The EEOC Turns 50: A Review of the Nation's Civil Rights Agency*

By Phyllis W. Cheng

The U.S. Equal Employment Opportunity Commission (EEOC or Commission) celebrates its 50th anniversary this year. The civil rights agency of the nation, the EEOC has reached its maturity through a half-century of development. This article provides a retrospective look at the EEOC and its enforcement role in developing employment discrimination law.

Background and Authority of the EEOC

On July 2, 1964, President Lyndon Johnson signed into law the 1964 Civil Rights Act.[1] Title VII of the Act prohibits discrimination by covered employers on the basis of race, color, religion, sex, or national origin.[2]

Title VII further created the EEOC, the federal agency that administers and enforces civil rights laws against workplace discrimination.[3] The Commission is a five-member, bipartisan commission whose mission is to eliminate unlawful employment discrimination. The law provides that the Commissioners, no more than three of whom may be from the same political party, are appointed to five-year terms by the President and confirmed by the Senate. The Chairman of the agency appoints the General Counsel.[4]

Exactly one year after the 1964 Civil Rights Act was enacted, the EEOC opened its doors on July 2, 1965.[5] The agency has the authority to investigate, issue findings, settle, and prosecute charges of discrimination against covered employers with 15 or more employees. The EEOC also works to prevent discrimination before it occurs through outreach, education, and technical assistance programs.[6] The Commission enforces Title VII, the Age Discrimination in Employment Act (ADEA),[7] the Equal Pay Act (EPA),[8] the Americans with Disabilities Act (ADA),[9] and the Genetic Nondiscrimination Information Act (GINA).[10]

In 2015, the EEOC is budgeted at $364,500,000, with a staff of 2,347 federal employees in Washington, D.C. and in 53 district and field offices throughout the United States.[11]

EEOC Milestones

The 1960's: Formative Years

Although the EEOC could not yet file lawsuits directly against employers, in 1968 the agency began to submit *amicus* or "friend of the court" briefs in cases brought by private individuals, seeking to develop favorable legal precedents on key substantive and procedural issues. By now, the Commission has taken the position that employers cannot rely on state protective laws as a defense to sex discrimination claims. In *Rosenfeld v. Southern Pacific Company*[12] and *Weeks v. Southern Bell Telephone Company*,[13] two Federal Courts of Appeal ultimately adopted EEOC's *amicus* position, striking down state laws limiting the jobs women could hold and specifically ruling that employers cannot rely on the stereotype that women are unable to lift weights of more than 30 pounds.[14]

The 1970's: Development of the Law

- In 1971, the Supreme Court in *Phillips v. Martin Marietta Corporation*[15] held that Title VII's prohibition against sex discrimination meant that employers could not discriminate on the basis of sex plus other factors such as having school age

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* This article was originally published in the October 2015 issue of Bender's California Labor & Employment Bulletin and is reprinted with permission.

[1] Pub. L. No. 88–352, 78 Stat. 241 (1964).

[2] 42 U.S.C. § 2000e-2.

[3] 42 U.S.C. § 2000e-4.

[4] 42 U.S.C. § 2000e-4.

[5] *See*, EEOC Website, *EEOC at 50*, at http://www.eeoc.gov/eeoc/history/50th/index.cfm.

[6] 42 U.S.C. § 2000e–4.

[7] 29 U.S.C. § 621 *et seq*.

[8] 29 U.S.C. § 206(d).

[9] 42 U.S.C. § 12101 *et seq*.

[10] 42 U.S.C. § 2000ff *et seq*.

[11] *See* EEOC Website, About EEOC, *Location*, at http://www.eeoc.gov/eeoc/, and *EEOC Budget and Staffing History 1980 to Present*, at http://www.eeoc.gov/eeoc/plan/budgetandstaffing.cfm.

[12] *Rosenfeld v. Southern Pacific Co*., 444 F.2d 1219 (9th Cir. 1971).

