



Iowa General Assembly

2014 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

DISPARATE IMPACT IN STATE EMPLOYMENT

Filed by the Iowa Supreme Court
July 18, 2014

Pippen v. State of Iowa

No. 12–0913 854 N.W.2d 1(Iowa 2014)

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20140718/12-0913.pdf

Background. Fourteen African Americans sued the State of Iowa (State) and various executive branch departments under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e–2000e-17 (2006), and the Iowa Civil Rights Act (ICRA), Iowa Code chapter 216, alleging discriminatory employment practices under the state merit employment system. They did not allege that the discrimination was intentional in nature, but rather the natural, unintended consequences of subjective, discretionary decision-making that resulted in systemic failure to follow statutory and regulatory policies that provide for equal opportunity for employment. The district court certified the case as a class action, with the class including all African American applicants or employees who sought or held merit system employment with an executive branch agency, other than the Board of Regents, on or after July 1, 2003.

Among the evidence offered by the plaintiffs at trial in support of their discrimination claim, a statistical expert testified that based on his analysis, African Americans were treated differently and more disadvantageously than whites both at various points in the hiring process and once employed by the State. The expert did not separate out each element of the hiring process in his analysis. Two psychology professors testified about the concept of “implicit bias,” whereby a person holds an unconscious, automatic preference for one race over another, which they opined may have affected the State’s hiring process, and which they further opined the State did not take sufficient action to minimize. The plaintiffs reviewed a report commissioned by the State that found notable statistical disparities in how African Americans were treated in the State’s hiring process compared to whites and suggested that this may lead to an inference of discrimination. The plaintiffs also offered testimony from class members who described specific examples where they believed they had been treated adversely based on their race. The State offered testimony from an economist who found the plaintiffs’ statistical expert’s analysis incomplete and questioned the expert’s conclusions. The expert further opined that there was no statistically significant evidence of systemic racial discrimination in the state merit employment system, and that the plaintiffs could have analyzed the State’s hiring process in a more detailed, meaningful manner.

In a suit alleging systemic employment practices with a discriminatory effect upon a protected class such as race, known as a claim of “disparate impact,” the plaintiffs have the legal burden to prove that one or more particular practices of the employer caused the disparate impact. If the plaintiffs do not offer such proof, they must instead prove that the elements of the employer’s hiring process cannot be individually separated for analysis of a disparate impact. The plaintiffs may then analyze the employer’s hiring process as a whole to prove a disparate impact. Such claims do not consider whether the employer’s intent was discriminatory; only the effects of the employer’s conduct are considered.

In this case, the plaintiffs argued that the components of the State’s hiring process were not capable of separation for individual analysis and that the process did not comply with various legal requirements, which resulted in a disparate impact that was adverse to African Americans. The district court ruled in favor of the State. The court found that the plaintiffs had not proved that the components of the State employment system were incapable of separation for analysis. The plaintiffs appealed to the Iowa Supreme Court (Court).

Issues. Whether the State’s employment practices under the state merit employment system are capable of separation

for statistical analysis of possible disparate impact upon African American applicants and employees for purposes of a claim of disparate impact under federal and state civil rights law.

Arguments and Holding. Justice Appel wrote the majority opinion, joined by Chief Justice Cady and Justices Hecht and Wiggins. The Court reviewed the history of state and federal civil rights law regarding employment, particularly with respect to the evolution of the concept of disparate impact.

Federal Law Claims. After summarizing applicable statutes, case law, academic literature, and the arguments of the parties, the Court considered whether the plaintiffs had demonstrated that the State's employment practices are incapable of separation for analysis of disparate impact under federal law. The Court reasoned that "analysis" in this context means statistical analysis. The Court noted that neither the organizational complexity of the State's executive branch nor the significant amount of employment data submitted by the State were sufficient to serve as decisive factors under the federal standard. The Court reasoned that an employer's decision-making process could be shown to be incapable of separation for statistical analysis under at least three circumstances: if the process itself made separation impossible, such as by being entirely subjective in nature; if the process could be separated, but the components of the process were so intertwined that analyzing them separately and meaningfully is impossible; or if the employer failed to keep adequate records on which analysis could be based. The Court found that the plaintiffs' argument in this case incorporated all three circumstances.

Having set out the plaintiffs' argument, the Court then considered whether they had met their burden of showing that there was no way to meaningfully separate the significant amount of employment data submitted by the State for statistical analysis based on those circumstances. The Court noted that the plaintiffs may have shown that data from electronic databases submitted by the State was incapable of separation for analysis. However, the Court then examined the trial court's findings regarding hard file copies of employment records that were also submitted by the State. The plaintiffs asserted that the data in the files was incomplete. Their statistical expert did not review the files, nor did the expert testify about whether the files could be statistically analyzed. The State's economist testified that the files could be meaningfully analyzed. The district court found that the files "permit a focused view" of the State's various hiring practices, and that "one can focus on any number of discrete employment decisions made as ... employment practices...." In light of the findings of the district court, and the lack of contrary evidence presented by the plaintiffs, the Court concluded that the plaintiffs failed to meet their burden to demonstrate that the State's employment practices were incapable of separation for statistical analysis. Therefore, the Court ruled against the plaintiffs on their claims under federal law.

