Discriminating Tastes are Bad in the Workplace

By Reg P. Wydeven
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Last weekend was a big one for basketball fans. April 2 had been set aside in their calendars for a whole year, as this marked the weekend for Kimberly High School's Alumni Basketball Tournament. Oh, and the NCAA's Final Four.

Once again I played in my alma mater's tourney, for my class of 1991 was the defending champion. This year we had targets on our backs, as the rest of the teams were gunning to dethrone us. And alas, we lost on a heartbreaking last-second shot.

Chasing around players that are ten years younger than I am definitely took its toll on my body. On Monday morning, I limped into work sounding like a bowl of Rice Krispies, and I began popping Advils like M&Ms.

While it may have been a bad weekend for older basketball players, it was a good weekend for older employees. The U.S. Supreme Court made a landmark decision is a lawsuit filed by 30 police officers and dispatchers in Jackson, Mississippi, against the city. The officers claimed they were discriminated against because of their age when the city implemented a policy that gave substantially larger pay raises to employees with five or fewer years of tenure.

The policy was put in place to bring junior officers' salaries in line with those of surrounding police forces, and as a result, it had an unfavorable impact on more senior employees. The officers allege this policy violates the Age Discrimination in Employment Act, which protects workers age 40 and older.

The Court held that employees 40 and older do not have to prove that their employer deliberately tried to discriminate against them, just that their employer's policies disproportionately harmed them.

While this is a groundbreaking decision for 'seasoned' employees, it didn't help the officers. The Court dismissed the officers' suit, stating the officers failed to prove the city's policy disproportionately harmed them, plus the policy was "based on a reasonable factor other than age." Namely, it was intended to carry out the city's legitimate goal of retaining police officers.

Title VII of the 1964 Civil Rights Act bans discrimination based on sex, religion or race. Under Title VII, employees are allowed to file a claim if their employer implements a policy that disproportionately harms a protected class even though the employer didn't intend to discriminate against this class. Commonly called disparate impact claims, the Supreme Court ruled these claims are now also allowed under the ADEA.

Employers will be upset by this decision because allowing disparate impact claims under the ADEA will hinder their ability to make business decisions based on non-age-related factors, such as training or performance, even if the impact happens to be greater on older workers.

The Court did hold, however, that employers are permitted to cite "reasonable" factors, such as cost-cutting, to justify policies that penalizes older workers, that typically have higher pay, more benefits, and bigger medical bills.

This was an important decision, as roughly half of the country's workforce, or 75 million people, are age 40 or older. This number continues to grow, and the federal government predicts that by 2010, more than half of all workers will be 40 or over. Further, legal experts claim that workers making age bias claims generally win their lawsuits less than one-third of the time.

If I ever do ever start to feel old, I don't need to look far for inspiration. My dad, the oldest player in the basketball tournament, drained five 3-pointers in one of his games and was named to the All-Tournament Team.