



Labor & Employment Practice

March 2008

Supreme Court Adopts EEOC Standard Regarding Whether a Filing Constitutes a “Charge”

Last week, the U.S. Supreme Court ruled that any document filed with the Equal Employment Opportunity Commission (EEOC) that can reasonably be construed as a request for action to protect an employee's rights or otherwise settle a dispute with the employer constitutes a discrimination charge within the meaning of the Age Discrimination in Employment Act (ADEA). *Federal Express Corp. v. Holowecki*, U.S., No. 06-1322. The Supreme Court's ruling affirms the U.S. Court of Appeals for the Second Circuit's decision reviving a potential class action brought by current and former FedEx employees who allege that FedEx had a pattern and practice of employment procedures that discriminated based on age. *See Holowecki v. Federal Express Corp.*, 440 F.3d 558 (2d Cir. 2006). Writing for the 7-2 majority, Justice Kennedy said the EEOC's regulations, while falling short of providing a comprehensive definition, reasonably interpret the statutory term “charge” and therefore are entitled to deference.

At issue in the case was whether a completed EEOC intake questionnaire form accompanied by a six-page affidavit qualified as a charge, even though the EEOC did not notify FedEx or conduct an investigation or conciliation. Under federal law, once a plaintiff submits a complaint with the EEOC, they are required to wait at least 60 days before filing suit against their employer. The two-month period allows the EEOC to notify the company, look into the allegations, and take steps to resolve them before a suit is brought. The U.S. District Court for the Southern District of New York found that the intake questionnaire and affidavit did not constitute a charge and, thus, granted FedEx's motion to dismiss on the ground that no charge had been filed at least 60 days before the suit was filed. *See Holowecki v. Federal Express Corp.*, No. 02 Civ. 3355(LMM), 2002 WL 31260266 (S.D.N.Y. Oct. 9, 2002), rev'd, 440 F.3d 558 (2d Cir. 2006). The Second Circuit reversed.

The Supreme Court majority adopted the EEOC's position that the proper test is whether the filing should be construed as a request by the employee for the agency to take action to vindicate the employee's rights. FedEx argued that a filing is not a charge if the EEOC fails to treat it as such by notifying the charged party and initiating a conciliation process. The Court concluded that even though the EEOC did not notify FedEx or conduct an investigation or conciliation, the filing at issue in the case contained certain information required by the regulations and the affidavit asked the agency to force FedEx to end its alleged age discrimination. The majority ruled that employees who allege job discrimination should not be penalized because the EEOC has not adequately investigated their claims.

In dissent, Justice Thomas and Justice Scalia departed from the majority “[b]ecause the standard the court applies is broader than the ordinary meaning of the term ‘charge,’ and because it is so malleable that it effectively absolves the EEOC of its obligation to administer the ADEA according to discernible standards.” Recognizing that FedEx was given “short shrift” because it remained unaware of the complaint until the suit was filed, the majority nonetheless suggested the district court could “attempt to remedy this deficiency by staying the proceedings to allow for an opportunity for conciliation and settlement.” Additionally, the majority urged the EEOC to

CHARLOTTE

CHICAGO

GENEVA

LONDON

LOS ANGELES

MOSCOW

NEW YORK

NEWARK

PARIS

SAN FRANCISCO

WASHINGTON, D.C.

consider further revisions in its forms and procedures to reduce the risk of further misunderstandings by those who seek its assistance.

To view the full text of the opinion visit:
<http://www.supremecourtus.gov/opinions/07pdf/06-1322.pdf>.

If you have any questions, please contact one of the Labor & Employment Relations partners listed to the right.

Chicago

(312) 558-5600

Derek G. Barella
Susan M. Benton
Kevin M. Cloutier
John M. Dickman
C. R. Gangemi, Jr.
Gregory J. Malovance
William G. Miozzi
Michael L. Mulhern
Gerald C. Peterson
Michael P. Roche
Rex L. Sessions
Cardelle B. Spangler
Cheryl Tama Oblander
Joseph J. Torres

Los Angeles

(213) 615-1700

Paul J. Coady
Jessie A. Kohler
Anna Segobia Masters
Evan R. Moses
Lee T. Paterson
Laura R. Petroff
S. Shane Sagheb
Amanda C. Sommerfeld

New York

(212) 294-6700

Jeffrey S. Bosley
Stephen L. Sheinfeld

Paris

(33) 1-53-64-82-82

Sébastien Ducamp
Barbara Hart

San Francisco

(415) 591-1000

Charles S. Birenbaum
Jonathan Cohen
Robert Spagat
Joan B. Tucker Fife

Washington, D.C.

(202) 282-5000

Connie N. Bertram
M. Carter DeLorme
William G. Miozzi