

## **Circuit Court Grants Federal Employee Right to File Action Against Agencies for Claims Lost at Agency Level**

In a major federal employee upset, the U.S. Court of Appeals for the D.C. Circuit recently changed the way federal employees and agencies may approach partial relief in future discrimination claims. The court held that in Equal Employment Opportunity complaints, if a federal employee wins one or more parts of their Title VII claim at the agency level, he or she does not have to risk putting all claims forward on appeal if they take civil action in district court on the issues he or she did not win at the administrative level.

In the case of *Payne v. Salazar* (Secretary, Dept. of the Interior), No. 09-5291 (D.C. Cir. Sept. 7, 2010), Ms. Payne, a Department of Interior employee since 1978, worked outside Monday thru Friday for close to 16 years, allowing her to devote her weekends to her religious studies. After suffering a near fatal allergic reaction to a bee sting in 2000, the agency moved her to a position indoors but changed her work schedule to Wednesday thru Sunday. Ms. Payne was denied numerous requests to change her work schedule to accommodate her weekend religious studies; leading Ms. Payne to file an EEO complaint alleging religious discrimination in September 2004.

Later that same month, Ms. Payne alleged retaliation for her EEO complaint after her supervisor suddenly gave her a minute-by-minute work schedule among other new, strict rules. The agency consolidated her original claim of discrimination as well as her claim of retaliation and in September 2007, the Administrative Judge held that the Department of Interior discriminated against Ms. Payne on account of her religion but did not retaliate.

Soon after, Ms. Payne filed suit in district court alleging the same retaliation in violation of her Title VII rights originally raised in her consolidated EEO case. She later added a second claim of retaliation due to a refusal to assign her light duty work after a back injury. The district court dismissed her first claim of retaliation for failure to state a claim holding:

a federal employee who obtains a final administrative disposition that finds discrimination . . . as to a portion of the allegations in the EEO Complaint, may [not] challenge in federal court just those liability findings by the EEOC that are unfavorable to the employee . . . while preserving those liability findings that are favorable to her.

*Id.* at 45-46. The court also dismissed Ms. Payne's second claim for failure to exhaust administrative remedies since the retaliation did not pertain to her original Title VII protections.

Ms. Payne appealed the district court's findings and in an unprecedented move, the DC Circuit overturned the dismissal of her first retaliation claim and affirmed the dismissal of her second. The Court rejected the government's legal theory that Ms. Payne's civil action had to include the entire EEO complaint, not just the retaliation claim she lost at the administrative level. Thus, the government asked that Ms. Payne's entire complaint, both her original claim

of discrimination for which she won and the retaliation claim for which she lost, must be reviewed by the court. The Court disagreed, stating:

In sum, an employee's right to trial de novo -- whether her employer is the federal government or a private company -- means that she is entitled to a plenary trial of whatever claims she brings to court. It does not mean that she must sue on claims she has no interest in pursuing. Indeed, were we to impose such a requirement, we would ourselves be treating federal employees differently than private-sector employees.

Id at 12. What does all this mean for federal employees? There are two outcomes to this case that may prove to help as well as hurt federal employee claims of discrimination and retaliation in the workplace. Firstly, federal employees may now be able to successfully bring claims that they did not win at the agency level to court for ruling rather than outright dismissal. Secondly, as argued by the government in this case, agencies may be less willing to grant partial relief to federal employees if they will not be able to appeal those decisions in court. Thus, the outcome of this case may force agencies to approach EEO claims as an "all or nothing" situation to prevent their appeal rights in the future. No matter the interpretation of this case decision by courts and federal agencies, it is important to file all claims of discrimination and subsequent retaliation in a timely manner to avoid any administrative issue that will allow your case to be dismissed at the agency level.