

*The U.S. Equal Employment Opportunity Commission*

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## FEDERAL COURT BARS EMPLOYERS FROM MAKING ISSUE OF IMMIGRATION STATUS IN DISCRIMINATION LAWSUITS

### *In Minneapolis Case, Court Rules EEOC Not Subject to Private-Party Rules in Class Suits*

MINNEAPOLIS - The U.S. Equal Employment Opportunity Commission (EEOC) announced today that the federal district court here has held that employers cannot make an issue of immigration status in employment discrimination lawsuits and that the EEOC is not required to comply with the rules applicable to private parties when the agency sues on behalf of a class of victims of discrimination.

In its lawsuit, *EEOC v. KCD Construction, Inc.*, D. Minn. No. 05-2122, the EEOC alleges that KCD Construction subjected Hispanic employees to harassment on the basis of their national origin. The harassment included, according to the EEOC, use of derogatory names and comments as well as physically striking Hispanic employees with tools and spitting on them. In defending the case, KCD Construction has argued that EEOC must comply with the same complex requirements applicable to class actions brought by private parties, and that KCD Construction is free to inquire into the immigration and citizenship status of the victims. Both positions have now been rejected by the court, the most recent decision coming earlier this week.

John Hendrickson, regional attorney for EEOC's Chicago District, which includes Minnesota, said, "The court's rulings on these important issues were not unanticipated, because they follow well-established existing law. These principles are absolutely critical to our ability to enforce federal law through class litigation and, at the same time, to protect the victims of discrimination from intimidation. That is to say, they are truly essential to the EEOC's pursuit of the public interest."

U.S. District Court Judge David S. Doty, in a decision issued Monday, rejected KCD Construction's argument that the EEOC must satisfy Rule 23 of the Federal Rules of Civil Procedure in order to maintain a class action lawsuit. The court found the EEOC is not subject to the rule because the agency seeks monetary relief in addition to injunctive relief.

The district court, citing U.S. Supreme Court precedent, focused on the role of the EEOC in vindicating the public interest "albeit at the behest of and for the benefit of specific individuals."

Tina Burnside, senior trial attorney in the EEOC's Minneapolis office, and lead counsel on the case, said: "The court's decision is important because it clearly states that the EEOC has the authority to bring a class action lawsuit without satisfying Rule 23 requirements regardless of whether it is seeking injunctive relief or compensatory and punitive damages."

The court earlier granted the EEOC's motion for a protective order prohibiting KCD Construction from seeking discovery regarding the Hispanic employees' citizenship, immigration and work permit status. In an Order issued February 28, 2006, U.S. Magistrate Judge Susan Richard Nelson ruled that discovery into the citizenship or legal status of the victims would not be permitted.

"We are pleased with the court's order because Title VII's protections against discrimination apply to all employees whether they are documented or undocumented," Burnside said. "Employers cannot discriminate against employees, and then threaten them by seeking information about their immigration status when they complain."

The EEOC is the federal government agency that enforces the nation's laws prohibiting discrimination in employment based on race, color, sex (including sexual harassment, pregnancy and wage bias), religion, national origin, age, disability, and retaliation. Further information about the Commission is available on its web site at [www.eeoc.gov](http://www.eeoc.gov).

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