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### **Supreme Court Opens Door For New Age Discrimination Claims**

On March 30, 2005, the United States Supreme Court decided the case of *Smith v. City of Jackson, Mississippi*, expanding the theories of recovery available to plaintiffs in age discrimination cases. The Court held for the first time that the "disparate impact" theory of recovery, announced in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) for cases brought under Title VII of the Civil Right Act of 1964, is also available under the Age Discrimination in Employment Act ("ADEA").

In *Smith*, the City of Jackson revised its pay plan for police officers and dispatchers in an attempt to raise their starting salaries to the regional average. The pay plan revision resulted in proportionately greater raises when compared to their former pay for officers with less than five years of service than for those with more seniority. Most officers over the age of 40 had more than five years of service, and thus, received proportionately smaller raises.

A group of older officers sued the city under the ADEA, claiming that the City deliberately discriminated against them because of their age ("disparate treatment") and that they were adversely impacted by the plan because of their age ("disparate impact"). The City's explanation for the pay differential was the perceived need to raise the salaries of junior officers to make them more competitive with comparable positions in the market in order to attract and retain police officers.

Although the Supreme Court analogized the ADEA to Title VII, it noted that the ADEA contained language not found in Title VII which significantly narrowed its coverage by permitting any "otherwise prohibited" action "where the differentiation is based on reasonable factors other than age." Furthermore, the Court reaffirmed that "it is not enough to simply allege that there is a disparate impact on workers, or point to a generalized policy that leads to such an impact. Rather, the employee is responsible for isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities."

Because the Petitioners did not identify any specific test, requirement or practice within the contested pay plan that had an adverse impact on older workers, and because the City's plan was based on reasonable factors other than age, the Supreme Court ultimately found that the Petitioners did not set forth a valid disparate impact claim.

The ADEA and the analogous California statute prohibiting age discrimination, the Fair Employment and Housing Act ("FEHA"), have many detailed and complex requirements. Employers should consult their labor counsel before amending employment policies or practices to ensure that the changes comply with both California and federal law.

For more information about this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

<b>Los Angeles</b>	<b>San Diego</b>	<b>San Francisco</b>
Charles F. Barker (213) 617.4168	David B. Chidlaw (619) 338.6614	Douglas J. Farmer (415) 774.2906
Elicia N. Bernstein (213) 617.5582	John D. Collins (619) 338.6613	Lara V. Hutner (415) 774.2903
Geoffrey D. DeBoskey (213) 617.5547	Julie A. Dunne (619) 338.6510	
David J. Fishman (213) 617.4118	Guy N. Halgren (619) 338.6605	<b>Del Mar Heights</b>
Jason R. Gasper (213) 617.5499	Samantha D. Hardy (619) 338.6640	Richard M. Freeman (858) 720.8909
Adena Hadar (213) 617.4128	Stacey E. James (619) 338.6581	Matthew McConnell (858) 720.8928
Douglas R. Hart (213) 617.5497	Rafael Nendel-Flores (619) 338.6619	Carole M. Ross (858) 720.8925
Derek R. Havel (213) 617.5424	W. David Osborne (619) 338.6589	
Kelly L. Hensley (213) 617.5441	Mary P. Snyder (619) 338.6503	<b>Santa Barbara</b>
Melissa Hughes (213) 616.5464	William V. Whelan (619) 338.6588	Jeffrey Dinkin (805) 879.1828
Tracey A. Kennedy (213) 617.4249	Tara L. Wilcox (619) 338.6608	Deborah Martin (805) 879.1838
Melissa P. Lopez (213) 617.4290		
Richard L. Lotts (213) 617.4119	<b>Orange County</b>	<b>Washington, D.C.</b>
Daniel J. McQueen (213) 617.4270	Heather Clark (714) 424.2820	Mark E. Nagle (202) 218.0014
Kristine A. Moon (213) 617.5523	Greg S. Labate (714) 424.2823	Julia H. Perkins (202) 772.5316
Jocelyn Riedl (213) 617.5592	Mary E. Lynch (714) 424.2826	Mary E. Pivec (202) 772.5310
Richard J. Simmons (213) 617.5518	Ryan D. McCortney (714) 424.2830	
Dianne Baquet Smith (213) 617.4265		
Brandyn Stedfield (213) 617.5514		
Natalie C. Trask (213) 617.4229		
Jennifer B. Zargarof (213) 617.4243		

**SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**

<b>LOS ANGELES</b> 213-620-1780	<b>CENTURY CITY</b> 310-228-3700	<b>SAN FRANCISCO</b> 415-434-9100	<b>ORANGE COUNTY</b> 714-513-5100
<b>DEL MAR HEIGHTS</b> 858-720-8900	<b>SAN DIEGO</b> 619-338-6500	<b>SANTA BARBARA</b> 805-568-1151	<b>NEW YORK</b> 212-332-3800
			<b>WASHINGTON, D.C.</b> 202-218-0000

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