

ALERTS

Employment Law News

AGE DISCRIMINATION BASED ON A NEUTRAL POLICY — A NEW THREAT

Employment & Labor Practice Team

In a significant case for employers, the U.S. Supreme Court recently ruled that the Age Discrimination in Employment Act (ADEA) allows current and former employees to prevail on claims for age discrimination even when an employer did not intentionally discriminate based on age. This "disparate impact" theory of age discrimination recently approved by the Supreme Court would allow an employee to prevail on an age discrimination claim by showing that an employer's facially neutral policies impacted workers over 40 more harshly than workers under 40. The good news for employers is that the Supreme Court also found that employers would have no liability so long as the considerations driving the challenged policy were "reasonable."

This decision will, no doubt, open the door for more litigation under the ADEA.

In light of this decision, employers should consider prioritizing a review of compensation, benefits and severance plans to ensure that such plans do not "disparately impact" those over 40, or if such plans do disparately impact those over 40, that the age-neutral justification for the policy is "reasonable" within the meaning of the ADEA. We recommend paying special attention to severance plans or programs, which have been an increasing target of litigation in recent years.