was evidence Circle K policy gave Wilkins the responsibility to make the selection. And if a jury believes Wilkins had made ageist comments, it could also conclude Wilkins denied plaintiffs the opportunity to seek the regional director position out of age bias.

Plaintiffs also cast doubt on Circle K’s assertion that Angeles was uniquely qualified to be West Coast regional director with evidence of deficiencies in Angeles’s past performance.

Moreover, plaintiffs presented evidence that Circle K had a standard policy of sending employees information about vacant positions, which the company failed to follow. A jury could find this deviation was an attempt to prevent plaintiffs from applying for a role in which they previously had expressed interest. That also would undercut Circle K’s explanation that it chose Angeles because he was the only person to express interest.

Lesson: A promotional decision may be legally challenged if made by an allegedly biased decision-maker after the employer deviates from its standard selection process.

Invitation: I’ll be presenting a Law at Work Year in Review luncheon on Dec. 16 from noon to 1:30 p.m., at a downtown location to be announced. The luncheon is sponsored by my law firm, Seltzer Caplan McMahon Vitek. I will review key developments from 2025, preview the

year ahead, and answer your questions. For more information and to RSVP, please email my assistant Milla Sheild at sheild@scmv.com.

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