

LABOR & EMPLOYMENT LAW

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Supreme Court Holds Clock Restarts Upon Recent Application of Old Policy

The U.S. Supreme Court has held that Equal Employment Opportunity Commission (EEOC) charges challenging an established policy on grounds that it disparately impacts protected classes can be filed within 300 days of the policy's most recent application. In *Lewis v. City of Chicago*, [08-974], the City of Chicago administered a written examination to applicants seeking employment with the Chicago Fire Department. The city randomly drew applicants who scored 89 or above (out of 100) to proceed to the next phase of the application process. Applicants who scored between 65 and 88 were notified that while they passed the exam, they likely would not be selected for participation in the next phase, although their information would be kept on file should the city's hiring needs change. Each year as the pool of applicants who scored 89 and above was exhausted, some of the applicants in the 65-88 range were randomly chosen to proceed to the next phase of the application process. (Applicants who scored below 65 were sent letters informing them that they failed the test and would no longer be considered.)

Years after the above process was implemented (and consistently followed), several African American applicants who were not selected from the 65-88 pool filed discrimination charges with the EEOC alleging that the selection process disparately impacted African Americans. Charges with the EEOC must be filed within 300 days of the alleged discrimination or they are time barred. Therefore, the question here was whether a plaintiff can, more than 300 days after the policy was adopted, timely allege that the application of a policy is discriminatory.

The Court held that the 300-day limit for disparate impact claims applied not to when the policy is adopted, but rather 300-days to when that policy was last *applied*. Even though the policy was adopted years before the EEOC charge was filed, every time the city used the policy the 300-day time period began anew, and the most recent use was within 300-days of filing the EEOC charge.

The Court distinguished disparate impact discrimination cases from disparate treatment discrimination cases for purposes of when a charge is timely filed. "For disparate-treatment claims –

and others for which discriminatory intent is required – that means the plaintiff must demonstrate deliberate discrimination within the limitations period. But for claims that do not require discriminatory intent [such as disparate-impact claims], no such demonstration is needed.”

This decision underscores the continuing importance of reviewing employment practices (such as hiring, promotion, discipline, and termination policies) that may have a disparate impact on protected classes because disparate-impact claims may be levied against employers essentially at any time, notwithstanding the fact that may have consistently used the same policy for years.

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