



Fifth Circuit Determines That Temporary, Indefinite Employment Does Not Toll the Limitations Period for Age Discrimination

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Phillips v. Leggett and Platt, Inc., No. 10-60585 (5th Cir. Sept. 21, 2011)

On September 21, 2011, the Fifth Circuit reversed a district court's decision to award an age discrimination plaintiff \$48,000 because the plaintiff's claim was time-barred.

In *Phillips v. Leggett and Platt, Inc.*, the plaintiff, a 66-year-old former employee for the defendant, was terminated and replaced by a 35-year-old employee. Phillips worked for Leggett and Platt for 24 years when it announced that it was shutting down the plant where she worked. "Later that month, Leggett informed Phillips that there were no positions available for her at the Houlka facility. She would be laid off once the Verona facility closed with her last day of employment being July 30, 2007." Four business days after the end of her employment, Leggett and Platt called Phillips to work on a temporary basis in the Houlka plant.

After approximately five months working at the Houlka facility, the plaintiff was informed that her temporary employment would end. Her employment was officially terminated on January 2, 2008. Only sixty-three days after the temporary work ended, but almost nine months after she was informed of her original termination, Phillips filed a charge with the EEOC alleging age discrimination for the original termination. The EEOC issued a right to sue letter. Thereafter, the plaintiff successfully argued in district court that the 180-day limitations period did not begin until she was terminated at the Houlka facility, or in the alternative, the limitations period should be equitably tolled.

In reversing the district court's decision, the Fifth Circuit determined that under the Age Discrimination in Employment Act, "a plaintiff is required to file a charge with the EEOC 'within 180 days after the alleged unlawful practice occurred.' 29 U.S.C. § 626(d)(1)(A)." Moreover, the 180-day limitations period begins "when an employee is unambiguously informed of an immediate or future termination." Here, the Fifth Circuit concluded that although "her rehiring for a temporary position on August 6 may have created a glimmer of hope of permanent re-employment if she performed well, ... [t]hat hope, however, was not enough to delay the start of the ADEA limitations period. The real-world sensitivities face a bright-line rule: **the limitations period began to run upon the unequivocal notification that her employment would ultimately be terminated, absent any later equivocation**

which did not occur here.”

In regards to the plaintiff’s equitable tolling argument, the Court concluded that generally, in the Title VII context, there are three bases for equitable tolling in the Fifth Circuit:

- (1) a pending action between parties in the wrong forum;*
- (2) the plaintiff’s unawareness of the facts supporting his claim because defendant intentionally concealed them; and*
- (3) the EEOC’s misleading the plaintiff about his rights.*

Here, the Court determined that there was no evidence that the “action on which the tolling is based — giving Phillips a temporary job — was misleading.” Although, it may have “created a practical problem for Phillips ... it did not alter the legal effect of earlier notice of an allegedly improper employment action.” Therefore, the Fifth Circuit ruled that the plaintiff’s wrongful termination claim should not have been equitably tolled.

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