[13] *Weeks v. Southern Bell Telephone C*o., 408 F.2d 228—Court of Appeals (5th Cir. 1969).

[14] *See* EEOC Website, *Milestones: 1971*, at http://www.eeoc.gov/eeoc/history/50th/milestones/1968.cfm/.

[15] *Phillips v. Martin Marietta Corp*., 400 U.S. 542 (1971).

children. In practical terms, EEOC's policy forbade employers from using one hiring policy for women with small children and a different policy for males with children of a similar age.[16]

- In *Griggs v. Duke Power Company*,[17] the Supreme Court decided that where an employer uses a neutral policy or rule, or utilizes a neutral test, and this policy or test disproportionately affects minorities or women in an adverse manner, then the employer must justify the neutral rule or test by proving it is justified by business necessity. The Court reasoned that Congress directed the thrust of Title VII to the consequences of employment practices, not simply the motivation. This decision paved the way for EEOC and charging parties to challenge employment practices that shut out groups if the employer cannot show the policy is justified by business necessity.[18]
- In *McDonnell Douglas Corporation v Green*,[19] the Supreme Court held that a charging party can prove unlawful discrimination indirectly by showing, for example, in a hiring case that: (1) the charging party is a member of a Title VII protected group; (2) he or she applied and was qualified for the position sought; (3) the job was not offered to him or her; and (4) the employer continued to seek applicants with similar qualifications. The Court found that if the plaintiff could prove these four elements, the employer must show a legitimate lawful reason why the individual was not hired. The employee still may prevail, the Court explained, if he or she discredits the employer's asserted reason for not hiring him or her.
- In *Espinoza v. Farah Manufacturing Co*mpany,[20] the Supreme Court held that non-citizens are entitled to Title VII protection and stated that a citizenship requirement may violate Title VII if it has the purpose or effect of discriminating on the basis of national origin.
- In *Alexander v. Gardner-Denver Company*,[21] the Supreme Court ruled that an employee who submits a discrimination claim to arbitration under a collective bargaining agreement is not precluded from suing his or her employer under Title VII. The Court reasoned that the right to be free of unlawful employment discrimination is a statutory right and cannot be bargained away by the union and employer.
- In *Corning Glass Works v. Brennan*,[22] the Supreme Court held that under the Equal Pay Act the allocation of proof in a pay discrimination case requires the plaintiff to prove that an employer pays an employee of one sex more than an employee of the other sex for substantially equal work.
- In *Albermarle Paper Company v. Moody*,[23] the Supreme Court decided that, after a court has found an employer guilty of discrimination, the "wronged" employee is presumed to be entitled to back pay.
- In *General Electric Company v. Gilbert*,[24] the Supreme Court ruled that a health insurance plan for employees providing sickness and accident benefits for any disability except those arising as a result of pregnancy did not constitute sex discrimination under Title VII, although the Court acknowledged that only women can become pregnant.
- In *Franks v. Bowman Transportation Co*,[25] the Supreme Court held that Title VII requires an employer to hire a victim of unlawful discrimination with seniority starting from the date the individual was unlawfully denied the position.
- In *McDonald v. Santa Fe Transportation Company*,[26] the Supreme Court held that Title VII prohibits racial discrimination against whites as well as blacks.
- In *International Brotherhood of Teamsters v. United States*,[27] the Supreme Court ruled that in a pattern or practice discrimination case, once the employee proves that the employer systematically discriminated, all the affected class members are presumed to be entitled to relief (such as back pay, reinstatement, etc.) unless the defendant proves that the

[16] *See Milestones: 1971*, *supra* Note 14.

[17] *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

[18] *See Milestones: 1971*, *supra* Note 14.

[19] *McDonnell Douglas Corp. v Green*, 411 U.S. 792 (1973).

[20] *Espinoza v. Farah Mfg. Co*., 414 U.S. 86 (1973).

[21] *Alexander v. Gardner-Denver Co*., 415 U.S. 36 (1974).

