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Case Law Update: Junior Membership Age Discrimination Analysis

Javorsky v. Western Athletic Clubs, California Court of Appeals, First District, Division 5 (December 11, 2015). Clubs throughout the country offer Junior Membership programs that afford younger members discounts in joining fees and/or dues or favorable membership financing. Some have questioned whether such programs violate federal or state age discrimination laws.

In *Javorsky*, a California appellate court recently upheld a ruling that a health and fitness club's discounted initiation fee and dues program for members aged 18 to 29 did not violate California's Unruh Civil Rights Act ("Unruh Act"). Noting that the Unruh Act prohibits only arbitrary, invidious or unreasonable discrimination, the court explained: "Discrimination may be reasonable, and not arbitrary, in light of the nature of the enterprise or its facilities, legitimate business interests (maintaining order, complying with legal requirements, and protecting business reputation or investment), and public policy supporting the disparate treatment." The club argued that the program was reasonable and not arbitrary because it (i) expanded access to beneficial, recreational activities; (ii) benefited an age group with limited financial resources; and (iii) did not perpetuate any invidious stereotypes. The club presented evidence from its expert witness demographer that individuals under age 30 tend to have substantially less disposable income than individuals over 30. The plaintiff's expert countered that certain individuals in the under 30 age group earn more than certain individuals in the over 30 group. But the trial court agreed with the club on all points, and the appellate court affirmed the trial court's determination.

The *Javorsky* decision dealt solely with the Unruh Act. Anti-discrimination laws in other states may be interpreted differently. This decision, however, likely will be instructive as to how a club can defend a challenge to a Junior Membership program based on anti-discrimination laws in other states as well. Clubs can often demonstrate a reasonable basis for offering younger members a discounted membership.

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