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Supreme Court Opens Door For New Age Discrimination Claims

On March 30, 2005, the United States Supreme Court decided the case of *Smith v. City of Jackson, Mississippi*, expanding the theories of recovery available to plaintiffs in age discrimination cases. The Court held for the first time that the "disparate impact" theory of recovery, announced in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) for cases brought under Title VII of the Civil Right Act of 1964, is also available under the Age Discrimination in Employment Act ("ADEA").

In *Smith*, the City of Jackson revised its pay plan for police officers and dispatchers in an attempt to raise their starting salaries to the regional average. The pay plan revision resulted in proportionately greater raises when compared to their former pay for officers with less than five years of service than for those with more seniority. Most officers over the age of 40 had more than five years of service, and thus, received proportionately smaller raises.

A group of older officers sued the city under the ADEA, claiming that the City deliberately discriminated against them because of their age ("disparate treatment") and that they were adversely impacted by the plan because of their age ("disparate impact"). The City's explanation for the pay differential was the perceived need to raise the salaries of junior officers to make them more competitive with comparable positions in the market in order to attract and retain police officers.

Although the Supreme Court analogized the ADEA to Title VII, it noted that the ADEA contained language not found in Title VII which significantly narrowed its coverage by permitting any "otherwise prohibited" action "where the differentiation is based on reasonable factors other than age." Furthermore, the Court reaffirmed that "it is not enough to simply allege that there is a disparate impact on workers, or point to a generalized policy that leads to such an impact. Rather, the employee is responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities."

Because the Petitioners did not identify any specific test, requirement or practice within the contested pay plan that had an adverse impact on older workers, and because the City's plan was based on reasonable factors other than age, the Supreme Court ultimately found that the Petitioners did not set forth a valid disparate impact claim.

The ADEA and the analogous California statute prohibiting age discrimination, the Fair Employment and Housing Act ("FEHA"), have many detailed and complex requirements. Employers should consult their labor counsel before amending employment policies or practices to ensure that the changes comply with both California and federal law.

For more information about this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

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