Effective:[See Notes]

United States Code Annotated Currentness
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter VI. Equal Employment Opportunities (Refs & Annos)
§ 2000e-16. Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission **shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section**. The

Equal Employment Opportunity Commission shall--

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions **which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder.** The plan submitted by each department, agency, and unit shall include, but not be limited to--

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Execu-

tive Order 11478 or any succeeding Executive orders, **or after one hundred and eighty days from the filing of the initial charge** with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, **an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action** as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.. [FN1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) of this title shall apply to complaints of discrimination in compensation under this section.

CREDIT(S)

(Pub.L. 88-352, Title VII, § 717, as added Pub.L. 92-261, § 11, Mar. 24, 1972, 86 Stat. 111, and amended 1978 Reorg. Plan No. 1, § 3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub.L. 96-191, § 8(g), Feb. 15, 1980, 94 Stat. 34; Pub.L. 102-166, Title I, § 114, Nov. 21, 1991, 105 Stat. 1079; Pub.L. 104-1, Title II, § 201(c)(1), Jan. 23, 1995, 109 Stat. 8; Pub.L. 105-220, Title III, § 341(a), Aug. 7, 1998, 112 Stat. 1092; Pub.L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814; Pub.L. 109-435, Title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242; Pub.L. 111-2, § 5(c)(2), Jan. 29, 2009, 123 Stat. 7.)

[FN1] So in original.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1998 Acts. House Conference Report No. 105-659, see 1998 U.S. Code Cong. and Adm. News, p. 343.

1972 Acts. House Report No. 92-238 and Conference Report No. 92-899, see 1972 U.S. Code Cong. and Adm. News, p. 2137.

1980 Acts. Senate Report No. 96-540, see 1980 U.S. Code Cong. and Adm. News, p. 50.

1991 Acts. House Report No. 102-40 (Parts I and II), Interpretative Memorandum, and Statement by President, see 1991 U.S. Code Cong. and Adm. News, p. 549.

1995 Acts. Related House No. 104-650 (Parts I and II) and Related Senate Report No. 104-397, see 1995 U.S. Code Cong. and Adm. News, p. 3

2006 Acts. Statement by President, see 2006 U.S. Code Cong. and Adm. News, p. S76.

References in Text

Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under section 2000e of this title.

“This Act”, referred to in subsec. (e), means Pub.L. 88-352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (section 2000a et seq.). For complete classification of this Act to the Code, see Short Title of 1964 Acts note set out under section 2000a of this title and Tables.

Amendments

2009 Amendments. Subsec. (f). Pub.L. 111-2, § 5(c)(2), added subsec. (f).

2006 Amendments. Subsec. (a). Pub.L. 109-435, § 604(f), substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

2004 Amendments. Subsec. (a). Pub.L. 108-271, § 8(b), substituted “Government Accountability Office” for “General Accounting Office”.

1998 Amendments. Subsec. (a). Pub.L. 105-220, § 341(a), inserted “in the Smithsonian Institution,” preceding “and in the Government Printing Office,”.

1995 Amendments. Subsec. (a). Pub.L. 104-1, § 201(c)(1), inserted provisions relating to Government Printing Office and General Accounting Office and struck out provisions

relating to legislative branch.

1991 Amendments. Subsec. (c). Pub.L. 102-166, § 114(1), increased time within which aggrieved employee or applicant may file civil action from within 30 days of receipt of notice of final action to within 90 days of receipt of such notice.

Subsec. (d). Pub.L. 102-166, § 114(2), added provision relating to availability of interest to compensate for delays in payment.

1980 Amendments. Subsec. (a). Pub.L. 96-191 struck out "(other than the General Accounting Office)" following "in executive agencies".

Effective and Applicability Provisions

2009 Acts. Pub.L. 111-2 and the amendments made by Pub.L. 111-2 take effect as if enacted on May 28, 2007, and apply to all claims of discrimination in compensation under subchapter VI of chapter 21 of this title (42 U.S.C.A. § 2000e et seq.), chapter 14 of Title 29 (29 U.S.C.A. § 621 et seq.), subchapter IV of chapter 126 of this title (42 U.S.C.A. § 12111 et seq.), 42 U.S.C.A. § 12203, and 29 U.S.C.A. §§ 791 and 794, that are pending on or after May 28, 2007, see Pub.L. 111-2, § 6, set out as a note under 42 U.S.C.A. § 2000e-5.

1998 Acts. Amendment by section 341(a) of Pub.L. 105-220 effective Aug. 7, 1998, and shall apply to and may be raised in any administrative or judicial claim or action brought before such date of enactment but pending on such date, and any administrative or judicial claim or action brought after such date regardless of whether the claim or action arose prior to such date, if the claim or action was brought within the applicable statute of limitations, see section 341(d) of Pub.L.105-220 set out as a note under section 633a of Title 29.

1995 Acts. Amendment by section 201(c)(1) of Pub.L. 104-1 effective 1 year after Jan. 23, 1995, see section 201(d) of Pub.L. 104-1, which is classified to section 1311(d) of Title 2, The Congress.

1991 Acts. Amendment by Pub.L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub.L. 102-166, set out as a note under section 1981 of this title.

1980 Acts. Amendment by Pub.L. 96-191 effective Oct. 1, 1980, see section 10(a) of Pub.L. 96-191.

Transfer of Functions

"Equal Employment Opportunity Commission" was substituted for "Civil Service Commission" in subsecs. (b) and (c) pursuant to Reorg. Plan No. 1 of 1978, § 3, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e-4 of this title, which transferred all equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission by subsecs. (b) and (c) of this section to the Equal Employment Opportunity Commission, with certain authority delegable to the Director of the Office of Personnel Management, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, set out as a note under section 2000e-4 of this title.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13145

<Feb. 8, 2000, 65 F.R. 6877>

TO PROHIBIT DISCRIMINATION IN FEDERAL EMPLOYMENT BASED ON GENETIC INFORMATION

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

Section 1. Nondiscrimination in Federal Employment on the Basis of Protected Genetic Information.

1-101. It is the policy of the Government of the United States to provide equal employment opportunity in Federal employment for all qualified persons and to prohibit discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services. This policy of equal opportunity applies to every aspect of Federal employment.

1-102. The head of each Executive department and agency shall extend the policy set forth in section 1-101 to all its employees covered by section 717 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16) [this section].

1-103. Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities, and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information, or information about a request for or the receipt of genetic services.

Sec. 2. Requirements Applicable to Employing Departments and Agencies.

1-201. Definitions.

(a) The term “employee” shall include an employee, applicant for employment, or former employee covered by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16).

(b) Genetic monitoring means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, respond to the effects of, or control adverse environmental exposures in the workplace.

(c) Genetic services means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes, or for genetic education or counseling.

(d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of “genetic tests” when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. The conducting of metabolic tests by a department or agency that are not intended to reveal the presence of a mutation shall not be considered a violation of this order, regardless of the results of the tests. Test results revealing a mutation shall, however, be subject to the provisions of this order.

(e) Protected genetic information.

(1) In general, protected genetic information means:

(A) information about an individual's genetic tests;

(B) information about the genetic tests of an individual's family members; or

(C) information about the occurrence of a disease, or medical condition or disorder in family members of the individual.

(2) Information about an individual's current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses) is not protected genetic information unless it is described in subparagraph (1).

1-202. In discharging their responsibilities under this order, departments and agencies shall implement the following nondiscrimination requirements.

(a) The employing department or agency shall not discharge, fail or refuse to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of that employee, because of protected genetic information with respect to the employee, or because of information about a request for or the receipt of genetic services by such employee.

(b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee's status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee.

(c) The employing department or agency shall not request, require, collect, or purchase protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by such employee.

(d) The employing department or agency shall not disclose protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by an employee except:

(1) to the employee who is the subject of the information, at his or her request;

(2) to an occupational or other health researcher, if the research conducted complies with the regulations and protections provided for under part 46 of title 45, of the Code of Federal Regulations;

(3) if required by a Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.

Sec. 3. Exceptions.

1-301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1-202.

(a) The employing department or agency may request or require information defined in section 1-201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:

(1) the request or requirement is consistent with the Rehabilitation Act [of 1973; 29 U.S.C.A. § 701 et seq.] and other applicable law;

(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1-301(b) of this order;

(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and

(4) the information defined in section 1-201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1-301(b) of this order.

(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:

(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1-301(a) of this order);

(2) the employee who uses the genetic or health care services has provided prior knowing, voluntary, and written authorization to the employer to collect protected genetic information;

(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1-202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information it-

self cannot be disclosed);

(4) such information is not used in violation of sections 1-202(a) or 1-202(b) of this order.

(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.

(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

(1) the employee has provided prior, knowing, voluntary, and written authorization;

(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;

(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and

(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

(e) This order does not limit the statutory authority of a Federal department or agency to:

(1) promulgate or enforce workplace safety and health laws and regulations;

(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations; or

(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.

Sec. 4. Miscellaneous.

1-401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.

1-402. Nothing in this order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or

(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.

1-403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON

CROSS REFERENCES

Affirmative action plan under this section to be included in Report to Congress by EEOC, see 5 USCA § 7201.
Attorney's fees and interest with regards to judicial review of certain actions by Presidential offices, see 28 USCA § 3905.
Damages in cases of intentional discrimination in employment, see 42 USCA § 1981a.
Extension of certain rights and protections to Presidential offices and generally applicable remedies and limitations including interest payments, see 3 USCA § 435.
Foreign service employment, applicability of rights and remedies available under this section, see 22 USCA § 3905.
Grievance defined for purposes of foreign service, see 22 USCA § 4131.
Handicapped individuals, employment of, remedies under this section available, see 29 USCA § 794a.
House of Representatives and agencies of the legislative branch, applicability of enforcement procedures for individuals protected under this section, see 2 USCA § 60*l*.
Merit system principles, prohibited personnel practices under this section, see 5 USCA § 2302.
Merit Systems Protection Board--
Appeals of actions involving discrimination prohibited by this section, see 5 USCA § 7702.
Judicial review of decisions, see 5 USCA § 7703.
Respondent defined for purposes of equal employment opportunities, see 42 USCA § 2000e.

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Equal employment opportunity programs, see 29 CFR § 1613.201 et seq.

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Civil Rights Act of 1991 and EEOC enforcement. Donald R. Livingston, 23 Stetson L.Rev. 53 (1993).

Interest dispute in Title VII actions--Loeffler v. Tisch. Note, 20 Creighton L.Rev. 1033 (1986-1987).

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Roadmap through Title VII's procedural and remedial labyrinth. Roy L. Brooks, 24 Sw.U.L.Rev. 511 (1995).

Time limits for federal employees under Title VII: Jurisdictional prerequisites or statutes of limitation? Note, 74 Minn.L.Rev. 1371 (1990).

The EEOC's regulations for proceedings involving federal employees are at 29 C.F.R. pts. 1613 and 1614.

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CJS Civil Rights § 219, Parties Plaintiff; Employees Covered.
CJS Civil Rights § 246, Retaliation for Exercise of Rights.
CJS Civil Rights § 280, Federal Employment.
CJS Civil Rights § 517, EEOC Regulations, Rules, Orders, and the Like.
CJS Civil Rights § 518, Federal Government Employment.
CJS Civil Rights § 576, Appeal to EEOC; Decision and Remedies on Appeal.
CJS Civil Rights § 577, Appeal to Merit Systems Protection Board (MSPB).
CJS Civil Rights § 581, Federal Government Employment.
CJS Civil Rights § 586, Federal Government Employment.

CJS Civil Rights § 587, Federal Government Employment--Waiting Period.
CJS Civil Rights § 604, Jurisdiction.
CJS Civil Rights § 616, Federal Government Employment.
CJS Civil Rights § 689, Prejudgment Interest.
CJS Indians § 7, Officers of Indian Affairs--Preferences for Indians.
CJS Interest and Usury; Consumer Credit § 109, Under Federal Law.
CJS Postal Service & Offenses Against Postal Laws § 19, Personnel.

RESEARCH REFERENCES

ALR Library

29 ALR, Fed. 2nd Series 415, Tolling of Time Period for Bringing Title VII Action Under § 706 of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(F)(1))--Based on Filings and Administrative and Court Proceedings.

28 ALR, Fed. 2nd Series 563, Validity and Construction of Indian Reorganization Act.

25 ALR, Fed. 2nd Series 145, Sufficiency of Form of Notice to Equal Employment Opportunity Commission Charging Violation of Age Discrimination in Employment Act.

24 ALR, Fed. 2nd Series 263, Tolling of the Time Period for Bringing Title VII Action Under § 706 of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(F)(1))--Based on Neglect or Misconduct of Third Party.

22 ALR, Fed. 2nd Series 159, Bivens Actions--United States Supreme Court Cases.

21 ALR, Fed. 2nd Series 65, Tolling of Time Period for Bringing Title VII Action Under § 706 of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(F)(1))--General Principles.

20 ALR, Fed. 2nd Series 343, Tolling of Time Period for Filing Title VII Charge With Equal Employment Opportunity Commission Under Section 706 of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(E)(1))--General...

20 ALR, Fed. 2nd Series 481, Validity, Construction, and Application of Government Employee Rights Act of 1991 (GERA), 42 U.S.C.A. §§ 2000e-16a, 2000e-16b, and 2000e-16c, and Implementing Regulations.

2006 ALR, Fed. 2nd Series 20, Application of Local Summary Judgment Rules to Nonmoving Party in Federal Courts--Filings Other Than Statements of Facts.

13 ALR, Fed. 2nd Series 633, Tolling of the Time Period for Bringing Title VII Action Under § 706 of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(F)(1))--Based on Per-

sonal Status or Circumstances.

8 ALR, Fed. 2nd Series 611, Application of Local District Court Summary Judgment Rules to Nonmoving Party in Federal Courts--Statements of Facts.

200 ALR, Fed. 1, Contingent Fees Paid to Attorneys as Gross Income to Client for Federal Income Tax Purposes.

196 ALR, Fed. 437, When is Coworker's Hostile Environment Sexual Harassment Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.) Imputable to Employer-Governmental Employment.

182 ALR, Fed. 61, Title VII Race or National Origin Discrimination in Employment--Supreme Court Cases.

180 ALR, Fed. 61, Admissibility, Under Rule 803(8)(C) of Federal Rules of Evidence, of "Factual Findings Resulting from Investigation Made Pursuant to Authority Granted by Law".

170 ALR, Fed. 219, Title VII Sex Discrimination in Employment--Supreme Court Cases.

170 ALR, Fed. 561, Individual Liability Under Family and Medical Leave Act (29 U.S.C.A. §§ 2601 et seq.).

169 ALR, Fed. 439, Exhaustion of Administrative Remedies as Prerequisite to Action Under Title I of Americans With Disabilities Act (42 U.S.C.A. §§ 12111-12117).

168 ALR, Fed. 1, What Constitutes Reverse or Majority Race or National Origin Discrimination Violative of Federal Constitution or Statutes--Public Employment Cases.

162 ALR, Fed. 273, What Constitutes Reverse or Majority Gender Discrimination Against Males Violative of Federal Constitution or Statutes--Private Employment Cases.

157 ALR, Fed. 1, When is Supervisor's Hostile Environment Sexual Harassment Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et Seq) Imputable to Employer.

157 ALR, Fed. 581, Comment Note: Sufficiency, in Federal Court, of Raising Issue Below to Preserve Matter for Appeal.

156 ALR, Fed. 1, What Constitutes Racial Harassment in Employment Violative of Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

156 ALR, Fed. 601, Sanctions Available Under Rule 37, Federal Rules of Civil Procedure, Other Than Exclusion of Expert Testimony, for Failure to Obey Discovery Order Not Related to Expert Witness.

154 ALR, Fed. 347, Award of Compensatory Damages Under 42 U.S.C.A. § 1981a for Violation of Title VII of Civil Rights Act of 1964.

153 ALR, Fed. 609, What Constitutes Reverse or Majority Gender Discrimination Against Males Violative of Federal Constitution or Statutes--Public Employment Cases.

151 ALR, Fed. 77, Factors or Conditions in Employment Discrimination Cases Said to Justify Decrease in Attorneys' Fees Awarded Under § 706(K) of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(K)).

150 ALR, Fed. 601, Punitive Damages in Actions for Violations of Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 1981a; 42 U.S.C.A. §§ 2000e et seq.).

146 ALR, Fed. 319, To What Extent Are Federal Entities Subject to Suit Under § 504(A) of Rehabilitation Act (29 U.S.C.A. § 794(A)), Which Prohibits Any Program or Activity Conducted by Any Executive Agency or the Postal Service From...

143 ALR, Fed. 269, Availability of Nominal Damages in Action Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

140 ALR, Fed. 301, Factors or Conditions in Employment Discrimination Cases Said to Justify Increase in Attorney's Fees Awarded Under § 706(K) of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-5(K)).

135 ALR, Fed. 307, Same-Sex Sexual Harassment Under Title VII (42 U.S.C.A. §§ 2000e et seq.) of Civil Rights Act.

136 ALR, Fed. 63, Remedies Available Under Americans With Disabilities Act (42 U.S.C.A. §§ 12101 et seq.).

137 ALR, Fed. 1, Period of Time Covered by Back Pay Award Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000c et seq.).

138 ALR, Fed. 1, Allowance and Rates of Interest on Backpay Award Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 20003 et seq.).

131 ALR, Fed. 221, Individual Liability of Supervisors, Managers, or Officers for Discriminatory Actions--Cases Postdating the Civil Rights Act of 1991.

132 ALR, Fed. 147, When is Intervention as Matter of Right Appropriate Under Rule 24(A)(2) of Federal Rules of Civil Procedure in Civil Rights Action.

132 ALR, Fed. 345, Rights of Prevailing Plaintiffs to Recover Attorneys' Fees Under § 706(K) of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e5(K)).

123 ALR, Fed. 1, Sex Discrimination in Job Assignment or Transfer as Violation of Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

111 ALR, Fed. 1, Sufficiency of Defendant's Nondiscriminatory Reason to Rebut Inference of Sex Discrimination in Promotion or Demotion of Employee as Violation of Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.)...

115 ALR, Fed. 1, What Constitutes Sex Discrimination in Termination of Employee So as to Violate Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

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97 ALR, Fed. 694, Jurisdiction of United States Court of Appeals for Federal Circuit Under 28 U.S.C.A. §§ 1292 and 1295.

100 ALR, Fed. 97, Evidence of Discriminatory Effect Alone as Sufficient to Prove, or to Establish Prima Facie Case Of, Violation of Fair Housing Act (42 U.S.C.A. §§ 3601 et seq.).

81 ALR, Fed. 732, Propriety of Ordering Consolidation Under Rule 42(A) of Federal Rules of Civil Procedure in Civil Rights Action.

84 ALR, Fed. 114, Actionability, Under Federal and State Antidiscrimination Legislation, of Foreign Employer's Discriminating in Favor of Foreign Workers in Hiring and Other Employment Matters.

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78 ALR, Fed. 252, When is Work Environment Intimidating, Hostile, or Offensive, So as to Constitute Sexual Harassment in Violation of Title VII of Civil Rights Act of 1964, as Amended (42 U.S.C.A. §§ 2000e et seq.)...

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80 ALR, Fed. 168, Recoverability of Cost of Computerized Legal Research Under 28 U.S.C.A. § 1920 or Rule 54(D), Federal Rules of Civil Procedure.

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68 ALR, Fed. 19, Disparate Impact Test for Sex Discrimination in Employment Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

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31 ALR, Fed. 146, Serviceman's Right to Recover Under Federal Tort Claims Act (28 U.S.C.A. §§ 2671 et seq.).

32 ALR, Fed. 7, Consideration of Work Performance or Production Records as Pretext for Unlawful Employment Practice Violative of Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.).

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27 ALR, Fed. 274, Employer's Enforcement of Dress or Grooming Policy as Unlawful Employment Practice Under § 703(A) of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e-2(a)).

