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EEOC Must Identify Individual Claimants and Investigate Claims Before Filing Suit

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By Colin Durham

Before filing suit on behalf of an aggrieved class of sexual discrimination claimants, the U.S. Equal Employment Opportunity Commission (EEOC) must identify the class of individual claimants and investigate their claims, according to the 8th U.S. Circuit Court of Appeals.

CRST Van Expedited Inc. (CRST) is one of the country's largest interstate trucking companies. CRST employs more than 2,500 long-haul drivers who operate in teams of two individuals to a truck. In operating their trucks, the drivers alternate between driving and sleeping on board in the truck's sleeper cab for as much as 21 days in an effort to maximize mileage and minimize stops.

Newly hired drivers must complete CRST's training program. Following an initial orientation, each trainee embarks on a 28-day, over-the-road training trip with an experienced "lead driver," who trains and evaluates the trainee's performance. At the conclusion of the trainee's 28-day training trip, the lead driver gives the trainee a "pass/fail driving evaluation" that is considered when determining whether to certify the trainee as a full-fledged CRST driver.

On Dec. 1, 2005, Monika Starke filed a charge of discrimination with the EEOC claiming, among other things, that she was forced to have unwanted sex with the lead driver during her 28-day training trip in order to get a passing grade from him. On Dec. 21, 2005, CRST submitted its position statement to the EEOC wherein it denied Starke's claims and disclosed the identity of two other female employees who, like Starke, had filed formal charges of discrimination with the EEOC against CRST.

After a perfunctory investigation, the EEOC sued CRST alleging that CRST had subjected Monika Starke and approximately 270 current and former female employees to a hostile work environment in violation of Title VII of the Civil Rights Act of 1964. The trial court dismissed the EEOC sexual harassment class-action claims because the EEOC had disregarded Title VII's mandatory pre-suit enforcement process by failing to investigate the claims of the individual claimants before filing suit. Rather, the EEOC used the lawsuit's discovery process to attempt to ascertain the identity of the class members and the merits of their respective claims; a tactic the EEOC routinely used in the past. As a consequence of its actions, the trial court sanctioned the EEOC for the sum of \$4.5 million.

On appeal, the 8th Circuit overturned the trial court's \$4.5 million sanction against the EEOC but upheld the trial court's dismissal of the EEOC's sexual harassment claims. The 8th Circuit reasoned that while the EEOC enjoys wide latitude in investigating and filing suits related to charges of discrimination, Title VII mandates that the EEOC investigate the claims of the individual claimants before filing suit. The 8th Circuit noted that the EEOC did not attempt to ascertain the identities of similarly situated employees until after it had filed suit against CRST. As a consequence, the trial court acted appropriately in dismissing the class-action sexual harassment claims.

EEOC v. CRST Van Expedited Inc., 8th Cir., Nos. 09-3764, 09-3765 & 10-1682 (Feb. 22, 2012). **Professional Pointer:** Employers should pressure the EEOC to identify each class member it seeks to represent before filing suit.

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