[22] *Corning Glass Works v. Brennan*, 417 U.S. 188 (1974).

[23] *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

[24] *General Elec. Co. v. Gilbert*, 429 U.S. 125 (1976).

[25] *Franks v. Bowman Transp. Co*., 424 U.S. 747 (1976).

[26] *McDonald v. Santa Fe Trail Transp. Co*., 427 U.S. 273 (1976).

[27] *International Brotherhood of Teamsters v. U.S*., 431 U.S. 324 (1977).

individuals were not the victims of the employer's pattern or practice of discrimination.

- In *Hazelwood School District v. United States*,[28] the Supreme Court ruled that an employee can establish a *prima facie* case of class hiring discrimination through the presentation of statistical evidence by comparing the racial composition of an employer's workforce with the racial composition of the relevant labor market. The Court explained that absent discrimination, an employer's workforce should reflect the composition of the employer's applicant pool.
- The Supreme Court in *Trans World Airlines, Inc. v. Hardison*[29] decided its first Title VII religious discrimination case. The Court stated that under Title VII employers must reasonably accommodate an employee's religious needs unless to do so would create an undue hardship for the employer. The Court defined hardship as anything more than *de minimis* cost.
- In *Occidental Life Insurance Company v. EEOC*,[30] the Supreme Court addressed many of the procedural arguments advanced by employers that had prevented EEOC's lawsuits from going forward. The Court held that EEOC lawsuits do not have to be filed in court within 180 days after the filing of a charge and that EEOC lawsuits are not subject to state statutes of limitation.
- In *Los Angeles Department of Water and Power v. Manhart*,[31] the Supreme Court ruled that an employer may not use the fact that women as a group live longer than men to justify a policy of requiring women employees to make larger contributions than men to a pension plan to receive the same monthly pension benefits when they retire.

The 1980's: Expansion of the Law

- In *General Telephone Company of the Northwest v. EEOC*,[32] the Supreme Court upheld the EEOC's authority to seek class-wide relief for victims of discrimination without being restricted by the class-action rules applicable to private litigants. The Court emphasized that when EEOC files suit, it acts to vindicate the "overriding public interest in equal employment opportunity."[33]
- In *County of Washington v. Gunther*,[34] the Supreme Court held that the Bennett Amendment,[35] which incorporated the four affirmative defenses of the Equal Pay Act into Title VII, does not limit Title VII pay discrimination claims to EPA claims. The Court found that Title VII wage claims can be broader than EPA claims because Title VII, unlike the EPA, is "intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes."[36]
- In *Connecticut v. Teal*,[37] the Supreme Court held that an employer is liable for racial discrimination when any part of its selection process, such as an unvalidated examination or test, has a disparate impact even if the final result of the hiring process is racially balanced. In effect, the Court rejected the "bottom line" defense and makes clear that the fair employment laws protect the individual.[38] The *Teal* decision means that fair treatment of a group is not a defense to an individual claim of discrimination.
- The Supreme Court in *Zipes v. Trans World Airlines*,[39] clarified the requirements for filing a private lawsuit under Title VII. The Court explained that the timely filing of a charge is not a jurisdictional requirement but like a statute of limitations and, therefore, is subject to equitable tolling and waivers.
- In *EEOC v. Shell Oil Company*,[40] the Supreme Court affirmed the authority of EEOC's Commissioners to initiate charges of discrimination through "Commissioners Charges."

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[28] *Hazelwood Sch. Dist. v. U.S.*, 433 U.S. 299 (1977).

[29] *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).

[30] *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355 (1977).

[31] *Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702 (1978).

[32] *General Telephone Co. of Northwest v. EEOC*, 446 U.S. 318 (1980).

[33] 446 U.S. at 326.

[34] *County of Washington v. Gunther*, 452 U.S. 161 (1981).

[35] The Bennett amendment to section 703(h) of Title VII, 42 U.S.C. § 2000e-2(h) (1976), provides: "It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by [the Equal Pay Act]."

