



The U.S. Supreme Court Will Redefine ‘EEOC Charge’

On November 6, 2007, U.S. Supreme Court will review a federal appeals court decision that treated an intake questionnaire as an Equal Employment Opportunity Commission (EEOC) charge, even though the agency had considered the questionnaire as a charge.

The lower court ruling, if left undisturbed, would deprive employers the opportunity to investigate and resolve discrimination claims, increase litigation and lead to the revival of stale claims, according to a FedEx summary asking the Supreme Court to review the decision.

In *Holowecki v. Federal Express Corp.* Patricia Kennedy completed an EEOC intake questionnaire on Dec. 3, 2001, asserting that FedEx unlawfully discriminated against older couriers. Kennedy filed an Age Discrimination claim in court on April 30, 2002, and submitted a formal EEOC charge on May 30, 2002. The district court dismissed Kennedy’s claim, ruling that her EEOC intake questionnaire was not an EEOC charge and that her May 30, 2002, charge was untimely.

The 2nd Circuit reversed the ruling, stating that the ADEA requires the filing of a timely charge with the EEOC but does not define “charge.” However, EEOC regulations specify what must appear in a charge.

“The required content is minimal,” the appeals court said, stating that a charge must:

- Be in writing from the person making the charge.
- Name the employer.
- Generally describe the allegedly discriminatory acts.
- Demonstrate “that an individual seeks to activate the administrative investigatory and conciliatory process.”

Kennedy had met these requirements by submitting the questionnaire and an accompanying affidavit identifying discriminatory treatment, the appeals court decided.

An individual may satisfactorily notify the EEOC of an age discrimination charge even if “the EEOC fails to follow through with notifying the employer and attempting to resolve the matter through ‘conciliation, conference and persuasion,’ ” the court stated. “To require this would be to hold individuals accountable for the failings of the agency.” FedEx appealed the decision to the Supreme Court, which announced June 4, 2007, that it would review the case.

If the Supreme Court upholds the 2nd Circuit’s decision, the system of processing EEOC charges will be viewed as less restrictive. Once a charge has been formally filed, it is processed through the EEOC and the employer (Respondent) is aware of where it is in the process.

An intake questionnaire would not be in the charge process and the employer may never be made aware of the charge or given the opportunity to conduct an internal investigation and/or resolve the issues in a timely manner. The 2nd Circuit's decision conceivably could revive a claim years after the intake questionnaire was completed.

Additionally, if the Supreme Court upholds the 2nd Circuit decision it would be much more difficult for HR professionals to consider any allegation of discrimination or employee complaint closed.

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