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Downsizing?

Employers who are in the process of downsizing their work forces should consider their ADEA exposure after the *Meacham* case, which is described in more detail to the right.

ADEA impacts the design and implementation of work force reductions. After *Meacham*, employers may need to more carefully plan and execute their down-sizing programs. And, if the downsizing impacts older workers more than younger ones, particular care should be taken to document not only the employer's reasons for restructuring (like cost reductions or eliminating redundant positions), but also the reason each of the terminated employees was chosen in lieu of other employees.

Supreme Court Sides with Employees in ADEA Lawsuit Age Discrimination Lawsuits Made Easier

The federal Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination against employees over 40 in employment matters, such as hiring, firing, compensation and benefits. A recent Supreme Court case makes it easier for employees age 40 and over to challenge employer practices under ADEA.

Disparate Impact Basis for Lawsuit. The case, *Meacham v. Knolls Atomic Power Laboratory*, involves so-called "disparate impact" lawsuits brought under ADEA. In disparate impact lawsuits, employees allege that the employer's action disproportionately harmed older employees, even though the employer did not intend to discriminate against employees based on their age. Disparate impact lawsuits often involve reductions in force where employees allege that an employer disproportionately terminated older employees.

Employer's Defense. ADEA specifically provides that an employer does not violate ADEA if the employer relied on factors other than age in making its employment decisions. In other words, an employee's lawsuit will fail if the employer's actions are based on "reasonable factors other than age." The issue in *Meacham* was whether the employee or the employer bears the burden of proving whether the employer relied on these factors instead of age.

Employer Bears Burden of Proof. In *Meacham*, the Supreme Court determined that the employer, not the employee, bears the legal burden of proving that its actions were based on reasonable factors other than age. The holding in essence puts a greater burden on employers in defending disparate impact ADEA claims.

More Expensive ADEA Litigation. By shifting the burden to the employer, the Supreme Court makes disparate impact cases easier for employees to win. The Supreme Court even notes that the decision will make ADEA litigation more difficult and costlier to defend and will sometimes affect the way employers do business with their employees.

Many commentators predict that a proliferation of age-related disparate impact lawsuits will follow this decision.

Employer Self-Protection. For employers to protect themselves in termination of multiple employees in a single or related event, employers must adequately plan ahead of time. Clearly documenting the reasons for the termination, on an employee-by-employee basis, among other things, may be critical. Each situation is different and must be carefully analyzed to achieve a favorable result.

More Information. If you have questions about the *Meacham* case, or would like to discuss employment practices affected by this ruling, please contact Don Mazursky (404.888.8840), Ed Johnson (404.888.8875), or Megan Gideon (404.888.8849).