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Supreme Court Removes Hurdle to Age Bias Suits

By LINDA GREENHOUSE

WASHINGTON, March 30 - Workers who sue their employers for age discrimination need not prove that the discrimination was intentional, the Supreme Court ruled on Wednesday.

Adopting a pro-worker interpretation of the federal law that prohibits age discrimination in employment, the 5-to-3 decision held that employees can prevail by showing that a policy has a discriminatory impact on older workers, regardless of the employer's motivation.

The decision removed the requirement, imposed by a number of lower federal courts, that employees produce the equivalent of a smoking gun in order to win an age discrimination suit. Since discrimination on the job is often subtle, and proof of motivation often elusive, the need to demonstrate intentional discrimination has led to the dismissal of many lawsuits before trial.

But the Supreme Court's decision, in an opinion by Justice John Paul Stevens, did not leave employers defenseless. They will be able to defend themselves by proving that a challenged policy was based on "reasonable factors other than age."

In fact, the court accepted that defense in the case at hand, a lawsuit brought by a group of older police officers in Jackson, Miss., who challenged the city's decision to give proportionately more generous raises to officers with less than five years on the force, most of whom were younger.

In another case involving age discrimination in the workplace, a federal district judge on Wednesday blocked a Bush administration rule that would have allowed employers to reduce or eliminate health benefits for retirees when they reach age 65.

The appeal by the officers in Jackson reached the Supreme Court after two lower courts - the federal district court in Jackson and the United States Court of Appeals for the Fifth Circuit, in New Orleans - ruled that the law required them to prove intentional discrimination and that claims of a discriminatory impact were categorically unavailable.

In rejecting that interpretation of the statute, the Supreme Court nonetheless found that the city's rationale

for the differential raises was "unquestionably reasonable." The city had said it needed to raise salaries in the junior ranks in order to become more competitive with other police departments in the region in recruiting and retaining officers. "While there may have been other reasonable ways for the city to achieve its goals, the one selected was not unreasonable," Justice Stevens said.

While the plaintiffs did not win their case, the result of their Supreme Court appeal, Smith v. City of Jackson, No. 03-1160, was to remove a significant ambiguity from a statute that is of growing importance to an aging American workforce. Within five years, half the labor force will be at least 40 years old, the age at which the law's protections apply.

The debate among the lower courts over how to interpret the statute "has been one of the great unresolved conflicts," James J. Brudney, a law professor at Ohio State University and an expert on labor law, said in an interview on Wednesday. He said the decision was surprising given the trend toward foreclosing what are known as "disparate impact" claims.

While it remains to be seen whether employees invoking these claims will prevail in substantially greater numbers, the decision will almost certainly result in more such cases going to trial, rather than being dismissed at the early stages on summary judgment. That prospect, in turn, will require employers to examine any policies that have different impacts on workers of different ages and to make sure that they can justify the policies on a basis other than age.

Professor Brudney said the decision left important questions to be addressed in future cases, such as whether cost-saving can be accepted as a reasonable justification for a policy that falls more harshly on older workers, who are usually among the highest paid. Judges have disagreed on this issue, he said.

While five justices agreed Wednesday that disparate-impact cases should be permitted, they did not agree on the reasoning. Justice Stevens was joined by Justices David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer in concluding that the text of the statute, as well as its consistent interpretation by executive branch agencies, supported the conclusion that such cases should be permitted.

Justice Stevens cited the statute's prohibition of actions that "deprive any individual of employment opportunities or otherwise adversely affect his status as an employee." He noted that "the text focuses on the effects of the action on the employee rather than the motivation for the action of the employer."

Justice Antonin Scalia said the court did not need to examine the statute itself but should accept the views of the Equal Employment Opportunity Commission, which adopted the disparate-impact interpretation of the statute in a formal rule-making proceeding soon after the law's enactment. "This is an absolutely classic case for deference to agency interpretation," Justice Scalia said.

One curiosity of the case was that the Bush administration did not appear in the Supreme Court to present the Equal Employment Opportunity Commission's view of the statute. The solicitor general's office declined to file a brief defending the commission's regulation.

Justice Clarence Thomas, a former chairman of the commission, and Justice Anthony M. Kennedy joined a dissenting opinion by Justice Sandra Day O'Connor. Chief Justice William H. Rehnquist did not participate in the case. He had just begun his treatment for thyroid cancer with the case was argued on Nov. 3.

In her opinion, Justice O'Connor emphasized a different portion of the statute. She noted that the law prohibits employers from taking specific actions against an individual "because of such individual's age." The "natural reading" of the text, Justice O'Connor said, was that "an employer is liable only if its adverse action against an individual is motivated by the individual's age."

This was the second consecutive ruling from the court to give a broad interpretation to a federal civil rights law. On Tuesday, the court ruled that the law known as Title IX, which bars sex discrimination in schools and colleges, also prohibits retaliation against those who complain about sex discrimination.

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