[36] 452 U.S. at 180 (quoting *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 763 (1976)).

[37] *Connecticut v. Teal*, 457 U.S. 440 (1982).

[38] 457 U.S. at 452.

[39] *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982).

[40] *EEOC v. Shell Oil Co.*, 466 U.S. 54 (1984).

- In *Meritor Savings Bank v. Vinson*,[41] the Supreme Court for the first time recognized that sexual harassment is a violation of Title VII. The Court in formulating its opinion, favorably cited EEOC's policy guidance on sexual harassment.
- In *Johnson v. Transportation Agency, Santa Clara County*,[42] the Supreme Court explained the requirements for a lawful voluntary affirmative action plan. The Court explained that in order for an affirmative action plan to be valid, an employer must show a conspicuous under-representation of minorities or women in traditionally segregated job categories, and that the plan does not unnecessarily restrict the rights of male or non-minority employees, or create an absolute barrier to their advancement.
- The Supreme Court in *EEOC v. Commercial Office Products,*[43] clarified the relationship between the EEOC and state and local Fair Employment Practice Agencies (FEPAs). The Court held that a FEPA's decision to waive Title VII's 60-day deferral period pursuant to a work-sharing agreement "terminates" state proceedings and permits the EEOC to immediately deem the charge filed and begin processing. The Court also ruled that a charging party who files a charge that is untimely under state law is nonetheless entitled to Title VII's longer 300-day federal filing period rather than the 180-day period.
- The Supreme Court in *Watson v. Fort Worth Bank & Trust*,[44] in a unanimous opinion, declared that the disparate impact analysis can be applied to subjective or discretionary selection practices. In the past, the Court had applied disparate impact only to tests and other presumptively objective practices.
- The Supreme Court in *Price Waterhouse v. Hopkins*[45] established how to analyze an employer's actions when the employer has mixed motivations for the employment decision, i.e., the employer was motivated by a legitimate reason and also by an unlawful reason such as race or sex bias. The Court held that if a plaintiff shows that discrimination played a motivating part in an employment decision, the employer can attempt to prove, as a complete affirmative defense, that it would have made the same employment decision even if discrimination were not a factor.
- In *Wards Cove Packing Company v. Atonio*,[46] the Supreme Court ruled that when a plaintiff makes a showing of a disparate impact violation of Title VII, the employee must do so by demonstrating that specific practices (and not the cumulative effect of the employer's selection practices) adversely affected a protected group. Further, the Court held that when a showing of disparate impact is made, the employer only has to produce evidence of a business justification for the practice, and that the burden of proof always remains with the employee.
- In *Public Employees Retirement System of Ohio v. Betts*,[47] the Supreme Court rejected the EEOC's position that a benefit plan that denied disability benefits to employees over the age of 60 at the time of retirement violates the Age Discrimination in Employment Act. Instead, the Supreme Court ruled that the ADEA does not prohibit discrimination in employment benefit plans, as long as the benefit plan is not a means to discriminate in some "non-fringe" benefit aspect of employment. In short, the Court held that the ADEA's prohibition against age discrimination does not apply to employee fringe benefits in most circumstances.
- The Supreme Court in *Lorance v. AT&T Technologies, Inc.,*[48] decided when a charging party must file a discrimination charge if the charging party is challenging a seniority system that is neutral (and non-discriminatory) on its face. The Court held that the time in which a facially-neutral seniority system can be challenged runs from the adoption of the alleged discriminatory system. The Court rejected the EEOC's position that the limitations period begins to run only when the employee is adversely affected by the seniority system.

The 1990's: Refinement of the Law

- In *International Union v. Johnson Controls,*[49] the Supreme Court addressed the issue of fetal hazards. In this case, the employer barred women

[41] *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

[42] *Johnson v. Transportation Agency*, 480 U.S. 616 (1987).

[43] *EEOC v. Commercial Office Products Co*., 486 U.S. 107 (1988).

