



D.C. District Court Clarifies Employees' Obligation to Exhaust Administrative Remedies Before Filing in Court

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In a case brought by an employee against the Government Printing Office (GPO), Judge Richard W. Roberts of the U.S. District Court for the District of Columbia addressed the recurrent dispute as to whether a federal employee who filed an EEO complaint and then subsequently alleges retaliation must also exhaust the administrative remedies as to the retaliation claim. See [Hairston v. Tapella](#), No. 2008-CV-1531 (D.D.C. Oct. 21, 2009).

While Judge Roberts stopped short of creating a bright line rule, he clarified that the determinative issue is whether the facts of the retaliation claim were raised during GPO's investigation of the original discrimination charge – in other words, whether GPO was on notice of the retaliation claim. The dispute about this exhaustion issue exists because the U.S. Court of Appeals for the D.C. Circuit "has declined to weigh in on the issue." See *Lewis v. Dist. of Columbia*, 535 F. Supp. 2d 1, 7 (D.D.C. 2008) (citing *Weber v. Battista*, 494 F.3d 179, 183-84 (D.C. Cir. 2007)).

To have jurisdiction in a federal court, a federal employee must show that he exhausted his administrative remedies by allowing the agency and/or Equal Employment Opportunity Commission to process the case for a minimum of 180 days after the formal EEO complaint was filed.

Trouble arises in cases where a federal employee exhausted his administrative remedies for the underlying discrimination complaint, but not for claims of retaliation that may have been added months after the initial complaint filing. In this case, the employee alleged GPO discriminated against him on the basis of race when it failed to promote him and later retaliated against him because of his EEO activity. However, the alleged retaliation was not committed by the same persons involved with the original discriminatory non-promotion, so the investigation of the non-promotion claim did not uncover the retaliation issues.

Thus, Judge Roberts found that based on the investigation, GPO had no notice of the retaliation until the lawsuit was filed. Not only did the employee make no attempt to contact EEO regarding his claim of retaliation but his retaliation claim was not within the scope of the investigation of the initial claims of discriminatory non-promotion. Judge Roberts held that in these circumstances, the retaliation claim had to be dismissed for failure to exhaust administrative remedies.

The bottom line is that to protect your rights, a federal employee should put the agency on notice of any new acts of discrimination or retaliation as soon as it is reasonably possible. While the employee's right to sue the agency in federal court may be delayed by an amended claim, the delay cannot be any longer than 180 days. In the long run, this wait is well worth avoiding the risk of having a retaliation claim dismissed for failure to exhaust administrative remedies.

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