



THE PAR-PLAN NEWS

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The Par-Plan News is published by the Michigan Township Participating Plan's Program Administrator:

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PAR-PLAN ANNUAL BUSINESS MEETING

The Par-Plan is pleased to announce that this years 20th Anniversary annual business meeting and 1st quarterly board of directors meeting will be held at the Grand Hotel on Mackinac Island on July 15, 2005. Registration will begin at 8:30 a.m. outside the Terrace Room located on the parlor level. The Plan's annual business meeting will begin at 9:00 a.m.

The annual business meeting includes detailed reports from each of the programs service providers on their activities over the past year and then outlines the goals of the program for the coming year. We encourage all members to attend.

From the Director's Desk

MTTP BOARD OF DIRECTORS

Term: July 1, 2005 through
June 30, 2006

ZONE 1

Paul Lehto, Secretary
Calumet Township
(906) 337-2410

ZONE 2

Marvin Besteman, Jr.
Kinross Charter Township
(906) 495-5381

ZONE 3

Pat Mead
Benzonia Township
(231) 882-4411

ZONE 4

Terry Wright
Grayling Township
(989) 348-4361

ZONE 5

Jim Beelen, Vice Chairman
Allendale Charter Township
(616) 895-6295

ZONE 6

Jon Sherwood
Beaverton Township
(989) 465-9176

ZONE 7

John Jones
Ira Township
(586) 725-0263

ZONE 8

John Buckhout, Chairman
Charter Township of Kalamazoo
(269) 381-8080

ZONE 9

William Bamber
Oceola Township
(517) 546-3259

I am Treasurer of the Charter Township of Kalamazoo and have been with the township for almost 22 years. I have been a member of the Par-Plan board of directors for 20 years and have seen the Par-Plan grow from a fledging group to the large organization it is today.

The Par-Plan has been a key insurance program for many public entities throughout the State of Michigan. Under the skillful direction of the Kenrick Corporation, Program Administrator, my township and others have a complete tailored insurance program at the best possible cost.

As current Chairman of the Par-Plan I would like to express my appreciation to the various entities that have allowed their elected officials to be representatives on the Par-Plan board.

John Buckhout, Chairman, Par-Plan Board

Par – Plan Board Election Results

On April 4th nomination forms were mailed to all members in the Zones #1, #4, and #7 and a special election in Zone #9. Nominations were then confirmed on May 13th and election ballots were mailed on June 6th.

The Par-Plan By-Laws and Election Committee counted ballots on June 27th. The election results for a Par-Plan board seats are as follows.

Zone 1: Incumbent Paul Lehto, Supervisor, Calumet Township, Houghton County

Zone 4: Incumbent Terry Wright, Supervisor, Grayling Township, Crawford County

Zone 7: Incumbent John Jones, Supervisor, Ira Township, St. Clair County

Zone 9: Candidate William Bamber, Supervisor, Oceola Township, Livingston County



Judith Smith, Clerk of Paradise Township, Grand Traverse County, won the Par-Plan door prize a Tiffany Lamp at the Crystal Mountain MTA District Meeting.

EMPLOYERS BEWARE: Employees can now bring age discrimination claims without evidence of intentional discrimination

On March 30, 2005, the United States Supreme Court finally addressed the issue of whether an employee, under the Age Discrimination in Employment Act (ADEA), could bring a claim of discrimination under a “disparate impact” theory of discrimination. The case of Smith v City of Jackson, Mississippi, et al involved public safety officers, who brought a suit against the City of Jackson alleging that salary increases they received were less generous than the increases received by younger officers. This suit raised the question of whether the “disparate impact” theory of recovery, as previously applied by the Supreme Court in other discrimination contexts, also applied in a suit brought under the ADEA.

The ADEA

The Age Discrimination in Employment Act is a federal law that prohibits employment discrimination on the basis of age. The Act covers employers with 20 or more employees and protects only those current or former employees who are 40 years of age or older. However, the ADEA contains language that significantly narrows its coverage by permitting any “otherwise prohibited” action by an employer “where the differentiation is based on reasonable factors other than age.” (Reasonable factors other than age discrimination (RFOA) provision).

