

For ADEA Purposes, A Filing Is A 'Charge'

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On Feb. 27, 2008, The Supreme Court issued its decision in *Federal Express Corp. v. Holowecki*, 552 U.S. ____ (2008).

The Court held that, for purposes of the administrative filing requirements of the Age Discrimination in Employment Act ("ADEA"), a "charge" is any document filed with the EEOC that identifies the complainant and the employer, alleges discriminatory acts, and can be reasonably construed by an objective observer to request agency action and appropriate relief.

The Court deferred to the EEOC's definition of what constitutes a "charge" in announcing a generous standard for determining when documents filed with the EEOC are sufficient to satisfy the ADEA's procedural requirements.

As a result, employers are likely to find it more difficult to obtain early dismissal of ADEA claims on procedural grounds.

In *Holowecki*, 14 current and former Federal Express ("**FedEx**") couriers over the age of 40 sued FedEx for age discrimination. They contended that certain productivity initiatives implemented by the company were veiled attempts to force older workers out of the company before they would be entitled to receive retirement benefits. In addition, they alleged that these initiatives were used as a pretext for harassing and discriminating against older couriers in favor of younger ones in violation of the ADEA.

FedEx moved to dismiss one of the couriers from the case on the grounds that she had not filed documentation sufficient to constitute a charge with the EEOC at least 60 days before filing suit, as required by the ADEA.

The employee countered that she had timely submitted an EEOC Form 283, entitled "Intake Questionnaire," to which she attached a signed affidavit describing the alleged discriminatory employment practices in greater detail.

The district court determined that these documents did not constitute a charge and granted the motion to dismiss. On appeal, the Second Circuit reversed, finding that the submitted documentation adequately expressed the employee's intent to activate EEOC enforcement procedures.

The Supreme Court affirmed the Second Circuit's decision. Justice Kennedy's majority opinion began by attempting to define what documents constitute a "charge" for purposes of the ADEA. The Court noted that neither the ADEA nor the EEOC regulations provided a comprehensive definition of the term "charge."

The Court rejected FedEx's argument that the EEOC must act upon a filing for it to be considered a charge, reasoning that the ADEA only requires the filing of a charge and does not condition an employee's right to sue upon the agency taking any specific action on the charge.

The Court also rejected the employee's argument that a filing will constitute a charge so long as it is in writing, names the prospective respondent, and generally alleges the discriminatory acts. The Court

deferred to the EEOC's position that a filing purporting to constitute a charge must satisfy the additional requirement of being reasonably construed by an objective observer as a request for the agency to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee.

The Court concluded that the information submitted by the employee met this standard. The Intake Questionnaire contained:

- (i) the employee's name, address, and telephone number, as well as those of her employer;
- (ii) an allegation that she and other employees had been the victims of age discrimination;
- (iii) the number of employees who worked at the facility where she was stationed; and
- (iv) a statement indicating that she had not sought the assistance of any government agency regarding this matter.

In addition, the employee's six-page affidavit requested that the agency "please force Federal Express to end their age discrimination plan so we can finish out our careers absent the unfairness and hostile work environment created within their application [of the initiatives]." The Court held that this statement was properly construed as a request for the agency to act, thereby satisfying that element.

Justice Thomas' dissent (joined by Justice Scalia) lamented the standard announced by the majority as "sufficiently vacuous" to permit almost any post hoc rationalization by the EEOC with respect to any document filed by an individual. The dissent was likewise critical of the majority's conclusion that the information provided by the employee was adequate because of the EEOC's refusal to treat the filing as a charge for purposes of invoking its charge processing procedures, thereby denying the employer an opportunity to attempt conciliation before litigation was filed.

Although the procedural requirements of the ADEA differ in some respects from those applicable to Title VII and other statutes enforced by the EEOC, one would expect the Court's generous interpretation of the term "charge" will be followed in other cases. To this extent, *Holowecki* is likely to make it more difficult for employers to obtain dismissal of employment discrimination claims on the basis of an incomplete or untimely filed EEOC charge.

Beyond that, the Court's opinion is probably most significant for its assessment of the extent to which the Court is likely to defer to various types of guidance issued by the EEOC, including statements in the EEOC compliance manual.

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