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Employment Law Alert

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Supreme Court Rules on Statute of Limitations for Disparate Impact Charges of Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from using employment practices that cause a disparate impact (*i.e.* unintentionally discriminate) on the basis of race, gender, or another protected class. A practice that has a disparate impact will violate the law, and should be altered or discontinued, unless the employer can demonstrate that it is job-related and necessary for business reasons, and there are no less discriminatory alternatives. The U.S. Supreme Court has now unanimously ruled in *Lewis v. City of Chicago*, 2010 U.S. LEXIS 4165, that the 300-day window for filing a disparate impact charge with the U.S. Equal Employment Opportunity Commission (EEOC) over an allegedly discriminatory employment practice restarts each time the employer applies that practice.

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The new case involved EEOC charges challenging a written test that the City of Chicago adopted in July 1995 and administered to firefighter job applicants. After scoring the tests, the city created three categories of applicants based on the scores: "well qualified," "qualified," and "not qualified." In January 1996, the city announced it would draw candidates randomly from the "well-qualified" applicants. "Qualified" applicants were informed that it was unlikely they would be called up but that they would remain on the eligibility list indefinitely. Applicants who were deemed "not qualified" were dropped from consideration for employment. In May 1996, the city selected its first class of applicants to advance, and it repeated this process several times over the next six years.

In 1997, several African-American applicants filed EEOC charges claiming that the test had a disparate impact on black applicants. The agency issued a right-to-sue letter, and the applicants then filed a lawsuit on behalf of approximately 6,000 black applicants who were rated "qualified" and not selected for hire.

The city conceded that the test had a disparate impact, but argued that the suit was not timely because the charges on which the lawsuit was based were filed more than 300 days after the applicants were first notified of the test results. The district court, however, found that a new claim accrued -- and the clock for filing a charge was restarted -- every time the city made a hiring decision based on the test results. Therefore, because the earliest

charges were filed within 300 days of the city's second round of hiring, the charges (and lawsuit) were timely. The Seventh Circuit Court of Appeals disagreed with the lower court and ruled that the charges were not timely filed.

The Supreme Court reversed, holding that a new disparate impact violation occurs each time an allegedly discriminatory practice is carried out (each time someone who took the test was not hired). As a result, affected employees or job applicants who do not challenge a practice within 300 days of its adoption may still later file a timely charge if they are subsequently impacted by the application of that practice.

This development means that employers may face new disparate impact lawsuits challenging practices that have been in place for years, and it could be difficult to produce evidence of the business necessity supporting a disputed practice as witness memories fade over time. As a result, employers should carefully evaluate, under guidance from counsel, whether their employment practices -- particularly tests and other selection procedures -- have an unlawful discriminatory impact.

Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, risk management, wage and hour class actions, ERISA litigation, and appellate law. If you have questions about this new development or your workplace obligations, please contact Michele Ballard Miller (mbm@millerlawgroup.com) or Carolyn Rashby (cr@millerlawgroup.com), or call (415) 464-4300. To learn more about our firm, visit our website at www.millerlawgroup.com.

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