TITLE VII COMPLAINTS NOT SUBJECT TO SIX-YEAR STATUTE OF

LIMITATIONS

February 2015 - Cindy Gierhart

Two circuit courts held for the first time last month that a six-year statute of limitations on claims against the federal government does not apply to Title VII workplace discrimination lawsuits. (*Howard v. Pritzker*, 2015 WL 64565 (D.D.C. Jan. 6, 2015); (*Kannikal v. Atty. Gen. U.S.*, 2015 WL 252437 (3d Cir. Jan. 20, 2015).)

Under Title VII, private-sector and government employees alike must first attempt to resolve workplace grievances through the Equal Employment Opportunity Commission (EEOC)'s administrative complaint process. If they are unhappy with the process and would like to file a lawsuit in court, they may do so starting 180 days after they file their EEOC complaint, up to 90 days after a final EEOC decision.

The plaintiffs in both cases—government employees—filed EEOC complaints and were still awaiting final decisions roughly a decade later, so they sued the government in federal court. The government argued the suits were barred by a general six-year statute of limitations for civil suits

against the government under 28 U.S.C. §2401(a).

The district courts agreed, dismissing the lawsuits. The Third and District of Columbia circuits reversed within two weeks of each other, finding that the more specific statute (Title VII's timing schedule) trumps the more general one (the six-year statute of limitations).

Philadelphia lawyer Faye Riva Cohen, who argued the appeal in *Kannikal*, said the decision is important not just for the plaintiffs in these cases but also for the thousands of federal employees who have EEOC cases pending.

"The EEOC process is really not under the control of the plaintiff; it's at the mercy of all of the agency procedures, which can drag on and on and on," Cohen said. Applying a six-year statute of limitations would have meant "all these people who are stuck in the middle of this administrative process—not of their own choice—would have their cases dismissed" if they filed in federal court.

Cohen said the federal government only recently introduced the argument that the six-year statute of limitations applies to Title VII claims, so the Third and D.C. circuits are the first circuits to consider the issue. The D.C. Circuit opinion called the government's argument "a novel attempt to reconfigure Congress's statutory scheme more than forty

years after its enactment."

Congress's intent in enacting Title VII was to encourage employees to use the administrative process "while also providing an escape valve from EEOC delays by permitting civil actions," the Third Circuit wrote.

A rigid six-year statute of limitations on Title VII complaints would thwart the intent of encouraging administrative remedy by pushing plaintiffs out of the administrative process and into the court system before their cases had a chance to conclude.

Because of the courts' decisions, "federal employees won't be forced to prematurely abandon the administrative process to bring a timely lawsuit in federal court," said Washington, D.C., lawyer Elizabeth Bullock, who argued the appeal in *Howard*.

Cohen said it is important that EEOC complaints be given the opportunity to conclude because it is costly to go to court, particularly for those whose complaints involve them losing their jobs.

"We cannot imagine that Congress intended to penalize claimants for EEOC delays," the Third Circuit wrote.

The D.C. Circuit agreed that plaintiffs should not be forced to choose between continuing with their EEOC complaints and going to court. "The administrative process was to precede resort to

court, but not to replace it," the court said.

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