



WEB EXCLUSIVE: EEOC Trial Tactics Lead To Massive Sanctions Award

Insights

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After more than ten years of protracted litigation brought by the Equal Employment Opportunity Commission (EEOC), including a stop at the U.S. Supreme Court, an Iowa federal district court recently upheld an award of nearly \$2 million in attorneys' fees in favor of CRST Van Expedited. The court criticized the EEOC's practice of presenting a moving target while prosecuting a Title VII class action, holding that most of the sexual harassment claims brought on behalf of nearly 78 claimants were "frivolous, groundless, or unreasonable." What can employers learn from this decision?

How Did We Get Here?

In December 2005, a former CRST driver named Monika Starke filed an EEOC charge of discrimination alleging that she was subjected to sexual harassment. After making a reasonable cause determination and failing to successfully conciliate Starke's matter, the EEOC brought suit against CRST on behalf of Ms. Starke and a class of other unnamed employees in an Iowa federal court. In the lawsuit, the EEOC alleged that CRST subjected numerous female employees to a hostile work environment based on sex in violation of Title VII.

After two years of litigation, the court ordered the EEOC to provide additional details regarding the women included in the class. The EEOC listed 270 names, but as the case wore on and discovery unfolded, many of these women were ultimately dismissed as plaintiffs. Over 200, in fact, had their claims dismissed based on defense motions, saw their claims voluntarily dropped by the EEOC, or lost out due to discovery sanctions. As for the remaining 67 women listed as plaintiffs, the EEOC was forced to concede that it had failed to investigate, provide a cause of determination, or attempt to conciliate their individual claims. The judge was not pleased with these pretrial tactics and awarded the employer \$4.7 million in attorneys' fees, expenses, and costs incurred defending the EEOC's defeated claims.

The EEOC appealed this decision to the 8th Circuit Court of Appeals, which agreed with the agency and reversed the award of attorneys' fees. It held that the employer was not entitled to recover this amount because it had not technically prevailed "on the merits" of the case against the 67 women. Instead, the court ruled that the portion of the case brought on behalf of these plaintiffs was dismissed on jurisdictional grounds, which did not entitle CRST to a fee award.

CRST appealed the matter to the Supreme Court, and in May 2016, the Court gave the employer a lifeline. Although it did not reinstate the fee award, it did say that employers could be considered

prevailing parties and therefore entitled to fees even if they do not win “on the merits.” The Supreme Court sent the case back down to the Iowa district court for a determination on whether the EEOC’s conduct in the litigation was “frivolous, unreasonable, or groundless” such to support the fee award.

Do Not Try These Tactics At Home

On remand, the court examined the EEOC’s litigation tactics and, in a September 22, 2017 ruling, concluded they were troubling enough to justify an award of \$1,860,127.36 in attorneys’ fees and costs to CRST. Of the more concerning maneuvers:

Bringing Claims Outside The Statute Of Limitations

First, the court noted that a portion of the EEOC’s claims were premised on alleged harassment that, even if truthful, would have occurred outside the applicable statute of limitations. The court faulted the EEOC for proceeding with allegations that could not have formed the basis of a valid sexual harassment claim.

No Pattern Or Practice

Next, the court pointed out that the EEOC failed to properly show a pattern-or-practice violation, which is a necessary component of any successful class action lawsuit premised on allegations of employment discrimination. It was especially troubling to the court because the EEOC originally launched its attack against CRST by contending that the employer engaged in a pattern or practice of committing and permitting sexual harassment at its workplace.

Not Severe And Pervasive

Another troubling aspect of the case involved the fact that the EEOC conceded that certain claimants were not victims of “severe or pervasive” behavior. Unfortunately for the federal agency, this is an essential element of a Title VII sexual harassment case, and failure to demonstrate this crucial factor doomed large portions of the class action.

No Reporting Of Harassment

Moreover, many of the claimants conceded they were aware of CRST’s established procedures for reporting sexual harassment, but failed to use them. The court reviewed Title VII case law and determined that courts routinely refuse to impute knowledge of harassment on an employer where the claimant fails to properly report the alleged behavior.

No Evidence That Employer Knew Of Harassment

The court further pointed out that the EEOC did not provide evidence that the employer had alternate means of knowing about the alleged harassment.

Employer Promptly Remedied Problems

Finally, the court determined that CRST took prompt action reasonably calculated to end harassment when it learned of offensive behavior. In fact, the court walked through an exhaustive list of occasions where CRST learned of alleged discriminatory behavior and took swift action to correct it.

What This Means for Employers

This decision is important for all employers for a number of reasons. First, it provides a reminder of a solid blueprint for handling sexual harassment claims before litigation unfolds:

- maintain an effective reporting procedure;
- widely disseminate the reporting procedure among your workforce and encourage your employees to use it when necessary;
- promptly address any complaints of harassment or discrimination; and
- take prompt remedial action to ensure the offending behavior is put to a stop and does not reoccur.

Second, if you are in the midst of litigation against an aggressive plaintiffs' firm or government agency, this case provides examples of the kinds of tactics that may form the basis of a sanctions award. If you see similar behavior in your case, you should immediately warn the other side to stand down. Citing this case in hopes of resolving the issue and putting a stop to the conduct could go a long way toward building your sanctions case.

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