[44] *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977 (1988).

[45] *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

[46] *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).

[47] *Public Employees Retirement System of Ohio v. Betts*, 492 U.S. 158 (1989).

[48] *Lorance v. AT&T Techs*., 490 U.S. 900 (1989).

[49] *Automobile Workers v. Johnson Controls, Inc*., 499 U.S. 187 (1991).

of childbearing age from certain jobs due to potential harm that could occur to a fetus. The Court ruled that the employer's restriction against fertile women performing "dangerous jobs" constitutes sex discrimination under Title VII. The Court explained that the safety exception is limited to instances in which sex or pregnancy actually interferes with the employee's ability to perform the job, and that danger to a woman herself does not justify discrimination. The Court further held that the employer's fetal-protection policy could be justified as a bona fide occupational qualification (BFOQ) defense only if being able to bear children interferes with a woman's ability to perform the duties of her job. Accordingly, the Court found that the fact that the job posed risk to fertile women did not justify barring all fertile women from the position.

- The Supreme Court in *Gilmer v. Interstate/Johnson Lane*[50] ruled that an individual who has signed an agreement to arbitrate employment disputes with his or her employer cannot proceed with an Age Discrimination in Employment Act lawsuit in court but must instead submit the dispute to an arbitrator. This decision differed from the Court's earlier decision in *Alexander v. Gardner-Denver*,[51] where the Court held that an employee could proceed with a Title VII lawsuit even though the union to which he belonged had agreed in a collective bargaining agreement to submit discrimination disputes to arbitration.
- In *St. Mary's Honor Center v. Hicks*,[52] the Supreme Court held that the plaintiff in an employment discrimination case is not entitled to automatically win even if he establishes a *prima facie* case of discrimination and demonstrates that all of the reasons advanced by the employer for the "challenged action" are false. The Supreme Court's decision meant that even if the plaintiff can prove the employer's asserted defense is pretextual, a finding of unlawful discrimination is not mandatory; a fact-finder may still conclude that the employer's action is not discriminatory.
- In *Harris v. Forklift Systems, Inc*.,[53] the Supreme Court ruled that in a sexual harassment case, the plaintiff does not have to prove concrete psychological harm to establish a Title VII violation.
- A unanimous Supreme Court in *McKennon v. Nashville Banner Publishing Company*,[54] rejected the so called "after acquired evidence" doctrine applied by lower courts to bar a plaintiff from proving unlawful discrimination. Under the doctrine, employers, after firing an employee or taking other adverse action, justify their actions by relying on evidence uncovered after the employee's termination that would have justified the termination. The Supreme Court held that in such cases, the employer is still liable for having violated an anti-discrimination law, but the employee is not entitled to reinstatement or to back pay for the period after the employer learns of the misconduct.
- The Supreme Court in *O'Connor v. Consolidated Coin Caterers Corporation*[55] held that to show unlawful discrimination under the Age Discrimination in Employment Act, a discharged plaintiff does not have to show that he or she was replaced by someone outside the protected age group (i.e., under age 40).
- A unanimous Supreme Court in *Robinson v. Shell Oil Company*[56] adopted EEOC's position that Title VII's prohibition against retaliation protects former as well as current employees.
- The Supreme Court in *Walters v. Metropolitan Educational Enterprises*[57] approved EEOC's "payroll method" of counting employees to determine if an employer has the requisite number of employees to be subject to Title VII coverage.
- The Supreme Court, in *Faragher v. City of Boca Raton*[58] and *Burlington Industries, Inc. v. Ellerth*,[59] spelled out the circumstances in which employers can be held liable for acts of sexual harassment carried out by their supervisory personnel. The Court held that employers are liable when the sexual harassment has culminated in a tangible employment action directed against the

[50] *Gilmer v. Interstate/Johnson Lane Corp*., 500 U.S. 20 (1991).

[51] *Alexander v. Gardner-Denver Co*., 415 U.S. 36 (1974).

