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IMLA NEWS
Issue 13 – July 3, 2014

Employment: Filing of Completed EEOC Intake Questionnaire Constitutes Age Discrimination Charge

Hildebrand v. Allegheny County, No. 13-1231 (3d Cir. June 27, 2014).

In a case of first impression in the jurisdiction, the Third Circuit has held that the filing of a fully-completed EEOC intake questionnaire constitutes formal commencement of an age discrimination action under the ADEA, also holding that exhaustion of administrative remedies may be pled generally rather than requiring specificity.

Anthony Hildebrand served as a detective for the Allegheny County District Attorney's office for five years before being terminated in 2011. He filed an internal grievance, but the termination was upheld. He then went to the EEOC and completed an intake questionnaire, wherein he stated he was the victim of age discrimination and wherein he checked a box stating he "want[ed] to file a charge of discrimination." He was issued a right-to-sue letter and did so, claiming the County and the DA's office violated the ADEA, Title VII (by retaliating against him), and the Equal Protection Clause (due to age-based discrimination he filed under Section 1983). The District Court granted defendants' motions to dismiss, finding that Hildebrand had not pled exhaustion of administrative remedies and that an EEOC questionnaire did not constitute a charge of discrimination. Hildebrand appealed.

HELD: The Third Circuit held that (1) Hildebrand could not maintain a Section 1983 claim for age discrimination because Congress had set forth a specific grievance procedure under the ADEA; (2) Hildebrand was not required to plead exhaustion of administrative remedies with specificity, but instead could do so generally; and (3) an EEOC intake questionnaire, if properly completed, does constitute a charge of discrimination.

DISCUSSION: This case presented three issues on which the Third Circuit had never published an opinion. First, the Circuit Court addressed "whether an employee terminated from a local

government position may maintain an action for age discrimination under 42 U.S.C. § 1983." The Third Circuit affirmed the lower court's holding that the ADEA is the exclusive remedy for individuals asserting discrimination based on age. To determine whether a statute precludes enforcement of an individual's rights under Section 1983, courts look to whether the statute provides a sufficiently comprehensive remedy. The Circuit Court found the ADEA does have a comprehensive scheme under which individuals may enforce their rights. It provides a private right of action, requires plaintiffs to exhaust administrative remedies by filing with the EEOC, and, unless the EEOC files, allows the employee to file suit.

(This ruling is in line with precedent from the First, Fourth, Fifth, Tenth, and DC Circuits, and differs only from the Seventh Circuit. The Seventh Circuit holds that, in addition to a comprehensive remedial scheme, "some additional indication of congressional intent" to deny plaintiffs the use of Section 1983 is necessary before the Court will deny plaintiffs such a claim. *Levin v. Madigan*, 692 F.3d 607, 619 (7th Cir. 2012)).

As to the second issue, "whether the pleading of exhaustion of administrative remedies, a prerequisite to bringing a lawsuit under the ADEA, must satisfy the standards established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)," the Court held a plaintiff need not plead this with particularity, but rather may allege it in general terms. Under the ADEA a plaintiff must exhaust administrative remedies and file a charge with EEOC within 300 days after the last date of discrimination, both of which are considered conditions precedent to filing under the ADEA. The District Court had held Hildebrand did not plead with particularity that he had exhausted his administrative remedies and dismissed his charge against Allegheny County. The Circuit Court reversed, noting that *Twombly/Iqbal* only interpreted FRCP 8(a), while the pleading of a condition precedent is covered under FRCP 9(c). That latter rule states "[i]n pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed."

On the third issue, "whether a complainant's submission of the Equal Employment Opportunity Commission's revised Intake Questionnaire constitutes the filing of a charge of discrimination," the Court held as long as the form is properly filled out it does constitute such a filing. Under *Federal Express Corp. v. Holowecki*, 552 U.S. 389 (2008), the Supreme Court held an EEOC filing may constitute a charge of discrimination. Hildebrand had checked a box on his EEOC form stating "I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name. . . ." The Third Circuit held Hildebrand unquestionably filed a charge of discrimination and reversed the District Court on this issue.

http://www2.ca3.uscourts.gov/opinarch/131321p.pdf (last accessed July 5, 2014).