

Failure to Check Box on EEOC Charge Proves Fatal to Harassment Claims

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A Virginia federal court last week dismissed a plaintiff's hostile work environment claims because the plaintiff failed to check the "continuing action" box or specifically mention "harassment" or "hostile work environment" in her EEOC charge.

In *Coleman v. Kettler Management*, the plaintiff filed suit against her former employer alleging that she was discriminated, harassed, and retaliated against on the basis of her race and disability. In her previously-filed EEOC charge, plaintiff checked the boxes for "race" and "disability" and provided brief narratives about the nature of her claims. The employer moved to dismiss the hostile work environment claims, arguing that both claims exceeded the scope of her EEOC charge.

The Court granted the motion, holding that "Plaintiff's EEOC charge only contains allegations of disability-based and race-based discrimination—the charge makes no mention of harassment or a hostile work environment." Thus, the charge failed to put the defendant on notice of plaintiff's hostile work environment theories.

The Court rejected Plaintiff's argument that "checking off the box for disability" provided the requisite notice. The Court found that, while the charge form does not have a hostile work environment box, it does have a "continuing action" box, which Plaintiff could have checked to indicate repeated instances of discriminatory behavior. Yet, her failure to check that box "counsels in favor of a finding that the ADA hostile work environment claim is not reasonably related to the EEOC charge." This case represents an important win for employers, highlighting a key defense that can be raised when a plaintiff's lawsuit includes claims not previously alleged at the EEOC stage.

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