



Timeliness of Disparate Impact Discrimination Claims Filed Under Title VII of the Civil Rights Act: A Legal Analysis of *Lewis v. City of Chicago*

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May 28, 2010

Congressional Research Service

7-....

www.crs.gov

R41271

Summary

This report discusses *Lewis v. City of Chicago*, a recent case in which the Supreme Court considered questions regarding the timeliness of disparate impact discrimination claims filed under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, color, national origin, sex, or religion. In *Lewis*, a group of aspiring black firefighters sued the City of Chicago over its repeated use of an employment test with racially disproportionate results to hire several new groups of firefighters over a six-year period. The city argued that the applicants, who filed their claim almost two years after the employment examination was administered, had exceeded the statutory deadline for filing claims under Title VII, while the applicants claimed that the city committed a fresh act of discrimination each time it relied upon the test to hire a new class of firefighters, thus repeatedly restarting the clock on the filing deadline. In a unanimous decision, the Supreme Court ruled in favor of the applicants for the firefighting positions, holding that such disparate impact claims may be brought each time an employer uses the results of a discriminatory test to hire.

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On May 24, 2010, the Supreme Court issued its decision in *Lewis v. City of Chicago*,¹ a case involving questions regarding the timeliness of disparate impact discrimination claims filed under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, color, national origin, sex, or religion.² In *Lewis*, a group of aspiring black firefighters sued the City of Chicago over its repeated use of an employment test with racially disproportionate results to hire several new groups of firefighters over a six-year period. The city argued that the applicants, who filed their claim almost two years after the employment examination was administered, had exceeded the statutory deadline for filing claims under Title VII, while the applicants claimed that the city committed a fresh act of discrimination each time it relied upon the test to hire a new class of firefighters, thus repeatedly restarting the clock on the filing deadline. In a unanimous decision, the Supreme Court ruled in favor of the applicants for the firefighting positions, holding that such disparate impact claims may be brought each time an employer uses the results of a discriminatory test to hire.

Background

In 1995, over 26,000 applicants seeking to join the Chicago Fire Department took an employment examination administered by the city. Based on the scores of the examination, the city established three groups of applicants: those who were “well-qualified,” “qualified,” or “not qualified.” On nine occasions, the city selected new hires from the pool of well-qualified candidates, although on the last occasion the city also hired applicants from the qualified group once it had exhausted the pool of well-qualified candidates.³ These nine hirings occurred over a six-year period.

In 1997, a group of black applicants who scored in the qualified range filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) claiming that the city’s practice of initially hiring only from the well-qualified group, which was 75.8% white and only 11.5% black, had an unlawful disparate impact on the basis of race. Subsequently, they filed a Title VII suit in federal court, and the district court certified a class of more than 6,000 black applicants who had scored in the qualified range but had not been hired. Although the city stipulated that its classification of applicants as either well-qualified or qualified had had a disparate racial impact, it sought summary judgment on the ground that the applicants had failed to file their EEOC claim within the statutorily mandated deadline. The district court rejected this argument and later ruled in favor of the applicants, ordering the city to hire 132 members of the class and awarding back pay to the rest.⁴ The U.S. Court of Appeals for the Seventh Circuit reversed the district court’s decision, holding that the applicants had failed to meet the statutory filing deadline because “[t]he hiring only of applicants classified ‘well qualified’ was the automatic consequence of the test scores rather than the product of a fresh act of discrimination.”⁵ The Supreme Court granted review in order to determine “whether a plaintiff who does not file a timely charge challenging the *adoption* of a practice—here, an employer’s decision to exclude employment applicants who did not achieve a certain score on an examination—may assert a

¹ 2010 U.S. LEXIS 4165 (May 24, 2010).

² 42 U.S.C. §§ 2000e et seq.

³ Lewis, 2010 U.S. LEXIS at *6-8.

⁴ Lewis v. City of Chicago, 2005 U.S. Dist. LEXIS 42544 (N.D. Ill. Mar. 22, 2005); Lewis v. City of Chicago, 2007 U.S. Dist. LEXIS 24378 (N.D. Ill. Mar. 20, 2007).

