

Second Circuit Upholds Dismissal Of Untimely Filed State Law Claims From Title VII Harassment Suit

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Last week the U.S. Court of Appeals ruled that filing a charge of discrimination with the U.S. Equal Opportunity Commission (EEOC) does not toll the limitations periods for filing state law tort claims, even if the state law claims arise out of the same factual circumstances as the discrimination alleged in the EEOC Charge. *Castagna v. Luceno*, No. 13-076-cv, 2014 WL 840964 (2d Cir. March 5, 2014). This issue has not yet been decided in most of the federal appeals courts, but the Second Circuit joins in adopting the result previously reached in the Ninth and Seventh Circuits. (*Arnold v. United States*, 816 F.2d 1306, 1313 (9th Cir. 1987); *Juarez v. Ameritech Mobile Communications, Inc.*, 957 F.2d 317, 323 (7th Cir. 1992). The Second Circuit's holding in *Castagna v. Luceno* confirms the views of most federal district courts that have considered joint federal and state claims in a single lawsuit in federal court. Plaintiffs claiming discrimination now will be prompted to either to file their state law claims in an independent state court lawsuit, even before the EEOC has processed their charge of discrimination, followed by a federal action based on the same facts, or to more often request an early "right to sue" letter from the EEOC and proceed more directly to federal court, foregoing the option of possible relief from the EEOC. Title VII requires prospective plaintiffs to exhaust administrative remedies by filing a timely charge of discrimination with the EEOC, but state law tort claims and some federal statutes, such as Section 1981 of the Civil Rights Act, do not require a prior filing with the EEOC. In *Castagna v. Luceno*, an accountant/receptionist sued her employer and her former boss for alleged sex-based harassment, including incidents of abusive behavior, physical contact and lewd comments. She filed a charge of discrimination with the EEOC and then a timely federal court lawsuit under Title VII after receiving a "right to sue" letter from the EEOC. However, while awaiting the EEOC's consideration of her claims, the one-year time period allowed under New York law for her accompanying tort claims of intentional infliction of emotional distress, battery and assault expired. The federal trial court dismissed her state law tort claims as time-barred and the Second Circuit Court of Appeals affirmed. The Court of Appeals based its decision primarily on the U.S. Supreme Court's holding in *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975) that the filing of a charge of discrimination with the EEOC does not toll the running of the state statutes of limitation that govern civil rights claims under Section 1981, because Congress intended that the two remedies be "truly independent." Applying similar reasoning, the Court of Appeals in *Castagna v. Luceno* found that the intent of Congress was that Title VII actions be "truly independent" remedies from state law claims as well, even if the state law claims involve the same circumstances. The Court of Appeals rejected Castagna's argument that judicial efficiency required or permits tolling of the state law claims. The court in *Castagna v. Luceno* did not consider or rule on the plaintiff's argument that New York law mandates tolling of her state law claims, finding that this argument was forfeited by not asserting to before the trial court. Plaintiffs under in Title VII cases continue to have no basis for arguing that they can delay bringing their state law claims, which often have short statutes

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of limitation, until they file a federal court action. However, the Court of Appeals opinion does suggest that plaintiffs could opt to file a state court action and then to seek a stay of that action pending the resolution of a later federal court lawsuit.