

# Employers To Face More Concurrent EEOC and Tort Suits after Second Circuit Decision

March 13, 2014

Last week the U.S. Court of Appeals for the Second Circuit held that filing a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) does not toll the statute of limitations for state-law tort claims arising out of the same factual basis as the discrimination alleged in the EEOC charge. *Castagna v. Luceno*, No. 13-0796-cv, 2014 U.S. App. LEXIS 4241 (2d Cir. Mar. 5, 2014).

## Background

Plaintiff, Patricia Castagna, filed an EEOC charge on October 21, 2008 alleging that her supervisor had created a hostile work environment and constructively discharged her on July 9, 2008. The EEOC issued a right-to-sue letter, and Castagna filed suit on November 9, 2009, alleging sex discrimination and a variety of intentional tort claims. Defendants moved to dismiss the tort claims, arguing that they were barred by the applicable one-year statute of limitations. The district court granted the motion and Castagna appealed.

## Holding

The Second Circuit affirmed the dismissal, holding that filing an EEOC charge does not toll the limitations period for state-law tort claims arising out of the "same nucleus of facts" as the EEOC charge. In rejecting Plaintiff's argument that tolling is necessary to promote judicial efficiency, the Second Circuit relied on the Supreme Court's decision in *Johnson v. Railway Express Agency, Inc.*,<sup>[1]</sup> which held that filing a discrimination charge with the EEOC does not toll the statute of limitations for a Section 1981 (42 U.S.C. § 1981) action premised on the same facts.

## Implications

In *Castagna*, the Second Circuit joined the Seventh and Ninth Circuits, as well as other district courts, in holding that an EEOC charge does not toll the statute of limitations on a state-law tort claim. In light of this decision, it is likely that there will be an increase in concurrent filings of state-law tort claims by employees during the pendency of their Title VII federal administrative proceedings. Alternatively, in states and local jurisdictions having their own fair employment practices (FEP) statutes, plaintiffs increasingly may choose to bypass the EEOC entirely in order to assert all statutory and tort claims in a single proceeding in state court.

If you have any questions about this decision, please contact your Proskauer relationship lawyer.

[\[1\]](#) 421 U.S. 454 (1975).

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