

“Unintentional Discrimination” Claim in Age Cases.

The City of Jackson (City) granted pay raises to all police officers and police dispatchers in an effort to make their starting salaries competitive with the regional average for such positions. Those with less than five years of service received proportionately greater raises than those with greater seniority. Most officers over 40 years of age had more than five years of service.

A group of senior officers over 40 years of age filed suit alleging a violation of the Age Discrimination in Employment Act of 1967 (ADEA), a federal statute which prohibits employment discrimination based on age with respect to those over 40 years old. Their suit claimed both disparate treatment (intentional discrimination) and disparate impact (unintentional discrimination). The District Court dismissed both claims by summary judgment. Upon review, the Fifth Circuit Court of Appeals found that dismissal of the disparate treatment claim was premature but affirmed dismissal of the disparate impact claim, finding the latter claim to be categorically unavailable under the ADEA. The case was then appealed to the Supreme Court.

The Supreme Court has for over thirty years held that plaintiffs may recover under Title VII of the Civil Rights Act of 1964 (Title VII) based upon proof of either disparate treatment or disparate impact. However, it had not, until this decision, ruled on the availability of disparate impact claims under the ADEA. After noting the similarity of the language used in the Title VII and ADEA prohibiting discrimination, as well as the interpretations of the Department of Labor and the Equal Employment Opportunity Commission allowing disparate claims under the ADEA, the Court held that both statutes allow claims based upon disparate impact. However, the Court went on to note that, unlike Title VII, the ADEA significantly narrows its coverage by permitting any “otherwise prohibited” action “where the differentiation is based on reasonable factors other than age.” *Smith v. City of Jackson*, No. 03-1160, (U.S. Mar. 30, 2005).

Ultimately, the Court affirmed the dismissal of the disparate impact claim in this case after finding that the officers had done little more than point out that the pay plan was relatively less generous to older workers than to younger ones. To prevail, the Court noted, the officers would have to identify a specific test, requirement, or practice within the pay plan that had an adverse impact on older workers. Thus, while this decision is important since it establishes the right to recovery for unintentional discrimination based on the disparate impact theory under the ADEA, plaintiffs under that law will have a higher burden of proof than do plaintiffs in similar cases under Title VII.