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Labor and Employment Law

# Disparate Impact Claims Valid Under the ADEA

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On March 30, 2005 the U.S. Supreme Court held that employees could bring disparate impact based suits under the Age Discrimination in Employment Act of 1967 ("ADEA"). Smith v. City of Jackson, 2005 U.S. LEXIS 2931. Expanding the disparate impact theory to age cases now permits a plaintiff to claim that a neutral employment practice that has a disproportionate negative impact on older workers is unlawful, without having to prove discriminatory intent. Prior to the Court's ruling, the circuit courts had split on whether ADEA permitted disparate impact claims even though the EEOC and Department of Labor had long held that it did.

Disparate impact theory was first recognized by the Court under the Civil Rights Act of 1964. Griggs v. Duke Power Co., 401 U.S. 424 (1971). While applying the theory to ADEA, the Court also made clear that the Act permits differentiation based on reasonable factors other than age ("RFOA"). Therefore, if an employer can show that the adverse impact is attributable to a reasonable non-age factor it will escape liability.

For instance, in Smith the city granted larger wage increases to employees with less than five years service to align starting salaries with market rates. Longer service employees who tended to be older complained the policy discriminated against them. Because the city showed its plan was based on reasonable factors other than age, it prevailed.

Although the Court has recognized a RFOA exception, employers should continue to analyze the impact their policies have on protected groups and make sure all decisions are justified by legitimate business needs.

For more information contact scott@schaffer-law.com or (860) 216-1965.

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