



Federal Appeals Court Overturns Decades Of Precedent To Revive Workplace Claim

Insights

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Overtuning 40 years of precedent, the 10th Circuit Court of Appeals has just ruled that an employee's failure to file an EEOC charge does not necessarily bar consideration of a private discrimination lawsuit. By concluding that an Equal Employment Opportunity Commission (EEOC) charge is not a jurisdictional prerequisite to suit, the federal appeals court's August 17 decision provides a new lifeline for disgruntled employees and former employees to bring suit against their employers (*Lincoln v. BNSF Railway Company, Inc.*).

Plaintiffs' Late Lawsuit Seemingly Dooms Their Chances...

Plaintiffs Larry Lincoln and Brad Mosbrucker were injured while working for BNSF Railway Company when a tank car sprung a leak and exposed them to 2-chlorobenzyl chloride. As a result of their injuries, their doctors advised them to no longer work outdoors, which barred them from returning to their former positions. Between 2010 and 2014, each plaintiff submitted more than 20 applications for other positions at BNSF, but the company did not select either of them for any of these jobs.

Meanwhile, in February 2013, each plaintiff filed an EEOC charge alleging workplace discrimination for failure to place them in new positions; in May 2015, Mosbrucker filed a second charge. The EEOC eventually issued Lincoln a letter dismissing his charge but stating he had the right to bring suit; the agency issued similar "right-to-sue" letters to Mosbrucker in July and September 2015.

Plaintiffs filed a joint lawsuit alleging disability discrimination and a failure to accommodate in violation of the Americans with Disabilities Act (ADA). They also raised claims under the Federal Railroad Safety Act (FRSA) and Occupational Safety and Health Act (OSHA).

BNSF asked the court to dismiss the ADA and FRSA claims under a theory that the workers failed to exhaust their administrative remedies. Under federal anti-discrimination laws, plaintiffs are required to file charges of discrimination with the EEOC or the applicable state anti-discrimination agency within 300 days of the date the discrimination occurred. Under clear 10th Circuit precedent, the plaintiffs' failure to file charges seemingly deprived the court of the authority to hear these claims.

The company contended that the court should reject any chance for Lincoln to rely on alleged employment actions that occurred more than 300 days before he filed his charge and actions that

occurred after he filed his charge. Similarly, it argued that Mosbrucker failed to exhaust his administrative remedies for actions that occurred between the filing of his first charge and 300 days before he filed his second charge. Applying precedent, the trial court held that the court lacked jurisdiction of these claims and entered judgment for BNSF. The workers appealed their case to the 10th Circuit Court of Appeals, which just overturned the lower court ruling, rejected 40 years of precedent, and ruled in favor of the workers.

...But Appeals Court Breathes New Life Into Claims

The 10th Circuit Court of Appeals—which hears federal cases arising from Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming—held that the provision of the statute authorizing federal courts to take jurisdiction over ADA claims did not require a plaintiff to exhaust administrative remedies before filing suit. The August 17 decision concluded that a court was permitted to hear the claims and make a ruling on them despite 40 years of precedent which otherwise led the employer to think it was safe.

The court of appeals did say that a defendant employer could raise failure to exhaust administrative remedies as an affirmative defense. The practical difference between having a court conclude that administrative exhaustion is a wholesale prerequisite to jurisdiction versus concluding that is simply an affirmative defense is significant. An affirmative defense is subject to counterarguments from plaintiffs, such as waiver, estoppel, and equitable tolling.

In the *BNSF* case, in fact, the plaintiffs argued that BNSF waived the defense, which they claim should permit them to proceed with their claim all the way to a jury trial. They pointed to the fact that BNSF filed a motion to dismiss raising an administrative exhaustion argument once the lawsuit was first filed, but that the parties soon agreed to put this argument on ice and litigate the rest of the case before asking a court to resolve this specific issue. The parties' stipulation agreed that the plaintiffs had exhausted administrative remedies for claims for employment actions that occurred after April 16, 2012. The plaintiffs argued that BNSF waived its exhaustion defense as to employment actions that occurred after that date by entering into this stipulation and could not now argue differently. The 10th Circuit agreed the language of the stipulation was unambiguous and remanded the case to the trial court to decide whether to enforce its terms against BNSF.

What Does This Decision Mean For Employers?

The decision in this case affects not only disability claims under the ADA but also claims for discrimination based on sex, race, color, national origin, and religion under Title VII of the Civil Rights Act of 1964, age under the Age Discrimination in Employment Act (ADEA), and genetic information under the Genetic Information Nondisclosure Act (GINA).

From now on, in any such federal case arising in courts under the 10th Circuit's jurisdiction, plaintiffs do not need to prove that they exhausted their administrative remedies in order for the court to hear the claims. Rather, defendants must prove that plaintiffs failed to exhaust administrative remedies, and must stand ready to defeat arguments by plaintiffs that they somehow waived the defense or took some other action that estopped them from raising the defense or that tolls

waived the defense or took some other action that estops them from raising the defense or that tolls the running of the time period for exhausting administrative remedies. This might impact the way you litigate and defend claims but could also affect your internal investigations or other personnel decisions. If you have questions about the application of this new standard, check with your Fisher Phillips counsel or any attorney in our [Denver](#) office.

This Legal Alert provides an overview of a specific federal court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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