

U.S. Supreme Court Rules for White Firefighters in Reverse Discrimination Case

In *Ricci v. DeStefano* (opinion attached), a city fire department that used objective examinations to identify the firefighters best qualified for promotion threw out the exam results after learning that vast majority of the higher-scoring firefighters were white. In doing so, the city hoped to avoid a discrimination suit by the lower-scoring minority firefighters. Instead, however, the white and Hispanic firefighters who performed well on the exam but were denied a chance at promotions by the city's action sued the city, claiming that they had been discriminated against on account of their race.

In a 5-4 decision, the United States Supreme Court ruled that the city fire department was wrong to throw out the exam results because there was not a "strong basis in evidence" that throwing out the test results was necessary to remedy any "disparate impact" discrimination against the minority firefighters. A belief that the minority firefighters intended to sue was considered no evidence in support of the city's actions.

Although not addressed in the decision, it is easy to see how the Court's reasoning may be expanded to cover an employer who conducts disparate impact analyses in the context of a workforce reduction and then alters the termination criteria to protect certain categories of employees. The decision also underscores the importance of ensuring that any objective tests or examinations (including physical ability tests, cognitive exams, and personality tests) used in making hiring or promotion decisions are job-related and consistent with business necessity. But, it also reminds employers that they may be bound by the outcomes of those tests and examinations, even in the face of potential litigation.

To learn more about the *Ricci* case and other recent and anticipated developments in Employment Law, please join us for our Employment Law Update Breakfast on July 28, 2009, beginning at 8 am in our offices.

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