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NOTES OF DECISIONS

I. GENERALLY

<Subdivision Index>

1. Construction

Statute requiring that employment discrimination action against government be brought by employee within 30 days [now 90 days] after receipt of right-to-sue letter from the Equal Employment Opportunity Commission (EEOC) is a condition to the government's waiver of sovereign immunity and thus must be strictly construed. Irwin v. Department of Veterans Affairs, U.S.Tex.1990, 111 S.Ct. 453, 498 U.S. 89, 112 L.Ed.2d 435, rehearing denied 111 S.Ct. 805, 498 U.S. 1075, 112 L.Ed.2d 865. Civil Rights 🔑1530

2. Construction with other laws

Congress did not intend the Religious Freedom Restoration Act (RFRA) to create a vehicle for allowing religious accommodation claims in the context of federal employment to do an end run around the legislative scheme of Title VII. Francis v. Mineta, C.A.3 (Virgin Islands) 2007, 505 F.3d 266. Civil Rights 🔑1312; Civil Rights 🔑1502

Employee's RFRA claim that United States Postal Service (USPS) violated his religious beliefs as member of Seventh-day Adventist Church, by requiring him to work on Saturdays, was foreclosed, since Title VII provided exclusive remedy for religious discrimination claims. Harrell v. Donahue, C.A.8 (Mo.) 2011, 638 F.3d 975. Civil Rights 🔑1502

Given that authority to issue a security clearance is a discretionary function of the executive branch and involves the complex area of foreign relations and national security, employment actions based on denial of security clearance are not subject to judicial review, including under Title VII. Bennett v. Chertoff, C.A.D.C.2005, 425 F.3d 999, 368 U.S.App.D.C. 123. War And National Emergency 🔑1136

Civil Rights Act of 1991 applied to Rehabilitation Act employment discrimination case that was pending at time of enactment of Civil Rights Act; thus, under Civil Rights Act, government employee who brought action under Rehabilitation Act was entitled to both pre- and postjudgment interest. Estate of Reynolds v. Martin, C.A.9 (Cal.) 1993, 985 F.2d 470, rehearing denied 994 F.2d 690. Civil Rights 🔑1106; Interest 🔑39(2.45); Interest 🔑39(3)

Cause of action pursuant to this subchapter for employment discrimination precluded a

claim under section 1981 of this title. Trotter v. Todd, C.A.10 (Kan.) 1983, 719 F.2d 346. Civil Rights 1312; Civil Rights 1502

In light of statement in amendment under this subchapter that provisions of this subchapter govern all civil actions brought thereunder, statutory procedures of this subchapter for judicial review are exclusive and thus Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, had no application in civil rights class action brought alleging discrimination by Commission in violation of amendment under this subchapter prohibiting discrimination in personnel actions affecting federal employees. Weahkee v. Powell, C.A.10 (N.M.) 1976, 532 F.2d 727, on remand. Civil Rights 1510

To the extent *Bivens* allegations against Department of Defense employees by female employee of the Defense Intelligence Agency (DIA) were not acts covered by Title VII, acts forming basis of claims arose from her employment and therefore, employee's claims were precluded by the Civil Service Reform Act, where employee alleged retaliation and discrimination as a result of her reporting sexual harassment by a supervisor. Kittner v. Gates, D.D.C.2010, 708 F.Supp.2d 47. United States 50.10(4)

Budget analyst's allegations that employer discriminated and retaliated against her on the basis of her disability failed to state a claim under Title VII, despite analyst's contention that Americans with Disabilities Act (ADA) incorporated same remedies as Title VII; fact that ADA contained same remedies did not convert ADA claim to one under Title VII. Elzeneiny v. District of Columbia, D.D.C.2010, 699 F.Supp.2d 31. Civil Rights 1532

Federal employee could not pursue claim against individual agency employees for conspiracy to deprive him of his constitutional rights; Title VII was exclusive preemptive administrative and judicial scheme for the redress of federal employment discrimination. Nurriddin v. Bolden, D.D.C.2009, 674 F.Supp.2d 64. Civil Rights 1502; Conspiracy 15

Insofar as Title VII claims of United States Government Printing Office (GPO) employee centered on GPO's alleged refusal to accommodate his physical limitations resulting from back injury sustained on job, claims had no effect on Secretary of Labor's determination of factual and legal issues pertaining to employee's Federal Employees' Compensation Act (FECA) claim or eligibility for workers' compensation benefits, and thus FECA did not bar employee's discrimination claims. Williams v. Tapella, D.D.C.2009, 658 F.Supp.2d 204. Civil Rights 1502; Workers' Compensation 2085

Federal employee's race discrimination action against agency, filed three days after period would otherwise expire without time after service added by federal civil rule, was timely. Springs v. Nicholson, E.D.N.C.2008, 581 F.Supp.2d 744. Civil Rights 1530

Federal employee could not bring discrimination claim under §§ 1983; Title VII was exclusive, preemptive administrative and judicial scheme for redress of federal employment discrimination. Roland v. Potter, S.D.Ga.2005, 366 F.Supp.2d 1233. Civil Rights 1312; Civil Rights 1502

Department of Army employee could not sue government for sexual harassment, sexual discrimination and retaliation under Civil Rights Act provision guaranteeing to all the contractual rights of white persons; provision was preempted by Title VII, as to federal employees, and alleged conduct occurred under color of federal law, while provision in question applied to state action. Peterson v. Brownlee, D.Kan.2004, 314 F.Supp.2d 1150. Civil Rights 1502

In enacting Title VII section prohibiting discrimination by the federal government, Congress intended to give public employees the same substantive rights and remedies that had previously been given employees in the private sector and thus, where the text permits, Title VII section prohibiting discrimination by the federal government should be read in harmony with Title VII section governing unlawful employment practices. King v. Dalton, E.D.Va.1995, 895 F.Supp. 831. Civil Rights 1125

Former federal employee did not have a separate discrimination claim under Civil Service Reform Act for action against administrative law judges and action involving discrimination, but was required to file his discrimination claim under Title VII. Haynes v. Health and Human Services, D.D.C.1995, 879 F.Supp. 127, affirmed 1997 WL 362503. Civil Rights 1502

Thirty-day [now ninety-day] limitations period for bringing claims under Title VII for discrimination in federal employment applies when federal employee submits ADEA claim for age discrimination to administrative agency and receives final agency decision. Jones v. Frank, D.Colo.1993, 819 F.Supp. 923, affirmed 32 F.3d 1454. Limitation Of Actions 58(1)

Federal civil rights statute prohibiting employment discrimination did not preempt Navy employee's state law tort claims against civilian employees since alleged physical and emotional injuries extended beyond workplace discrimination. Kent v. Howard, S.D.Cal.1992, 801 F.Supp. 329. Civil Rights 1312

Claim by civilian employee of Air Force Reserve that her disclosure of weapons contract irregularities resulted in intentional physical and verbal harassment and intimidation were actionable under Title VII and, thus, employee could not pursue *Bivens* claim based on alleged violations of Fourth, Fifth, and Fourteenth Amendment rights. McDowell v. Cheney, M.D.Ga.1989, 718 F.Supp. 1531. United States 50.10(4)

Title VII was exclusive, preemptive administrative and judicial scheme for redress of

Social Security Administration employee's alleged federal employment discrimination claims, precluding employee from recovering under federal civil rights statute. Washington v. Secretary of Health and Human Services, N.D.Ohio 1988, 693 F.Supp. 569. Civil Rights 1312; Civil Rights 1502

Section of the Age Discrimination in Employment Act prohibiting discrimination against federal employees was modeled after Title VII of the Civil Rights Act and the two statutes, whenever possible, are to be construed consistently. Svenson v. Thomas, D.C.D.C.1985, 607 F.Supp. 1004. Statutes 223.2(1.1)

This section was not intended by Congress to preempt action for violation of Equal Pay Act of 1963, section 206(d) of Title 29, even though it did preempt other claims alleging employment discrimination against federal agency. Weiss v. Marsh, M.D.Ala.1981, 543 F.Supp. 1115. Labor And Employment 2457

Proscription against employment discrimination on the basis of sex and against retaliation for participation in equal employment opportunity programs in provisions of this subchapter was made applicable to federal employees by this section. Clark v. Alexander, D.C.D.C.1980, 489 F.Supp. 1236. Civil Rights 1116(1)

Allegations that Department of Housing and Urban Development employee had been discharged because of his advocacy, as part of his work, of improved treatment of racial minorities stated claim that would be cognizable under provision of this section that all personnel actions affecting federal employees shall be made free from any discrimination based on race, but that provision was the plaintiff's exclusive remedy and he could not maintain action under § 1985 of this title creating civil liability for participating in conspiracy to prevent federal officer from performing his duties or creating civil liability for participating in conspiracy to deny equal protection of law or equal privileges of immunities under law. Stith v. Barnwell, M.D.N.C.1978, 447 F.Supp. 970. Civil Rights 1532; Conspiracy 7.5(1)

Dismissal for failure to comply with 30-day [now ninety-day] requirement of this subchapter will not bar a later action brought under § 1981 of this title. Miller v. Saxbe, D.C.D.C.1975, 396 F.Supp. 1260. Judgment 570(2)

3. Purpose

In extending reach of equal employment provision of this subchapter to public employers, including the federal government, Congress clearly intended to give public employees the same substantive rights and remedies that had been previously provided for employees in the private sector. Douglas v. Hampton, C.A.D.C.1975, 512 F.2d 976, 168 U.S.App.D.C. 62, on remand. Civil Rights 1525

Hostile work environment claims need not allege tangible or economic losses because language of "terms, conditions, or privileges of employment" evinces congressional intent to strike at entire spectrum of disparate treatment of men and women. Hayes v. Shalala, D.D.C.1995, 902 F.Supp. 259. Civil Rights 1185

In enacting 1972 amendments to this subchapter, Congress intended this section thereof to provide exclusive and preemptive judicial remedy for claims of discrimination in federal employment; thus, black lawyer who alleged that transfer denial by the Veterans Administration was based on his race and age did not have cause of action for race discrimination under section 1981 of this title or U.S.C.A. Const.Amend. 5. Wilkins v. Walters, N.D.Ohio 1983, 571 F.Supp. 474. Civil Rights 1312; Civil Rights 1322; Civil Rights 1502

In extending the protections of this subchapter to federal employees, Congress intended to extend to them the identical antireprisal protections afforded private employees. DeMedina v. Reinhardt, D.C.D.C.1978, 444 F.Supp. 573. Civil Rights 1249(1)

In bringing federal employees within coverage of discriminatory employment practice provision of this subchapter, Congress intended such employees to have the same remedies as private sector employees. Williams v. Tennessee Valley Authority, M.D.Tenn.1976, 415 F.Supp. 454, affirmed in part, vacated in part on other grounds 552 F.2d 691. Civil Rights 1525

One of the purposes behind this section was to permit federal employees to litigate employment discrimination claims in federal court without those claims first being lost in the quagmire of administrative remedies requiring exhaustion. Ellis v. Naval Air Rework Facility, Alameda, Cal., N.D.Cal.1975, 404 F.Supp. 391, on subsequent appeal 608 F.2d 1308, on remand 87 F.R.D. 15. Civil Rights 1513

In enacting this section, Congress meant to give federal employees the same rights as private individuals bringing employment discrimination claims. Ellis v. Naval Air Rework Facility, Alameda, Cal., N.D.Cal.1975, 404 F.Supp. 377. Civil Rights 1517

This section contemplates that Civil Service Commission [now contemplates that E.E.O.C.] and agencies of federal government should work closely with court to eradicate vestiges of discrimination in public employment. Napper v. Schnipke, E.D.Mich.1975, 393 F.Supp. 379. Civil Rights 1504

Congress, in enacting this section, intended to provide for federal employees the same right to judicial review of discrimination charges as that embodied in this subchapter for nongovernmental employees, with an exception for national security. Thompson v. U.S. Dept. of Justice, Bureau of Narcotics and Dangerous Drugs, N.D.Cal.1973, 360 F.Supp. 255. Civil Rights 1510

4. Retroactive effect

Application to Postal Service employee's Title VII action of 90-day limitations period found under Civil Rights Act of 1991 for Title VII lawsuits filed by federal employees, rather than former 30-day limitations period, was proper prospective application, though events underlying Postal Service employee's claim antedated the 1991 Act; application of 1991 Act's 90-day limitations period was not retroactive since 90-day period did not attach new legal consequences to events completed before enactment of 1991 Act, and new limitations period applied to Postal Service employee's filing of Title VII complaint which occurred after 1991 Act's enactment. Forest v. U.S. Postal Service, C.A.6 (Ohio) 1996, 97 F.3d 137. Civil Rights 1106

Court of Appeals properly applied rule of strict construction against waiver of sovereign immunity in holding that provision for interest on attorney fees and expenses in Title VII action did not apply retroactively; Court was not obliged to follow presumption of retroactivity. Brown v. Secretary of Army, C.A.D.C.1996, 86 F.3d 225, 318 U.S.App.D.C. 151. Civil Rights 1106; United States 125(9)

Sovereign immunity barred retroactive application of section of Civil Rights Act of 1991, which entitled prevailing party in Title VII action to award of interest on previously awarded attorney fees and expenses, to Title VII action against government in which litigation on merits of plaintiff's claim was completed and attorney fees incurred before the section became effective. Brown v. Secretary of Army, C.A.D.C.1996, 78 F.3d 645, 316 U.S.App.D.C. 284, rehearing in banc denied , rehearing denied 86 F.3d 225, 318 U.S.App.D.C. 151, certiorari denied 117 S.Ct. 607, 519 U.S. 1040, 136 L.Ed.2d 533. Civil Rights 1106; United States 125(9)

Provision of Civil Rights Act of 1991 waiving federal government's sovereign immunity to awards of interest in Title VII actions does not apply retroactively; requiring government to pay interest would disrupt longstanding expectation created by no-interest rule and, thus, would impose important new legal burden on government. Woolf v. Bowles, C.A.4 (Va.) 1995, 57 F.3d 407. United States 110

Section of Civil Rights Act of 1991 which extended time limit for federal employees to file employment discrimination actions from 30 to 90 days could not be applied retroactively to save employment discrimination claim of former federal employee, as former employee attempted to use 1991 Act to revive right which did not exist under law as it was in force when claim arose, application of new time limit would have altered substantive rights of both parties, and Congress did not express intent to have provision apply retroactively; thus, traditional presumption against retroactive application controlled. Million v. Frank, C.A.10 (Okla.) 1995, 47 F.3d 385. Civil Rights 1106

Provision of Civil Rights Act of 1991 allowing for interest on awards against federal government in Title VII actions does not apply retroactively. Edwards v. Lujan, C.A.10 (Colo.) 1994, 40 F.3d 1152, certiorari denied 116 S.Ct. 417, 516 U.S. 963, 133 L.Ed.2d 335. United States 110

Congress intended provision of Civil Rights Act of 1991 that same interest to compensate for delay in payment be available to federal employees as in cases involving nonpublic parties apply to cases pending at its enactment. Estate of Reynolds v. Martin, C.A.9 (Cal.) 1993, 985 F.2d 470, rehearing denied 994 F.2d 690. Interest 31

Section of Civil Rights Act authorizing interest on back pay awards does not apply retroactively in cases pending on Act's effective date. Huey v. Sullivan, C.A.8 (Mo.) 1992, 971 F.2d 1362, rehearing denied, certiorari denied 114 S.Ct. 1642, 511 U.S. 1068, 128 L.Ed.2d 363. Interest 21

Amendments to Title VII contained in Civil Rights Act of 1991, which extended time to request Equal Employment Opportunity Commission to reconsider decision in Title VII case from 30 to 90 days, did not apply retroactively; determination by Commission that Act did not apply retroactively in Title VII action was a permissible construction in light of Congress' intent to leave question of retroactivity to others. Rowe v. Sullivan, C.A.5 (Tex.) 1992, 967 F.2d 186, rehearing denied. Civil Rights 1106

Suit may not be brought under the 1972 amendments to this subchapter based on acts of discrimination terminated before 1972, in the absence of a timely administrative complaint pending in 1972. Thompson v. Sawyer, C.A.D.C.1982, 678 F.2d 257, 219 U.S.App.D.C. 393. Civil Rights 1530

Although 1980 amendment of this section which deleted parenthetical clause “(other than the General Accounting Office)” from language of subsec. (a) of this section, became effective approximately four months before court of appeals rendered decision holding that this subchapter did not apply to former “excepted service” employee, and thus such decision did not apply law in effect at time it was rendered, where former General Accounting Office employee's claim under U.S.C.A.Const. Amend. 5 would have to be dismissed if amendment to this section were applied, since this subchapter would constitute his exclusive judicial remedy, and claim under this subchapter would be vulnerable to motion to dismiss for failure to exhaust administrative remedies, despite fact that former employee was not required to exhaust such remedies at time he filed suit, amendment would not be given retroactive effect. Lawrence v. Staats, C.A.D.C.1981, 665 F.2d 1256, 214 U.S.App.D.C. 438. Civil Rights 1106

Government employee's right to bring a civil action with respect to religious discrimination was not retroactively available based upon his administrative complaint where as of effective date of this section which provides the judicial remedy, employee had no ad-

ministrative complaint alleging religious discrimination pending. Siegel v. Kreps, C.A.D.C.1981, 654 F.2d 773, 210 U.S.App.D.C. 58. Civil Rights 1525

This subchapter, which was amended to extend administrative and judicial remedies to federal employees, did not apply retroactively where claimant had no claim, administrative or judicial, pending on effective date of the amendment. Revis v. Laird, C.A.9 (Cal.) 1980, 627 F.2d 982. Civil Rights 1106

This subchapter is applicable to federal employees who had administrative claims pending on effective date of its provisions, but federal employees who had received final determination or who had abandoned their administrative claim prior to effective date were not entitled to benefits of its provisions. Eastland v. Tennessee Valley Authority, C.A.5 (Ala.) 1977, 553 F.2d 364, certiorari denied 98 S.Ct. 611, 434 U.S. 985, 54 L.Ed.2d 479, on remand , on remand 528 F.Supp. 862. Civil Rights 1106

Where, on record, plaintiff would have been promoted but for racial discrimination in favor of another plaintiff was entitled not only to promotion to the job he was denied by discrimination but also to whatever benefits, in terms of seniority or the like, would flow from giving his promotion retroactive effect, but it would be left to trial court, in first instance, to decide whether, under 1972 amendments of this subchapter, promotion could be made effective as of January 1970 when discrimination was suffered or only as of some later date. Huntley v. Department of Health, Ed. and Welfare, C.A.5 (La.) 1977, 550 F.2d 290. Civil Rights 1565

Where, although acts complained of in civil rights complaint filed against the Government occurred prior to effective date of this subchapter which waived United States' government defense of sovereign immunity and authorized filing of civil actions by employees of the federal Government, administrative proceedings were pending on that date, this subchapter applied retroactively. Allen v. U.S., C.A.3 (Pa.) 1976, 542 F.2d 176. Civil Rights 1106

District court had jurisdiction over federal employee's claim of racial discrimination that was pending administratively on effective date of 1972 amendments to this subchapter. Adams v. Brinegar, C.A.7 (Ill.) 1975, 521 F.2d 129. Federal Courts 225

Provision of this section granting federal employees right to sue in United States district court upon discrimination claims against government was applicable retroactively to any cases in which proceedings were pending on effective date of its provisions. Grubbs v. Butz, C.A.D.C.1975, 514 F.2d 1323, 169 U.S.App.D.C. 82. Civil Rights 1106

This section was applicable retroactively to actions pending on effective date of this subchapter. Womack v. Lynn, C.A.D.C.1974, 504 F.2d 267, 164 U.S.App.D.C. 198.

