

U.S Supreme Court Expands Rights of Older Workers

By a five Justice majority the U. S. Supreme Court expanded the rights of workers forty years old and older by allowing disparate impact lawsuits under the Age Discrimination in Employment Act ("ADEA"). Disparate impact cases were previously not available within the U.S. Seventh Circuit Court of Appeals, a jurisdiction that covers Illinois, Indiana and Wisconsin.

AKP discussed this possibility in an earlier issue of our newsletter (See **Winter 2004/2005 AKP Workplace Bulletin** for a full review of the facts in the case of *Smith v. City of Jackson*). The U.S. Supreme Court found that the language of the ADEA itself, as well as EEOC regulations, allow for disparate impact suits. While expanding the basis for a lawsuit and taking the employer's intent out of the equation, Plaintiffs must identify a specific practice or policy that harms them because of their age. Even with this requirement, this is a major shift in the law that will have a huge impact on employers. Recent reductions in force and other large scale changes within companies were immune to claims of disparate impact for age. A number of cases in the past ten years, such as the *R.R. Donnelly* case, generated a great deal of litigation alleging disparate impact based on race following companies' cutbacks in their workforce. Now the possibility exists that reductions in force and changes in company policies that have a disproportionate impact on workers forty years old and older will likewise result in significant class action litigation based on age.

AKP will be offering expanded management training to prepare employers for this change in the law that is effective immediately.