

Labor Law Bulletin

Labor and employment law trends
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Supreme Court Endorses EEOC Definition of "Charge" under ADEA

In its second pro-employee decision in two days, the Supreme Court held that a charging party need not file a formal charge with the EEOC to satisfy the administrative charge-filing requirement. All that is required is that the person file documents with the EEOC that can be "reasonably construed as a request for the agency to take remedial action to protect the employee's rights."

In *Federal Express Corp. v. Holowecki*, No. 06-1322 (Feb. 27, 2008), four couriers brought a lawsuit claiming age discrimination in connection with new performance programs rolled out by the company. Only one of the claimants filed any papers with the EEOC before filing suit. That claimant had submitted an Intake Questionnaire accompanied by a sworn affidavit that asked the EEOC to "please force Federal Express to end their age discrimination." The company did not receive notice of the claim before suit was filed. The district court dismissed the lawsuit but the Second Circuit Court of Appeals reversed. The Supreme Court affirmed the court of appeals.

In its lengthy decision on a technical procedural issue, the Supreme Court stated that the EEOC was entitled to deference on its interpretation of the word "charge" in the ADEA. Finding that the EEOC had been internally consistent on the issue, it adopted the EEOC definition of that term. To constitute a charge, the Court held, the documents must identify the charged party, contain an allegation of discrimination and be reasonably construed as a request for the EEOC to take remedial action. The filing must be examined from the standpoint of an objective reader to determine whether the charging party "requests the agency to activate its machinery and remedial processes."

Although deferential to both the EEOC and putative claimants, the decision does contain some limitations. First and somewhat mysteriously, the Supreme Court began its decision by cautioning that the definition of "charge" in the ADEA might not be the same as under other discrimination statutes even if the EEOC uses the same definition. Second, the Court stated that the submission of an Intake Questionnaire alone may not be sufficient to constitute a charge without clear indication in that document or others that the filer wants to pursue administrative action. One other principle that came out of the decision is that the failure of the EEOC to engage in pre-litigation conciliation does not require dismissal of the lawsuit. At most, it may require the district judge to stay the proceedings to allow an opportunity for the parties to consider settlement.

We encourage any of our clients to contact Bruce R. Alper (312-609-7890) or Christopher L. Nybo (312-609-7729) with questions about this decision.

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