Where Civil Service Commission's Board of Appeals and Review had, in January 1971, affirmed ruling of Departmental Office of Civil Rights on Coast Guard employee's claim of racial discrimination in denial of promotion, employee's claim was not pending "undetermined administratively" on Mar. 24, 1972, effective date of this section giving federal employees right to sue on account of racial discrimination; and thus, employee was precluded from bringing such a suit. Clark v. Goode, C.A.4 (Md.) 1974, 499 F.2d 130. Civil Rights 1106

Section of Civil Rights Act of 1991, which entitles prevailing party in Title VII action to award of interest on previously awarded attorney fees and expenses, did not affect parties' substantive rights in a case pending at time statute was enacted and, thus, applied to Title VII plaintiff's application for interest on attorney fees; prior to enactment of section, Title VII plaintiffs were entitled to interest on attorney fees in private-sector cases, statute that awards interest on attorney fees involved collateral issue, and section merely added that interest on attorney fees would also be payable in public-sector cases. Brown v. Marsh, D.D.C.1994, 868 F.Supp. 15, reversed 78 F.3d 645, 316 U.S.App.D.C. 284, rehearing in banc denied , rehearing denied 86 F.3d 225, 318 U.S.App.D.C. 151, certiorari denied 117 S.Ct. 607, 519 U.S. 1040, 136 L.Ed.2d 533. Interest 39(2.45)

Ninety-day statute of limitation period provided for by Civil Rights Act of 1991 was inapplicable to former postal worker's ADEA age discrimination action which was filed before Act became law. Jones v. Frank, D.Colo.1993, 819 F.Supp. 923, affirmed 32 F.3d 1454. Limitation Of Actions 6(1)

This section does not apply retroactively to discrimination by federal agencies unless an administrative or district court proceeding was pending on the effective date. Miller v. Smith, D.C.D.C.1984, 584 F.Supp. 149. Civil Rights 1106

This section extending remedies of this subchapter to federal employees applies retroactively to actions in which an administrative or judicial claim was pending on Mar. 24, 1972, but not if such claims had been finally decided or abandoned by that date. Hill v. U.S. Postal Service, S.D.N.Y.1981, 522 F.Supp. 1283. Civil Rights 1106

This section, allowing suits to be brought against the United States on complaints of employment discrimination, applies to claims that were already in the administrative process on Mar. 24, 1972, the effective date of this section, but it does not extend to claims that arose out of pre-act discrimination that were not brought before an administrative body until some time after this section went into effect. Thompson v. Link, E.D.Mo.1974, 386 F.Supp. 897. Civil Rights 1530

Where nurse, who alleged that her discharge by Veterans Administration Hospital was based on racial discrimination, had an administrative action pending as of the effective date of amendment prohibiting discrimination based on race, color, religion, sex or na-

tional origin, the amendment was retroactive under the circumstances, meaning that the district court had jurisdiction to hear the matter. Jackson v. U.S. Civil Service Commission, S.D.Tex.1973, 379 F.Supp. 589. Civil Rights 1106

Federal employee whose administrative claim with respect to discriminatory employment practices was pending as of Mar. 24, 1972 had cause of action under this subchapter. Ficklin v. Sabatini, E.D.Pa.1974, 378 F.Supp. 19. Civil Rights 1511

Where government employee's action in district court charging Air Force Reserve Personnel Center with employment discrimination because of employee's race was instituted within 30 days [now 90 days] after employee received notice that Civil Service Commission had denied his appeal from appeals examiner's recommendation of no probable cause, this section which extended this subchapter to federal employees would be applied retroactively so as to permit employee's suit. Fears v. Catlin, D.C.Colo.1974, 377 F.Supp. 291. Civil Rights 1106

Where alleged discriminatory discharge from federal agency occurred prior to effective date of this section creating a new right for federal employees under this subchapter which as originally enacted exempted agencies of the United States, no claim for relief was stated under this section. Hill-Vincent v. Richardson, N.D.Ill.1973, 359 F.Supp. 308. Civil Rights 1532

5. State regulation or control

Title VII preempted employee's intentional infliction of emotional distress (IIED) claim against supervisor in his individual capacity, where that claim was wholly derivative from alleged conduct giving rise to Title VII claims. Roland v. Potter, S.D.Ga.2005, 366 F.Supp.2d 1233. Damages 57.6; States 18.15

Federal employee's complaint alleging that his free speech rights were violated by disciplinary action taken against him on basis of political content of his T-shirt was so inexorably intertwined with his claim of national origin discrimination as to be preempted by Title VII. Toyee v. Reno, E.D.Mich.1996, 940 F.Supp. 1094. Civil Rights 1502

Title VII is exclusive remedy for redress of federal employment discrimination and preempts other discrimination laws. Ciafrei v. Bentsen, D.R.I.1995, 877 F.Supp. 788. Civil Rights 1502

6. Exclusive nature of section

Federal employees alleging discrimination had no claim under the equal protection principles of the due process clause of the Fifth Amendment; Title VII provided the exclusive judicial remedy for claims of discrimination in federal employment. Mlynczak v.

Bodman, C.A.7 (Ill.) 2006, 442 F.3d 1050. Civil Rights 1502; Constitutional Law 3593; United States 36

Title VII offers federal employees the exclusive, preemptive, administrative scheme for the redress of federal employment discrimination. Keller v. Embassy of U.S., D.D.C.2007, 522 F.Supp.2d 213. Civil Rights 1502

Title VII provides the exclusive judicial remedy for claims of discrimination in federal employment, and federal employee who is covered by Title VII may not sue under §§ 1981 or the Fifth Amendment. Prince v. Rice, D.D.C.2006, 453 F.Supp.2d 14. Civil Rights 1312; Civil Rights 1502

Rehabilitation Act provides a remedy, in fact the exclusive remedy, for a federal employee's disability discrimination claim if the employee first exhausts her administrative remedies. Jordan v. Evans, D.D.C.2005, 404 F.Supp.2d 28. Civil Rights 1513

Former Postal Service employee's claims under New York State Human Rights Law (NYHRL) and New York City Human Rights Law (NYCHRL), alleging religious discrimination or retaliation for complaints about such discrimination, were barred, since Title VII was exclusive remedy for federal employees alleging employment discrimination based on race, color, religion, sex, or national origin. Garvin v. Potter, S.D.N.Y.2005, 367 F.Supp.2d 548. Civil Rights 1502; Civil Rights 1704; Postal Service 5

Title VII action against federal government is exclusive judicial remedy for discrimination in federal employment. Nishibayashi v. England, D.Hawai'i 2005, 360 F.Supp.2d 1095. Civil Rights 1502

Federal employee's sole remedies for his claims of gender and age discrimination and retaliation were under Title VII and ADEA, since Title VII and ADEA preempted claims made under any other authority. Mitchell v. Chao, N.D.N.Y.2005, 358 F.Supp.2d 106. Civil Rights 1502; United States 36

Employee could not maintain claims against Postal Service under Massachusetts' anti-discrimination and sexual harassment statutes, inasmuch as Title VII was exclusive and pre-emptive administrative and judicial scheme for redress of federal employment discrimination. Healy v. Henderson, D.Mass.2003, 275 F.Supp.2d 40. Civil Rights 1502; Civil Rights 1704

Section 717 of Title VII is the exclusive remedy available to federal employees for the redress of federal employment discrimination. Brunetti v. Rubin, D.Colo.1998, 999 F.Supp. 1408. Civil Rights 1502

Title VII is exclusive remedy for federal employment discrimination. Wright v. Butts,

M.D.Ala.1996, 953 F.Supp. 1343. Civil Rights 1502

Federal employee failed to state Fifth Amendment claim, arising from same allegations that supported her Title VII sexual harassment claim, since Title VII provided exclusive remedy for claims of discrimination in federal employment. Carlson v. U.S. Dept. of Health and Human Services, D.Md.1995, 879 F.Supp. 545. Civil Rights 1502

As a federal employee under the National Guard Technical Act (NGTA), National Guard technician's exclusive remedies to redress employment discrimination arose under Title VII, not the New Jersey Law Against Discrimination (NJLAD). Reiser v. New Jersey Air Nat. Guard, C.A.3 (N.J.) 2005, 152 Fed.Appx. 235, 2005 WL 2812806, Unreported. Civil Rights 1502; Civil Rights 1704

Internal Revenue Service (IRS) revenue agent's institutional discrimination claim that was based on alleged violations of his Fifth Amendment rights had to be dismissed, give that Title VII was the exclusive vehicle available to him as a federal employee claiming employment discrimination. Carter v. O'Neill, C.A.5 (La.) 2003, 78 Fed.Appx. 978, 2003 WL 22430742, Unreported. Civil Rights 1502

7. Executive orders

Ex.Ord. No. 11246 concerning equal opportunity in federal employment represents in essence the formulation of a policy by the President for guidance of federal agencies. Congress of Racial Equality (Target City Project) v. Commissioner, Social Sec. Administration, D.C.Md.1967, 270 F.Supp. 537. Civil Rights 1125

8. Pretextual basis for discrimination

Concerns about federal agency employee's interactions with secretarial staff, offered by agency as reason for limiting employee's ability to directly assign work to staff, was not shown to be pretext for retaliation for employee's filing administrative Title VII sex and national-origin discrimination claim; employee's superior averred particular instances of poor judgment by employee, while employee's rebuttal consisted only of time proximity between administrative complaint and agency's limitation on employee. Weber v. Battista, C.A.D.C.2007, 494 F.3d 179, 377 U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1251; Civil Rights 1252; United States 36

Employer's proffered reason for discharging postal worker, his poor attendance record and unremitting lack of punctuality, was not a pretext for discrimination based on postal worker's Italian origin; worker was not similarly situated with co-worker of Irish descent who allegedly was treated more leniently since worker had longer and more varied history of attendance problems and failed to mend his ways following receipt of formal warnings. Pagano v. Frank, C.A.1 (Mass.) 1993, 983 F.2d 343. Civil Rights 1138

Statistics presented by Asian-American female former Foreign Service officer concerning representation of Asian-American women among senior ranks of Service were not relevant to question of whether Service's decision not to hire her for position of US-NATO Political Counselor was pretext for unlawful gender and racial discrimination, and thus were insufficient to create triable fact issue with respect to pretext, for purposes of summary judgment in employee's Title VII action. Farris v. Clinton, D.D.C.2009, 602 F.Supp.2d 74. Federal Civil Procedure 2497.1

Although a plaintiff alleging failure to promote based on race in violation of Title VII may proffer evidence that her employer has treated similarly situated individuals outside her protected class more favorably, a plaintiff is not required to do so; a plaintiff may try in multiple ways to show that the employer's stated reason from the employment action was not the actual reason, in other words, was pretext. Hawkins v. Holder, D.D.C.2009, 597 F.Supp.2d 4. Civil Rights 1137; Civil Rights 1138

Federal agency's proffered reasons, including lack of qualifications, for not hiring Hispanic applicant for several positions were not rendered pretextual for national origin discrimination in violation of Title VII, simply by virtue of agency officials' awareness of applicant's national origin. Moncada v. Peters, D.D.C.2008, 579 F.Supp.2d 46. Civil Rights 1137

Even if a court suspects that a job applicant asserting a Title VII or Age Discrimination in Employment Act (ADEA) claim was victimized by poor selection procedures it may not second-guess an employer's personnel decision absent demonstrably discriminatory motive. Chappell-Johnson v. Bair, D.D.C.2008, 574 F.Supp.2d 103, affirmed 358 Fed.Appx. 202, 2009 WL 5127101. Civil Rights 1137; Civil Rights 1209

There was no indication that selection panel's belief that female Federal Deposit Insurance Corporation (FDIC) employee was not best qualified applicant for human resource specialist position was unreasonable, as would support employee's claim that FDIC's legitimate, non-discriminatory reason for not selecting her for position was mere pretext for gender discrimination under Title VII and age discrimination under Age Discrimination in Employment Act (ADEA). Chappell-Johnson v. Bair, D.D.C.2008, 574 F.Supp.2d 87, affirmed 358 Fed.Appx. 200, 2009 WL 5127099. Civil Rights 1171; Civil Rights 1209

There was no evidence that non-promotion of African-American State Department employee to position of Equal Employment Opportunity (EEO) Manager was result of unlawful discrimination, or that Department's non-discriminatory reason for its decision was mere pretext, as would support employee's claim that she was discriminated against on basis of her race in violation of Title VII in not being promoted to position. Prince v. Rice, D.D.C.2008, 570 F.Supp.2d 123, affirmed 2009 WL 5125223. Civil

Rights 1135; Civil Rights 1137

Genuine issue of material fact existed as to whether reasons proffered by federal employer in denying employee a pay raise were pretext for race discrimination, precluding summary judgment in Title VII action. Brownfield v. Bair, D.D.C.2008, 541 F.Supp.2d 35. Federal Civil Procedure 2497.1

Genuine issue of material fact as to whether proffered rationale of United States Postal Service (USPS) that most qualified candidate was selected for position of supervisor of maintenance operations (SMO) precluded summary judgment on issue of pretext for discrimination, under Title VII, on basis of race, gender, and national origin by non-promotion of two employees. Jones v. Potter, D.Conn.2007, 514 F.Supp.2d 274. Federal Civil Procedure 2497.1

African-American applicant failed to meet his burden of showing that agency's proffered legitimate, nondiscriminatory reason for his nonselection for newly created position of Director of Office of Patient Advocacy at Department of Veterans Affairs Medical Center in Washington, D.C.(VAMC-DC) was pretextual; even if applicant established that he was the best qualified for Director position when he interviewed under the announcement, he did not establish that reasonable jury could infer discriminatory animus from decision to cancel job announcement and instead reinstate Lead Patient Advocate, whose position had been abolished. Pierce v. Mansfield, D.D.C.2008, 530 F.Supp.2d 146. Civil Rights 1137

Former Federal Bureau of Investigation (FBI) agent failed to present sufficient evidence that agency's legitimate, nondiscriminatory reason for initiating second referral to Office of Professional Responsibility (OPR) was a pretext for discriminatory or retaliatory animus. Velikonja v. Gonzales, D.D.C.2007, 501 F.Supp.2d 65, affirmed 298 Fed.Appx. 8, 2008 WL 4844773. Civil Rights 1544; Civil Rights 1553; United States 36

Older white male United States Park Police (USSP) sergeant failed to show that agency's proffered legitimate, nondiscriminatory reasons for not reassigning him to any of three canine officer positions to which he sought transfer were pretextual; reassignments did not require the same formal procedures used for promotions, such as ranking candidates and thoroughly reviewing their entire work records, though decision process was informal there was no evidence that recommending or selecting officials acted in bad faith, and court would not infer discrimination even if selecting officials' personal knowledge regarding sergeant was incorrect, as their testimony was frank and highly credible that they believed the reasons they proffered for their decisions. McNally v. Norton, D.D.C.2007, 498 F.Supp.2d 167. Civil Rights 1548; Civil Rights 1549; Civil Rights 1551

Fact that arbitrators reinstated employee on three separate occasions did not show that

Postal Service's stated reasons for its various adverse actions, namely employee's violations of employment policies and practices, were pretextual, inasmuch as arbitrators' decisions were based on whether Postal Service had just cause for termination under collective bargaining agreement (CBA). Lawson v. Potter, D.Kan.2006, 463 F.Supp.2d 1270, reconsideration denied 2007 WL 201121. Civil Rights 1137; Civil Rights 1263

Removed civilian employee failed to show that Department of the Navy's proffered legitimate, nondiscriminatory reasons for her removal were pretext for discrimination or retaliation through allegation that her previous supervisor repeatedly denied her credit regarding her discoveries and findings in publications and instead let less qualified, younger males receive the accolades and exposure such discoveries generated; alleged professional slights did not rise to level of adverse employment actions, and they were material only to question of whether defendants' real reason for terminating employee was her gender, national origin, or age. Ikossi v. England, D.D.C.2005, 406 F.Supp.2d 23, affirmed in part , reversed in part 516 F.3d 1037, 380 U.S.App.D.C. 112. Armed Services 27(5); Civil Rights 1137; Civil Rights 1171; Civil Rights 1209; Civil Rights 1251

In suit alleging national origin and age discrimination regarding position of Librarian Cataloger in Korean/Chinese team at Library of Congress, employer's proffered explanation for denying position to applicant of Korean national origin over the age of forty, that applicant of Chinese national origin under age of forty was stronger candidate, was legitimate and nondiscriminatory and was not shown to be pretextual, even though unsuccessful applicant highlighted difference between her thirteen years of experience at Library and successful applicant's three years and contended she had stronger knowledge of Korean language, which job announcement listed as relevant skill. Kwon v. Billington, D.D.C.2005, 370 F.Supp.2d 177. Civil Rights 1137; Civil Rights 1209

Female Library of Congress employee's proffered testimony from coworkers regarding her demeaning treatment by supervisor compared to that of male coworkers, as well as direct evidence of discriminatory animus from other female employees who had worked under same supervisor, created fact issue as to whether government's proffered nondiscriminatory reasons for differing treatment of employee, i.e. her less-than-outstanding performance evaluations, failure to perform all duties in her position description, and ultimate departure in reduction in force (RIF), were pretextual, precluding summary judgment in employee's Title VII sexual discrimination action against government. Higbee v. Billington, D.D.C.2003, 246 F.Supp.2d 10, reconsideration denied 290 F.Supp.2d 105. Federal Civil Procedure 2497.1

Secretary of the Navy's memorandum directing human resources director at naval sea systems command to downgrade certain employee positions was a legitimate, non-race

based and non-retaliatory reason for change of employee's position description and grade level. Nails v. England, D.D.C.2004, 311 F.Supp.2d 116. Civil Rights 1249(1)

Black Hispanic female former employee failed to prove that employer's reason for terminating her, misrepresentation of her physical restrictions, was pretext for Title VII race and sex discrimination; had employee been white male suffering same physical impairments, he would have been terminated had he misrepresented his ability to report for work. Francis v. Runyon, E.D.N.Y.1996, 928 F.Supp. 195. Civil Rights 1137; Civil Rights 1171

Federal employee failed to establish that agency, which suspended and subsequently removed her, intentionally discriminated against her on basis of sex or age or in retaliation for prior discrimination complaints; employee did not prove that agency's proffered nondiscriminatory reasons of abuse of overtime authorization, insubordination, uncooperative work behavior, and failure to comply with authorized instructions of supervisor were pretexts for discrimination. Mitchell v. Espy, D.Kan.1994, 845 F.Supp. 1474. Civil Rights 1169; Civil Rights 1207; United States 36

Evidence established that civilian Army auditor-trainee's purported lack of qualifications was merely pretext for terminating trainee based on fact that he was Egyptian; even accepting supervisor's criticisms of trainee's performance, deficiencies did not justify termination under standards for training program. Yacoub v. McGovern, N.D.N.Y.1993, 840 F.Supp. 947. Civil Rights 1544

Applicant for government position failed to demonstrate that legitimate, nondiscriminatory reasons for her rejection, namely her poor interview, her lack of experience with computerized supply management system, and significant amount of time since she worked in inventory management, were pretext for discrimination on basis of race and age, despite evidence of her experience with another computerized system, in view of qualifications of those who were chosen and applicant's failure to take advantage of her opportunity to advise interviewer of her experience with other system. Robinson v. Russo, E.D.Va.1989, 736 F.Supp. 1411, affirmed 900 F.2d 254. Civil Rights 1137; Civil Rights 1209

Unsupported accusations of perjury and misrepresentation were an insufficient showing of pretext for an African-American female employee of the United States Postal Service (USPS) to prevail on Title VII discrimination claims. Williams v. Potter, C.A.10 (Kan.) 2005, 149 Fed.Appx. 824, 2005 WL 2387828, Unreported, certiorari denied 127 S.Ct. 83, 549 U.S. 818, 166 L.Ed.2d 30. Civil Rights 1544; Civil Rights 1549

Allegedly subjective nature of some of interviewer's questions, and interviewer's failure to record candidates' answers, did not establish that United States Postal Service's (USPS) proffered legitimate nondiscriminatory reason for failing to promote African-

American employee to customer service supervisor position in mail distribution craft, i.e., that white candidate performed better during interview, was pretext for racial discrimination in violation of Title VII; proportion of subjective questions asked during interviews was too small to account for vast discrepancy between white applicant's score of 96.7 percent correct and plaintiff's score of 44.3 percent correct, and failure to record answers did not tend to show that interviewed lied about candidates' performances or that he ultimately chose white candidate over plaintiff because of plaintiff's race. Williams v. Henderson, C.A.4 (S.C.) 2005, 129 Fed.Appx. 806, 2005 WL 977587, Unreported, certiorari denied 126 S.Ct. 387, 546 U.S. 876, 163 L.Ed.2d 172. Civil Rights 1137

In Title VII action by African-American former employee at federal government agency, alleging discrimination based on race, government's proffered reason for his termination, that he failed to maintain satisfactory attendance record, was legitimate and nondiscriminatory. Steik v. Garcia, N.D.Cal.2003, 2003 WL 22992223, Unreported. Civil Rights 1128

Bureau of Prisons (BOP) employee failed to rebut BOP's proffered legitimate, nondiscriminatory reason for failing to promote her assistant manager position, i.e., that such decision was made by another office, removed from employee's immediate supervisors, that conducted neutral evaluation of available candidates. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1135; Civil Rights 1137

