

CLIENT ALERT

"Disparate Impact" Theory Available In Age Discrimination Cases

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Resolving a split in the circuit courts, a divided Supreme Court in *Smith v. City of Jackson*, (Mar. 30, 2005) held that the "disparate impact" theory of liability, which does not require a showing of discriminatory intent, applies to claims asserted under the Age Discrimination in Employment Act (ADEA). However, the Court noted that "the scope of disparate-impact liability under ADEA is narrower" than under Title VII of the Civil Rights Act of 1964, due to statutory language in ADEA that permits employers to take "otherwise prohibited" employment action where the "differentiation is based on reasonable factors other than age," such as seniority or rank.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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