



Supreme Court Expands Time to File Disparate Impact Discrimination Claims

Job applicants may now have a potential disparate impact claim with each new failure to hire under an allegedly discriminatory selection practice. The Supreme Court unanimously held in Lewis v. City of Chicago that a new violation occurs, and a new 300-day period for filing a discrimination charge with the Equal Employment Opportunity Commission (EEOC) begins, each time an employment practice that causes a disparate impact on minorities or other protected classes is used.

Background

Among other things, Title VII of the Civil Rights Act of 1964 protects individuals against intentional employment discrimination because of their race (disparate treatment) and, in some cases, against facially neutral employment practices that adversely and disproportionately affect them (disparate impact). Before bringing a federal lawsuit, those claiming discrimination must file a timely EEOC charge (within 180 or 300 days after the alleged discrimination occurred, depending on the state).

In 1995, the City of Chicago gave firefighter applicants a written examination, and used the results to create a hiring eligibility list. Those who scored at least 89 out of 100 were rated as “well-qualified,” passing the first hurdle in the hiring process. Applicants scoring between 65 and 89 were rated as “qualified” and were told that their applications would remain on file but they would not likely be hired. Those scoring below 65 were immediately rejected as “not qualified.” Although 45% of the test takers were white and 37% were African-American, 12.6% of whites compared to 2.2% of African-Americans scored 89 or above. Thus, white applicants were five times more likely to advance to the next hiring stage.

In 1998, more than 300 days after the exam but while its results were still in use, six “qualified” applicants sued, claiming the City’s selection practice disproportionately excluded African-Americans from advancing in the hiring process in violation of Title VII. After the case made its way through the federal district and appellate courts, the Supreme Court agreed to review it. The Court considered whether a disparate impact claim challenging the applicant selection practice could be brought if a timely EEOC charge challenging its adoption was not made.

Lewis v. City of Chicago

In [Lewis v. City of Chicago](#), a unanimous Supreme Court held that the present effects of employment practices adopted more than 300 days earlier can lead to Title VII liability in disparate impact cases. Here, the Court found

that selecting applicants years later to fill a new class of firefighters on the basis of a 1995 eligibility test with an admittedly disparate racial impact could form a new and distinct basis for a discrimination claim. The Court concluded that an employment practice that causes disparate impact may be challenged not only upon its adoption, but also each time the employer uses it. Therefore, the Court allowed the 300-day statutory clock for filing an EEOC charge to restart each time the City filled a new class of firefighters by applying a cut-off score that excluded qualified applicants from consideration.

BUCK COMMENT. *Almost one year earlier, in another case involving firefighters, a divided Supreme Court held that employers can violate Title VII when they take race-conscious actions to address statistical imbalances in the workplace, even if well-intentioned. In Ricci v. DeStefano, the Court found that reverse discrimination occurred when the City of New Haven discarded promotional test results for firefighters because too few minorities would have qualified for advancement. (See our July 30, 2009 [For Your Information](#).)*

Conclusion

Because this decision makes it easier for individuals to file timely EEOC charges, employers – particularly public sector employers – are more vulnerable to disparate impact discrimination claims, and they may now face claims challenging employment practices they have used for years. Employers should review their hiring practices to ensure that they are neutral and fair, and that the application of their selection criteria is job related and consistent with business necessity. Given the extended statute of limitations, employers may also want to revisit their document retention policies to ensure that appropriate records of employment practices and selection decisions are maintained for an adequate length of time.

Buck's consultants would be pleased to discuss the impact of this decision on your employment practices.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.