9. Business necessity

In civil rights action by black national guardsman against state National Guard for allegedly unlawfully discriminating against him on basis of race when it refused to hire him for full-time civilian equal employment opportunity position, in which guardsman established prima facie case of employment discrimination, any claim which Guard might raise that its rating procedure was required by business necessity was obviated by fact Guard stopped using such procedure well before trial, and implemented what it felt to be better rating method, which did not prefer applicants who were already full-time civilian employees. Thornton v. Coffey, C.A.10 (Okla.) 1980, 618 F.2d 686. Civil Rights 1127

Preference of Board of Veterans Appeals, Veterans Administration, for attorneys with recent legal experience was valid job-related requirement for position of attorney advisor to such agency. Coopersmith v. Roudebush, C.A.D.C.1975, 517 F.2d 818, 170 U.S.App.D.C. 374. Civil Rights 1127

Former temporary worker who sued African Development Foundation (ADF), a federal agency, for employment discrimination failed to demonstrate that agency's decision to

contract out work was not prudent business decision, as required to establish requisite employer-employee relationship under Title VII; although no special skills were required of worker, she generally performed her tasks independent of supervision, and her receptionist position was not integral to business of agency. Mason v. African Development Foundation, D.D.C.2004, 355 F.Supp.2d 85. Civil Rights 1116(1)

Tennessee Valley Authority's (TVA) requirement of "clean" disciplinary record for more desirable nuclear plant laborer positions bore manifest and important relationship to right to work in nuclear plant and was more than amply justified as business necessity, even assuming policy had discriminatory impact, in view of need for disciplined workers arising from close contact they would have with fellow workers and outside visitors in highly visible plant well known for public perception of danger and overriding need for stringent safety measures, absent any evidence suggesting that TVA disciplined blacks more often or more severely than whites who committed same or similar infractions. Garner v. Runyon, N.D.Ala.1991, 769 F.Supp. 357. Civil Rights 1135

For purposes of action brought by civilian woman employed as supply clerk by Texas Air National Guard to recover for alleged sex discrimination in employment, there was a manifest and compelling "business" and national defense reason why better paying civilian positions in Air National Guard should be held by persons who were members of Air National Guard and thus susceptible to mobilization. Grier v. Rumsfeld, S.D.Tex.1979, 466 F.Supp. 422. Civil Rights 1169; Civil Rights 1175

10. Persons liable--Generally

An employer is liable for discriminatory acts committed by supervisory personnel. Bundy v. Jackson, C.A.D.C.1981, 641 F.2d 934, 205 U.S.App.D.C. 444. Civil Rights 1528

Only proper defendant in civil action by federal employee under Title VII is head of department, agency, or unit; same is true of civil action under the Rehabilitation Act. Nurriddin v. Bolden, D.D.C.2009, 674 F.Supp.2d 64. Civil Rights 1531

Postal Service employee's supervisor could not be held individually liable under Title VII. Ausfeldt v. Runyon, N.D.N.Y.1997, 950 F.Supp. 478. Civil Rights 1116(2)

Former manager of federal facility where employee worked was not subject to individual liability on employee's Title VII sexual harassment claim, since former manager was simply a former employee of federal agency, and could not be considered employee's employer. Bangas v. Potter, C.A.6 (Ohio) 2005, 145 Fed.Appx. 139, 2005 WL 1901825, Unreported. Civil Rights 1116(2)

11. ---- Federal agencies, persons liable

Agency was liable as plaintiff's employer for sexual harassment committed by agency supervisors, even though director of agency did not use his position to harass, where director and other officials in agency who had some control over employment and promotion decisions had full notice of harassment committed by agency supervisors and did virtually nothing to stop or even investigate practice. Bundy v. Jackson, C.A.D.C.1981, 641 F.2d 934, 205 U.S.App.D.C. 444. Civil Rights 1528

Transportation Security Administration (TSA), as federal agency, could not be subjected to liability by former airport employees under Oregon statute prohibiting discrimination in employment, since employees' potential remedies against agency were exclusively governed by Title VII and Age Discrimination in Employment Act (ADEA). Sharr v. Department of Transp., D.Or.2003, 247 F.Supp.2d 1208. Civil Rights 1502; Civil Rights 1704

Named defendants sued in their official capacity in employee's Title VII action against United States Department of Agriculture (USDA) who were not the head of the USDA were not proper defendants. Johnson v. Veneman, D.D.C.2008, 569 F.Supp.2d 148. Civil Rights 1531

Former temporary worker who sued African Development Foundation (ADF), a federal agency, for employment discrimination failed to demonstrate that agency had high degree of control over her work, as required to establish requisite employer-employee relationship under Title VII; relationship was terminable by either party at will, worker's contracts with agency all had fixed dates, and contracts did not require agency to notify worker if it chose not to renew them. Mason v. African Development Foundation, D.D.C.2004, 355 F.Supp.2d 85. Civil Rights 1116(1)

American Embassy Association (AEA) was not an instrumentality of the United States State Department (USDOS), so as to subject Secretary of State to liability for AEA's alleged racial discrimination against former AEA employee in violation of Title VII, where, although AEA was created pursuant to federal legislation, AEA was not owned or directly funded by the federal government, but generally functioned independent of it, AEA's day-to-day operation, including the authority to manage personnel issues, were controlled by its general manager, who in turn reported directly to AEA's board of trustees, which was independently governed by its own distinct constitution and bylaws, and AEA was financially independent and did not receive financial assistance from the USDOS. Tewelde v. Albright, D.D.C.2000, 89 F.Supp.2d 12. Civil Rights 1116(1); United States 53(4)

Smithsonian Institute was not under control of executive branch of federal government, and, thus, provision of Rehabilitation Act governing employment of individuals with disabilities by executive agencies did not apply to Smithsonian employee, where although Board of Regents of Smithsonian included members from all three branches of federal

government, 15 of 17 members of Board were either members of Congress or appointed by Congress. Rivera v. Heyman, S.D.N.Y.1997, 982 F.Supp. 932, affirmed in part , reversed in part 157 F.3d 101. Civil Rights 1116(1)

Adjutant General of state Army National Guard and hiring officer/interviewer were not proper defendants to sex discrimination action brought by rejected applicant, and thus they would be dropped as defendants, as neither were head of federal department, agency, or unit. Blong v. Secretary of Army, D.Kan.1995, 877 F.Supp. 1494. Civil Rights 1531

Proscription against employment discrimination on the basis of race in this subchapter applies to federal agencies. Segar v. Civiletti, D.C.D.C.1981, 508 F.Supp. 690, affirmed in part, vacated in part on other grounds 738 F.2d 1249, 238 U.S.App.D.C. 103, certiorari denied 105 S.Ct. 2357, 471 U.S. 1115, 86 L.Ed.2d 258. Civil Rights 1116(1)

When agency specifically cites and relies on its own regulation prohibiting discrimination, it need not meet Title VII standards for establishing discrimination. Hicks v. Department of Treasury, M.S.P.B.1994, 62 M.S.P.R. 71, affirmed 48 F.3d 1235, rehearing denied , in banc suggestion declined. Merit Systems Protection 216.5

12. ---- Secretary of Defense, persons liable

Secretary of Defense must accept responsibility for derelictions, if any, of supervisors of civilian fire fighters at naval air station in responding to racial harassment of employee by co-workers. DeGrace v. Rumsfeld, C.A.1 (Mass.) 1980, 614 F.2d 796. Civil Rights 1363

13. ---- Securities and Exchange Commission, persons liable

Securities and Exchange Commission which was employer of personnel who persisted in activity which created hostile work environment and which took no action despite its actual knowledge was liable under agency principles for the acts of its managers. Broderick v. Ruder, D.D.C.1988, 685 F.Supp. 1269. Civil Rights 1363

14. ---- Equal Employment Opportunity Commission, persons liable

Congress did not expressly create a cause of action against the Commission by employees of third parties; only present or former employees of the Commission or applicants for employment who allege unlawful employment practice committed by the Commission as an employer may bring action under this subchapter against the Commission. Ward v. E.E.O.C., C.A.9 (Cal.) 1983, 719 F.2d 311, certiorari denied 104 S.Ct. 2159, 466 U.S. 953, 80 L.Ed.2d 544, rehearing denied 105 S.Ct. 29, 468 U.S. 1227, 82 L.Ed.2d 921. Civil Rights 1527

Former teacher had no cause of action under Title VII against the Equal Employment Opportunity Commission (EEOC) regarding the procedures used by the EEOC to investigate and process his discrimination complaints, even if the EEOC did decline to pursue his claims out of nothing more than fear of straining its working relationship with the District of Columbia Office of Human Rights (OHR). Bagenstose v. District of Columbia, D.D.C.2007, 503 F.Supp.2d 247, affirmed 2008 WL 2396183, rehearing en banc denied. Civil Rights 1529

Title VII provided federal employee with remedy only against her employer, and did not create independent cause of action against Equal Employment Opportunity Commission (EEOC) based upon its alleged wrongful refusal to reopen employee's case. Packer v. Garrett, D.D.C.1990, 735 F.Supp. 8, affirmed 959 F.2d 1102, 295 U.S.App.D.C. 98, rehearing denied, certiorari denied 113 S.Ct. 819, 506 U.S. 1036, 121 L.Ed.2d 691, rehearing denied 113 S.Ct. 1374, 507 U.S. 955, 122 L.Ed.2d 751. Civil Rights 1506

Title VII did not give employment discrimination plaintiff right to sue Equal Employment Opportunity Commission or its chairman for handling or disposition of her complaint. Lawrence v. Chairman, E.E.O.C., N.D.N.Y.1990, 728 F.Supp. 899. Civil Rights 1504

Title VII of the Civil Rights Act does not provide federal employee either an express or implied cause of action against the Equal Employment Opportunity Commission to challenge its investigation and processing of a charge; a federal employee may vindicate his rights by filing a complaint against the party allegedly engaged in the discrimination. Svenson v. Thomas, D.C.D.C.1985, 607 F.Supp. 1004.

15. ---- Executive departments, persons liable

State Army National Guard was not “executive department,” “government corporation,” or “independent establishment,” for purposes of employment discrimination action. Blong v. Secretary of Army, D.Kan.1995, 877 F.Supp. 1494. Civil Rights 1531

16. ---- Postal service, persons liable

Employee's position as postmaster did not relieve the Postal Service of responsibility to investigate and prevent harassment, for purposes of Title VII discrimination action. Galdamez v. Potter, C.A.9 (Or.) 2005, 415 F.3d 1015. Civil Rights 1149; Civil Rights 1528

Rehabilitation Act section providing for application of remedies, procedures, and rights set forth in Title VII for suits by federal employees against head of department, agency, or unit, did not bar Postal Service employee from maintaining disability discrimination suit against union and union local under ADA, since no sovereign immunity concerns

were present, and employee was not allowed to escape rigors of exhausting his administrative remedies. Jones v. American Postal Workers Union, C.A.4 (W.Va.) 1999, 192 F.3d 417. Civil Rights 1258

Only employers, and not individuals merely with supervisory control over an employee, can be held liable under Title VII. Thompkins v. Potter, D.Conn.2006, 451 F.Supp.2d 349. Civil Rights 1113

United States Postal Service employee did not suffer adverse employment action, upon which Title VII claim against the Postmaster General could be based, when Postmaster General removed two workers from her direct supervision pursuant to a realignment plan, where removal of workers from her direct supervision did not change her official or unofficial working conditions. de Jesus v. Potter, D.Puerto Rico 2005, 397 F.Supp.2d 319, affirmed in part, vacated in part and remanded 211 Fed.Appx. 5, 2006 WL 3782922. Civil Rights 1126

United States Postal Service is "government agency" within meaning of Civil Rights Act of 1991 and, therefore, is immune from liability for punitive damages in Title VII action. Cleveland v. Runyon, D.Nev.1997, 972 F.Supp. 1326. Civil Rights 1577

17. Immunity--Generally

Equal Employment Opportunity Commission (EEOC) was immune from a Title VII suit challenging the manner in which it investigated or processed a former teacher's claims of employment discrimination. Bagenstose v. District of Columbia, D.D.C.2007, 503 F.Supp.2d 247, affirmed 2008 WL 2396183, rehearing en banc denied. Civil Rights 1529

Federal agency's Equal Employment Opportunity (EEO) officer was immune from male employee's Title VII sexual harassment claim based on allegation that female officer disseminated false information about him was during her investigation of female subordinate's sexual harassment charge against him; essence of employee's claim was that investigator defamed him, and since investigator would have been immune from liability under the Federal Tort Claims Act (FTCA), she was also immune from liability under Title VII as well. Kipnis v. Baram, N.D.Ill.1996, 949 F.Supp. 618. Civil Rights 1529

Under this section, head of federal department which employed plaintiff could not be sued individually, but only in her official capacity. Keeler v. Hills, N.D.Ga.1975, 408 F.Supp. 386, supplemented 73 F.R.D. 10. Civil Rights 1531

Conclusory allegations of good faith in affidavits did not guarantee federal officials the shield of official immunity; such issues were required to be tested on the merits particularly where the action was based on alleged discrimination which had been found to ex-

ist by the Commission. Miller v. Saxbe, D.C.D.C.1975, 396 F.Supp. 1260. Civil Rights 1398; Civil Rights 1532

17a. ---- Intra-military immunity, persons liable

Title VII creates a limited exception to the *Feres* doctrine of intra-military immunity that allows some lawsuits to be brought pursuant to the provisions of Title VII if the plaintiff is a civilian employee of the military. Overton v. New York State Div. of Military and Naval Affairs, C.A.2 (N.Y.) 2004, 373 F.3d 83. Civil Rights 1116(3); United States 78(16)

18. ---- Sovereign immunity, persons liable

Legislative record of Government Employee Rights Act (GERA) failed to show that Congress identified a pattern of state discrimination toward members of an elected official's personal staff, those serving the official on a policymaking level, and those serving as immediate advisers, so as to support abrogation of states' Eleventh Amendment immunity from suit by means of a valid enforcement of Fourteenth Amendment; Congress, in passing Equal Employment Opportunity Act, had excluded such individuals from coverage, and nothing in record showed that such individuals had been discriminated against when GERA was enacted. Alaska v. E.E.O.C., C.A.9 2007, 508 F.3d 476, rehearing en banc granted 531 F.3d 1002, on rehearing en banc 564 F.3d 1062, certiorari denied 130 S.Ct. 1054. Constitutional Law 4869; Federal Courts 265

Congress waived sovereign immunity for Title VII retaliation claims. Rochon v. Gonzales, C.A.D.C.2006, 438 F.3d 1211, 370 U.S.App.D.C. 74, rehearing en banc denied. United States 125(9)

Workforce Investment Act included the Smithsonian Institute among federal entities to which Congress waived sovereign immunity with respect to Title VII claims, but like all other entities listed in that provision, the Smithsonian may only be sued in federal court if the aggrieved employee or applicant for employment has exhausted all available administrative remedies. Misra v. Smithsonian Astrophysical Observatory, C.A.1 (Mass.) 2001, 248 F.3d 37. Civil Rights 1513; United States 125(9)

To provide sovereign immunity waiver absent in Title VII, separate statute must, at a minimum, unequivocally express Congress's intent to waive sovereign immunity under Title VII. Arneson v. Callahan, C.A.8 (Mo.) 1997, 128 F.3d 1243, certiorari denied 118 S.Ct. 2319, 524 U.S. 926, 141 L.Ed.2d 694. United States 125(9)

Subsection (c) of § 717 of the Civil Rights Act is a clear expression of consent to suits against the United States by federal employees covered by subsection (a). Salazar v. Heckler, C.A.10 (Colo.) 1986, 787 F.2d 527. United States 78(5.1)

Back pay award to employee of Internal Revenue Service in employment discrimination suit was not barred by governmental immunity, in view of facts that fundamental constitutional rights were involved and that Congress consented to filing of action against government through one of its representatives. Carreathers v. Alexander, C.A.10 (Colo.) 1978, 587 F.2d 1046. Civil Rights 1577

Action by army employee against United States and Secretary of the Army on account of alleged racial discrimination was an action against the sovereign. Jordan v. U.S., C.A.8 (Neb.) 1975, 522 F.2d 1128. United States 125(25.1)

Absent an effective waiver the doctrine of sovereign immunity would bar discriminatory employment practices suit against an agency of federal government, since a decree awarding the requested promotion or back pay would involve expenditures from the treasury and in effect, operate against the sovereign. Brown v. General Services Administration, C.A.2 (N.Y.) 1974, 507 F.2d 1300, certiorari granted 95 S.Ct. 1989, 421 U.S. 987, 44 L.Ed.2d 476, affirmed 96 S.Ct. 1961, 425 U.S. 820, 48 L.Ed.2d 402. United States 125(25.1)

Congressional Accountability Act's (CAA) waiver of sovereign immunity for purposes of certain Title VII claims against United States Capitol Police for “covered employees” did not include Library of Congress employees. Fraternal Order of Police Library of Congress Labor Committee v. Library of Congress, D.D.C.2010, 692 F.Supp.2d 9. United States 125(5)

Congress had not waived sovereign immunity of Equal Employment Opportunity Commission (EEOC) with respect to plaintiff's claim for equitable bill of discovery, which did not implicate the EEOC as a former employer. Darbeau v. Library of Congress, D.D.C.2006, 453 F.Supp.2d 168. United States 125(28.1)

Feres doctrine of intramilitary immunity bars claims against military doctors for medical malpractice, civil rights claims against federal individuals brought under *Bivens,* civil rights claims by national guard personnel against state officers, and Title VII-type discrimination in employment claims; *Feres* also bars suits under the Public Vessels Act, and claims for age and disability discrimination. Flowers v. First Hawaiian Bank, D.Hawai'i 2003, 289 F.Supp.2d 1213, affirmed 179 Fed.Appx. 986, 2006 WL 1233096, certiorari denied 127 S.Ct. 2248, 550 U.S. 933, 167 L.Ed.2d 1089. United States 78(16); United States 50.10(5)

Under Title VII, federal Government has waived its sovereign immunity to limited extent. Ciafrei v. Bentsen, D.R.I.1995, 877 F.Supp. 788. United States 125(9)

This section is example of explicit waiver of sovereign immunity. McNutt v. Hills,

D.C.D.C.1977, 426 F.Supp. 990. United States 125(5)

Under 1972 amendment to this subchapter, defense of sovereign immunity is to be waived, in accordance with congressional mandate and administrative regulations made pursuant to it, only after specific complaints have been filed within 30 days of incidents of discrimination, so that there can be administrative investigation contemplated by this subchapter. Ettinger v. Johnson, E.D.Pa.1976, 410 F.Supp. 519, reversed on other grounds 556 F.2d 692. United States 125(9)

Doctrine of sovereign immunity precludes any action by a federal employee against supervisors acting in their official capacity except within framework of provision of this section prohibiting discrimination in federal employment. Archuleta v. Callaway, D.C.Colo.1974, 385 F.Supp. 384. United States 125(24)

Action for alleged discrimination in government employment, initiated by filing of an administrative complaint prior to adoption of this section was barred by doctrine of sovereign immunity, despite claim that alleged acts of discrimination continued beyond dates on which administrative complaints were filed and administrative action terminated, where continuing practices were couched in generalized grounds appropriated to an anticipated class action suit, whereas specific acts relied upon by plaintiffs all occurred prior to enactment of this section, and it was not claimed that manner in which practices affected plaintiffs was identical to past acts of defendants. Willingham v. Lynn, E.D.Mich.1974, 381 F.Supp. 1119. United States 125(25.1)

19. Territorial application

Title VII did not apply extraterritorially to regulate employment practices of United States government with respect to Japanese citizen employed under contract between governments of United States and Japan calling for employees, funded by Japanese government, to provide administrative and logistical support to U.S. forces based in Japan. Nishibayashi v. England, D.Hawai'i 2005, 360 F.Supp.2d 1095. Civil Rights 1115

20. Motive

There was no unlawful animus on the part of a decision-maker or the Department of Labor in selecting another candidate for a promotional position, thus defeating plaintiff employee's discrimination claims under Title VII and the ADEA; while the employee claimed that he was treated differently because he was not informed of the vacancy announcement in the proper fashion, he admittedly did not know whether other applicants were notified in the proper fashion, and statistical evidence of eight consecutive promotions of female employee was not accompanied by evidence of the applicant pool for those promotions, and did not support an inference of sex discrimination, as 75% of the employees in the department were women. Harris v. Chao, D.D.C.2007, 480 F.Supp.2d

