

Second Circuit Decision Resuscitates EEOC's Gender Discrimination Suit Against Sterling Jewelers

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This week, the ***United States Court of Appeals for the Second Circuit*** sharply limited employers' ability to challenge the adequacy of the **EEOC's** pre-suit investigations. The Court issued an [opinion](#) vacating a district court decision granting summary judgment to Sterling Jewelers Inc. ("Sterling") on sex discrimination claims filed by the Equal Employment Opportunity Commission ("EEOC").

Women employed by Sterling in several states across the country filed charges of discrimination against Sterling between 2005 and 2007, alleging that Sterling had "engaged in a 'continuing policy or pattern of sex discrimination.'" ***EEOC v. Sterling Jewelers***, 2015 U.S. App. LEXIS 15986, * (2d Cir. Sept. 9, 2015). After an investigation and unsuccessful mediation regarding allegations against Sterling, the EEOC issued a Letter of Determination on January 30, 2008, concluding that Sterling "subjected Charging Parties and a class of female employees with retail sales responsibilities nationwide to a pattern or practice of sex discrimination in regard to promotion and compensation." *Id.* at *6. Subsequently, on September 23, 2008, the EEOC filed a discrimination claim in the Western District of New York. After discovery in the case, Sterling moved for summary judgment on the basis that the EEOC had failed to meet its obligations to perform a pre-suit investigation regarding the claims against the company. The United States magistrate judge reviewing the summary judgment motion issued a Report and Recommendation to the United States District Court judge, concluding that there was "no evidence that [the EEOC] investigated a *nationwide* class," and therefore recommended that the district court grant summary judgment in favor of Sterling. The district court agreed, dismissing the EEOC's case with prejudice. The EEOC appealed the district court's decision.

On appeal, the EEOC argued that the magistrate judge went beyond simply evaluating the existence of the investigation but instead, improperly evaluated the *sufficiency* of the EEOC's pre-suit investigation. The Second Circuit accepted the EEOC's argument, holding that "[t]he sole question for judicial review is whether the EEOC conducted an investigation. As the district and magistrate judges in this case recognized, courts may not review the sufficiency of an investigation?only whether an investigation occurred." *Id.* at *9. The Second Circuit also noted the low burden that the EEOC must meet to satisfy its pre-suit obligations, asserting that the EEOC is not required to provide a detailed explanation of its investigation or the evidence gleaned from the investigation and that "...an

affidavit from the EEOC, stating that it performed its investigative obligations and outlining the steps taken to investigate the charges, will usually suffice.” *Id.* at *11. Ultimately determining that the EEOC did in fact conduct a nationwide pre-suit investigation into the charging parties’ discrimination claims, the EEOC vacated the district court’s decision and remanded the case for further proceedings.

The Second Circuit’s decision indicates that employers facing investigations by the EEOC may not be able to rely on the defense that the EEOC’s investigation into the charging party’s claims was inadequate. The decision reasoned that more extensive review of EEOC actions would “expend scarce resources and would delay and divert EEOC enforcement actions from furthering the purpose behind Title VII—eliminating discrimination in the workplace.” *Id.* at 11-12. This week’s decision suggests that courts will afford the EEOC great latitude in the manner in which it investigates allegations of discrimination. If other jurisdictions follow the Second Circuit’s reasoning, it is unlikely that employers will be able to defeat an EEOC charge based on the sufficiency of the agency’s investigation into such charges.

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