

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 Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

MCKENNON v. NASHVILLE BANNER PUBLISHING CO.  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
SIXTH CIRCUIT  
No. 93-1543. Argued November 2, 1994—Decided January 23,  
1995

Alleging that her discharge by respondent Nashville Banner Publishing Company violated the Age Discrimination in Employment Act of 1967 (ADEA), petitioner McKennon filed suit seeking a variety of legal and equitable remedies available under the ADEA, including backpay. After she admitted in her deposition that she had copied several of the Banner's confidential documents during her final year of employment, the District Court granted summary judgment for the company, holding that McKennon's misconduct was grounds for her termination and that neither backpay nor any other remedy was available to her under the ADEA. The Court of Appeals affirmed on the same rationale.

*Held:* An employee discharged in violation of the ADEA is not barred from all relief when, after her discharge, her employer discovers evidence of wrongdoing that, in any event, would have led to her termination on lawful and legitimate grounds had the employer known of it. Pp. 3-10.

(a) Such after-acquired evidence is not a complete bar to ADEA recovery. Even if the employee's misconduct may be considered to be supervening grounds for termination, the ADEA violation that prompted the discharge cannot be altogether disregarded. The Act's remedial provisions, 29 U. S. C. §626(b); see also 29 U. S. C. §216(b), are designed both to compensate employees for injuries caused by prohibited discrimination and to deter employers from engaging in such discrimination. The private litigant who seeks redress for his or her injuries vindicates both of these objectives, and it would not accord with this scheme if after-acquired evidence of wrongdoing barred all relief. *Mt. Healthy City School District*

*Bd. of Ed. v. Doyle*, 429 U. S. 274, 284-287, distinguished.  
Pp. 3-7.

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(b) Nevertheless, after-acquired evidence of the employee's wrongdoing must be taken into account in determining the specific remedy, lest the employer's legitimate concerns be ignored. Because the ADEA simply prohibits discrimination, and does not constrain employers from exercising significant other prerogatives and discretions in the usual course of hiring, promoting, and discharging employees, employee wrongdoing is relevant in taking due account of such lawful prerogatives and the employer's corresponding equities arising from the wrongdoing. Pp. 7-8.

(c) The proper boundaries of remedial relief in cases of this type must be addressed on a case-by-case basis. However, as a general rule, neither reinstatement nor front pay is an appropriate remedy. It would be both inequitable and pointless to order the reinstatement of someone the employer would have terminated, and will terminate, in any event and upon lawful grounds. The proper measure of backpay presents a more difficult problem. Once an employer learns about employee wrongdoing that would lead to a legitimate discharge, it cannot be required to ignore the information, even if it is acquired during the course of discovery in a suit against the employer and even if it might have gone undiscovered absent the suit. The beginning point in formulating a remedy should therefore be calculation of backpay from the date of the unlawful discharge to the date the new information was discovered. The court can also consider any extraordinary equitable circumstances that affect the legitimate interests of either party. Pp. 9-10.

(d) Where an employer seeks to rely upon after-acquired evidence of wrongdoing, it must first establish that the wrongdoing was of such severity that the employee in fact would have been terminated on those grounds alone had the employer known of it at the time of the discharge. The concern that employers might routinely undertake extensive discovery into an employee's background or job performance to resist ADEA claims is not insubstantial, but the courts' authority to award attorney's fees under §§216(b) and 626(b) and to invoke Federal Rule of Civil Procedure 11 in appropriate cases will likely deter most abuses. P. 10.

9 F. 3d 539, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.