

## [Boost for age-bias cases](#)

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The U.S. Supreme Court ruled Wednesday that older workers may allege age discrimination even if their employers did not intend to harm them.

The 5-3 ruling allows workers over 40 to sue for age discrimination based solely on damage done by an action or policy of their employer. They do not have to prove the employer intended to discriminate.

The justices, however, set a high standard of proof for such cases to prevail, giving businesses and other organizations some consolation from the ruling.

The court also affirmed that age can be relevant to a worker's ability to do certain jobs.

The decision potentially affects 75 million workers older than 40 in the United States - or about half of the nation's workforce.

But its biggest effect is in Colorado and 15 other states where federal courts had ruled that such claims were not allowable under federal anti-discrimination laws.

"It's huge. It makes it easier for an employee to bring a claim against an employer based on the employer's policy," said MaryBeth Sobel, a lawyer with Denver-based Woodrow & Sobel who represents employees in workplace litigation. She estimates that age-discrimination cases could jump by 20 percent as a result of the ruling.

About 18,000 age-bias cases were filed with the U.S. Equal Employment Opportunity Commission last year, although most didn't result in lawsuits. Cases tend to rise during economic downturns, when there are many layoffs.

Lawyers representing employers said the effect of Wednesday's ruling will be less dramatic.

"I don't think it's going to have a huge impact. I do think it will open some claims for older workers who might not have succeeded" before, said Josh Kirkpatrick, an employment-law attorney in the Denver office of Littler Mendelson, which represents companies.

The decision will force employers to look more closely at how their actions affect older workers, said Allan Estroff, director of employment law at the Denver-based Mountain States Employers Council, which represents 2,500 companies and other organizations.

"It means that if a policy is having a greater impact on older employees, the burden shifts to the business to explain the necessity of having that policy," he said.

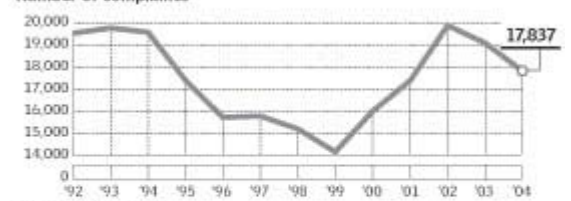
But protections against age discrimination remain slightly below those for discrimination based on race, gender and national origin, Estroff said.

That's because employers still can defend against age discrimination by proving their actions were based on "reasonable factors other than age," in the words of the Supreme Court justices.

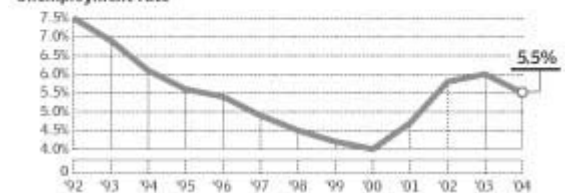
### Age-discrimination complaints

Nationally, the number of age-discrimination complaints tends to rise as the economy falters. As shown here, total age-discrimination complaints made to the Equal Employment Opportunity Commission closely track the U.S. unemployment rate.

Number of complaints



Unemployment rate



Sources: EEOC, Bureau of Labor Statistics

Jonathan Moreno | The Denver Post

"All you have to do is show the process was not unreasonable," Estroff said. In race and gender cases, an employer must show that the action or policy that resulted in discrimination was a business necessity.

Wednesday's ruling was made in an age-discrimination case brought by 30 police officers in Jackson, Miss. The officers, all over 40, claimed the city discriminated against them through a wage scale that rewarded younger workers with greater increases in pay.

Though the justices affirmed the right of such cases to proceed, they unanimously ruled against the police officers, saying they had not proved their case.

Justice John Paul Stevens wrote the majority opinion. In a concurring brief, Justice Antonin Scalia argued that the EEOC should be given discretion to authorize age-discrimination cases without intent.

Chief Justice William Rehnquist, who has been ill, did not participate.

While the ruling will increase the number of age-discrimination cases, it doesn't make it any easier for those cases to prevail, employment lawyers said.

"You still have to prove your case. The levels of proof are still high," Sobel said.

"Rarely do you have a smoking gun. You need to have good, solid evidence to be successful," he said.

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