

LABOR AND EMPLOYMENT PRACTICE GROUP

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AGE-BIAS LAW EXPANDED; U.S. SUPREME COURT RULES THAT EMPLOYEES DO NOT HAVE TO PROVE INTENT IN ORDER TO ESTABLISH A CLAIM OF AGE DISCRIMINATION

On March 30, 2005, the United States Supreme Court in the case of *Smith v. City of Jackson*, handed down a decision which opens the door to challenges under the Age Discrimination in Employment Act (ADEA) to employment policies or practices that adversely impact workers age 40 and older.

This decision is regarded as a victory for older workers. Laurie McCann, a senior attorney for the AARP, a lobbying group for individuals 50 years of age and over, is quoted by Reuters News Agency as hailing the opinion as "enormously significant", and "a major boost for the fight to eliminate age discrimination in the workplace." The Court's ruling potentially affects approximately 75 million employees, or about half of the entire U. S. workforce. The ADEA applies to employers with 20 or more employees, and protects employees who are 40 years and over.

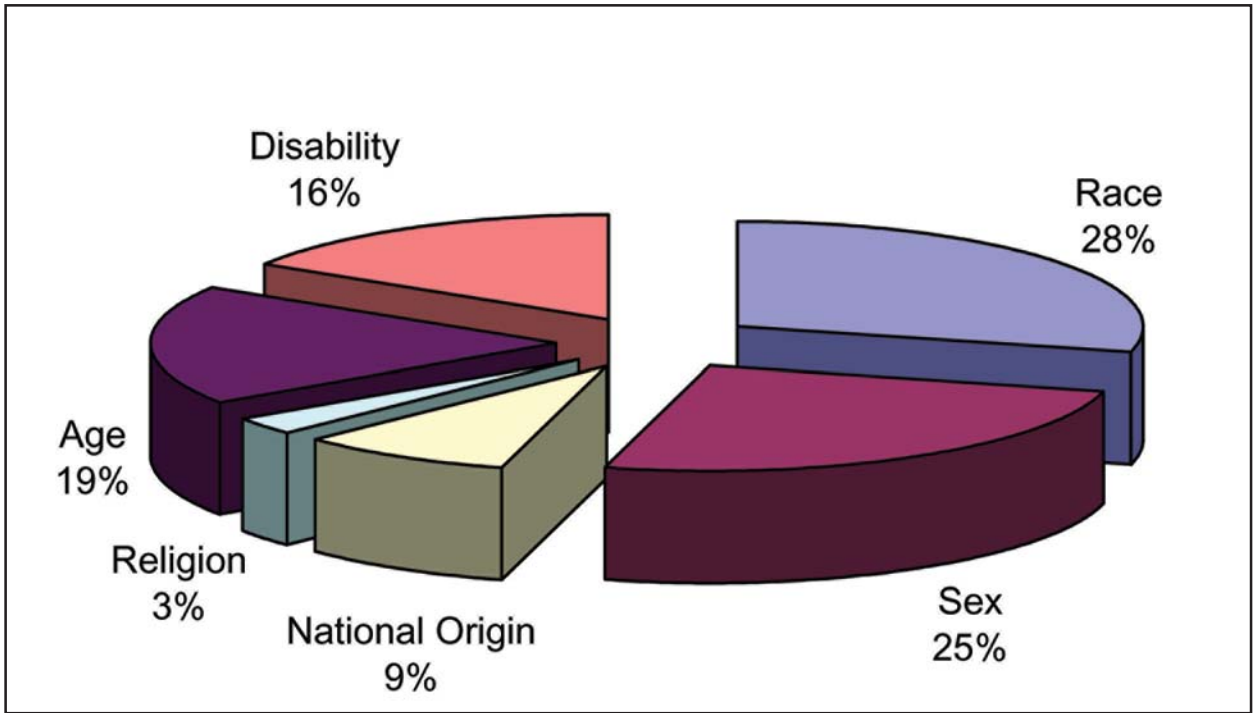
In *Smith*, older police officers filed suit alleging that a revised City pay plan disproportionately benefited younger, less senior officers. The City wanted to bring salaries up to the regional average. In particular, the City wanted to raise the salaries of junior officers so that the pay would be competitive with comparable positions in the market. As a result, younger and/or less experienced officers received higher percentage raises than more senior officers. However, the senior officers received higher raises in pure dollar amounts than the junior officers. While the Supreme Court held that the older officers had the right to file suit,

the Court determined that the pay plan did not violate the ADEA in that its main objective was to attract younger employees to the department.

Practically, what the *Smith* case does is open the door to lawsuits even where the policies and decisions of the employer do not mention age. This means a facially neutral policy or practice could lead to liability if it can be shown that it subjects older employees to a significant adverse impact regarding their employment, even if there is no intent to discriminate. Additionally, an employee in the protected class would have to show that workers outside of the protected class are not affected by the policies to the same degree. However, employers do have important defenses in these types of cases. Justice Stevens, who wrote for the majority in the *Smith* decision, stated, "Certain employment criteria that are routinely used may be reasonable despite their adverse impact on older workers as a group." What this means for employers is that they will avoid liability if the policy or practice at issue is based on a reasonable business decision that has nothing to do with age.

From a strategic standpoint, the *Smith* case means that employers must routinely scrutinize how personnel decisions, e.g., reductions-in-force, off-shoring, pension plan adjustments, could possibly affect older workers. It is now even more important that employers ensure that a thorough legal analysis is part of any strategic decision that may affect their workforce.

TYPES OF DISCRIMINATION CLAIMS FILED IN 2004



For additional information, please contact one of the following partners in our Illinois and Missouri offices:

Ed Bott
(314) 516-2690
esb@greensfelder.com

Kathi Chestnut
(314) 516-2650
klc@greensfelder.com

Dennis Collins
(314) 516-2648
dgc@greensfelder.com

Tom Hennessy
(618) 239-3605
th@greensfelder.com

Jill Luft
(314) 516-2653
jil@greensfelder.com

Mary Beth Ortals
(314) 516-2646
mbo@greensfelder.com

Bill Schmitt
(618) 239-3610
was@greensfelder.com