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Courts May Not Consider Sufficiency of EEOC Investigation

By Sharon A. Lim 10/8/2015

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A court may review whether the Equal Employment Opportunity Commission (EEOC) conducted an investigation prior to a lawsuit, but it may not review the sufficiency of that investigation, according to the 2nd U.S. Circuit Court of Appeals.

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating on the basis of race, color, religion, sex or national origin. Before the EEOC may bring a lawsuit against an employer under Title VII, it must first fulfill certain statutory obligations, including conducting a pre-suit investigation regarding the alleged discrimination. To fulfill its pre-suit investigation obligation, the EEOC must demonstrate that it took steps to determine whether there was reasonable cause to believe that the allegations against the employer are true.

Between 2005 and 2007, 19 female employees of Sterling Jewelers Inc. filed charges with the EEOC, alleging a nationwide practice of gender-based pay and promotion discrimination. In 2006, Sterling and the charging parties entered into mediation and signed a mediation and confidentiality agreement, under which the EEOC agreed to suspend its investigation during mediation. While the EEOC also agreed not to use any information disclosed during mediation as evidence in any subsequent proceedings, the parties agreed to allow certain information disclosed during mediation to be given to the EEOC investigator and to be placed in the EEOC investigative file if mediation was unsuccessful.

After mediation efforts failed, the EEOC investigator resumed his investigation of the allegations against Sterling. The EEOC subsequently issued a letter of determination finding that Sterling violated Title VII and thereafter filed a lawsuit against Sterling. Sterling moved for summary judgment, arguing that the EEOC had failed to conduct a pre-suit investigation. The district court found no evidence that the EEOC performed a nationwide class investigation and granted summary judgment in favor of Sterling. The EEOC appealed.

The appeals court vacated the district court's summary judgment order and remanded the case for further proceedings, finding that the lower court improperly considered the sufficiency of the EEOC investigation rather than solely considering whether the EEOC had conducted an investigation. The appeals court found that, based on the investigator's testimony that he reviewed the investigative files, investigated all charges and requested documents from the parties to further the investigation, the EEOC had properly investigated the claims against Sterling. The appeals court also determined that the EEOC investigation was "nationwide." The appeals court based this determination on the EEOC investigator's testimony and the documents in the investigative file, such as a statistical analysis based on companywide data, company policies and charges with companywide class allegations.

In reaching its decision, the appeals court reasoned that courts should respect the EEOC's wide discretion under Title VII and should not be permitted to impose extra procedural requirements on the EEOC by delving into the sufficiency of an EEOC investigation.

EEOC v. Sterling Jewelers Inc., 2nd Cir., No. 14-1782 (Sept. 9, 2015).

Professional Pointer: Employers likely will be unable to dispute the sufficiency of an EEOC investigation if the EEOC investigator simply produces an affidavit outlining the steps that he or she took in investigating allegations against an employer.

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