



# CLIENT NEWS BRIEF

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## SUPREME COURT ISSUES A RULING REGARDING THE STATUTE OF LIMITATIONS FOR CLAIMS OF DISPARATE IMPACT DISCRIMINATION IN EMPLOYMENT

Title VII of the Civil Rights Act of 1964 (“Title VII”) bars employment actions that have a “disparate impact” on a protected group, such as African-Americans. The United States Supreme Court recently held that a plaintiff may assert a claim of disparate impact discrimination by filing a timely claim challenging the employer’s application, rather than adoption, of an employment practice, as long as the plaintiff alleges each of the elements of a disparate impact claim. (Lewis v. City of Chicago (2010) 560 U. S. \_\_\_\_.)

In July 1995, the City of Chicago (“City”) administered an examination to applicants seeking a position with the fire department. In January 1996, the City announced that the hiring process would begin with those who scored above 89 on the test. In May and October of 1996, the City implemented the new hiring process. Applicants who scored between 65 and 89 were informed that they had passed the examination and were therefore “qualified”, but, based on the City’s projected hiring needs and the number of applicants scoring above 89, they would not likely be called for further processing. The City kept each “qualified” applicant’s name on the eligibility list for approximately the next six years.

To preserve a claim for discrimination under Title VII, the aggrieved party must file charges within 300 days after the discriminatory action by an employer. (42 U.S.C. § 2000e-5(e)(1).) In March 1997, an African-American applicant, who scored in the “qualified” range and was not hired as a candidate firefighter, filed a discrimination claim with the Equal Employment Opportunity Commission (“EEOC”), followed by other candidates who filed in subsequent months. The applicants then filed a civil action against the City, alleging that its practice of selecting only applicants who scored 89 or above to advance resulted in a disparate impact on African-Americans in violation of Title VII.

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The City argued that the only possible discriminatory act in this case was sorting the scores, which meant that the plaintiffs were required to file their claims with the EEOC no later than 300 days after the sorting occurred in January 1996. A federal District Court ruled in favor of the plaintiffs; however, the federal Seventh Circuit Court of Appeal reversed the decision, holding that the lawsuit was untimely because the EEOC claim was filed more than 300 days after the allegedly discriminatory act of sorting the scores. The Supreme Court disagreed and held that a new claim could arise from the subsequent use of the discriminatory employment practice.

The Supreme Court stated that a plaintiff can establish a disparate impact claim by showing that the employer uses an employment practice that causes a disparate impact on one of the prohibited bases of discrimination. (42 U.S.C. § 2000e-2(k)(1)(A)(i).) Here, the court determined that the plaintiffs' claim was not barred by the 300-day time limit, because each time the City used the eligibility list (employing the score cut-off) to fill firefighter positions, it was applying an employment practice that caused a disparate impact on a protected class of individuals. The court held that the firefighter candidates' claim was cognizable and reversed and remanded the matter back to the Seventh Circuit Court of Appeals.

This case demonstrates that the Supreme Court has moved toward a broader view of discriminatory impact law. Each time a discriminatory policy is implemented, the timeline for a new cause of action may begin. Thus, employers should review and replace old policies still in use that may have a discriminatory impact, or remain potentially liable for discrimination claims filed years after the policy was initially put into effect.

For further information or if you have any questions concerning employment discrimination issues, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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