

# EEOC Cannot Proceed on Nationwide Pattern and Practice Litigation Because It Failed to Conduct a Nationwide Investigation During the Charge Stage

## Labor & Employment Law Update

on April 8, 2014

The United States District Court for the Western District of New York ruled in favor of Sterling Jewelers, Inc., and dismissed, with prejudice, the EEOC's claim against the company alleging nationwide pattern and practice discrimination. The court found that the EEOC did not present sufficient evidence to demonstrate that the agency undertook a nationwide investigation of the pattern and practice claims. As such, the court found that the EEOC was barred from proceeding on those claims and granted summary judgment to Sterling Jewelers.

Throughout the last few years, there have been many court decisions granting the EEOC almost unfettered discretion in conducting their investigations and conciliating with employers. One exception to that trend has been that courts have generally been dismissing class claims if the EEOC did not discover those claims during the investigation stage. Courts have dismissed class claims brought by the EEOC where the EEOC used the discovery process in litigation to identify a class, holding that the EEOC needs to identify that class during its investigation and not wait until litigation to determine if there is a class. One court held that "where the scope of its pre-litigation efforts [is] limited in terms of geography, number of claimants, or nature of claims – the EEOC may not use discovery in the resulting lawsuit as a fishing expedition to uncover more violations."

In this case, Sterling Jewelers asserted the absence of a nationwide pre-suit investigation as an affirmative defense to the case and discovery was conducted on that issue. The EEOC presented no evidence of any nationwide investigation and, in fact, the investigation appeared limited to two facilities. The EEOC argued that a court may not inquire into the scope of its pre-suit investigation. However, the court did not buy that argument and found that the EEOC has a statutory obligation to conduct an investigation and the court could inquire into whether the EEOC actually did conduct an investigation on the nationwide pattern and

practice claims. The court found that “where, as here, the EEOC completely abdicates its role in the administrative process, the appropriate remedy is to bar the EEOC from seeking relief....”

This is an important reminder for employers to keep in mind and document during the investigation stage as well as after the EEOC has filed suit alleging a class or pattern and practice allegations.

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