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Third Circuit holds Title VII verification requirement may be equitably waived.

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When a party files a lawsuit they almost always are required to sign a statement that the accusations in the legal pleading are true. This signature is typically called a “verification.” The United States Third Circuit Court of Appeals (Third Circuit) recently issued an opinion holding that this requirement may be “equitably waived” in some circumstances. The case is *Buck v. Hampton School District*. (A copy of the case can be found at www.findlaw.com.)

The Facts of the Case:

Kathleen Buck a secretary for the Hampton School District from 1993 through October 2002. Ms. Buck claimed the superintendent, Dr. Lawrence Korchnak, did inappropriate things to her like rubbing himself in front of her and asking her to kiss him. Ms. Buck resigned in October 2002 and lost her benefits as well as 15% of her pension. Shortly thereafter Ms. Buck filled out an intake questionnaire with the Equal Employment Opportunity Commission (EEOC). She also completed an eight-page charge of discrimination. Ms. Buck’s attorney signed the charge and it was forwarded by the EEOC to Dr. Korchnak and the Hampton School District. The School District responded to the charge in detail and denied all of Ms. Buck’s allegations. The EEOC granted Ms. Buck a “right to sue” letter, which allowed her to file her case in Federal Court. Ms. Buck filed her case with five counts of discrimination. The school district responded with a motion to dismiss. They argued Ms. Buck’s failed to sign her EEOC verification and consequently the District Court could not hear the case. The District Court granted the motion to dismiss and Ms. Buck appealed to the Third Circuit.

The Third Circuit Holding:

Judge Rendell issued the opinion for the court. She concluded that Ms. Buck did fail to sign her charge of discrimination and therefore it was not verified. Judge Rendell reviewed Title VII

statutory requirements and concluded a signed verification by the charging employee is a **statutory requirement**. One of the purposes behind the statutory requirement of the signed verification is so that employers are not forced to respond and defend a frivolous Title VII charge. Judge Rendell found that the EEOC regulations allow employees to correct the verification requirement. However, she also found that the ability to fix the technical defect does not serve the purpose behind the policy once an employee files their Title VII law suit in Federal Court. Nonetheless, Judge Rendell considered the fact that the School District received notice of the discrimination charge, filed a detailed response, and never raised the verification problem in the response as critical to the outcome of the this case. The rule issued from this case is that failing to verify an EEOC charge will not prevent a case from being heard in Federal Court where the employer **failed to raise the defect** at the EEOC and before the case was filed in Federal Court. Judge Rendell wrote, “[W]here, as here, an employer has actual notice of a discrimination charge and chooses to respond to the merits of the claim before the EEOC without asserting lack of verification as defense it waives its right to secure dismissal of the federal court proceedings on that basis.” *Buck v. Hampton Township School District*, 2006 U.S. App. LEXIS 16463, *23 (3rd Cir. Pa. June 30, 2006).

What does this mean for employees experiencing discrimination in the workplace?

Make sure you sign the documents that you file with the EEOC. When signing these documents ask whether you have completed the statutory requirements for signing necessary documents under oath. If there is some technical flaw with your case you should take care of it before the “right to sue” letter is issued from the EEOC.

What does this mean for employers defending discrimination claims?

Raise any technical deficiencies before the EEOC issues the “right to sue” letter. Your failure to raise the deficiency may result in equitable waiver at the Federal Court level. On the other hand, if you raise a statutory requirement that has not been met and the employee fails to fix it, the employee’s failure to fix the deficiency may support a motion to dismiss in Federal Court.

What does this mean for someone considering an appeal?

Judge Rendell looked at the policy behind the statutory requirement. She also considered cases with similar issues in other circuits. It is important to note she disagreed with the analysis in a 7th Circuit District Court opinion on the same issue. She referred frequently to the EEOC *amicus* briefs in her analysis. Parties considering an appeal should consider researching other circuit opinions and consider the input and effect of *amicus* before developing the theory of the appeal.

For more information about this case and other appellate issues contact Deem & López Law Offices at info@dflworkforjustice.com or call (717) 892-3900.

