

RHODE ISLAND MEDIATORS ASSOCIATION

ADEA, DISPARATE- IMPACT CLAIMS, and MEDIATION

JUNE 2008, Submitted to the Providence Journal

Michele Gousie Geremia, BSW, MSLR, SPHR

The Supreme Court's recent decision regarding the ADEA (Age Discrimination in Employment Act of 1967) and disparate-impact claims based on "reasonable factors other than age" (RFOA) may well have an impact on an employer's decision to terminate employees over the age of 40. It will undoubtedly be more difficult for employers to persuade the court of the reasonableness of non-age factors, especially where the non-age factor is obscure, and costlier for employers to defend their choices as reasonable.

On June 19, 2008, the Supreme Court released its decision regarding MEACHAM ET AL. v. KNOLLS ATOMIC POWER LABORATORY, AKA KAPL, INC., ET AL. This lawsuit was brought by 28 of 31 salaried employees, 30 of whom were at least 40 years old, who were laid off when Knolls was ordered to reduce its work force for fiscal year 1996.

The Supreme Court decision made it clear that in a disparate-impact claim, where the employer holds that they are terminating employees for reasons other than age, the burden falls on the employer to show that the "reasonable factor other than age" is indeed reasonable.

Some business groups, as the Providence Journal reported on June 20, 2008, are predicting that this ruling will lead to more lawsuits. The AARP is hailing this decision as strengthening the rights of laid-off workers. Human Resource departments are (hopefully) looking more closely at their "neutral" corporate policies.

There is a tremendous opportunity, here, for companies to take the bolder step of reviewing their policies for dealing with conflict in the workplace, looking for alternatives to resolving discrimination claims, whether ADEA, ADA, Harassment, or unfair termination claims.

Workplace mediation, especially as a step in a company Dispute Resolution Plan, may prove to be highly effective in resolving conflict, for many reasons. Workplace mediation provides parties with an opportunity to negotiate a resolution. The parties have an opportunity to create their own solution. Because an outside neutral facilitates the process, it is impartial. Mediation is also confidential. It often provides a fresh view, where the parties have dug their heels in around positions that may not serve their best interests. The greatest benefits to workplace mediation may be that the process fosters mutual respect, the parties are empowered, and companies can stay focused on the future. Ultimately, mediation saves time and money, allowing for greater productivity.

This recent Supreme Court decision provides an opportunity to create powerful processes for resolving conflict in organizations, in particular the development of Dispute Resolution Plans, where mediation is a mandatory step in the process. The result would be a powerful response to a court decision that might otherwise leave employers shuddering.