104. Civil Rights 1549; Civil Rights 1551

Supervisor had no discriminatory animus when assigning African-American female employee to work on Sunday before Memorial Day according to medical center's alphabetical emergency coverage/call-back roster for medical instrument technicians; employee traded shifts and worked on Memorial Day. Lester v. Secretary of Veterans Affairs, W.D.La.2007, 514 F.Supp.2d 866. Civil Rights 1137; Civil Rights 1171

Genuine issues of material fact existed as to whether retaliatory motive played a role in state employee's demotion and involuntary detail, precluding summary judgment for employer in Title VII retaliation claim alleging employee was discriminated against for assisting a subordinate in filing a discrimination claim against employer. Rountree v. Johanns, D.D.C.2005, 382 F.Supp.2d 19. Federal Civil Procedure 2497.1

21. Employees protected, generally

Independent contractor was an "employee," within the meaning of Title VII, of the Executive Office for United States Attorneys (EOUSA) of the Department of Justice (DOJ); although contract between EOUSA and company for which independent contractor worked provided that the company's contractors were not to be considered employees of EOUSA, and contractor spent only a taskless few hours at EOUSA, the parties' understandings of their anticipated roles showed that EOUSA would have exercised the primary control over contractor's work, EOUSA supervisor would have set contractor's schedule and duties and provided performance evaluations, contractor would have provided the same personnel security services as those performed by federal employees at the EOUSA, and she would have been supervised in the same manner, and company's authority over contractor focused largely on payroll matters and formalization of hiring and termination. Harris v. Attorney General of U.S., D.D.C.2009, 657 F.Supp.2d 1. Civil Rights 1116(1)

Under *Browning-Ferris* joint employer test, genuine issue of material fact as to whether female contract workers who were terminated from their positions with former government entity that had become private, employee-owned corporation and subcontracted to provide administrative contract workers for Department of Homeland Security (DHS) were "employees" of DHS within meaning of Title VII, precluded summary judgment for DHS on their claims of gender discrimination, sexual harassment, and retaliation. Butterbaugh v. Chertoff, W.D.Pa.2007, 479 F.Supp.2d 485. Federal Civil Procedure 2497.1

Issue of whether temporary employee was joint employee of federal agency and placement service involved fact questions that could not be resolved on motion to dismiss employee's Title VII discrimination suit against agency on ground that employee was not federal employee. Coles v. Harvey, D.D.C.2007, 471 F.Supp.2d 46. Federal Civil Pro-

cedure 1831

Filipino who was employed by United States Navy at facility in the Philippines but was neither United States citizen nor United States national was "alien" to whom Title VII did not apply. Licudine v. Winter, D.D.C.2009, 603 F.Supp.2d 129. Civil Rights 1116(3)

II. DISCRIMINATORY PRACTICES PROHIBITED

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41. Discriminatory practices prohibited generally

Title VII's federal-sector provision contains a broad prohibition of "discrimination," rather than a list of specific prohibited practices. Gomez-Perez v. Potter, U.S.2008, 128 S.Ct. 1931, 553 U.S. 474, 170 L.Ed.2d 887. Civil Rights 1125

Failure to promote system accountant for United States Marshals' Service (USMS) was not violation of Title VII and Rehabilitation Act, due to absence of showing of similarly situated employees who were promoted; other employees cited for comparison purposes worked for other departments, had different evaluators, and were at different pay grades. Bolden v. Ashcroft, D.D.C.2007, 515 F.Supp.2d 127. Civil Rights 1222

United States Postal Service (USPS) employee claiming she was discriminated against on basis of sex and race through harassment about use of leave and breaks did not allege that her supervisor and manager subjected her to "adverse employment action" by repeatedly requiring her to resubmit leave forms and asking her whereabouts during breaks. Williams v. Potter, D.Kan.2004, 331 F.Supp.2d 1331, affirmed 149 Fed.Appx. 824, 2005 WL 2387828, certiorari denied 127 S.Ct. 83, 549 U.S. 818, 166 L.Ed.2d 30. Civil Rights 1150; Civil Rights 1190

Employment discrimination case brought by federal civil service employee was limited to claims of discrimination in employment as cognizable under this subchapter. Johnson v. Hampton, E.D.Va.1977, 452 F.Supp. 1, affirmed 577 F.2d 734. Civil Rights 1502

Limit of court's jurisdiction action under this section alleging employment discrimination is to determine whether any personnel action taken affecting employees or applicants for employment are made free from any discrimination based on race, color, religion, sex or national origin. Simmons v. Schlesinger, E.D.Va.1975, 398 F.Supp. 1327, affirmed, affirmed in part , remanded in part , on remand. Federal Courts 225

Postal Service's disciplinary actions against and termination of employee did not constitute unlawful discrimination or retaliation, in violation of Title VII, absent evidence that employee was treated differently than similarly situated employees. Shelvy v. Potter, C.A.7 (Ill.) 2003, 63 Fed.Appx. 273, 2003 WL 1980246, Unreported, certiorari denied 124 S.Ct. 445, 540 U.S. 972, 157 L.Ed.2d 322. Postal Service 5

42. Totality of employer's actions, discriminatory practices prohibited

Public employee claimed actionable personnel actions against him, supporting his retaliation claim, though some of his claims may not have directly affected his employment conditions, where he argued that totality of actions taken by his employer collectively created harassing and retaliatory environment. Hayes v. Shalala, D.D.C.1995, 902 F.Supp. 259. United States 36

42a. Adverse employment action, discriminatory practices prohibited--Generally

Assignment of two female Department of Veterans Affairs employees to a different department for less than two weeks was not retaliation for complaining about alleged gender discrimination by supervisor, as would violate Title VII, where employees had just returned from extended medical leaves and required training, and employees did not suffer any diminution in pay or benefits. Ahern v. Shinseki, C.A.1 (R.I.) 2010, 629 F.3d 49. Civil Rights 1249(1)

United States Postal Service's (USPS) delay in issuing health benefit refund payments to disabled employee after she filed an equal employment opportunity (EEO) complaint was not a materially adverse employment action that could support retaliation claim under Title VII; objectively reasonable employee would not find the occasional delay in receipt of less than two percent of her monthly income to be a serious hardship that would dissuade her from making a charge of discrimination. Fanning v. Potter, C.A.8 (Ark.) 2010, 614 F.3d 845. Civil Rights 1249(1); Postal Service 5

Alleged actions of federal supervisory employee's manager, of detailing three of employee's 57 subordinates to other duties, failing to designate employee as acting director of certain office for one day, vetoing clerical staff hiring and then reversing veto two days later, and failing to refer theft case involving employee's subordinate for formal investigation, if proven, did not constitute adverse employment actions under Title VII, pursuant to theory that they interfered with employee's managerial prerogatives. Patterson v. Johnson, C.A.D.C.2007, 505 F.3d 1296, 378 U.S.App.D.C. 285, rehearing en banc denied. Civil Rights 1126; Civil Rights 1135

Alteration of rest days in job posting did not amount to an adverse employment action, as required to support postal employee's Title VII retaliation claim; changing the days off associated with new posting did not affect employee any more than it did other eligible bidders, and employee did not suffer any undue hardship since he continued to have same days off, rather than his preferred normal weekend schedule. Morales-Vallellanes v. Potter, C.A.1 (Puerto Rico) 2010, 605 F.3d 27, certiorari denied 131 S.Ct. 978. Civil Rights 1249(1); Postal Service 5

Supervisor's criticism of federal employee for exhibiting negative behaviors was not a

materially adverse action as might form basis of employee's claim against employer under Title VII alleging retaliation for reporting sexual harassment. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1249(1); United States 36

Failure of Department of Housing and Urban Development (HUD) department head to recommend employee for Presidential Rank Award was not adverse employment action, and thus was not actionable under Title VII, in that award was intended to reward indefinable star qualities that were by their very nature subjective, and inherent uncertainty in award process meant there could be no direct tie between nomination and award. Douglas v. Donovan, C.A.D.C.2009, 559 F.3d 549, 385 U.S.App.D.C. 120. Civil Rights 1126

Supervisor's physical assault of postal employee and denial of transfer requests were not adverse employment actions within meaning of Title VII, and were not ascribable to discriminatory motive or intent; the physical encounter itself, while understandably upsetting, was not so severe as to alter materially the employee's working condition. Mathirampuzha v. Potter, C.A.2 (Conn.) 2008, 548 F.3d 70. Civil Rights 1126; Civil Rights 1135; Civil Rights 1137

Letter of instruction received by General Services Administration (GSA) employee, stating that she had not been following GSA guidelines for modification and extension of contracts, was not adverse employment action upon which Title VII or ADEA claim could be based, in that letter did not say employee was being disciplined, but warned that disciplinary action might be taken if she failed to comply with directive. Atanus v. Perry, C.A.7 (Ill.) 2008, 520 F.3d 662. Civil Rights 1126; Civil Rights 1207

Food and Drug Administration's (FDA) conduct of placing employee on administrative leave with pay during the pendency of his criminal case did not constitute an adverse employment action, for purposes of employee's Title VII discrimination action. Joseph v. Leavitt, C.A.2 (N.Y.) 2006, 465 F.3d 87, certiorari denied 127 S.Ct. 1855, 549 U.S. 1282, 167 L.Ed.2d 325. Civil Rights 1126

Federal Bureau of Investigation's (FBI) alleged refusal to investigate death threats made by federal prison inmate against African-American special agent, contrary to Bureau's usual practice, allegedly in retaliation for agent's previous Title VII race discrimination action against Bureau, was cognizable under Title VII anti-retaliation provision, even though agent did not suffer diminution in pay or benefits; alleged conduct constituted material retaliatory act, since reasonable FBI agent might well have been dissuaded from engaging in protected activity as result. Rochon v. Gonzales, C.A.D.C.2006, 438 F.3d 1211, 370 U.S.App.D.C. 74, rehearing en banc denied. Civil Rights 1249(1); United States 36

Denial of female federal agency employee's request that her work be reviewed by a more senior supervisor was not "adverse employment action," as required to establish prima facie Title VII retaliation claim; the denial did not constitute significant change in employment status, compensation, or benefits, or otherwise result in objectively tangible harm to employee. Broderick v. Donaldson, C.A.D.C.2006, 437 F.3d 1226, 369 U.S.App.D.C. 374. Civil Rights 1249(1); United States 36

Alleged actions of female federal employee's supervisors, including collecting examples of mistakes that employee made on job, denying employee's request to work night shift for two weeks, subjecting employee to security investigation, and screaming at employee during meeting, were not frequent or severe enough to form basis of employee's hostile work environment claim based on sex or national origin discrimination, or retaliation claim under Title VII. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1250

Applicant for attorney position with the United States Citizenship and Immigration Services (USCIS) was required to offer statistical evidence to establish prima facie case of disparate treatment discrimination based on his race and national origin, in violation of Title VII, where mere fact that USCIS did not select him, even though he was at the top of his class at traditionally black law school, was insufficient to show that USCIS's reliance on law school rankings would in the ordinary course exclude black applicants from meaningful consideration. Onyewuchi v. Mayorkas, D.D.C.2011, 2011 WL 652369. Civil Rights 1545

Federal employee did not suffer "adverse employment action," as required to establish prima facie case of race-based discrimination under Title VII, when employer changed technology, which involved shifting many of employee's duties to other people and not including him on the design team, absent evidence that employee's title, salary, supervisory responsibilities, or opportunity for promotion were materially altered by such action. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. Civil Rights 1126

An employer's alleged failure to investigate complaints of highly inappropriate conduct towards employee, and refusal to grant employee the conditions of employment she was entitled to through the application, inter alia, of employer's workplace rules, did not constitute "adverse employment actions" sufficient to support a prima facie case of discrimination under Title VII; employer's alleged failure to investigate employee's claims did not effect a significant change in employee's employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits. Baird v. Snowbarger, D.D.C.2010, 2010 WL 3999000. Civil Rights 1126

National Forest Service's (NFS) decision to increase the amount of cattle range work that its female wildlife biologist would perform, thus decreasing her biology work, was

not a “materially adverse change” in her job duties in violation of Title VII, as required to support biologist's claim she was retaliated against for filing charge with Equal Employment Opportunity Commission (EEOC); biologist's resistance to assuming more cattle range duties was simply that she preferred to work on other tasks, and there was no indication that reasonable employees in biologist's position would have objectively found range work, by its very nature, to be less desirable than the biologist's other work duties which were reassigned. White v. Schafer, D.Colo.2010, 738 F.Supp.2d 1121. Civil Rights 1249(1); United States 36

Employer's denial of request by African-American female employee for tuition reimbursement for master's degree was not in disparate treatment of employee in violation of Title VII, since denial did not adversely impact any terms or conditions of her employment and she had not been treated differently from any other similarly situated employee. Beckham v. National R.R. Passenger Corp., D.D.C.2010, 736 F.Supp.2d 130. Civil Rights 1138

National Aeronautics and Space Administration's (NASA) alleged exclusion of male employee from meetings and high profile assignments were not tangible adverse employment actions, as required for employee to establish sex-based discrimination claim under Title VII; employee's complaints about Administration's actions did not amount to more than general dissatisfaction with his job. Johnson v. Bolden, D.D.C.2010, 699 F.Supp.2d 295. Civil Rights 1179

Federal employee's allegation that he “was repeatedly subject to abusive and discourteous treatment by various managers” was too conclusory and insufficient to state claim for relief under hostile work environment theory pursuant to ADEA, Title VII, and Rehabilitation Act, absent basis to infer that any such treatment was motivated by discriminatory or retaliatory animus. Koch v. Schapiro, D.D.C.2010, 699 F.Supp.2d 3. Civil Rights 1532; United States 36

Manager's conduct in yelling at federal employee was not sufficiently adverse to support employee's retaliation claims under ADEA, Title VII, and Rehabilitation Act, where there was no physical contact, and yelling occurred on only one occasion. Koch v. Schapiro, D.D.C.2010, 699 F.Supp.2d 3. Civil Rights 1249(1); United States 36

Alleged actions taken by United States Postal Service against employee, an African-American attorney of Japanese ancestry, including removing employee from certain case, not giving employee assignments, and placing employee on mandatory performance improvement plan, did not cause significant change in employment status or materially adverse consequences affecting terms, conditions, or privileges of employee's employment, and thus were not materially adverse actions, as would support employee's prima facie case of discrimination under Title VII based on his race and national origin. Manuel v. Potter, D.D.C.2010, 685 F.Supp.2d 46. Civil Rights 1126

Federal employer's requiring Hispanic female employee, who filed complaint with Equal Employment Opportunity (EEO) for denial of promotion and made formal Equal Employment Opportunity Commission (EEOC) charge of discrimination, to submit updated medical information with respect to her second request for telecommuting and request for reasonable accommodation for her alleged myofascial pain syndrome was not materially adverse, as would support employee's Title VII retaliation claim; employer's actions would not have dissuaded reasonable employee from making or supporting charge of discrimination. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1249(1); United States 36

None of federal employer's alleged actions, including denying Hispanic female employee telecommuting agreement, denying employee use of entrance door close to her office, closely monitoring employee, changing drafts of employee's engagement letters, assigning employee to small office, delaying employee's receipt of award for accomplishment, and denying employee's work requests, were adverse employment actions, as would support employee's Title VII discrimination claim based on disparate treatment; actions taken by employer were not ultimate employment decisions. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1138; Civil Rights 1172

Supervisor's conduct toward coworker but not toward African-American employee, including speaking Spanish to coworker, inviting coworker into his office, and leaving coworker handwritten notes, did not constitute “adverse employment actions,” as required to establish claim of race discrimination under Title VII against United States Small Business Administration, even though employee may have preferred supervisor with a more affectionate or inclusive management style, where his supervisor's conduct did not give rise to a significant change in employment status or have any effect on salary, benefits, or grade of his employment responsibilities or future employment opportunities. Kelly v. Mills, D.D.C.2010, 677 F.Supp.2d 206, affirmed 2010 WL 5110238. Civil Rights 1126

Investigation of employee by the Small Business Administration (SBA) Office of Inspector General (OIG), and subsequent oral instruction she received, were not materially adverse employment actions, as element of employee's retaliation claim under Title VII against the SBA, where such actions would not have dissuaded a reasonable worker from complaining of discrimination, absent evidence that the investigation and reprimand injured employee's reputation or had any effect on conditions or terms of her employment. Brown v. Mills, D.D.C.2009, 674 F.Supp.2d 182. Civil Rights 1249(1); United States 36

Denial of leave, termination of employment, denial of noncompetitive promotion, denial of use of donated leave, denial of performance awards, and denial of timely within-

grade increase satisfied “adverse action” element of federal employee's prima facie case of discrimination under Title VII, as they plainly impacted employee's compensation and tangible benefits. Nurriddin v. Bolden, D.D.C.2009, 674 F.Supp.2d 64. Civil Rights 1128; Civil Rights 1135; Civil Rights 1136

Department of Interior's actions in admonishing former employee for using his personal radio at his desk, conducting his yearly performance review via telephone, and not granting his request for vacation leave until day before his vacation was to start were not adverse employment actions, as required for employee to establish prima facie case of retaliation under Title VII; Department's actions were not materially adverse and would not dissuade a reasonable employee from making or sustaining a discrimination claim. Lara v. Kempthorne, S.D.Tex.2009, 673 F.Supp.2d 504. Civil Rights 1249(1); Civil Rights 1249(3); United States 36

Employer's alleged act of informing federal employee's former subordinates that the employee was not a unit chief and that they were no longer to report to her was not an adverse employment action for purposes of Title VII and §§ 1981. Hutchinson v. Holder, D.D.C.2009, 668 F.Supp.2d 201. Civil Rights 1126

Environmental Protection Agency (EPA) employee who desired to collaborate with private firms on development of mapping software program did not suffer an actionable adverse employment action under Rehabilitation Act or Title VII in connection with agency's delay in approval of her Cooperative Research and Development Agreement (CRADA); likelihood that she would have received monetary benefit had EPA promptly acted upon her CRADA application was completely speculative. Porter v. Jackson, D.D.C.2009, 668 F.Supp.2d 222, affirmed 2010 WL 5341881, rehearing en banc denied. Civil Rights 1126; Civil Rights 1220

Alleged actions of Export-Import Bank of the United States, namely, depriving female probationary employee, who was over age of 40, of opportunities for career advancement, development of international business contacts, interaction with clients and other prominent members of international community, and opportunity to be kept in loop regarding work in her region, did not constitute adverse actions, as would support employee's gender and age discrimination claims under Title VII and Age Discrimination in Employment Act (ADEA), absent explanation of how actions had tangible, and not speculative, effect on terms, conditions, and privileges of employee's employment. Nuskey v. Hochberg, D.D.C.2009, 657 F.Supp.2d 47. Civil Rights 1169; Civil Rights 1207

Department of State's delayed close out of one of employee's audits was not “adverse employment action,” and thus was not actionable under Title VII, absent evidence that delay had any tangible impact on the terms, conditions or privileges of employee's employment. Hunter v. Clinton, D.D.C.2009, 653 F.Supp.2d 115. Civil Rights 1126

Request that United States Agency for International Development (USAID) Office of Security employee take mental health screening exam before trip to Iraq was not "adverse action" that would support her Title VII retaliation claim; although employee visited doctor twice she never received exam, employee was cleared for and in fact did travel to Iraq, and employee presented no evidence suggesting that request for exam became part of her personnel file or was considered during her performance evaluations. Talavera v. Fore, D.D.C.2009, 648 F.Supp.2d 118. Civil Rights 1249(1); United States 36

Even assuming female employee at National Institutes of Health exhausted administrative remedies with regard to her Title VII sex discrimination claim arising from former employer's investigation of her work computer, employer's investigation was not adverse employment action, as required to establish prima facie case of discrimination; employer's computer policy allowed it access to employees' computers if there was reasonable suspicion of unauthorized use. Bonds v. Leavitt, D.Md.2009, 647 F.Supp.2d 541, affirmed in part , reversed in part 629 F.3d 369. Civil Rights 1169

Federal Deposit Insurance Corporation's (FDIC) classification of a vacant position at a level at which employee was not eligible constituted an "adverse employment action," as element of employee's prima facie case of race discrimination under Title VII. Chappell-Johnson v. Bair, D.D.C.2009, 636 F.Supp.2d 135, affirmed 2010 WL 605160. Civil Rights 1135

