

The U.S. Equal Employment Opportunity Commission

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TWO FEDERAL COURTS: EEOC CAN CORRESPOND WITH CLASS MEMBERS IN LAWSUITS WITHOUT INTERFERENCE

Judges in Supercuts 'English Only' and FIM Sexual Harassment Cases Reject Employers' Efforts to Review Letters in Advance

CHICAGO - The U.S. Equal Employment Opportunity Commission (EEOC) announced this afternoon that it has secured two rulings assuring that the EEOC can continue to correspond with victims of employment discrimination in lawsuits without submitting such letters in advance to either the courts or attorneys for employers.

John Hendrickson, the EEOC regional attorney in Chicago, said, "When the EEOC has brought a lawsuit challenging an employer's discrimination against multiple applicants or employees, we often want to reach potential victims through mass mailings. That's a big part of the process of identifying actual victims, gathering evidence, and measuring damages."

However, Hendrickson said employers often attempt to interfere in the process by insisting on advance review of such letters by the courts and by employers' attorneys. "So to get two rulings on the same day, as we have this week, that we can reach out to potential class members in our cases and reach out without interference is very significant to us. It means our prospects for identifying real victims of discrimination and gathering genuinely reliable evidence in these cases are excellent."

The March 29 rulings came in two separate class action lawsuits being litigated by the EEOC. One was made by U.S. District Judge John W. Darrah in *EEOC v. Primps L.L.C. d/b/a Supercuts*, N.D. Illinois No. 05 C 4592, a case in which the agency is challenging a "speak-English-only" rule in the defendant's hair salons.

Judge Darrah wrote: "[Supercuts'] Motion . . . seeks to require [EEOC] to submit to the Court and [Supercuts'] counsel certain proposed written communications with members of the Plaintiff class. The Court may not exercise its power to prohibit communications with Plaintiff class 'without a specific record showing by the moving party of the particular abuses by which it is threatened.' *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 (1981), citing *Coles v. Marsh*, 560 F.2d 186 (3d Cir. 1977). The Defendant

fails to meet this burden. Thus, the Defendant's Motion for a Protective Order is denied."

The other ruling was by U.S. Magistrate Judge Geraldine Soat Brown in *EEOC v. Fun in Motion, Inc.*, N.D. Illinois No. 05 C 6889, a sexual harassment case brought by the EEOC against a retail distributor of swimming pools, spas, patio furniture, and other recreational supplies under the name "FIM." In that case also, the employer sought defense counsel and court review of EEOC letters to class members. Judge Soat Brown, having found there were no specific facts supporting the employer's assertion of a need for a protective order, denied FIM's motion.

EEOC Trial Attorney Ann Henry, who, along with Hendrickson and Supervisory Trial Attorney Diane Smason, is litigating the *Supercuts* and *FIM* cases, said, "These are the kinds of rulings that may, at first, seem highly technical and not particularly important. But our experience is exactly the reverse. They make a substantive difference and a big one because they enable us to reach workers who really have suffered discrimination and who are, under our statutes, entitled to be made whole."

The *Supercuts* case was filed in federal district court in Chicago on August 11, 2005. The FIM case was filed in the same Court on December 7, 2005.

The EEOC is responsible for enforcing the nation's laws prohibiting discrimination in employment based on race, color, sex (including sexual harassment and pregnancy), religion, national origin, age, disability, and retaliation. Further information about the Commission is available on its web site at www.eeoc.gov.

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