

EMPLOYMENT LAW UPDATE

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Douglas v. California Dept. of Youth Authority
271 F.3d 812
C.A.9 (Cal.) 2001.

The Ninth Circuit revives “stale” or expired claims under the ADA on the grounds of the “continuing violations doctrine.”

By *Jason A. Geller and David Borovsky*

Under the Rehabilitation Act (“Rehabilitation Act”), a plaintiff must generally file suit for disability discrimination within one year of the employer’s allegedly discriminatory act. Under the Americans with Disabilities Act (“ADA”), a plaintiff must first file an administrative charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) within 300 days of the discriminatory act before filing a lawsuit.

The Ninth Circuit Court of Appeals recently clarified the application of the “continuing violations doctrine” to these federal statutes concerning hiring cases and identified some circumstances under which an employer may be held liable for discriminatory acts occurring *outside* of these limitations periods.

In the Fall of 1999, plaintiff Dossey Douglas applied for a position as a group

supervisor with the California Youth Authority (“CYA”). He passed most of the screening tests during 1995. In February 1996, CYA informed him that he had failed a vision test due to his color blindness. He was denied the position on this basis in March 1996. In April 1996, Douglas appealed this decision to the State Personnel Board, and then re-applied for the position a second time in the Fall of 1996. In February 1997, the Personnel Board informed Douglas that his appeal was denied. CYA never responded to Douglas’ second application for the position.

In April 1997, Douglas filed a discrimination charge with the EEOC which issued a “cause” finding in February 1998. In July 1998, Douglas filed suit in federal court for violations of the ADA and the Rehabilitation Act on the grounds that the vision test was discriminatory.

CYA moved for summary judgment on the ground that the claims were barred by the statute of limitations. CYA argued that the alleged discrimination could only have occurred in March 1996, when it had rejected Douglas' application for failing his vision test, more than one year before Douglas filed his charge with the EEOC and his lawsuit. Douglas responded that both claims were timely under a "continuing violations" theory. The trial court disagreed, granted summary judgment in favor of CYA, and Douglas appealed.

The Ninth Circuit Court of Appeals recognized two methods by which a plaintiff may establish a "continuing violation." First, the plaintiff may show a series of *related* acts against one individual, so long as one act falls within the relevant limitations period. Second, a plaintiff may show a "systematic violation," meaning a systematic policy or practice of discrimination that operated, in part, within the limitations period. If either type of continuing violation can be shown, then the limitations clock does not begin to run until the discriminatory conduct ends. Douglas argued that CYA's vision testing requirement was a "systematic policy of discrimination" because the general policy was enforced during most of his employment, including days that fell within the limitations period when he was appealing CYA's decision not to hire him and re-applying for the position.

Because Douglas filed his lawsuit on July 6, 1998, his Rehabilitation Act claim would be barred by the limitations period if his claim accrued, or arose, *before* July 5, 1997, one year earlier.

Since he filed his EEOC charge on April 18, 1997, discriminating acts must have occurred within 300 days of the filing, or on or after July 22, 1996, to be timely.

The Court found enough evidence supporting the existence of a continuing wrong, which extended into the limitations period, and reversed the summary judgment. Because Douglas re-applied for the position in Fall 1996, the evidence suggested that CYA may have discriminated against him in failing to respond to this second application during the 1996-1998 time period. Since Douglas may have been "exposed" to the discriminatory practice during the limitations period, the continuing violations doctrine applied. Thus, CYA's discrimination may have extended throughout this period, up until 1998 when Douglas finally filed suit.

The continuing violations doctrine can revive otherwise "stale" claims. If employers become aware of a policy that might be construed as discriminatory, they should eliminate it immediately for many reasons, not the least of which is to defeat old claims under this doctrine.

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