

EMPLOYMENT LAW PRACTICE GROUP Alert

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Thomas J. Dillon III
Mahlon G. "Bud" Funk, Jr.
Chandra D. Lantz
Andrew M. Lohmann
J. Terry Parsley
Roderick W. Simmons
Paul A. Simpson
John W. Vaughan, Jr.
James L. Weinberg
Jennifer M. Becker
Sheila G. deLa Cruz
Andrew P. Sherrod
C. Brandon Spalding

**HIRSCHLER
FLEISCHER**
ATTORNEYS AT LAW

The Edgeworth Building
2100 E. Cary Street
Richmond, Virginia 23223-7078
Phone: 804-771-9500
Fax: 804-644-0957

Mill Race North
725 Jackson Street, Suite 200
Fredericksburg, VA 22401-5720
Phone: 540-604-2100
Fax: 540-604-2101

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Disparate Impact Claims: Good intentions could still mean bad results for employers.

In 2008, the U.S. Supreme Court drastically altered employers' ability to defend against disparate impact claims. In a disparate impact suit, an employer may be liable for taking an action or putting in place a policy or procedure that has a disproportionately negative effect on older employees even if the policy or procedure is neutral on its face. A disparate impact claim does not depend on an employer's intent to discriminate, but rather, the negative impact of the employer's action. In Meacham v. Knolls Atomic Power Laboratory (No. 06-1505), the federal government ordered its contractor, Knolls Atomic Power Laboratory ("Knolls") to reduce its work force. Knolls ultimately fired 31 employees, 30 of whom happened to be at least 40 years old. The laid off workers (Meacham for short) sued Knolls for violating the Age Discrimination in Employment Act ("ADEA") under a "disparate impact" claim.

The Supreme Court held that the burden is on the employer to prove that its decision was based on a "reasonable factor other than age" (e.g., performance, critical skills, etc.). As a result, the Meacham decision could make it more difficult for employers to successfully defend against ADEA disparate impact suits. An employer should carefully analyze a business decision that affects more than one employee, such as workforce reductions, restructuring and other decisions that could impact employees over 40 years of age. If a business decision results in a disparate impact on older employees, an employer must review its criteria used in making that decision to ensure the objective application of such criteria. The employer should also document its attempts to make an age-neutral business decision.

A disparate impact claim does not focus on an employer's intent to discriminate, but rather, the negative impact of the employer's action.

For more information, contact Sheila deLa Cruz, Esq., 804-771-9530 or sdelacruz@hf-law.com