⁵ Lewis v. City of Chicago, 528 F.3d 488, 491 (7th Cir. Ill. 2008).

disparate-impact claim in a timely charge challenging the employer's later *application* of that practice."⁶

Title VII: Disparate Impact Claims and Filing Requirements

Under Title VII, two different types of discrimination are prohibited. The first is disparate treatment,⁷ which involves intentional discrimination, such as treating an individual differently because of his or her race. The second type of prohibited discrimination—at issue in *Lewis*—is disparate impact,⁸ which involves a neutral employment practice that is not intended to discriminate but that nonetheless has a disproportionate effect on protected individuals. An employer may defend against a disparate impact claim by showing that the challenged practice is “job related for the position in question and consistent with business necessity,” although a plaintiff may still succeed by demonstrating that the employer refused to adopt an available alternative employment practice that has less disparate impact and serves the employer's legitimate needs.⁹

Regardless of whether they allege disparate impact or disparate treatment, individuals who want to challenge an employment practice as unlawful are required to file a charge with the EEOC within a specified period—either 180 days or 300 days, depending on the state—“after the alleged unlawful employment practice occurred.”¹⁰ The question that arose for the Supreme Court in *Lewis* was whether the city's subsequent use, rather than its initial adoption, of a discriminatorily tiered hiring system constituted an unlawful employment practice for purposes of starting the clock on the filing deadline.

The Supreme Court's Decision

Ultimately, the Court ruled unanimously in favor of the applicants, holding that such disparate impact claims may be brought when a plaintiff challenges an employer's subsequent application of an earlier-adopted discriminatory practice. In its brief opinion, the Court relied on the text of Title VII to determine that the city's refusal to hire those applicants whose scores fell below the well-qualified range constituted an “employment practice,”¹¹ and thus concluded that the applicants could proceed with their suit because they had established a *prima facie* disparate impact claim by showing, as Title VII requires, that the employer “uses a particular employment practice that causes a disparate impact.”¹²

⁶ *Lewis*, 2010 U.S. Lexis at *6.

⁷ 42 U.S.C. § 2000e-2(a)(1).

⁸ *Id.* at § 2000e-2(k). *See also* *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

⁹ 42 U.S.C. § 2000e-2(k).

¹⁰ *Id.* at § 2000e-2(a)(1). In *Lewis*, the applicable timeframe was 300 days.

¹¹ *Lewis*, 2010 U.S. LEXIS at *14-15.

¹² 42 U.S.C. § 2000e-2(k).

In rejecting the city's contention that the only actionable discrimination occurred when it first established cutoff scores for the well-qualified and qualified groups of applicants, the Court distinguished its rulings in several earlier cases, including *Ledbetter v. Goodyear Tire & Rubber Co.*,¹³ a 2007 case in which the Court held that a plaintiff's Title VII claim was untimely, rejecting her argument that each paycheck she received reflected a lower salary due to past discrimination and thus constituted a new violation of the statute.¹⁴ According to the Court, its previous cases "establish only that a Title VII plaintiff must show a 'present violation' within the limitations period."¹⁵ In *Ledbetter*, which involved a disparate treatment claim and therefore required a showing of discriminatory intent, the plaintiff failed to demonstrate that such intentional discrimination had occurred within the filing period. In a disparate impact case such as *Lewis*, however, no such showing of discriminatory intent is required, and the Court therefore concluded that the applicants' claim was cognizable.¹⁶

Finally, the Court addressed the practical implications of its decision. According to the city, the Court's decision will cause numerous problems for employers, including new disparate impact lawsuits that challenge employment practices that have been used for years and difficulty defending against such suits after many years have passed. The Court noted, however, that a different reading of the statute would produce equally puzzling results: under the city's interpretation, "if an employer adopts an unlawful practice and no timely charge is brought, it can continue using the practice indefinitely, with impunity, despite ongoing disparate impact."¹⁷ Likewise, litigation could increase if employees who are afraid of missing the filing deadline decide to challenge new employment practices before it is clear whether such practices have a disparate impact. Ultimately, the Court noted that its task is not to address the practical implications of its decision but rather to give effect to the statute. In enacting Title VII, "Congress allowed claims to be brought against an employer who uses a practice that causes disparate impact, whatever the employer's motives and whether or not he has employed the same practice in the past. If the effect was unintended, it is a problem for Congress, not one that the federal courts can fix."¹⁸

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¹³ 550 U.S. 618 (2007).

¹⁴ For more information on the decision, see CRS Report RS22686, *Pay Discrimination Claims Under Title VII of the Civil Rights Act: A Legal Analysis of the Supreme Court's Decision in Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, by (name redacted).

¹⁵ *Lewis*, 2010 U.S. LEXIS at *17.

¹⁶ *Id.* at *18-20.

¹⁷ *Id.* at *20-21.

¹⁸ *Id.* at *21.

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