[52] *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993).

[53] *Harris v. Forklift Systems, Inc*., 510 U.S. 17 (1993).

[54] *McKennon v. Nashville Banner Publ'g Co*., 513 U.S. 352 (1995).

[55] *O'Connor v. Consolidated Coin Caterers Corp*., 517 U.S. 308 (1996).

[56] *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997).

[57] *Walters v. Metropolitan Ed. Enterprises, Inc*, 519 U.S. 202 (1997).

[58] *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

[59] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

harassed employee (e.g., employee is terminated or demoted after rejecting a supervisor's sexual advance). The Court further ruled that employers are permitted to establish an affirmative defense to the claim, if it can show no tangible action was taken against the harassed employee and two additional elements: (1) the employer had established and communicated an effective procedure for employees to seek redress from sexual harassment; and (2) the harassed employee failed to take advantage of this procedure. If an employer can show all of these elements, then it will not be held responsible for the sexual harassment by its supervisory personnel.

- In the cases of *Sutton v. United Airlines, Inc*.[60] and *Murphy v. United Parcel Service*,[61] the Supreme Court held that the question of an individual's disability requires evaluation of his or her impairment in its "mitigated" or corrected state. To be protected by the Americans with Disabilities Act, the individual must show that he or she is substantially limited in performing a major life activity even with the use of medications or assistive devices.

The 21st Century: Further Clarification of the Law

- In *Reeves v. Sanderson Plumbing Products, Inc*.,[62] the Supreme Court held that plaintiffs can prevail in an employment discrimination case if they show that the employer's reason for a challenged action is pretextual. A plaintiff does not have to prove that discrimination was the real reason; it can be inferred from the facts.
- In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*,[63] the Supreme Court held that a person is substantially limited in a major life activity within the meaning of the ADA, if he has "an impairment that prevents or significantly restricts the individual from doing activities that are of central importance to most people's daily lives."[64] This case was later superseded by the Americans with Disabilities Act Amendments Act[65] (ADAAA).
- The Supreme Court held in *EEOC v. Waffle House, Inc*.[66] that an agreement to arbitrate between an employee and employer does not bar the EEOC from pursuing victim-specific relief on behalf of an employee who files a timely charge of discrimination.
- In *Raytheon Company v. Hernandez*,[67] the Court ruled that, under the ADA, a neutral no-rehire policy is a legitimate, non-discriminatory reason for refusing to rehire an employee who had a record of drug addiction.
- In *Pennsylvania State Police v. Suders*,[68] the Supreme Court held that when a supervisor's "official act" precipitates an employee's constructive discharge, the *Faragher/Ellerth* affirmative defense is not available to the employer. Employers can otherwise raise the defense if an employee alleges she was constructively discharged because of harassment.
- The Supreme Court held in *General Dynamics Land Systems, Inc. v. Cline*[69] that the ADEA does not prevent an employer from favoring an older employee over a relatively younger one.
- The Supreme Court held in *Smith v. City of Jackson, Mississippi*[70] that the ADEA authorizes recovery in disparate impact cases and permits the employer defense that the challenged action was based on "reasonable factors other than age."[71]
- The Supreme Court held in *Burlington Northern and Santa Fe Railway Company v. White*[72] that the anti-retaliation provision of Title VII (Section 704(a)) is not limited to discriminatory actions affecting a term, condition, or privilege of employment and, thus, is broader than Title VII's core anti-discrimination provision (Section 703(a)).

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[60] *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999).

[61] *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999).

[62] *Reeves v. Sanderson Plumbing Products, Inc*., 530 U.S. 133 (2000).

[63] Toyota Motor Mfg. v. Williams, 534 U.S. 184 (2002).

[64] 534 U.S. at 198.

[65] Pub. L. No. 110-325, 122 Stat. 3553 (Sept. 25, 2008).

[66] *EEOC v. Waffle House*, 534 U.S. 279 (2002).

