

AGE DISCRIMINATION DOES NOT REQUIRE PROOF OF INTENT
By Karen Sutherland

The United States Supreme Court issued a decision in March 2005 called *Smith v. City of Jackson* clarifying the legal standards that are applied to proof of age discrimination in employment claims. The case arose out of a change to the City of Jackson, Mississippi's pay plan for police officers and dispatchers whereby employees with less than five years' service received proportionally greater raises in order to bring their salaries closer to market rate. Due to the seniority component, the pay plan was relatively less generous to older workers because they usually had more than five years' seniority. Thus, the employees argued that the change in pay plan had a disparate (negative) impact on employees who were over 40 even if the pay plan did not intentionally discriminate based on an employee's age.

The courts have supported claims for "disparate impact" under Title VII of the Civil Rights Act, which covers discrimination based on race, color, religion, sex or national origin, but there is language in the ADEA allowing an employer "to take any action otherwise prohibited . . . where the differentiation is based on reasonable factors other than age discrimination. . . ." This language is not present in Title VII, and it has affected the interpretation of the ADEA as compared to Title VII.

The lower court in the *Smith* case held that the Age Discrimination in Employment Act (ADEA) does not cover "disparate impact" claims. The Supreme Court disagreed with the lower court and held that there are times when a policy or procedure could give rise to an age discrimination claim under the ADEA because of its disparate impact, but that the City of Jackson's officers and dispatchers had failed to prove "disparate impact" under the facts of their case.

The Supreme Court focused on two issues in the *Smith* case. The first was whether there was a specific test, requirement, or practice within the pay plan that had an adverse impact on older workers, and the second was whether the City's pay plan was based on reasonable factors other than age. After applying these factors, the Court found no evidence that the ADEA had been violated and upheld the dismissal of the employees.

This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at ksutherland@omwlaw.com