Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KENTUCKY RETIREMENT SYSTEMS ET AL. v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 06-1037. Argued January 9, 2008—Decided June 19, 2008

Kentucky permits "hazardous position" workers, e.g., policemen, to receive normal retirement benefits after working either 20 years or 5 years and attaining age 55 and pays "disability retirement" benefits to workers meeting specified requirements. Kentucky's "Plan" calculates normal retirement benefits based on actual years of service. The Plan calculates disability benefits by adding to an employee's actual years of service the number of years that the employee would have had to continue working in order to become eligible for normal retirement benefits, adding no more than the number of years the employee had previously worked. Charles Lickteig, who continued working after becoming eligible for retirement at age 55, became disabled and retired at age 61. He filed an age discrimination complaint with respondent (EEOC) after the Plan based his pension on his actual years of service without imputing any additional years. The EEOC filed suit against Kentucky and others (collectively Kentucky), arguing that the Plan failed to impute years solely because Lickteig became disabled after age 55. The District Court granted Kentucky summary judgment, holding that the EEOC could not establish age discrimination, but the Sixth Circuit ultimately reversed on the ground that the Plan violated the Age Discrimination in Employment Act of 1967 (ADEA).

Held: Kentucky's system does not discriminate against workers who become disabled after becoming eligible for retirement based on age. Pp. 4–14.

(a) The ADEA forbids an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U. S. C.

Syllabus

§623(a)(1) (emphasis added). A plaintiff claiming age-related "disparate treatment" (i.e., intentional discrimination) must prove that age "actually motivated the employer's decision." Hazen Paper Co. v. Biggins, 507 U.S. 604, 610 (emphasis added). In Hazen Paper, the Court found that, without evidence of intent, a dismissal based on pension status was not a dismissal "because . . . of age," id., at 611-612, noting that, though pension status depended upon years of service, and years of service typically go hand in hand with age, the two concepts are "analytically distinct," id., at 611. And the dismissal at issue there, if based purely on pension status, would not embody the evils prompting the ADEA: It was not based on a "prohibited stereotype" of older workers, did not produce any "attendant stigma" to those workers, and was not "the result of an inaccurate and denigrating generalization about age." Id., at 612. However, the Court noted that discrimination based on pension status could violate the ADEA if pension status was a "proxy for age." Id., at 613. Pp. 4-6.

(b) Applying Hazen Paper, the circumstances here, taken together, show that the differences in treatment in this particular instance were not "actually motivated" by age. (1) Age and pension status remain "analytically distinct" concepts. (2) Here, several background circumstances eliminate the possibility that pension status serves as a "proxy for age." Rather than an individual employment decision, at issue here are complex systemwide rules involving not wages, but pensions—a benefit the ADEA treats somewhat more flexibly and leniently in respect to age. Further, Congress has otherwise approved programs, such as Social Security Disability Insurance, that calculate disability benefits using a formula that expressly takes account of age. (3) The disparity here has a clear non-age-related rationale. The Plan's disability rules track Kentucky's "normal retirement" rules by imputing *only* those additional years of service needed to bring the disabled worker's total to 20 or to the number of years that the individual would have worked had he worked to age 55. Thus, the disability rules' purpose is to treat a disabled worker as though he had become disabled after, rather than before, he had become eligible for "normal retirement" benefits. Age factors into the disability calculation only because the normal retirement rules themselves permissibly consider age. The Plan simply seeks to treat disabled employees as if they had worked until the point at which they would be eligible for a normal pension. Thus, the disparity turns upon pension eligibility and nothing more. (4) Although the Plan placed an older worker at a disadvantage here, in other cases, the rules can work to the advantage of older workers, who may get a bigger boost of imputed years than younger workers. (5) Kentucky's system does not rely on the sorts of stereotypical assumptions, e.g., the work ca-

Syllabus

pacity of "older" workers relative to "younger" workers, that the ADEA sought to eradicate. The Plan's "assumptions" that no disabled worker would have continued to work beyond the point at which he was both disabled and pension eligible do not involve agerelated stereotypes, but apply equally to all workers regardless of age. (6) The nature of the Plan's eligibility requirements means that, unless Kentucky were severely to cut the benefits to disabled workers who are not yet pension eligible, it would have to increase the benefits available to disabled, pension-eligible workers, while lacking any clear criteria for determining how many extra years to impute for those already 55 or older. The difficulty of finding a remedy that can both correct the disparity and achieve the Plan's legitimate objective—providing each disabled worker with a sufficient retirement benefit—further suggests that this objective, not age, "actually motivated" the Plan.

The Court's opinion in no way unsettles the rule that a statute or policy that facially discriminates based on age suffices to show disparate treatment under the ADEA. The Court is dealing with the quite special case of differential treatment based on *pension status*, where pension status—with the explicit blessing of the ADEA—itself turns, in part, on age. Further, the rule for dealing with this sort of case is clear: Where an employer adopts a pension plan that includes age as a factor, and that employer then treats employees differently based on pension status, a plaintiff, to state a claim under the ADEA, must adduce sufficient evidence to show that the differential treatment was "actually motivated" by age, not pension status. Pp. 6–11.

(c) The Federal Government's additional arguments are rejected. Since *Hazen Paper* provides the relevant precedent here, an ADEA amendment made in light of *Public Employees Retirement System of Ohio* v. *Betts*, 492 U. S. 158, is beside the point. And a contrary interpretation contained in an EEOC regulation and its compliance manual does not lead to a different conclusion. Pp. 11–13.

467 F. 3d 571, reversed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, and THOMAS, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which SCALIA, GINSBURG, and ALITO, JJ., joined.