Employer's decision to place employee's package car immediately adjacent to car of co-worker, who had previously been suspended for violating company policy on sexual harassment through his conduct towards employee, was not "materially adverse" action, thereby precluding employee's retaliation claim, based on decision, against employer under Title VII, co-worker did not have any communication with employee after his reinstatement, and car placement did not require employee to be alone or even in close quarters with co-worker. Turrentine v. United Parcel Service, Inc., D.Kan.2009, 645 F.Supp.2d 976. Civil Rights 1246

District court applied well-settled law and did not improperly weigh the evidence in granting summary judgment to Secretary of Labor on employee's Title VII and ADEA claims, and thus reconsideration was not warranted of the court's determination that employee did not suffer adverse employment action, as element of prima facie case of discrimination and retaliation, when he was denied his requests for temporary details to supervisory position and for a "desk audit," a review of his current responsibilities to determine whether he was actually performing responsibilities at a higher grade level, and that employee had failed to rebut the Secretary's legitimate nondiscriminatory and non-retaliatory reasons for denying the details and audit; court's findings that neither the requested details nor desk audits would have qualified employee for the position he

sought nor could the desk audit requests have impacted plaintiff's consideration for positions in the vacancy announcements were based on undisputed evidence regarding the timing of the events. Brookens v. Solis, D.D.C.2009, 635 F.Supp.2d 1. Federal Civil Procedure 2653

Department of Labor (DOL) employee did not suffer adverse employment action, as element of prima facie case of discrimination and retaliation under Title VII and the ADEA, when he was denied his requests for temporary details to supervisory position and for a "desk audit," a review of his current responsibilities to determine whether he was actually performing responsibilities at a higher grade level; employee did not any injury or harm resulting from these denials, and the temporary details would not have enabled employee to satisfy requirements for the supervisory position. Brookens v. Solis, D.D.C.2009, 616 F.Supp.2d 81, reconsideration denied 635 F.Supp.2d 1, affirmed 2009 WL 5125192, rehearing en banc denied , certiorari denied 131 S.Ct. 225, 178 L.Ed.2d 136. Civil Rights 1126; Civil Rights 1207; Civil Rights 1249(1); United States 36

Supervisor's letter of counseling containing job-related constructive criticism and his caution against dishonesty during administrative investigation did not constitute materially adverse employment actions required to establish retaliation claim under Title VII, where letter and warning had no attendant effects on employee's employment. Cochise v. Salazar, D.D.C.2009, 601 F.Supp.2d 196, affirmed 377 Fed.Appx. 29, 2010 WL 2203308, rehearing en banc denied. Civil Rights 1249(1); United States 36

Postal Service employee's failure to obtain light or limited duty due to his permanent knee problems, work-related wrist injury, and associated medical limitations did not constitute a change in his employment status or benefits, let alone a significant change that would be an adverse employment action for purposes of employee's Title VII gender-based discrimination claim, where Postal Service denied employee's light duty request due to lack of proper medical documentation to support request, which lack was caused by employee's fundamental mistake about the duty status and documentation that were appropriate in light of his wrist injury, and employee was in fact granted light duty during time period at issue when he provided the proper documentation for it. Franklin v. Potter, D.D.C.2009, 600 F.Supp.2d 38. Civil Rights 1179

Federal employee's receipt of a rating of "Achieved Standards" rather than one of "Exceeded Standards" did not constitute a materially adverse action, as required to establish discrimination and retaliation claims under Title VII, where performance rating employee received was not a negative rating and in no way affected employee's salary, bonus, grade or any other term or condition of his employment. Brown v. Paulson, D.D.C.2009, 597 F.Supp.2d 67. Civil Rights 1126; Civil Rights 1249(1); United States 36

Substantial two-year delay in processing Internal Revenue Service (IRS) employee's grievances following the filing of his Equal Employment Opportunity Commission (EEOC) complaint, which alleged that black supervisors had retaliated against him in response to his opposition to a black female employee's discrimination claim, was materially adverse, as element of employee's prima facie case of Title VII retaliation claim; there were several violations of time period set forth in IRS grievance procedure, and entire procedure took significantly and inexcusably longer than the handbook's promise. Twisdale v. Paulson, S.D.W.Va.2009, 595 F.Supp.2d 686. Civil Rights 1249(1); United States 36

Exclusion of federal employee from staff meeting did not amount to "adverse employment action," as required to establish a prima facie Title VII employment discrimination claim, absent showing that employee's absence from the meeting impacted her job duties or resulted in any other material change in the terms and conditions of her employment. Watson v. Paulson, S.D.N.Y.2008, 578 F.Supp.2d 554, affirmed 355 Fed.Appx. 482, 2009 WL 4431051. Civil Rights 1126

Criticism of African-American male employee's performance did not constitute "adverse employment action," as required for employee's Title VII race and gender discrimination claims against Navy; employee failed to identify objectively tangible harm that resulted from criticisms. Lipscomb v. Winter, D.D.C.2008, 577 F.Supp.2d 258, affirmed in part , remanded in part 2009 WL 1153442, on remand 699 F.Supp.2d 171. Civil Rights 1126; Civil Rights 1179

Snubbing and verbal attacks that two co-workers inflicted upon federal employee after she filed Equal Employment Opportunity Commission (EEOC) charge did not rise to the level of a materially adverse employment action that could support Title VII retaliation claim. Vines v. Gates, D.D.C.2008, 577 F.Supp.2d 242. Civil Rights 1249(1); United States 36

Director's failure to submit federal employee's application for assistant director position in Department of the Interior was not an "adverse employment action" that would support Title VII retaliation claim; that position was not vacant at time in question, employee's statement immediately following meeting with director that he did not believe director was going to forward his application in any event indicated he was not relying on director's alleged representation he would do so, employee submitted application himself when he wished to express interest in position and admitted it was employee's responsibility to do so, and director's letter unconditionally stating that he would be recusing himself from matters affecting employee's career undeniably put employee on notice that director's offers of assistance had been withdrawn. Hill v. Kempthorne, D.D.C.2008, 577 F.Supp.2d 58. Civil Rights 1249(1); United States 36

An employee suffers an "adverse employment action" that can form the basis of Title VII

retaliation claim if she experiences materially adverse consequences of engaging in statutorily protected activity that affect the terms, conditions, or privileges of employment or future employment opportunities such that a reasonable trier of fact could find objectively tangible harm. Brownfield v. Bair, D.D.C.2008, 541 F.Supp.2d 35. Civil Rights 1245

Medical instrument technician's rotation between surgery and x-ray duties was not an ultimate employment decision, such as hiring, granting leave, discharging, promoting, and compensating, and was not actionable employment discrimination; the rotation was not a decision about benefits, compensation or employment. Lester v. Secretary of Veterans Affairs, W.D.La.2007, 514 F.Supp.2d 866. Civil Rights 1135

Being stripped of all supervisory authority may, taken alone, constitute a materially "adverse action" that will support prima facie case of retaliation under Title VII. Richardson v. Gutierrez, D.D.C.2007, 477 F.Supp.2d 22. Civil Rights 1245

African-American female employee who sued Navy failed to establish that she suffered adverse employment action, as required to maintain prima facie retaliation claim under Title VII; employee did not suffer any cognizable harm from either elimination of management analyst position that she had held or by her non-selection for GS-12 facilities management position. Mills v. Winter, D.D.C.2008, 540 F.Supp.2d 178. Armed Services 27(4); Civil Rights 1249(1); Civil Rights 1249(2)

United States Postal Service (USPS) employee did not suffer an "adverse employment action" in connection with removal of nameplate from her door and alleged dissemination of false information concerning reasons for her absence, and she thus failed to establish a prima facie case of discrimination under Title VII in that regard; those events occurred after her last day working at USPS. West v. Potter, D.D.C.2008, 540 F.Supp.2d 91. Civil Rights 1126

Federal agency's adoption of new medical certification requirement for continued inclusion in program for accommodating employees injured because of their exposure to toxic substances in office building was not "adverse employment action" sufficient to support employee's discrimination and retaliation claims under Title VII and Rehabilitation Act, even if new requirement subjected employee to stress and fear that he would be removed from program, and forced him to use sick leave and incur medical expenses every two years, where employee's anxiety was speculative and subjective, employee was already consulting his physician on regular basis, requirement was intended to help ensure that employee continued to be placed in appropriate workspace, and he was never removed from program. Dage v. Johnson, D.D.C.2008, 537 F.Supp.2d 43. Civil Rights 1218(4); Civil Rights 1249(1); United States 36

Filipino Army drug testing laboratory employee failed to establish prima facie case of

disparate treatment based on race or national origin under Title VII, absent evidence she was subjected to any adverse employment action; none of the asserted actions had a negative impact on her compensation, hours, status, or other terms of employment. Delacruz v. Tripler Army Medical, D.Hawai'i 2007, 507 F.Supp.2d 1117. Civil Rights 1138

Older, African-American federal employee failed to show that allegedly adverse employment action of denial of "job swap" gave rise to an inference of discrimination; none of the other allegedly similarly-situated employees he identified actually received a job swap. Alexander v. Tomlinson, D.D.C.2007, 507 F.Supp.2d 2. Civil Rights 1138; Civil Rights 1210

Alleged failure of Federal Bureau of Investigation (FBI) to provide legal attache's office in Saudi Arabia with additional resources after September 11, 2001 terrorist attacks on United States, when its workload increased substantially but its requests for additional personnel and resources were allegedly ignored, did not constitute an "adverse employment action" that would support a Title VII discrimination claim. Rattigan v. Gonzales, D.D.C.2007, 503 F.Supp.2d 56. Civil Rights 1126

Issuance of "status check letters" involving Postal Service Manager's request that employee explain her absence or suffer discipline, delay in reinstating United States Postal Service (USPS) employee's health care benefits, change of her work station, and supervisor's accusation that employee was late for a shift change, were not "adverse employment actions," for purposes of employee's claim she was subject to disparate treatment based on race and sex after arbitrator reinstated her following her termination. Thompkins v. Potter, D.Conn.2006, 451 F.Supp.2d 349. Civil Rights 1138; Civil Rights 1172

When sexual harassment by a supervisor does not culminate in a tangible employment action, a defending employer may raise an affirmative defense to liability, subject to proof by a preponderance of the evidence; the employer must show each of the following: (1) that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior and (2) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. MacDougall v. Potter, D.Mass.2006, 431 F.Supp.2d 124. Civil Rights 1189; Civil Rights 1549

Former postal employee who sued Postal Service, alleging gender discrimination, failed to establish that he suffered adverse employment action, as required to maintain claim under Title VII; purported verbal abuse by supervisor did not result in any change in employee's job status. Mayes v. Potter, D.Colo.2006, 418 F.Supp.2d 1235, reconsideration denied 2006 WL 2583578. Civil Rights 1179

Genuine issue of material fact, as to whether African-American female Library of Congress employee's detailing out of her parking specialist position for nearly two years to various other positions with “undescribed duties” but no reduction in wages or benefits was “adverse employment action,” precluded summary judgment for Library of Congress on employee's Title VII claim based on failure to show that element of prima facie case. Clipper v. Billington, D.D.C.2006, 414 F.Supp.2d 16. Federal Civil Procedure 2497.1

Procurement of arrest warrant and arrest of African-American federal employee who had complained of discriminatory nonselection for promotion, leading to his criminal prosecution, was an “adverse employment action” that would support his prima facie case of retaliation under Title VII. Roberson v. Snow, D.D.C.2005, 404 F.Supp.2d 79. Civil Rights 1249(1); United States 36

Black African-American Library of Congress employee did not show that she suffered “adverse employment action” that would support prima facie case of discrimination based on color or race under Title VII in relation to assignment of work or denial of training; employee failed to put forth even a scintilla of evidence of adverse impact or tangible harm. Nichols v. Billington, D.D.C.2005, 402 F.Supp.2d 48, affirmed 2006 WL 3018044, reconsideration denied. Civil Rights 1126

In defining what constitutes an “adverse employment action” under Title VII, courts have consistently focused on ultimate employment decisions such as hiring, granting leave, promoting, and compensating and not interlocutory or intermediate decisions having no immediate effect upon employment decisions. Moore v. Ashcroft, D.D.C.2005, 401 F.Supp.2d 1. Civil Rights 1119

Allegedly disparaging remarks made by supervisor did not constitute adverse employment action, for purpose of claim of racial discrimination made by African American federal employee under Title VII. Blount v. Dept. of Health and Human Services, D.Md.2004, 400 F.Supp.2d 838, affirmed 122 Fed.Appx. 64, 2005 WL 430102, certiorari denied 126 S.Ct. 758, 546 U.S. 1043, 163 L.Ed.2d 589. Civil Rights 1126

United States Postal Service employee did not suffer adverse employment action, upon which Title VII claim against the Postmaster General could be based, when Postmaster General failed to grant a higher employment grade to two workers under employee's supervision, where failure to promote workers did not directly affect employee's working conditions. de Jesus v. Potter, D.Puerto Rico 2005, 397 F.Supp.2d 319, affirmed in part, vacated in part and remanded 211 Fed.Appx. 5, 2006 WL 3782922. Civil Rights 1126

Former employee of the Department of Agriculture failed to establish that employer's proffered legitimate reasons for adverse work actions against employee were pretextu-

al, including travel fraud, misuse of a government credit card, deficient service to members of the public, the creation of the appearance of giving preferential treatment subordinate, and the creation of a tense and uncomfortable working environment, as required for employee's discrimination action under Title VII. Rountree v. Johanns, D.D.C.2005, 382 F.Supp.2d 19. Civil Rights 1137

Federal employee failed to allege adverse employment action in complaint, as required to state cause of action under Title VII, where he failed to identify any specific adverse action, but instead relied on "ongoing discrimination." Worth v. Jackson, D.D.C.2005, 377 F.Supp.2d 177, affirmed in part, vacated in part and remanded 451 F.3d 854, 371 U.S.App.D.C. 339. Civil Rights 1532

Denial of federal employee's sole timely request to relieve additional workload resulting from departure of another employee was not "adverse employment action" that would support her claim of disparate treatment; employee voluntarily assumed that workload, was not required to work in excess of forty hours per week, and did not otherwise suffer material change in terms and conditions of employment. West v. Norton, D.N.M.2004, 376 F.Supp.2d 1105. Civil Rights 1138

Supervisor's failure to deliver mail on Jewish mail carrier's route, so that Jewish mail carrier would subsequently have increased quantity of mail to deliver, was not adverse employment action giving rise to inference of discrimination, as required for prima facie case under Title VII, where such problem was not limited to mail carrier's route, and supervisor was subsequently demoted, correcting the problem. Garvin v. Potter, S.D.N.Y.2005, 367 F.Supp.2d 548. Civil Rights 1157; Civil Rights 1535

Alleged formal discussion in which Postal Service official denied mail carrier the option to frequent a particular lunch spot, making it difficult for her to eat balanced lunch and "address health issues caused by excessive fast foods," if proven, was not adverse employment action upon which Title VII discrimination claim could be based, absent evidence that right to eat balanced lunch was term or condition of employment or that Postal Service demoted or otherwise penalized mail carrier for any reason related to her restaurant choice. Clapp v. Potter, M.D.N.C.2004, 329 F.Supp.2d 597. Civil Rights 1126

United States Forest Service employee did not suffer adverse employment action, as required to establish retaliatory harassment for filing Title VII discrimination claim, by reason of aggregate effect of restrictive leave policy, imposed after employee took one month in sick leave without explanation from physician, 90-day performance improvement plan, and letters of warning letters regarding use of sick leave and leaving training sessions early; employee's job, pay, and benefits all remained same. Lujan v. Johanns, C.A.10 (N.M.) 2006, 181 Fed.Appx. 735, 2006 WL 1431442, Unreported. Civil Rights 1250; United States 36

Proposed letter of reprimand that was never issued did not constitute an "adverse employment action," as required to establish a prima facie case of retaliation under Title VII. McGhee v. Nicholson, C.A.11 (Ga.) 2005, 160 Fed.Appx. 934, 2005 WL 3529257, Unreported. Civil Rights 1248

Federal employee failed to prove the existence of an adverse employment action, as required to prevail on a Title VII retaliation claim regarding the cancellation of a reclassification review, despite her claims that she would ultimately be prevented from obtaining higher-level federal jobs, and that she was being denied the opportunity to be compensated for work she had been performing; the employee failed to show that she had training or expertise in federal job classification, she made no effort to substantiate her opinion that her job, as she claimed she performed it, should have been classified differently, and she presented no evidence that she was not properly compensated for work she performed. Fierro v. Norton, C.A.10 (N.M.) 2005, 152 Fed.Appx. 725, 2005 WL 2660492, Unreported. Civil Rights 1249(1); United States 36

42b. ---- Warnings, adverse employment action, discriminatory practices prohibited

Federal employee did not suffer "adverse employment action," as required to establish prima facie case of race-based discrimination under Title VII, when he received a counseling letter from his supervisor, where letter of counseling did not implement any discipline, but, rather, merely cautioned that discipline could follow if inadequate performance did not improve and provided constructive criticism of employee's performance, and did not have any tangible effect on terms or conditions of employment. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. Civil Rights 1126

Postal Service's stated reason for issuing letter of warning to employee, namely that she had failed to follow instructions and caused unauthorized use of overtime, was not pretext for gender discrimination in violation of Title VII, where overtime used on same day by male employee, who was not disciplined, was authorized, and any use of unauthorized overtime by such male employee on other days was not because of failure to follow instructions. Lawson v. Potter, D.Kan.2006, 463 F.Supp.2d 1270, reconsideration denied 2007 WL 201121. Civil Rights 1172

Mere warning of possible future disciplinary action does not constitute an independent "adverse employment action" simply because the employer later followed through on the warning. Santa Cruz v. Snow, D.D.C.2005, 402 F.Supp.2d 113. Labor And Employment 827

42c. ---- Suspensions, adverse employment action, discriminatory practices prohibited

Two-day suspension of female employee of Small Business Administration (SBA) was

not retaliation for employee's anonymous administrative complaint about gender discrimination and sexual harassment within agency, as required to support claim under Title VII's anti-retaliation provisions, since employee was suspended before supervisors who imposed suspension learned she was source of anonymous complaint. Rivera-Colon v. Mills, C.A.1 (Puerto Rico) 2011, 635 F.3d 9. United States 53(5)

Employer's proffered reasons for giving employee 10-day suspension, i.e., her insubordinate, disorderly, and rude conduct toward her supervisor's boss, her similar past conduct, and her failure to explain herself, were not pretexts for discrimination in violation of Title VII or ADEA, where employee admitted that she told her supervisor's boss that "she did not believe Christians would act in this manner," and she offered nothing more than her belief that her conduct did not warrant suspension. Atanus v. Perry, C.A.7 (Ill.) 2008, 520 F.3d 662. Civil Rights 1137; Civil Rights 1209

Food and Drug Administration's (FDA) conduct of continuing employee's administrative leave with pay following the dismissal of criminal charges, during the pendency of an internal investigation, did not constitute an adverse employment action, for purposes of employee's Title VII discrimination action; the FDA reasonably suspended its own investigation pending the criminal prosecution and, following the dismissal of the charges, acted with reasonable diligence in conducting its investigation of the serious accusations. Joseph v. Leavitt, C.A.2 (N.Y.) 2006, 465 F.3d 87, certiorari denied 127 S.Ct. 1855, 549 U.S. 1282, 167 L.Ed.2d 325. Civil Rights 1126

Federal Deposit Insurance Corporation's (FDIC) legitimate, nonretaliatory reasons for suspending employee who filed Equal Employment Opportunity Commission (EEOC) complaints, namely, employee's misuse of FDIC's electronic travel voucher (ETV) system, employee's sending of inappropriate e-mails to his direct supervisor, and employee's submitting of false time and attendance records, were not pretext for retaliation under Title VII, Rehabilitation Act, or Age Discrimination in Employment Act (ADEA). Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Civil Rights 1251

Federal employee's unsubstantiated allegations regarding supervisor's credibility and conclusory allegations by his coworkers, that employer discriminated against employee, failed to show that employer's legitimate, non-discriminatory reason for suspending employee without pay, that employee was insubordinate and failed to perform his duties, was pretextual, and employer thus was not liable under Title VII for discrimination based on race and retaliation. Drewrey v. Clinton, D.D.C.2011, 2011 WL 229432. United States 36