[67] *Raytheon Co. v. Hernandez*, 540 U.S. 44 (2003).

[68] *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004).

[69] *General Dynamics Land Sys. v. Cline*, 540 U.S. 581 (2004).

[70] *Smith v. City of Jackson, Mississippi*, 544 U.S. 228 (2005).

[71] 544 U.S. at 238.

[72] *Burlington Northern v. White*, 548 U.S. 53 (2006).

- The Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Company, Inc*.[73] (superseded by the Lilly Ledbetter Fair Pay Act[74]) held that the period for filing an EEOC charge challenging pay discrimination begins when the pay-setting decision is made and, therefore, a Title VII charge ordinarily must be filed within 180/300 days of the time when that decision was originally made.
- The Supreme Court held in *Kentucky Retirement Systems v. EEOC*[75] that a disability retirement plan that discriminated on the basis of pension eligibility did not violate the ADEA, even though pension eligibility was based on age, because the employer was not "actually motivated" by age.[76]
- In *Federal Express Corporation v. Holowecki*,[77] the Supreme Court held that a filing with the EEOC constitutes an ADEA charge if it not only meets the charge-filing requirements of 29 C.F.R. § 1626.6, which require a charge to 1) be in writing, 2) include an allegation of discrimination, and 3) name the charged respondent, but can also be "reasonably construed as a request for the [EEOC] to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee."[78]
- The Supreme Court held in *Meacham v. Knolls Atomic Power Laboratory*[79] that an employer defending an ADEA disparate-impact claim bears both the burden of production and the burden of persuasion on the "reasonable factors other than age" defense.
- The Supreme Court held in *Crawford v. Metropolitan Government of Nashville and Davidson County, TN*[80] that the opposition clause of Title VII's anti-retaliation provision protects individuals who provide information as part of an employer's investigation of alleged discrimination.
- In *14 Penn Plaza LLC v. Pyett*,[81] the Supreme Court held that a collectively-bargained mandatory arbitration agreement that covers claims of employment discrimination is enforceable.
- In *AT&T Corporation v. Hulteen*,[82] the Supreme Court held that an employer does not violate the Pregnancy Discrimination Act[83] (PDA) by paying pension benefits pursuant to a bona fide seniority plan that provides less service credit for pregnancy leave taken before the enactment of the PDA than for other forms of short-term disability leave.
- In *Gross v. FBL Financial Services, Inc*.,[84] the Supreme Court held that plaintiffs must always show that age was the "but for" cause of discrimination to establish ADEA liability.
- In *Ricci v. DeStefano*,[85] the Supreme Court held that Title VII prohibits an employer from discarding the results of a promotion test that has a racially-disparate impact unless the employer can demonstrate a strong basis in evidence to believe that relying on the results would subject the employer to disparate-impact liability.
- The Supreme Court held in *Lewis v. City of Chicago*[86] that an employee who does not challenge the adoption of an allegedly discriminatory practice (here, an employer's decision to exclude employment applicants who did not achieve a certain score on an examination) may assert a disparate-impact claim in a timely charge challenging the employer's later application of that practice. Thus, the African-American firefighter applicants at issue had cognizable disparate-impact claims under Title VII each time the city hired from an eligibility list based on an allegedly discriminatory written exam.
- The Supreme Court held in *Thompson v. North American Stainless, L.P.*[87] that Title VII provides a cause of action to an employee who was allegedly discharged in retaliation for his fiancée's protected activity against the same employer.
- In *Staub v. Proctor Hospital*,[88] the Supreme Court held that an employer can be liable, under certain circumstances, for the discriminatory animus of a supervisor who did not make the ultimate employment decision.

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[73] *Ledbetter v. Goodyear Tire & Rubber Co*., 550 U.S. 618 (2007).

[74] Pub. L. No. 111-2, 123 Stat. 5 (Jan. 29, 2009).

[75] *Kentucky Retirement Sys. v. EEOC*, 554 U.S. 135 (2008).

