



**Supreme Court Changes Timeliness Analysis for EEO Claims**

FEES AND BURGESS, P.C., Emphasizes:

In a recent case, the U.S. Supreme Court announced that plaintiffs may timely file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) within 300 days of the *application* of a discriminatory practice and not merely its enactment or adoption. This holding broadens the scope of claims for which employees or applicants may file discrimination charges with the EEOC, and it will affect each employer subject to Title VII of the Civil Rights Act, meaning employers with 15 or more employees (Title VII).

Specifically, African-American applicants for firefighter positions with the City of Chicago (City) alleged that the City’s hiring policies had a disparate impact on such African-American applicants. In the trial court, the City filed for summary judgment dismissing plaintiffs’ disparate impact claims, arguing that plaintiffs had not filed within 300 days “after the unlawful employment practice has occurred.” Such a requirement is stated within Title VII, although plaintiffs responded by arguing that they filed in a timely manner because the City continued to rely on the discriminatory hiring policies in making decisions about the plaintiff-applicants. The trial court agreed with plaintiffs and refused to dismiss the case against the City.

On appeal, the U.S. Supreme Court agreed with the trial court and held that plaintiffs may properly file claims challenging the application of a discriminatory practice in addition to challenges to the initial enactment of such a practice. In so holding, the Supreme Court cited language in Title VII which states that discrimination may occur where an employer “uses a particular employment practice that causes a disparate impact . . . .” The Court distinguishes past cases in which it held that plaintiffs could not sue for the “present effects of past discrimination.” It states that, with a disparate-impact claim, no proof of discriminatory intent is needed, and because of the broad language in Title VII regarding the “use” of an employment practice, Congress intended Title VII to cover the present applications of previously-drafted discriminatory policies and procedures.

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The Supreme Court noted the various practical issues that may result from this ruling. Specifically, the Supreme Court recognized that employers may be subject to multiple new suits related to practices that employers have used for many years, and that such employers may have difficulty proving any business necessity defenses due to the length of time between creation of a policy and a lawsuit related to the policy. Regardless, the Supreme Court observed that Congress may change the language in Title VII if it did not intend this result.

Employers should review their current employment policies to ensure that such policies do not create any disparate impact on protected employees or applicants. More importantly, employers should continually document their legitimate business rationale for formulating non-standard policies or any procedures that could potentially have a disparate impact on certain classes of applicants or employees. Preservation of these defenses may be critical to successfully challenging employee claims in the future.

The case is Lewis v. City of Chicago, 2010 WL 2025206 (U.S. May 24, 2010).

## **FEES & BURGESS, P.C. - Calendar of Events**

FEES & BURGESS, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars/webinars.

### **July 2010, Fort Lauderdale, Florida, Greater Fort Lauderdale Broward County Convention Center**

#### [NCMA 2010 World Congress](#)

At the 2010 National Contract Management Association (NCMA) World Congress, Allen Anderson and Jeff Roth will be presenting *Uniform Commercial Code, Parts 1 – 4 and Logistically Speaking: Using Delivery Terms to Allocate Supply Chain Risks* .

*Uniform Commercial Code, Parts 1 – 4*: The program, divided into four sections, covers an overview of the Uniform Commercial Code, Articles 1, 2, and 2A. This training is used as a fast track study session as preparation for the Certified Commercial Contracts Manager exam.

Part 1: July 19, 11:15 – 12:30 Part 2: July 19, 2:30 – 3:45

Part 3: July 20, 11:15 – 12:30 Part 4: July 20, 2:30 – 3:45



### FEES & BURGESS, P.C. - Calendar of Events, *continued from page 2*

*Logistically Speaking: Using Delivery Terms to Allocate Supply Chain Risks:* Contract professionals grapple on a day-to-day basis with risk and responsibility for transportation, warehousing, domestic and international regulation, and overall logistics, often as both exporters and importers. A thorough understanding of delivery terms, and their use and impact, is the only method by which such contract professionals can effectively manage their supply chains and control the associated risk.

This session will be presented on July 21, 9:30 – 10:45

Click [here](#) for more information on the 2010 NCMA World Congress.

#### **September 1, 2010– Huntsville, Alabama, Holiday Inn, Research Park**

##### *Employment Law Survival Training for Managers: 10 Key Areas of Legal and Practical Knowledge*

This daylong program, presented by Jeffrey Roth, Allen Anderson, and Leah Green, is a must for training managers and supervisors to recognize and deal with challenging employee issues that arise daily in the workplace. Attendees will learn key aspects of critical issues and how to work with existing company policies to address and resolve them.

The 10 key areas covered in the program will include:

- The Employment Relationship
- Company Policies/Handbook/Code of Conduct
- Equal Employment Opportunity
- Medical Issues in the Workplace
- Hiring/Promotion
- Wages/Hours/Compensation
- Labor Relations/Union Free
- Occupational Safety and Health Act of 1970
- Conflict Management/Grievances
- Discipline/Termination

This highly interactive program includes discussion of real-life scenarios encountered by supervisors, and how, and how not, to respond to each scenario or crisis. This program is designed to help managers and supervisors from small and large businesses recognize high-risk situations and minimize, or eliminate, those risks.





# HR CORNER

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### SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact [seminars@feesburgess.com](mailto:seminars@feesburgess.com).

### NEWSLETTERS

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**Michael L. Fees**  
[mfees@feesburgess.com](mailto:mfees@feesburgess.com)

**C. Gregory Burgess**  
[gburgess@feesburgess.com](mailto:gburgess@feesburgess.com)

**Allen L. Anderson**  
[anderson@feesburgess.com](mailto:anderson@feesburgess.com)

**Jeffrey L. Roth**  
[jroth@feesburgess.com](mailto:jroth@feesburgess.com)

**FEES & BURGESS, P.C.**  
213 Green Street  
Huntsville, Alabama 35801  
Telephone (256) 536-0095  
Facsimile (256) 536-4440

[www.feesburgess.com](http://www.feesburgess.com)

**Stacy L. Moon**  
[smoon@feesburgess.com](mailto:smoon@feesburgess.com)

**Leah M. Green**  
[lgreen@feesburgess.com](mailto:lgreen@feesburgess.com)

**Ryan G. Blount**  
[rblount@feesburgess.com](mailto:rblount@feesburgess.com)

**Lauren A. Smith**  
[lsmith@feesburgess.com](mailto:lsmith@feesburgess.com)

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