United States Department of Agriculture's (USDA) decision to place employee on paid administrative leave while investigating evidence of his misconduct was not an adverse employment action, as would support employee's retaliation claim under Title VII, where it was consistent with preexisting USDA disciplinary procedures. Ghaly v. U.S. Dept. of

Agriculture, E.D.N.Y.2010, 739 F.Supp.2d 185. Civil Rights 1249(3); United States 36

Seven-day paper suspension received by postal worker was "adverse employment action" for purposes of worker's prima facie case of race and national origin discrimination under Title VII, given that paper suspension, as second step in Postal Service's progressive discipline process, was more serious action than formal, written reprimand and was equivalent in degree of seriousness to suspension without pay, even though, after one month, paper suspension was reduced to formal letter of warning and, due to worker's good behavior for following five months, letter of warning was reduced to "official discussion." Abraham v. Potter, D.Conn.2007, 494 F.Supp.2d 141. Civil Rights 1126

Federal Bureau of Investigation's (FBI) proffered reasons for suspending then demoting African-American female employee, that her violation of FBI policy by using a derogatory term to describe a superior, her insubordination, and her work substantially substandard performance, were not pretext for racial discrimination in violation of Title VII; special agent in charge (SAC) had documented continuous problems with employee's behavior and performance, and final decisions on the personnel actions were made by FBI's Office of Professional Responsibility (OPR) and Administrative Services after thorough investigation and review. Dawson v. U.S., D.S.C.2008, 549 F.Supp.2d 736, affirmed 368 Fed.Appx. 374, 2010 WL 727648. Civil Rights 1137

Environmental Protection Agency's (EPA) placement of African-American employee on administrative leave following dispute with intern to whom he was a mentor was not adverse employment action based on his race and/or gender in violation of Title VII; employee was placed on paid administrative leave for only 10 hours, both employee and intern received same instruction not to return to work, no other employment action was taken against employee, and investigation concluded he had engaged in no wrongdoing. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights 1126; Civil Rights 1179

Postal Service's stated reason for suspending employee for seven days, namely that she refused to provide original medical documentation and exhibited discourteous, unprofessional, and insubordinate behavior, was not pretext for gender discrimination in violation of Title VII, where employee did not dispute that Office of Injury Compensation required original medical forms and that she did not provide required originals, and she conceded that supervisor considered her behavior discourteous, unprofessional, and insubordinate. Lawson v. Potter, D.Kan.2006, 463 F.Supp.2d 1270, reconsideration denied 2007 WL 201121. Civil Rights 1171

Department of Treasury's reasons for five-day unpaid suspension of older Filipino GS-13 chemical engineer, stated in notice of proposed suspension, were legitimate and nondiscriminatory and were not shown to be pretext for age, race or national origin dis-

crimination; cited reasons were engineer's inappropriate behavior at staff meeting, his failure to follow his supervisor's orders, and his failure to completed assigned tasks. Santa Cruz v. Snow, D.D.C.2005, 402 F.Supp.2d 113. Civil Rights 1126; Civil Rights 1137; Civil Rights 1207; Civil Rights 1209

42d. ---- Evaluations, adverse employment action, discriminatory practices prohibited

Lowered performance evaluations that followed federal agency employee's administrative Title VII sex and national-origin discrimination complaints against agency potentially constituted adverse employment actions that could support employee's claim of retaliation, even though evaluations were not adverse in absolute sense; there was causal relationship between evaluations and employees' receipt of performance awards, and non-receipt of awards could dissuade reasonable worker from making or supporting charge of discrimination. Weber v. Battista, C.A.D.C.2007, 494 F.3d 179, 377 U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1249(1); Civil Rights 1252; United States 36

The effect of a poor evaluation is ordinarily too speculative to be actionable under Title VII; if, however, that evaluation determines the bonus, then the employee may show the evaluation caused an objectively tangible harm and thus was an adverse employment action. Douglas v. Donovan, C.A.D.C.2009, 559 F.3d 549, 385 U.S.App.D.C. 120. Civil Rights 1119; Civil Rights 1136

Non-receipt of cash awards by United States Postal Service employee, an African-American of Japanese ancestry, as well as his receipt of negative performance evaluation and corresponding salary adjustment, were materially adverse actions supporting employee's prima facie case of discrimination under Title VII based on his race and national origin; actions caused employee direct economic harm. Manuel v. Potter, D.D.C.2010, 685 F.Supp.2d 46. Civil Rights 1136

There was no causal connection between Hispanic federal employee's filing of Equal Employment Opportunity Commission (EEOC) charge of discrimination and her receipt of “fully satisfactory” rating from her supervisor approximately eight months later, which was lower rating than she had previously been given, as would support employee's Title VII retaliation claim against employer. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1252; United States 36

African-American employee's allegedly negative performance evaluation did not constitute an “adverse employment action,” as required to establish claim of race discrimination under Title VII against United States Small Business Administration, even though a coworker, who screened fewer cases than employee, received a higher rating than employee; it took employee longer to process the cases in question, and there was otherwise no showing that the evaluation had an effect on the terms, conditions, or privileges

of employee's employment. Kelly v. Mills, D.D.C.2010, 677 F.Supp.2d 206, affirmed 2010 WL 5110238. Civil Rights 1126

Employee adequately alleged an adverse employment action regarding her poor performance reviews for purposes of Title VII and §§ 1981; if she could show that the reviews resulted in her non-selection for promotions or her failure to receive awards and recognition, then she would have demonstrated that they were adverse employment actions. Hutchinson v. Holder, D.D.C.2009, 668 F.Supp.2d 201. Civil Rights 1395(8); Civil Rights 1532

Department of State employee's "excellent" performance rating, rather than "outstanding" rating, was not an "adverse employment action," and thus was not actionable under Title VII, absent explanation of how such rating had any effect on employee's salary, benefits, or employment grade or future employment opportunities. Hunter v. Clinton, D.D.C.2009, 653 F.Supp.2d 115. Civil Rights 1126

Reasons proffered by federal employer for giving employee rating of "Achieved Standards" rather than one of "Exceeded Standards" were not pretext for race discrimination or retaliation in violation of Title VII; employer determined that employee did not merit a rating of "Exceed Standards" because, among other reasons, employee did not submit written suggestions to management on how to improve staff performance in the specified area, a specific consideration set forth in employee's performance evaluation plan, and employee did not consistently fulfill any of his various employment responsibilities at a level that would have warranted the higher rating. Brown v. Paulson, D.D.C.2009, 597 F.Supp.2d 67. Civil Rights 1137; Civil Rights 1251; United States 36

Allegations relating to investigations or monitoring of Federal Bureau of Investigation (FBI) Saudi Arabian legal attache and/or his work performance, including review of his file conducted by Supervisory Special Agent, on-site review conducted by Unit Chief, debriefing of temporary duty personnel returning from Riyadh for information about attache, and loyalty investigation of attache conducted by FBI's security division after attache's conversion to Islam did not rise to level of an "adverse action" for purposes of Title VII discrimination claims. Rattigan v. Gonzales, D.D.C.2007, 503 F.Supp.2d 56. Civil Rights 1126; Civil Rights 1157

In most circumstances, performance evaluations alone at satisfactory level or above should not be considered "adverse employment actions"; even performance evaluations that are unequivocally negative are not necessarily adverse actions when they do not affect the employment discrimination plaintiff's salary, benefits, work duties, or other material conditions of employment. Santa Cruz v. Snow, D.D.C.2005, 402 F.Supp.2d 113. Civil Rights 1119

42e. ---- Denial of training, adverse employment action, discriminatory practices pro-

hibited

United States Postal Service's (USPS) legitimate, nondiscriminatory reasons for removing African-American employee, who made complaints regarding discrimination and unfair treatment to his supervisors, from managerial training program, including employee's poor evaluation scores and employee's showing up late for meetings, failing to review employees as instructed, and struggling with reporting proper mail volumes, were not pretext for retaliation under Title VII. Moore v. Potter, D.Or.2010, 701 F.Supp.2d 1171. Civil Rights 1251; Postal Service 5

Federal government employee proffered sufficient evidence to show that his rejection from leadership development initiative (LDI) program constituted an adverse personnel action against him, as required to establish prima facie case of retaliation under Title VII; graduates of LDI program were placed on a register of graduates that was used as a resource to fill open positions when they became available, and the program also provided participants with formal classroom training, special assignments and tasks, job swaps, and rotational assignments, specific development projects, and off-duty activities. Walker v. England, D.D.C.2008, 590 F.Supp.2d 113. Civil Rights 1249(1); United States 36

Government's decision not to provide federal employee, an engineering technician who provided technical, repair and modernization services to various Navy ships and weapons systems, with particular training on primary missile launching system used on surface combatant ships was supported by legitimate, nondiscriminatory reasons, precluding employee's Title VII claim alleging that refusal to provide such training was in retaliation for filing race discrimination claims; government employer alleged that there was no vacant position that would use such training, that employee would not be qualified to work on the primary missile launching system even with training, and that there was no funding for employee to receive such training. Munoz v. England, D.Hawai'i 2008, 557 F.Supp.2d 1145, affirmed in part , vacated in part 630 F.3d 856. Armed Services 27(4); Civil Rights 1249(1)

Older, African-American federal employee failed to show that allegedly adverse employment action of failing to place him in permanent position in Washington, D.C. upon his office's relocation to Miami gave rise to an inference of discrimination; although employee identified five employees who were supposedly “placed” in permanent positions, two of them obtained their positions competitively, and he did not demonstrate that he was similarly situated to any of the three who were placed noncompetitively. Alexander v. Tomlinson, D.D.C.2007, 507 F.Supp.2d 2. Civil Rights 1138; Civil Rights 1210

Refusal of Environmental Protection Agency (EPA) supervisor to authorize Native American employee's attendance at conference of American Indian professionals where he allegedly could “network with professionals of Native American descent,” thus in-

creasing his opportunity to secure outside employment, was not "adverse employment action" that would support employee's prima facie claim of race-based disparate treatment; materially adverse consequences he alleged were purely speculative. Edwards v. U.S. E.P.A., D.D.C.2006, 456 F.Supp.2d 72. Civil Rights 1126

Denial of training opportunity on allegedly discriminatory grounds can constitute an "adverse employment action," but only if the denial materially affects the employee's pay, hours, job title, responsibilities, promotional opportunities, and the like. Santa Cruz v. Snow, D.D.C.2005, 402 F.Supp.2d 113. Civil Rights 1119

42f. ---- Job assignment or duties, adverse employment action, discriminatory practices prohibited

Reassignment and termination of female employee of Small Business Administration (SBA), who had filed administrative complaints alleging agency engaged in gender discrimination and sexual harassment, was done under generally applicable policy of employer that covered large number of employees, and thus reassignment and termination could not form basis of retaliation claim under Title VII. Rivera-Colon v. Mills, C.A.1 (Puerto Rico) 2011, 635 F.3d 9. United States 53(5)

Temporary rotation of male postal employee's preferred "distribution" duties to female clerk was not a materially adverse employment action, as required to support employee's Title VII gender discrimination and retaliation claims; employee was required to perform "window" duties rather than "distribution" duties for limited period of time, those duties fell within employee's job description, and on other rare occasions employee performed "window" duties in the normal course of his employment. Morales-Vallellanes v. Potter, C.A.1 (Puerto Rico) 2010, 605 F.3d 27, certiorari denied 131 S.Ct. 978. Civil Rights 1179; Civil Rights 1249(1); Postal Service 5

Evidence was sufficient to support jury's finding that Department of Transportation employee's reassignment from Director of the Office of Communications, Navigation, and Surveillance Systems to Program Manager for the Year 2000(Y2K) Project was not an "adverse employment action" under Title VII, as required to establish gender discrimination claim; although in new position employee supervised fewer employees, had no budget, and she reported to one of her former peers, employee retained her pay grade and her Senior Executive Service (SES) status, and new position proved vital, visible, and prestigious. Czekalski v. LaHood, C.A.D.C.2009, 589 F.3d 449, 389 U.S.App.D.C. 17, rehearing en banc denied. Civil Rights 1169

Supervisors' slowing of processing of federal employee's cases and requiring her to submit biweekly status reports were not materially adverse actions as might form basis of employee's claim against employer under Title VII alleging retaliation for reporting sexual harassment, but were rather minor inconveniences and alterations of job re-

sponsibilities which did not rise to level of adversity necessary to support claim. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1249(1); United States 36

Federal employer's changes to job duties of employee, who was over 70 years old and "brown-skinned" Muslim from Pakistan, after another employee was hired did not constitute adverse employment action, as required for employee's claims of race, religion, age, and disability discrimination in violation of ADEA, Rehabilitation Act, and Title VII, where changed duties did not require employee to do qualitatively inferior work involving any less skill or knowledge, and reassignment of some duties occurred due to hiring another employee to bring office back to former strength. Baloch v. Kempthorne, C.A.D.C.2008, 550 F.3d 1191, 384 U.S.App.D.C. 85. Civil Rights 1126; Civil Rights 1157; Civil Rights 1207; Civil Rights 1220

Supervisor's reducing work responsibilities of female federal employee, who filed Equal Employment Opportunity (EEO) complaint, were discrete acts that could not form basis of employee's hostile work environment claim based on sex or national origin discrimination, or retaliation claim under Title VII. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1250

Federal Deposit Insurance Corporation's (FDIC) legitimate, nonretaliatory reason for assigning employee, who filed Equal Employment Opportunity Commission (EEOC) complaints, special project on security breaches, namely, to give employee opportunity to demonstrate that he was still capable of professional work, was not pretext for retaliation under Title VII, Rehabilitation Act, or Age Discrimination in Employment Act (ADEA). Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Civil Rights 1251

Federal employee did not suffer "adverse employment action," as required to establish prima facie case of race-based discrimination under Title VII, when he was assigned job duties outside his job description, absent allegations that employee's hours, salary, or other terms of his employment changed because of the new duties. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. Civil Rights 1126

National Forest Service's (NFS) decision to increase the amount of cattle range work that its female wildlife biologist would perform, thus decreasing her biology work, was not an "adverse employment action" in violation of Title VII, as required to support biologist's claim for disparate treatment, but instead, was merely a minor alteration of her job responsibilities; biologist's job duties already included a significant amount of cattle range work, it was management's prerogative to assign biologist to particular duties within her job classification in the most efficient and beneficial way, and biologist did not lose opportunities for bonuses or recognition that would otherwise have been available. White v. Schafer, D.Colo.2010, 738 F.Supp.2d 1121. Civil Rights 1126

Reassignment of African American female employee to particular section of Department of Homeland Security without subsequent promotion was not pretext for racial discrimination in violation of Title VII, since she filled position of person who had been promoted, indicating that promotion in that department was possible, and individuals outside of her protected class had not been treated differently than she had been. Oliver v. Napolitano, D.D.C.2010, 729 F.Supp.2d 291. Civil Rights 1137

African-American female federal employee established prima facie case of race and gender discrimination based on her reassignment to Program Analyst position; she was a member of two protected classes and suffered an adverse employment action in that after reassignment her duties dramatically declined in both quantity and quality. Thomas v. Vilsack, D.D.C.2010, 718 F.Supp.2d 106. Civil Rights 1135; Civil Rights 1169

Male employed by National Aeronautics and Space Administration (NASA) as Equal Opportunity Manager was not subject to adverse employment action that would support prima facie case of sex discrimination when he was promoted to GS-15 level, had his job-related responsibilities and duties assigned to female employee with less experience, and had his performance appraisal completed by employee at lower GS level. King v. Bolden, D.D.C.2010, 717 F.Supp.2d 65. Civil Rights 1179

Secret Service's reassignment of African-American special agent from position as special agent in charge of division protecting former First Lady to position as assistant special agent in charge of training center was not adverse employment action, as required to establish prima facie case of racial discrimination under Title VII; agent's base salary increased slightly as result of reassignment, and his responsibilities were not greatly diminished. Sykes v. Napolitano, D.D.C.2010, 710 F.Supp.2d 133. Civil Rights 1135

Failure to reassign female employee of the Department of the Army to open position was not “adverse employment action,” as required for employee's Title VII retaliation action, where employee was not employee level required for position, vacancy announced was never issued, and position was filled non-competitively. Torres v. McHugh, D.N.M.2010, 701 F.Supp.2d 1215. Armed Services 27(4); Civil Rights 1249(1)

Legitimate, non-discriminatory and non-retaliatory reasons proffered by Director of Office of Small and Disadvantaged Business Utilization (OSDBU) for reassigning responsibility for Veteran's Business Program from African American Deputy Director, who had filed formal administrative complaints, to another employee, namely, that project was only assigned to Deputy Director on temporary basis and to better balance workload in OSDBU, were not pretext for race discrimination or retaliation under Title VII. Holmes-Martin v. Sebelius, D.D.C.2010, 693 F.Supp.2d 141. Civil Rights 1137; Civil Rights 1251; United States 36

Removal of employee of Employment and Labor Law Section (ELL) of the United States

Postal Service, an African-American attorney of Japanese ancestry who reported incident in which co-worker allegedly made racially discriminatory statement, as first chair attorney on specific case was materially adverse, as supported employee's prima facie case of retaliation under Title VII; after employee's removal from case, he was no longer offered federal court litigation, which was important to his success at Postal Service. Manuel v. Potter, D.D.C.2010, 685 F.Supp.2d 46. Civil Rights 1249(1); Postal Service 5

Even if not time-barred, Hispanic federal supervisory employee's transfer to position with no supervisory status and her subsequent transfer back to her original position six months later was not adverse employment action, as would support employee's Title VII discrimination claim based on disparate treatment; employee's transfers were at her own request, employee failed to show that either transfer was based on her protected classes, and employee failed to establish that six-month interval between her transfer to non-supervisory job, if it was demotion, and her reinstatement to supervisory position, harmed her in any way. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1138; Civil Rights 1172

Description by former Chief of Division of Cultural Programs for Department of State of his assignment to Declassification Unit belied his claim that it was retaliation for protected activity; he blamed his difficulty in finding new position on his involuntary curtailment from his position, referring to it as “a scarlet U on his sweater,” characterized assignment to that unit as a “snowball” effect from his involuntary curtailment, and stated that timing of curtailment meant that most positions had already been filled and it made him a less desirable candidate than other applicants. McGrath v. Clinton, D.D.C.2009, 674 F.Supp.2d 131, appeal denied 2010 WL 3199835. Civil Rights 1252; United States 36

Employee presented sufficient summary judgment evidence that she suffered an adverse personnel action to establish a prima facie case of race discrimination under Title VII, despite employer's claim that there was no change in her pay, benefits, or grade as a result of her reassignment from a paralegal specialist to a human resources specialist; immediately after her reassignment, she was assigned tasks commensurate with an entry-level position, and she offered uncontroverted testimony that after her reassignment she was unable to competently answer employees' questions about employee benefits until she completed her training program. Sharpe v. Bair, D.D.C.2008, 580 F.Supp.2d 123, appeal dismissed 2010 WL 288558. Federal Civil Procedure 2497.1

Secretary of Labor proffered legitimate nondiscriminatory and nonretaliatory reasons under Title VII and the ADEA for denying Department of Labor (DOL) employee's requests for temporary details to supervisory position and for a “desk audit,” a review of his current responsibilities to determine whether he was actually performing responsibilities at a higher grade level; no detail opportunities were available when employee made

his requests, and employee requested the desk audit the day after the denial of his request for within-grade increase in pay (WGI), which in turn was based on his most recent performance rating of "Minimally Satisfactory" and subsequent performance deficiencies. Brookens v. Solis, D.D.C.2009, 616 F.Supp.2d 81, reconsideration denied 635 F.Supp.2d 1, affirmed 2009 WL 5125192, rehearing en banc denied , certiorari denied 131 S.Ct. 225, 178 L.Ed.2d 136. Civil Rights 1126; Civil Rights 1207; Civil Rights 1249(1); United States 36

Former Federal Deposit Insurance Corporation (FDIC) employee suffered an adverse employment action when his job title was changed from "Project Manager" to "Senior Information Systems Specialist," as required for employment discrimination claim under Title VII, although FDIC contended that the job titles were informal, where employee's duties changed just before he received new job title. Chowdhury v. Bair, D.D.C.2009, 604 F.Supp.2d 90, subsequent determination 680 F.Supp.2d 176. Civil Rights 1126

