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## Employers Who Prevail In A Title VII Case May Seek Attorneys' Fees Even Without A Ruling On The Merits

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In a unanimous decision, the U.S. Supreme Court ruled that a Title VII defendant is not required to obtain a favorable judgment on the merits of the underlying discrimination case to be eligible to recover its attorneys' fees. The decision means that employers who are able to dispose of Title VII claims for non-merits reasons, such as a dismissal on statute-of-limitations grounds, lack of subject matter jurisdiction, failure of the EEOC to conciliate, or something similar, may ask a court to award the attorneys' fees incurred in contesting the claims (assuming, of course, it satisfies the remaining requirements for an attorneys' fees award). Refusing to decide whether the EEOC must pay the \$4 million attorney fee award at issue, the Court sent the case back to the Eighth Circuit Court of Appeals to consider an alternative theory proposed by the EEOC. *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. \_\_\_\_ (2016).

### **Trucking Company Gets Sexual Harassment Claims Dismissed**

In the case before the Court, a new female driver at a large trucking company, CRST Van Expedited, Inc., filed a discrimination charge with the EEOC alleging that she was sexually harassed by two male trainers during her 28-day over-the-road training trip. After a lengthy investigation and unsuccessful conciliation, the EEOC filed suit alleging sexual harassment on behalf of the driver and other allegedly similarly situated female employees. During discovery, the EEOC identified over 250 other women who had supposedly been harassed.

Years of legal battles ensued, during which the district court ultimately dismissed all of the EEOC's claims for various reasons, including expiration of the statute of limitations, lack of severity or pervasiveness of the alleged harassment, employees' failure to complain timely, CRST's prompt and effective response to harassment complaints, and discovery sanctions for the EEOC refusing to produce certain women for depositions. Upon dismissing the lawsuit, the court ruled that CRST was a prevailing party and invited them to apply for attorneys' fees. CRST did, and the court awarded CRST over \$4 million in fees.

The EEOC appealed (twice) and the Eighth Circuit Court of Appeals, among other things, reversed the award of attorneys' fees. Bound by previous decisions in its circuit, the Court of Appeals held that before a defendant could be deemed to have prevailed for purposes of recovering

attorneys' fees, the defendant had to obtain a favorable judicial determination on the merits of the case. The Eighth Circuit then determined that CRST had not prevailed on the claims brought on behalf of 67 women because their claims were dismissed due to the EEOC's failure to investigate and conciliate, which was not a ruling on the merits. As a result, the Eighth Circuit ruled that CRST was not entitled to an award of attorneys' fees on those claims. CRST appealed to the United States Supreme Court.

### **Defendant As “Prevailing Party”**

Title VII provides that a court, in its discretion, may award reasonable attorneys' fees to the prevailing party. Accordingly, before deciding whether to award attorneys' fees in any given case, a court must determine whether the party seeking fees has, in fact, prevailed. That determination is relatively clear when a plaintiff proves his or her discrimination case and a favorable judgment or court order is entered in the plaintiff's favor. But there has been no clear definition on how courts should determine whether a defendant has prevailed, especially when the complaint is dismissed for procedural deficiencies or on jurisdictional grounds.

In rejecting the Eighth Circuit's requirement that “prevailing party” status depends on a ruling on the merits, the Court stated that “[c]ommon sense undermines the notion that a defendant cannot 'prevail' unless the relevant disposition is on the merits.” Instead, the Court held that a defendant fulfills its primary objective whenever it can rebuff the plaintiff's case, irrespective of the precise reason for the court's decision. Looking to the congressional intent for Title VII's fee-shifting provision, the Court ruled that a defendant may “prevail” even when the court's final judgment is not on the merits.

### **Fees Expended in Frivolous, Unreasonable, or Groundless Litigation**

The Court noted that under Title VII's fee-shifting provision, prevailing defendants may seek attorneys' fees whenever the plaintiff's claim was frivolous, unreasonable, or groundless. The Court recognized that defendants spend significant attorney time and expenses contesting frivolous and unreasonable claims that result in their favor, whether on the merits or not, and that a request for an award of fees in such cases is appropriate.

### **Good News For Employers**

The Court's decision is good news for employers defending Title VII claims because it makes clear that a defendant may ask for attorneys' fees when it gets a favorable judicial result for reasons not on the merits, where the defendant can show that the plaintiff's claim was frivolous, unreasonable, or groundless. That clarification may help deter the EEOC and individual plaintiffs from filing or continuing to litigate groundless claims.

That said, we may not have seen the final word on application of the Title VII fee-shifting provision as the Court sent the CRST case back to the Eighth Circuit to consider a new argument put forth by the EEOC, namely

that a defendant must obtain a preclusive judgment in order to be the “prevailing party.” We’ll keep tabs on this case and let you know of any further developments.

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