

ADEA EXPANDED: LOOK OUT!

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Motivated in part by the desire to bring the starting salaries of police officers up to the regional average, a southern city adopted a pay plan granting raises to all City employees. Specifically the city granted raises to all police officers and police dispatchers. The purpose of the plan was to “attract and retain qualified people, provide incentive for performance, maintain competitiveness with other public sector agencies and ensure equitable compensation to all employees regardless of age, sex, race, and/or disability.” Officers with less than five years of tenure received proportionately greater raises when compared to their past pay raises versus those with more seniority. Because older officers tended to occupy more senior positions, on average they received smaller increases when measured as a percentage of their salary.

Police and public safety officers brought suit against the city, under the Age Discrimination in Employment Act (ADEA), alleging the city deliberately discriminated against them because of their age, and that they were “adversely affected” by the plan based on their age. The salary increases they received were less generous than increases received by younger officers.

The court found it is not enough to simply allege that there is disproportionate treatment of workers, or point to a generalized policy that leads to such an impact. Rather, the employee must isolate and identify the specific employment practices that are responsible for any observed disparities. In this instance the officers only isolated the pay plan stating it is more generous to younger workers than to older workers. They failed to identify any specific test, requirement, or practice within the pay plan that had an adverse impact on older workers.

Furthermore, the court found the City’s plan was based on reasonable factors other than the age. The City’s explanation for the difference between older and younger workers was its need to make junior officers’ salaries competitive with comparable positions in the market. Reliance on these factors was unquestionably reasonable given the City’s goal to foster growth in the police force and maintain workers.

Generally, under Title VII, an employer need not be motivated by a discriminatory intent for an employee to recover under a Title VII claim. If the employee proves he/she was treated differently, the employee may still be able to recover. Disparate impact occurs when an employment practice that appears to be neutral, has an unjustified adverse impact on members of a protected class (race, gender, sex, national origin, religion, age, disability). Disparate impact challenges are often based on interviews, written tests, physical requirements (height, weight, etc), and educational requirements.

To recover, a plaintiff must prove that an employment practice has a substantial adverse impact on a protected group. Oftentimes, the employee will utilize statistics to expose the disparate impact (5% difference has been held to expose disparate impact). In its defense, the employer must prove that the employment practice is job related for the individual position.

However, the employee can still prevail under such a claim even when the employer proves the business necessity defense. If the employee can show the employer refused to adopt alternative employment practices that would satisfy the necessity without the disparate impact on a protected class, the employee will win.

The Lessons Learned:

Disparate impact claims can be defeated by showing a reasonable business purpose motivated the employment practice. In this case, the Supreme Court found that the employer had a reasonable purpose behind their business practices — keeping and retaining workers — and, as a result, the employees' claim did not succeed. Reasonable employment practices include having legitimate reasons for recruitment, reward, retention purposes, and making management decisions grounded on the abilities of the employees.

We encourage employers to consult with an experienced labor and employment attorney before taking any action.