



Labor & Employment Client Advisory

UNITED STATES SUPREME COURT EXPANDS AGE DISCRIMINATION PROTECTION

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In a much anticipated decision, the United States Supreme Court earlier this week expanded the reach of federal age discrimination lawsuits against employers. Under its decision of *Smith v. City of Jackson*, employers can be responsible under the federal Age Discrimination in Employment Act ("ADEA") without any proof of intentional discrimination. Now, even an employer's unintentional and neutral decision can be enough for an age discrimination claim IF that decision disproportionately affects older workers.

Traditionally, discrimination lawsuits have come in two forms. The first is the more classic "differential treatment" case, where an employee claims he/she was treated differently or targeted because of their legal status (i.e., age, race, sex, etc.) The second, lesser-known claim is for "disparate impact" where employees claim that a company's employment practices -- that apply to everyone equally -- are still discriminatory because in practice they adversely affect one group more than another. For example, a company's arbitrary decision to impose a minimum height for all employees applies to everyone, but affects women more than men.

These disparate impact claims have been allowed for other types of discrimination, such as race or sex discrimination. But, before the *City of Jackson* case, courts were divided over whether these claims should also apply to age discrimination cases. In its decision, the U.S. Supreme

Court ruled for the first time that "disparate impact" age claims are valid. In reaching its decision, the Court relied upon the fact that the language of the ADEA is virtually identical to other federal discrimination laws that allow disparate impact claims.

Although the Court permitted these claims, it did give some relief to employers. That is, in its decision, the Court emphasized that disparate impact age claims are not as broad as under other discrimination laws. Under these other laws, an employer's primary defense is to show that it acted for business necessity, and not just for ordinary economic reasons. But, for age claims, the Court gave the employers a more favorable defense -- was the decision based on a "reasonable factor other than age?" Under this test, the Court ruled against the employees in *City of Jackson*. So, even though that employer gave disproportionately higher pay raises to younger workers, the Court accepted the non-age explanation that the raises were done to remain competitive in the market place for younger workers.

The full impact of *City of Jackson* may not be known for some time; courts now have to decide what other "reasonable" factors exist to overlook a negative impact on older workers. Despite the end result, the decision to allow these types of claims can have a significant impact upon employers and how they operate. Employers must now be more sensitive in implementing broad or company-wide changes, and be

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careful to focus on the consequences of their employment practices on older workers. So, because older workers tend to be longtime employees with higher pay and more benefits, a company might inadvertently violate the ADEA when it cuts certain expenses across-the-board. And, regardless of which way a court or jury may ultimately rule on a company's decision, what does seem clear is that the *City of Jackson* opinion will lead to more lawsuits being filed against employers.

For more information on the Supreme Court's decision in *City of Jackson* and its implications upon your business, you may contact any member of Archer & Greiner's Labor and Employment Department at (856) 795-2121.