

# PUBLICATION

---

## How to Lose a Title VII Statute of Limitations Defense

September 22, 2009

Title VII of the 1964 Civil Rights Act requires covered employers to post a notice describing the law's provisions in an accessible format. This notice must be conspicuously posted in the same place where other employee notices are customarily maintained. Moreover, the notice must be prepared by or approved by the EEOC.

Employers who fail to comply with this Title VII notice requirement may be stripped of their argument that untimely claims of discrimination must be dismissed. The recent case *Wei Hong Zheng, et. al., v. Wong, et. al.*, 2009 WL 2601313 (E.D.N.Y. August 24, 2009), illustrates this point. There, an employee working in the restaurant of a hotel-casino in Atlantic City, New Jersey filed a complaint alleging that she had been discriminated against and fired because of her race, sex and/or national origin.

The statute of limitations for filing such complaints is 300 days from the alleged discrimination. The employee, Chan, did not file her complaint until 364 days following her termination. Unsurprisingly, her employer filed a motion to dismiss arguing that the Title VII claims were barred by the statute of limitations.

Chan argued that her claims were saved by the doctrine of equitable tolling because her employer failed to post the requisite Title VII Notice of Employees' Rights. Without the benefit of the mandatory notice, Chan argued, she was unaware of her Title VII rights and did not learn of them until after she had consulted a lawyer.

The Eastern District of New York agreed. In so doing, it recognized that five Circuit Courts of Appeal have likewise ruled that an employer's failure to comply with Title VII's posting requirements justified delaying the start of the limitations period until an employee learned or should have learned of her rights through other means. Here, although the Court did not know when Chan first consulted a lawyer, her employer's failure to post the notice excused the two-month delay.

Employers can cheaply and easily protect their statute of limitations defense by complying with the mandatory notice requirements of Title VII. Companies can order up to 10 posters in four different languages from the EEOC.

Do not be surprised to see the *Hunter* case appealed to the Supreme Court. Of particular focus in such an appeal may be the Sixth Circuit's reliance in *Hunter* upon an administratively-promulgated regulation—rather than Congressional intent like the Supreme Court did in *Gross*—to buttress its holding. Baker Donelson can assist you with these and other employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

Baker Donelson gives you what boutique labor and employment firms can't: a set of attorneys who are not only dedicated to the practice of labor and employment issues, but who can reach into an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs. We set ourselves apart by valuing your entire company. And when it comes to your company's most valuable asset - your employees - we're committed to counseling with and advocating for you every step of the way.