[76] 554 U.S. at 143.

[77] *Federal Express Corp. v. Holowecki*, 552 U.S. 389 (2008).

[78] 522 U.S. at 402.

[79] *Meacham v. Knolls Atomic Power Lab*, 554 U.S. 84 (2008).

[80] *Crawford v. Metropolitan Gov't of Nashville*, 555 U.S. 271 (2009).

[81] *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009).

[82] *AT&T Corp. v. Hulteen*, 556 U.S. 701 (2009).

[83] Pub. L. No. 95-955, 92 Stat. 2076 (Oct. 31, 1978).

[84] *Gross v. FBL Fin. Servs*., 557 U.S. 167 (2009).

[85] *Ricci v. DeStefano*, 557 U.S. 557 (2009).

[86] *Lewis v. City of Chicago*, 560 U.S. 205 (2010).

[87] *Thompson v. North Am. Stainless, L.P.*, 562 U.S. 170 (2011).

[88] *Staub v. Proctor Hosp*., 562 U.S. 411 (2011).

- In *Kasten v. Saint-Gobain Performance Plastics Corporation*,[89] the Supreme Court held that the anti-retaliation provision of the Fair Labor Standards Act[90] (FLSA) covers oral as well as written complaints. (The same retaliation provision applies under the EPA.)
- In *Wal-Mart Stores, Inc. v. Dukes*,[91] the Supreme Court held that a group of plaintiffs seeking injunctive and declaratory relief and back pay, on behalf of a nationwide class of 1.5 million female employees, cannot pursue a class action under Federal Rule of Civil Procedure 23(b)(2).
- The Supreme Court held in *Vance v. Ball State University*[92] that an employer may be held vicariously liable for a supervisor's unlawful harassment only when the employer has empowered that person to take tangible employment actions against the victim.
- The Supreme Court held in *University of Texas Southwestern Medical Center v. Nassar*[93] that the "but for" causation standard applies to Title VII's retaliation provision.
- In an 8-1 decision, the Supreme Court in *EEOC v. Abercrombie & Fitch Stores, Inc*.[94] held in favor of the EEOC, finding that it was a violation of the law to fail to accommodate an applicant who wore a hijab.
- In *Young v. United Parcel Service, Inc.*,[95] the Supreme Court held that a pregnant worker wishing to show disparate treatment through indirect evidence may do so through the application of the *McDonnell Douglas* framework. In reaching this holding, the Court reversed summary judgment in favor of UPS.
- In *Mach Mining v. EEOC*,[96] the Supreme Court held that "a court may review whether the EEOC satisfied its statutory obligation to attempt conciliation before filing suit[, but] the scope of that review is narrow."[97] The Court determined that judicial review is limited to whether the EEOC has "inform[ed] the employer about the specific allegation"[98] and whether the EEOC has "tr[ied] to engage the employer in some form of discussion."[99]

Conclusion

In enforcing these anti-discrimination statutes, the EEOC has played a significant role in the development of the nation's employment policies and practices. At its half-century mark, the agency can look back at its achievements and plan for the coming changes that will continue to shape the future of the American workplace.

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[89] *Kasten v. Saint-Gobain Performance Plastics Corp*., 563 U.S. 1 (2011).

[90] 29 U.S.C. § 201 et seq.

[91] *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 277 (2011).

[92] *Vance v. Ball State Univ*., 133 S. Ct. 2434 (2013).

[93] *University of Texas Southwestern Med. Ctr. v. Nassar*, 133 S. Ct. 2517 (2013).

[94] *EEOC v. Abercrombie & Fitch Stores*, 135 S. Ct. 2028 (2015).

[95] *Young v. United Parcel Serv.*, 135 S. Ct. 1338 (2015).

[96] *Mach Mining v. EEOC*, 135 S. Ct. 1645 (2015).

[97] 135 S. Ct. at 1649.

[98] 135 S. Ct. at 1655.

[99] 135 S. Ct. at 1656.