The “Disparate Impact” Theory

A “disparate impact” claim challenges the consequences of employment practices, not simply the motivation. Essentially, it alleges that a policy and practice which is neutral on its face, has a more harsh, or disparate impact on a protected class. Proof of discriminatory motive and intent is not required. The theory has been applied since 1971 when the Supreme Court announced that was applicable in Title VII discrimination cases (race, color, religion, sex). However, based on some of the complicated legislative history found in the ADEA, along with confusion regarding the RFOA provision, the lower federal courts have not consistently held that the theory could be applied in the age discrimination context. Until now, the Supreme Court never specifically addressed the issue.

The Case

In the Smith case, the City of Jackson had adopted a pay plan in 1998 granting raises to all city employees. The stated purpose of the plan was to “attract and retain qualified people, provide incentive for performance, maintain competitiveness with other public sector agencies and insure equitable compensation to all employees regardless of age, sex, race and/or disability.” A 1999 revision to the plan, which was motivated at least in part by the City’s desire to bring the starting salaries of police officers up to the regional average, granted raises to all police officers and police dispatchers. Those who had less than five years of tenure received proportionally greater raises when compared to those with more seniority. Although some officers over the age of 40 has less than five years service, most of the older officers had more.

The plaintiffs were a group of older officers who filed suit under the ADEA claiming, among other things, that they were “adversely affected” by the plan because of their age.

The Decision

The Court held that the “disparate impact” theory of liability was, in fact, available the ADEA. The Court adopted the test used in disparate impact claims brought under Title VII, stating that there must be a specific test, requirement, or practice within the pay plan that has an adverse impact on older workers.

Because the plaintiffs in Smith v City of Jackson, Mississippi, could not point to a specific test, requirement or practice within the plan that adversely impacted them, the Court denied their claim, stating:

It is not enough to simply allege that there was a disparate impact of workers, or point to a generalized policy that leads to such an impact. Rather the employee is “responsible for isolating and identifying the *specific* employment practices that are allegedly responsible for any observed statistical disparities.” Petitioners have failed to do so. Their failure to identify the specific practice of being challenged is the sort of omission that could “result in employers being challenged is the sort of omission that could “result in employers being potentially liable for the myriad of cases that may lead to statistical imbalances...” (Citations omitted).

The Court also added that not only did the plaintiffs fail to identify a relevant practice, but that the City's plan was based on reasonable factors other than age. The Court stated that "reliance on seniority and rank is unquestionably reasonable given the City's goal of raising employees' salaries to match those in surrounding communities," and that the decision was based on a "reasonable factor other than age."

The Bottom Line

While the plaintiffs did not succeed in Smith v Jackson, Mississippi, the case is a victory for future age discrimination plaintiffs who now do not need to show intentional discrimination when bringing their claims. However, the case does provide protections for employers as well. To be successful, plaintiffs must show not only a specific test, requirement, or practice that has an impact on older workers, but also that the employer's decision is not based on a "reasonable factor other than age". As long as the employer's goal is legitimate and the methods reasonable, a plaintiff will not be able to establish a violation of the ADEA under the "disparate impact" theory.

Future court decisions interpreting the "reasonable factor other than age" standard will no doubt identify the true impact this case has on employers. In the short term, it is safe to say that the Supreme Court's decision in Smith v City of Jackson Mississippi, will lead to the filing of more age discrimination claims.

This article appeared in the April 2005 issue of the Smith Haughey Rice & Roegge Legal Alert Newsletter. Permission was received to reprint.

Midwest Claims Service, Inc. Update

We are pleased to announce that appointed counsel Mr. Thomas McGraw and Mr. Gus Morris joined the Law Firm of Kupelian Ormond & Magy, located at 25800 Northwestern Hwy., Suite 950, Southfield, Michigan effective January 10, 2005.

The Kupelian firm has over twenty attorneys who specialize in the various areas of the law. They offer the advantages and resources of a larger firm while at the same time, give a refreshing level of personal attention to their clients.



Mr. McGraw is appointed counsel in region nine which includes Wayne, Oakland and Genesee counties. He has been on the Midwest Claims Service, Inc. appointed counsel list of approved attorneys for a number of years specializing in employment, zoning, civil rights, general liability, automobile liability and municipal litigation.



Mr. Morris is appointed counsel specializing in police professional liability litigation, throughout the State of Michigan. He has extensive experience in this area of litigation and is very active in assisting the Par-Plan Risk Control department and the Par-Plan Law Enforcement committee in the development of policies and procedures for police departments.



Making this move with Mr. McGraw and Mr. Morris is their longtime Legal Assistant, Ms. Melanie Graham.