Supreme Court Rules That Disparate Impact Claims May Be Brought Under the Age Discrimination in Employment Act
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On March 31, 2005, the U.S. Supreme Court ruled that an individual protected by the Age Discrimination in Employment Act ("ADEA") (i.e., an employee, former employee, or job applicant who is age forty or older) can sue an employer for age discrimination if the employer’s policy, practice or other employment action has had a disparate impact -- even if unintended -- on older workers. See Smith v. City of Jackson, Miss., et al., No. 03-1160 (March 31, 2005). The Court’s decision resolves a disagreement among the federal appellate courts, only some of which had previously concluded that disparate impact claims could be brought under the ADEA. The Court’s decision is significant because it is now the law of the land that a plaintiff in a disparate impact case does not need evidence of intentional age discrimination in order to prevail. The Court has long held that disparate impact claims are available under Title VII, and it has now afforded the same avenue of relief to ADEA plaintiffs.

The Facts of the Case

The named plaintiff in Smith and certain other police department employees over the age of 40 sued Jackson, Mississippi and the city police department in federal court. Plaintiffs alleged that the police department’s salary plan violated the ADEA because (they claimed) that salary plan had the effect of discriminating against older workers on the basis of their age. The purpose of the plan was to bring starting salaries for police officers and police dispatchers up to the regional average (a non-discriminatory objective); in order to meet this objective, the city raised the pay of existing officers according to their years of service. As a result, officers with five or fewer years of tenure were given proportionally larger raises that those who had more than five years of tenure. Since those with more seniority also tended to be among the older employees, plaintiffs alleged that the salary plan had an unlawful disparate impact on older workers, notwithstanding that the purpose of adopting the plan was nondiscriminatory. Both the federal district court and the Fifth Circuit Court of Appeals dismissed plaintiffs’ claims on the grounds that disparate impact claims could not be brought under the ADEA, and that the allegedly discriminatory impact of a facially neutral plan, policy or practice therefore did not constitute actionable age discrimination.

The Court’s Rationale for its Decision

The Supreme Court reversed the lower court ruling and concluded that disparate impact claims are available under the ADEA. The Court relied primarily on the applicable language of the ADEA, which it noted is nearly identical to that of Title VII. Because the language of the two statutes is so similar, the Court found that the ADEA, like Title VII,
authorized disparate treatment claims. However, the Court also noted that there are some differences between the two statutory schemes, and that such differences require that only a narrower scope of a disparate impact claim be permitted under the ADEA. Specifically, unlike Title VII, under ADEA any "otherwise prohibited" action of an employer is lawful provided the action is based on reasonable factors other than age. Therefore, an employer can justify a policy that has a disproportionately adverse effect on older employees by showing that the policy is based on "reasonable" factors other than age. By contrast, an employer defending a disparate impact claim under Title VII must show that a policy having an adverse effect on the basis of race or sex is justified by "business necessity," a standard that requires the employer to show that it has no alternative means to achieve its business goals. The reasonableness standard under the ADEA is far less onerous for employers, making it easier for employers to defend disparate impact claims under the ADEA than under Title VII.

Notably, despite finding that disparate impact claims are available under the ADEA, the Court dismissed the plaintiffs' claims based on the specific facts presented in Smith. The Court noted that the burden is on the plaintiff-employee to isolate and identify the specific employment practices that are allegedly responsible for any statistical disparities based on age, which the Smith plaintiffs failed to do. The Court also held that the city's stated reasons for the pay plan, including the need to bring the junior officers' salaries in line with comparable positions in the labor market, were reasonable. Accordingly, the Court dismissed plaintiffs' disparate impact claim.

The Implications for Employers

Obviously, the Supreme Court's decision in Smith is not good news for employers, particularly in jurisdictions that had previously refused to recognize disparate impact claims under the ADEA. But, because the scope of disparate impact claims under the ADEA is not as broad as those filed under Title VII, it should be easier for employers to defend these claims. However, as a result of this decision, employers should review their policies and practices to evaluate their impact, if any, on older workers.