



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
General Counsel

September 3, 2014

By CM/ECF Pacer

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
Lewis F. Powell Jr. Courthouse & Annex
1100 East Main St., Ste. 501
Richmond, VA
23219-3517

re: *EEOC v. Freeman*, No. 13-2365

Dear Ms. Connor,

The EEOC submits this letter pursuant to Fed. R. App. P. 28(j). The Commission argued in its opening brief at pp. 61-65 and in its reply brief at pp. 30-33 that the district court erred in holding that the 300-day limitation period of 42 U.S.C. § 2000e-5 (“§ 706”) applies when the EEOC sues to remedy a pattern-or-practice of discrimination under 42 U.S.C. § 2000e-6 (“§ 707”). Specifically, the Commission argued that § 707 contains no limitation period and that the very nature of a pattern or practice of discrimination means that the discrimination did not occur on any particular day, negating the application of the 300-day limitation. The Commission additionally argued in its opening brief at pp. 66-67 and in its reply brief at p. 34 that the continuing violation doctrine applies when litigants allege a pattern or practice of discrimination under § 706, rendering the 300-day limit of § 706 inapplicable. Accordingly, the EEOC contended, the district court erred in applying a 300-day limit to EEOC’s claims alleging a pattern-or-practice of discrimination as to Freeman’s use of credit and criminal background checks to make hiring decisions.

Since the Commission filed its reply brief, two district courts have issued opinions supporting the EEOC’s position that the 300-day limitation does not apply in this case. In *EEOC v. New Prime, Inc.*, 2014 WL 4060305, at *12 (W.D. Mo. August 14, 2014), where EEOC challenged the employer’s same-sex driver training policy, the district court stated, “this Court agrees that no limitation period applies to the EEOC’s § 707 claim.” In *EEOC v. PMT Corp.*, -- F. Supp. 2d --, 2014 WL 4321401, at *2 (D. Minn. August 27, 2014), where EEOC alleged the defendant engaged in a pattern or practice of discriminatory hiring, the district court held that the continuing violation doctrine permits courts to consider discrimination that occurred more than 300 days before a charge was filed. These decisions support the Commission’s argument that the district court erred in this case by applying a 300-day limitation period.

s/ Anne Noel Occhialino
Attorney
(P)(202) 663-4724
Annenoel.occhialino@eeoc.gov

CC via CM/ECF: Donald R. Livingston, Counsel for Freeman
W. Randolph Teslik, Counsel for Freeman