



Supreme Court Deems Disparate Impact Employment Discrimination EEOC Charge Filed Within 300 days of Discriminatory Practice’s Application Timely

A unanimous U.S. Supreme Court ruled that, where plaintiffs file discrimination charges with the federal Equal Employment Opportunity Commission (EEOC) based on the disparate impact of the application of a challenged practice, the EEOC’s 300-day limitations statute begins to run when all the elements of a discriminatory-impact claim became apparent, not when the practice was adopted. This decision, which involved racial discrimination, applies equally to other forms of federally prohibited discrimination, including disability under the Americans with Disabilities Act (ADA) Title I, 42 U.S.C. §§12111-117. *Lewis v. Chicago, 2010 WL 2025206 (U.S. Sup. Ct. May 24, 2010).*

Beginning in 1997, African-Americans who applied for City of Chicago firefighter jobs, but were not chosen because they only scored in the “qualified” range on a written test, filed charges with the EEOC. Plaintiffs challenged the city’s practice, which was instituted in 1996, of only hiring applicants who scored 89 or above on the exam. The EEOC issued right-to-sue letters. Plaintiffs sued the city under Title VII of the Civil Rights Act, 42 U.S.C. §2000e-5(e)(1), alleging that its written test had a disparate impact on African-American applicants.. A class action was certified, and an Illinois federal court denied the city summary judgment, rejecting its claim that the EEOC

charges had been untimely. The court found that the city's ongoing reliance on the test results was a continuing Title VII violation. Plaintiffs eventually prevailed on the merits, but the Seventh Circuit reversed, finding that the suit was untimely because the earliest EEOC charge had been filed more than 300 days after the city adopted the practice of hiring only applicants with scores of 89 or above. 528 F.3d 488 (7th Cir. 2008).

Writing for the Court, Justice Scalia—joined by all the other justices—distinguished the applicable limitations period for employment claims based on discriminatory impact from the limitations period for claims based on discriminatory intent. Discriminatory intent claims must revert to the time when the intent was manifest—here, when the scores were sorted. By contrast, a disparate impact claim may be based on a later application of the challenged practice, as long as all of the essential elements for a disparate-impact claim are satisfied.

Determining when that point in time occurs “requires identify[ing] precisely the unlawful employment practice of which’ they complain.” Here, it was undisputed that the challenged practice fell within the 300-day period for many of the plaintiffs. The critical question is not when the practice complained about occurred, but whether the practice, which continued thereafter, can be the basis for a discrimination claim. The Court answered affirmatively that it can be, and found that many of the plaintiffs here had made out a *prima facie* case of a Title VII violation and, thus, could pursue their claim, upon which they eventually prevailed.

The Court noted, but did not decide, that the city may be correct that certain plaintiffs who took the first exam had a disparate impact claim when the new practice was adopted in 1996. If that is true, their EEOC charges were untimely. However, any

new violations that occurred when the city continued to implement its 1996 practice could be redressed. Plaintiffs had to show that they filed within the limitations period based on a present violation, which occurred when all the elements of the discriminatory impact claim came together.

In finding the city's argument—that allowing such claims will create a host of practical problems for employers and employees alike—unpersuasive, the Court asserted its obligation to give effect to the law Congress enacted. On remand, the Seventh Circuit was “left” to decide whether the district court's judgment should be modified based on the first hiring round in 1996, which occurred outside the charging period, even for the earliest EEOC charge.