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Employment Practices Liability

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EEOC Proposes Rule Changes for Procedural Regulations Under Title VII, ADA and GINA and Procedures for ADEA

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On February 22, 2019, the Equal Employment Opportunity Commission (EEOC) published proposed rule changes that would, inter alia, clarify the process for deferral to state and local agencies and update "no cause" determination procedures.

Proposed Updates Regarding Deferrals to State and Local Agencies: The EEOC has published proposed regulations that would clarify the time period within which an individual could file a charge with the EEOC for complaints arising in "deferral" states, which include Connecticut. In deferral states, which have their own fair employment practices agencies, an individual gets 300 days to file a charge with the EEOC instead of the usual 180 days.

The proposed revision will more clearly indicate that, if the statute in the deferral state covers the same general basis or category of discrimination alleged by the charging party, the charging party has 300 days to file a charge with the EEOC. This is true even if the charging party alleges a specific violation not recognized under the state statute.

For example, if a statute covers the general category of discrimination being claimed by the individual (e.g., religious discrimination) but the individual alleges a specific violation that is not recognized under the state statute (e.g., religious accommodation), then the individual would still get the full 300 days to file a charge.

"No Cause" Determination Procedure Proposed Updates: The EEOC also proposes an amendment to add language clearly communicating that a dismissal from the agency includes notice of the charging party's statutory right to file a lawsuit. Additionally, the EEOC proposes to revise the regulatory language to clarify that a "no cause" closure of a charge is not a final evaluation of whether discrimination occurred or is occurring. The proposed amended language is intended to more clearly communicate that after a "no clause" closure, private proceedings or litigation may still lead to court findings of discrimination or settlements in favor of charging parties.

Vitally, pursuant to this proposal, the EEOC may on its own initiative reconsider a final determination of no reasonable cause and a director of the issuing office may, on his or her own initiative, reconsider a final determination of no reasonable cause. If the Commission or the director of the issuing office decides to reconsider a final no cause determination, a notice of intent to reconsider shall promptly issue to all parties to the charge.

If the 90-day period for filing suit has expired or the charging party has either filed suit or requested a notice of right to sue, the notice of intent to reconsider will vacate the "no cause" determination but will not revoke the charging party's right to sue within 90 days. After reconsideration, the Commission or a director of the issuing office shall issue a new determination.

If the notice of intent to reconsider is issued while the 90-day period is still running, and the charging party has not filed suit and did not request and receive a notice of right to sue, the notice of intent to reconsider shall vacate the determination and shall revoke the charging party's right to bring suit within 90 days. In those circumstances where the charging party's right to bring suit within 90 days was revoked, the determination shall include notice that a new 90-day suit period shall begin upon the charging party's receipt of the determination.

There is no provision in the proposed regulations for the parties to submit additional information, documents or arguments during the reconsideration period.

Names of Charging Parties in ADEA Claims Could be Withheld from the Employer: A provision proposed by the EEOC provides that a charge of an unlawful employment practice within the meaning of the ADEA may be made by or on behalf of any person claiming to be aggrieved. If a charge is brought on behalf of an individual, the written charge need not identify by name the person on whose behalf it is made. Any such person may request that the Commission keep his or her identity confidential, and the Commission will disclose such identity only to Federal, State or local agencies that also have agreed to keep such information confidential.

Conclusion: These changes, if adopted, will affect the defense of claims of employment discrimination. Comments on these proposed changes will be accepted until April 23, 2019.

Our office will continue to monitor the status of the EEOC's proposed rules and will keep clients informed of any rules that are adopted as final.

Robin Kallor is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including the selection process, discrimination and harassment related issues and frequently conducts neutral workplace investigations. If you have questions about this legal update, please contact us at 860-361-7999. If you wish to receive future updates on labor and employment related topics,please contact Carolyn Field, CIRMA Communications Supervisor at cfield@ccm-ct.org.

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