State Law Claims. The Court then turned to the plaintiffs' claims under state law. Reviewing the history of the ICRA, the Court noted that it is similar but not identical to the federal Civil Rights Act of 1964. Particularly, the ICRA includes language stating that it "shall be construed broadly to effectuate its purposes." The federal law has no such language and has at times been construed narrowly by the courts. The Court noted that while federal precedent is binding for purposes of the plaintiffs' claims under federal law, it is not bound by federal precedent when considering the plaintiffs' state law claims, although Iowa precedent in this area is largely undeveloped, and the Court will at least consider federal precedent as persuasive. Even where the language in federal law and state law is identical, the Court concluded it may deviate from federal precedent and reach its own conclusions. The Court reasoned that this is particularly so in light of various judicial interpretations of federal law and subsequent congressional responses over the years; the ICRA was not affected by these historical developments.

However, the Court then noted that the plaintiffs had not suggested that the standards for their claims under state law differed from those applicable under federal law. The plaintiffs in fact seemed to assume that the standards are the same. The Court explained that it has the right to deviate from a federal standard when interpreting state law even when none of the parties to a case argue that it should, citing various cases where it has reserved that right in the past. However, the Court then noted that the factual record in this case, as well as the parties' legal arguments and the structure of the litigation, had been developed based solely upon the federal standards. Therefore, neither party had an adequate opportunity to present arguments for or against developing a separate state standard, so the Court declined to address such undeveloped arguments on its own. The Court did not find any basis to adopt a separate state standard on its own accord and thus, for the purposes of this case, adopted the federal standard under state law: that the plaintiffs must show that the State's employment practices are incapable of separation for statistical analysis of possible disparate impact upon African Americans. As the Court already ruled that the plaintiffs failed to meet their legal burden under that federal standard, the Court ruled against their claims under state law as well.

Concurrence. Justice Waterman, joined by Justices Mansfield and Zager, wrote an opinion concurring with the majority opinion only in the result of the ruling. After reviewing applicable statutory and case law and the evidence and findings from the district court, Justice Waterman came to the same conclusions as the majority opinion based on the same rationale. He discussed in particular detail various evidence and findings from the district court that he argued made clear that statistical analysis of the State's employment data was possible despite the shortcomings cited by the plaintiffs. He did acknowledge that the evidence presented might indicate that discrimination may have occurred in state employment. He suggested that in order to satisfactorily prove that such discrimination occurred, the plaintiffs should have conducted a more thorough analysis of the available data or pursued more narrowly targeted claims than a large class action suit.

Where Justice Waterman primarily took issue with the majority opinion was its discussion of the possibility of deviating from federal precedent in its interpretation of the ICRA. He disputed the majority's interpretation of prior case law that the majority asserted provided authority for deviating from federal precedent when interpreting the ICRA. He cited various cases where the Court has previously indicated that federal precedent concerning federal civil rights law would guide the Court in interpreting analogous portions of the ICRA. He argued that in light of that precedent, Iowa lawyers have long understood that federal precedent would guide interpretation of the ICRA. He argued that this method provides predictability in this area of the law. He also noted that the legislature has acquiesced to this method over the years by taking no contrary action. He argued that the majority's comments on the subject disrupted the "stability and predictability" of Iowa law by creating uncertainty as to the weight that should be given by the legal profession to federal precedent in this area. He also suggested that the majority could have chosen not to raise the possibility of deviating from federal precedent when it did not intend to do so in this particular case.

Impact and Applicability. This case establishes that the standard for a claim of disparate impact in employment under the ICRA is the same as the federal standard under Title VII of the Civil Rights Act of 1964: if the plaintiffs cannot show that one or more particular employment practices caused the disparate impact, they must then show that the elements of the employer's hiring process cannot be individually separated for analysis of a disparate impact. Such showing allows the plaintiffs to analyze the employer's hiring process as a whole to prove a disparate impact. The case makes clear that arguments that data on an employer's hiring process is deficient or that analysis of the data is impossible will be closely scrutinized. The majority opinion does leave open the possibility that the Court might consider an argument that it should adopt a different standard for disparate impact claims under the ICRA than the federal standard, if such an argument were made in a future case. The majority opinion did not indicate what such a standard might be.

LSA Monitor: Jack Ewing, Legal Services, (515) 281-6048.