

Supreme Court Decision Expands Age Discrimination Statute, But Maybe Only A Little

The United States Supreme Court held that employees 40 years old or older are not required to show discriminatory intent in order to bring a lawsuit under the Age Discrimination in Employment Act ("ADEA"). Instead, older employees may now bring a lawsuit if they can show that a company policy which is facially neutral in its treatment of different minority groups has an adverse impact on older workers when it is actually applied. Such claims, known as a "disparate impact" claims, have been available under Title VII (which prohibits race, color, religion, sex and national origin discrimination) for more than 30 years. The lower courts had been split on whether such claims were also permitted under the ADEA.

Despite the Supreme Court's expansion of the ADEA to allow these disparate impact claims, employers should not expect a drastic increase in liability under the ADEA. First, as noted above, a number of lower courts already allowed such claims. Second, the Supreme Court went to great lengths to stress the ADEA's "reasonable factor other than age" exception. This exception allows employers to escape liability where the adverse impact was attributable to a nonage factor that was reasonable. In other words, an employer may enact a policy that adversely impacts older workers as long as the policy was based on reasonable business motives other than age.

In the case before the Supreme Court (*Smith v. City of Jackson*), the policy at issue was the City of Jackson's decision to give a pay increase to all police officers in an attempt to bring salaries up to the regional average. When that policy was actually applied, those officers who had less than five years of experience were given proportionally larger raises than those officers with more than five years experience (due to the difference in their then-current salaries). Because most of the officers aged 40 and older happened to be in the group with more than five years experience, they brought suit against the city claiming they were adversely affected by the policy because of their age.

The Supreme Court, in applying its new ruling on disparate impact claims, ruled against the officers under the exception. It found that "the City's decision to grant a larger raise to lower echelon employees for the purpose of bringing salaries in line with that of surrounding police forces was a decision based on a 'reasonable factor other than age' that responded to the City's legitimate goal of retaining police officers."

In light of this decision, employers should analyze the reasons for any policy they are considering enacting to be sure that there is a reasonable, well documented business objective

behind the policy. Provided that such an objective exists, potential liability under the ADEA should not increase drastically.

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