Postal Service's refusal to grant employee light duty on one occasion due to his permanent knee injury and refusal to extend employee's light duty assignment on another occasion were not materially adverse actions for purposes of employee's Title VII discriminatory retaliation claims, and even if the actions were materially adverse, no reasonable jury could find that they resulted from any retaliatory animus, where refusals were the result of employee's repeated failures to comply with Postal Service administrative requirements for light duty requests and documentation. Franklin v. Potter, D.D.C.2009, 600 F.Supp.2d 38. Civil Rights 1249(1); Civil Rights 1251; Postal Service 5

Federal employee was not subject to "adverse employment action" because of her transfer, and thus, employee did not establish prima facie Title VII employment discrimination claim based on the transfer, although she moved locations from downtown Manhattan to midtown Manhattan, where employee remained at the same pay and grade/level and retained similar duties and responsibilities as she had in her prior position. Watson v. Paulson, S.D.N.Y.2008, 578 F.Supp.2d 554, affirmed 355 Fed.Appx. 482, 2009 WL 4431051. Civil Rights 1135

Federal employer offered legitimate, nonretaliatory motive for refusing request to relocate employee's office, precluding determination that refusal was unlawful retaliation for employee's filing of Equal Employment Opportunity Commission (EEOC) complaint, by showing that employee's receptionist duties requested that she be located near entrance door to work area; in addition, employer moved co-workers who were allegedly bothering employee to partial accommodation of her work relocation request. Vines v. Gates, D.D.C.2008, 577 F.Supp.2d 242. Civil Rights 1249(1); United States 36

Genuine issues of material fact precluded summary judgment on Department of the Interior employee's retaliation counts that were based on denial of his travel request, early termination of his detail to Office of Environmental Policy, and denial of opportunity for

him to serve as acting supervisor; while the issue was close as to whether those actions individually constituted "adverse actions," based on their combined effect, a reasonable worker could be dissuaded from engaging in protected activity to oppose discrimination. Hill v. Kempthorne, D.D.C.2008, 577 F.Supp.2d 58. Federal Civil Procedure 2497.1

Older male African-American officer in Department of Homeland Security (DHS) failed to rebut Secretary's legitimate, nondiscriminatory and nonretaliatory reason for his non-selection for emergency deployment to Buffalo, New York, that officer charged with selecting volunteers for deployment was "told to find anyone who could leave right away," he was on evening shift, and DHS gleaned all the volunteers it needed from day shift; employee's notation that officers chosen for deployment were all younger merely restated his original claim, evading direct response to credibility, likelihood or good faith of Secretary's proffered explanation, and employee had not traced path of causation that would support his claim he was not deployed in retaliation for his sexual harassment complaint. Short v. Chertoff, D.D.C.2008, 555 F.Supp.2d 166. Civil Rights 1135; Civil Rights 1179; Civil Rights 1207; Civil Rights 1249(1); United States 36

Genuine issue of material fact existed as to whether federal employee suffered an adverse personnel action based upon the involuntary reassignment of job duties, precluding summary judgment in favor of employer on employee's Title VII retaliation claim. Pardo-Kronemann v. Jackson, D.D.C.2008, 541 F.Supp.2d 210, affirmed in part , reversed in part 601 F.3d 599, 390 U.S.App.D.C. 178. Federal Civil Procedure 2497.1

Supervisor's explanation that medical instrument technicians needed to rotate between ultrasound and diagnostic (x-ray) equipment in order to maintain skills was not pretext for employment discrimination. Lester v. Secretary of Veterans Affairs, W.D.La.2007, 514 F.Supp.2d 866. Civil Rights 1137

Plaintiff who is denied lateral transfer does not suffer actionable injury under Title VII, unless there are some other materially adverse consequences affecting terms, conditions, or privileges of her employment or her future employment opportunities such that reasonable trier of fact could conclude that plaintiff has suffered objectively tangible harm. Mills v. Winter, D.D.C.2008, 540 F.Supp.2d 178. Civil Rights 1135

Proposed transfer of United States Postal Service (USPS) employee's job and her attendant responsibilities did not support a prima facie case of discrimination under Title VII; proposed transfer that did not occur was not an "adverse employment action" and did not create a hostile work environment, eventually resulting in employee's constructive discharge. West v. Potter, D.D.C.2008, 540 F.Supp.2d 91. Civil Rights 1135

Denial of permission for Federal Bureau of Investigation (FBI) legal attache in Saudi Arabia to travel to another Arab country and lack of notice given to him about assistant

legal attache's trip to FBI headquarters were not "adverse employment actions" that would support Title VII discrimination claims. Rattigan v. Gonzales, D.D.C.2007, 503 F.Supp.2d 56. Civil Rights 1126

Department of Health and Human Services (DHHS) employee suffered an "adverse employment action" that would support his Title VII and ADEA claims when he was re-assigned from his GS-15 position as Director of Office of Grants Management (OGM) in Administration for Children and Families (ACF) to Grants Management Officer position, which he alleged was "unclassified" and involved the work of a GS-13 employee, in which he had no supervisory authority and lacked signature authority over the one grant he supervised. Bryant v. Leavitt, D.D.C.2007, 475 F.Supp.2d 15. Civil Rights 1135; Civil Rights 1207

Federal employee of United States Marshals' Service suffered adverse employment actions, as required for her Title VII claim against federal government alleging gender discrimination, where employee's duties were substantially altered, her investigative duties were taken away from her, she was passed over for advancement opportunities for which she was qualified and which were given to employees with less experience, she was repeatedly transferred, she was assigned to rotation system, and she was assigned to oppressive work environment while on light duty. DeCaire v. Gonzales, D.Mass.2007, 474 F.Supp.2d 241, vacated 530 F.3d 1, corrected. Civil Rights 1169; Civil Rights 1185

Alleged reduction in federal employee's work assignments after he filed Equal Employment Opportunity (EEO) complaint rose to level of "adverse employment action" that would support his retaliation claim. Edwards v. U.S. E.P.A., D.D.C.2006, 456 F.Supp.2d 72. Civil Rights 1249(1); United States 36

Significant change in job responsibilities is classic and widely recognized example of forbidden retaliation; such a harm is not purely subjective injury, and may indeed amount to materially adverse consequence affecting terms, conditions, or privileges of employment or future employment opportunities which may constitute objectively tangible harm. Prince v. Rice, D.D.C.2006, 453 F.Supp.2d 14. Civil Rights 1245; Labor And Employment 827

Repeated denial of federal employee's requests for detail assignments over three-year period was not an "adverse employment action" that would support prima facie case of race or sex discrimination under Title VII. Nichols v. Truscott, D.D.C.2006, 424 F.Supp.2d 124. Civil Rights 1126; Civil Rights 1169

42g. Reprimands, Adverse employment actions, discriminatory practices prohibited

Female federal employee's receipt of letter of admonition for turning off shared printer

after employee filed Equal Employment Opportunity (EEO) complaint did not constitute severe conduct required to support hostile environment claim based on sex or national origin discrimination, or retaliation claim under Title VII; language of letter was not objectively offensive, and employee did not deny that she turned off printer. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1250

United States Department of Agriculture's Foreign Service's legitimate, nondiscriminatory reasons for oral reprimand of employee were not pretextual, for purposes of Title VII race and national origin discrimination claims alleged by African-American U.S. citizen of Hispanic descent, originally born in Panama; Commission required employee to inform both his American and Panamanian supervisors of audit plans, and he failed to inform Panamanian supervisor, and reprimand stemmed from less than satisfactory performance in assigned tasks. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1137

Letter of admonishment issued by agency because of federal employee's delinquent payment of government credit card bill was not actionable "adverse employment action" that would support his retaliation claim under Title VII. McGrath v. Clinton, D.D.C.2009, 674 F.Supp.2d 131, appeal denied 2010 WL 3199835. Civil Rights 1249(3); United States 36

Federal employee's failure to review all tapes before they aired and her dereliction of her other editorial duties during a broadcast constituted a legitimate, nondiscriminatory reason under Title VII for issuing a letter of reprimand. Wada v. Tomlinson, D.D.C.2007, 517 F.Supp.2d 148, affirmed 296 Fed.Appx. 77, 2008 WL 4569862, rehearing en banc denied. Civil Rights 1126

Questionable allegations of hostile and erratic workplace behavior, lodged in formal letter of reprimand that remained in Federal Housing Finance Agency (FHFA) employee's file for one year, could have dissuaded reasonable employee from engaging in Equal Employment Opportunity (EEO) activity, and thus issuance of letter constituted adverse action for purposes of employee's Title VII retaliation claim. Powell v. Lockhart, D.D.C.2009, 629 F.Supp.2d 23. Civil Rights 1249(3); United States 36

Investigation of sexual harassment charges and reassignment of African-American male employee was not "adverse employment action," for purposes of employee's Title VII claims against Navy; employee did not contend that he suffered diminution in pay or benefits from reassignment, and employee failed to present evidence to support assertion that investigation damaged chances of receiving career ladder promotion. Lipscomb v. Winter, D.D.C.2008, 577 F.Supp.2d 258, affirmed in part , remanded in part 2009 WL 1153442, on remand 699 F.Supp.2d 171. Civil Rights 1126; Civil Rights 1179

Government Accountability Office (GAO) Personnel Appeals Board (PAB) executive director's letter asking senior trial attorney "to keep her timely and fully informed of all matters of importance to the office going forward," though evidently prompted by large increase in number of charges filed with PAB that executive director believed attorney was aware of but had failed to inform her about, did not constitute material "adverse action" that would support prima facie retaliation claim under ADEA and Title VII; though employee characterized it as a "written reprimand," letter did not indicate it was such, it was not placed in attorney's personnel file, and it did not lead to any disciplinary action against her. Williams v. Dodaro, D.D.C.2008, 576 F.Supp.2d 72. Civil Rights 1249(3); United States 36

African-American male employee failed to establish prima facie case that Environmental Protection Agency's (EPA) letter of reprimand in response to employee's letter to president of university alleging wrongdoing by intern for whom he was a mentor on agency letterhead and suggesting EPA involvement in matter was retaliation for prior Equal Employment Opportunity (EEO) activity against EPA in violation of Title VII, although letter of reprimand was to remain in employee's personnel file for two years; five-month time lapse between EEO activity and letter of reprimand was too remote to establish causation. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights 1249(3); Civil Rights 1252; United States 36

Manager's memorandum to employee acting as team leader setting forth some actions that could be taken to resolve dispute between employees who reported to team leader did not constitute materially adverse action necessary to support employee's Title VII retaliation claim against federal agency, even if employee considered memorandum to be reprimand, where memorandum did not mention her at all and was not placed in her personnel file. Meyer v. Nicholson, W.D.Pa.2006, 441 F.Supp.2d 735. Civil Rights 1249(1); United States 36

42h. ---- Discipline, adverse employment action, discriminatory practices prohibited

United States Postal Service's discipline of African-American employee, which included warning letters and suspensions, did not constitute adverse employment action for purposes of employee's Title VII racial discrimination claim, since discipline did not affect employee's pay or employment conditions. Johnson v. Potter, M.D.Fla.2010, 732 F.Supp.2d 1264. Civil Rights 1126

Older male African-American officer in Department of Homeland Security (DHS) failed to rebut Secretary's legitimate, nondiscriminatory reasons for issuing disciplinary sanctions against him for failure to obey arrest order and use of offensive language toward his supervisor; despite being explicitly instructed at least three times to arrest subject with handgun at government building he released subject and returned him his handgun, and he referred to superior officer who had so instructed him by a racial epithet.

Short v. Chertoff, D.D.C.2008, 555 F.Supp.2d 166. Civil Rights 1126; Civil Rights 1179; Civil Rights 1207

Federal employee failed to establish that employer retaliated against him for his prior Equal Employment Opportunity (EEO) activity by listing him as AWOL (absent without leave); employer had a legitimate, non-discriminatory reason for listing employee as AWOL based upon his failure to follow proper leave request procedure by obtaining his supervisor's approval prior to taking leave, and employee failed to demonstrate that such reason was pretext for retaliation. Pardo-Kronemann v. Jackson, D.D.C.2008, 541 F.Supp.2d 210, affirmed in part , reversed in part 601 F.3d 599, 390 U.S.App.D.C. 178. Civil Rights 1249(3); Civil Rights 1251; United States 36

Older African-American Secret Service officer in Dignitary Protection Division (DPD) failed to establish, subjectively or objectively, that he was subjected to a hostile work environment through his mandated attendance at anger management classes following confrontation with superior officer; he described anger management class to EAP counselor that recommended it as “most informative” and “helpful,” and he did not show the attendance requirement was levied for a discriminatory reason. Williams v. Chertoff, D.D.C.2007, 495 F.Supp.2d 17. Civil Rights 1147; Civil Rights 1213

African-American male employee was not harmed by Environmental Protection Agency's (EPA) decision to place him on 10 hours of paid administrative leave following dispute with intern for whom he was a mentor, as required to allege retaliation in violation of Title VII; employee was paid for leave, leave had no impact on his job, duties, compensation, or any other identified tangible aspect of his life, and intern's allegations that employee acted in threatening manner were never proved and had no impact on employee's position. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights 1249(1); United States 36

Second referral by Federal Bureau of Investigation (FBI) of agent to Office of Professional Responsibility (OPR) was not an “adverse employment action” that would support prima facie case of discrimination or retaliation under Title VII; that referral was not made for purposes of preventing agent from receiving promotion as whatever “cloud” OPR referral cast over agent's career prospects was already hanging over her, and because agent resigned from FBI before second investigation was completed, second referral did not result in any additional disciplinary action. Velikonja v. Gonzales, D.D.C.2007, 501 F.Supp.2d 65, affirmed 298 Fed.Appx. 8, 2008 WL 4844773. Civil Rights 1126; Civil Rights 1249(3); United States 36

Federal employee's reports of conduct (ROC) memorializing encounters with employee acting as team leader did not constitute materially adverse employment actions necessary to support team leader's Title VII retaliation claim against agency, even though team leader was not notified of ROCs and was subsequently denied promotion, where

she was never admonished or disciplined in any way because of allegations contained in ROCs, and executive who recommended not to promote her had not seen ROCs. Meyer v. Nicholson, W.D.Pa.2006, 441 F.Supp.2d 735. Civil Rights 1249(1); United States 36

42i. ---- Performance improvement plans, adverse employment action, discriminatory practices prohibited

Post office's alleged selective enforcement of its breaks policy, in that certain female employees were permitted to take longer breaks than provided by policy, did not materially effect male postal employee's employment, as required to support employee's Title VII gender discrimination and retaliation claims; employee was not formally disciplined for violating the policy, or denied the opportunity to take breaks himself, and all employees were required to clock in and out each time they went on break. Morales-Vallellanes v. Potter, C.A.1 (Puerto Rico) 2010, 605 F.3d 27, certiorari denied 131 S.Ct. 978. Civil Rights 1179; Civil Rights 1249(1); Postal Service 5

Federal agency employer's failure to give female federal employee certain training opportunities did not amount to "adverse employment actions," as required to establish prima facie Title VII sex discrimination claim, even if other, male employees received the training, where there was no showing that female employee was fired, suspended, demoted, denied a requested promotion, or suffered any loss of pay, or that the training was necessary for advancement in status or pay. Pagan v. Holder, D.N.J.2010, 741 F.Supp.2d 687. Civil Rights 1169

African-American female employee did not suffer tangible harm by employer's denying her access to one particular computer programming training course, as required to show cognizable adverse employment action on disparate treatment claim under Title VII. Beckham v. National R.R. Passenger Corp., D.D.C.2010, 736 F.Supp.2d 130. Civil Rights 1138

Denial of ten of General Services Administration (GSA) employee's requests for training and leave in two-year period were not shown to be "adverse employment actions" that would support prima facie case of discrimination under ADEA or Title VII; closest employee came to alleging that level of harm was statement that completion of one course would potentially entitle her to certificate that could enhance her career, but that class was third in series and employee did not pass second class, and she also failed to show or even properly allege that completing course was all that would be required to receive certification. Calhoun v. Prouty, D.D.C.2009, 643 F.Supp.2d 87, affirmed in part 2010 WL 605059, affirmed in part, reversed in part and remanded 2011 WL 192497. Civil Rights 1126; Civil Rights 1207

Former Federal Deposit Insurance Corporation (FDIC) employee realized no adverse

employment consequences of placement on performance improvement plan (PIP), and, thus, placement on PIP was not an adverse employment action, as required for employment discrimination claim under Title VII, where placement on PIP did not result in change in employee's grade or salary. Chowdhury v. Bair, D.D.C.2009, 604 F.Supp.2d 90, subsequent determination 680 F.Supp.2d 176. Civil Rights 1126

42j. ---- Schedule or work hours, adverse employment action, discriminatory practices prohibited

Members of predominantly white squad within police department's canine unit suffered adverse employment action, as required to establish prima facie case of race discrimination under Title VII, when squad was moved from all night shifts to rotating shifts; officers in squad lost income because they earned less night-pay differential, and switch to rotating shift adversely affected officers' sleep schedules, overtime opportunities, and part-time day jobs. Ginger v. District of Columbia, C.A.D.C.2008, 527 F.3d 1340, 381 U.S.App.D.C. 252, rehearing en banc denied , certiorari denied 129 S.Ct. 930, 173 L.Ed.2d 112. Civil Rights 1234

Government employer did not retaliate against disabled federal employee, in violation of Title VII, for supporting coworker's union grievance, filing discrimination and retaliation complaint with Equal Employment Opportunity Commission (EEOC), and engaging in protected EEO activity, by reevaluating employee's flexible work schedule accommodation; employee's supervisor testified that he had no knowledge of any of employee's prior Title VII activity, and employee did not show that supervisor was aware of her Title VII activity, or that his explanation for decisions he made was pretextual. Schmidt v. Solis, D.D.C.2011, 2011 WL 703623. United States 36

Federal employee did not suffer “adverse employment action,” as required to establish prima facie case of retaliation under Title VII, when agency insisted that employee return to an ordinary work schedule. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. United States 36

Denial of opportunity to African-American female employee to work from home on, at most, three occasions was minor annoyance, not cognizable adverse employment action, as required for disparate treatment claim under Title VII, particularly where employer had approved her requests for different work schedule or location in the past and employee's work-at-home record was unacceptable. Beckham v. National R.R. Passenger Corp., D.D.C.2010, 736 F.Supp.2d 130. Civil Rights 1138

Genuine issue of material fact as to whether employer's decision to change employee's start time would dissuade employee from pursuing charge of discrimination before Equal Employment Opportunity Commission (EEOC), and thus, was “materially adverse,” precluded summary judgment on employee's claim that employer retaliated, in

violation of Title VII, against employee after she filed charge with EEOC in connection with co-worker's sexual harassment. Turrentine v. United Parcel Service, Inc., D.Kan.2009, 645 F.Supp.2d 976. Federal Civil Procedure 2497.1

A four-hour change in working hours for a period of only four weeks was not sufficient to rise to the level of an adverse employment action for Title VII purposes. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Civil Rights 1120

Genuine issue of material fact, as to whether change in United States Postal Service (USPS) employee's schedule was "adverse employment action" under the circumstances, precluded summary judgment on employee's gender discrimination claim based on her inability to establish that element of prima facie case; change of employee's days off from consecutive days to nonconsecutive days effectively eliminated her two-day weekend. Armery v. Potter, D.Mass.2007, 497 F.Supp.2d 134. Federal Civil Procedure 2497.1

Supervisor's decision to take over from African-American female employee responsibility for on-call scheduling of medical instrument technicians at medical center was not employment discrimination; the employee had been arranging the schedule due to an informal arrangement among the employees and not as part of a job duty, and since all employees were required to perform on-call duty and were placed on the same rotating on-call schedule, employee was treated the same as all other radiology employees. Lester v. Secretary of Veterans Affairs, W.D.La.2007, 514 F.Supp.2d 866. Civil Rights 1126; Civil Rights 1138; Civil Rights 1169; Civil Rights 1172

Genuine issues of material fact existed regarding question of whether federal government employee was denied overtime work based on retaliation for his equal employment opportunity (EEO) related activities, precluding summary judgment on employee's Title VII claim of retaliation. Walker v. England, D.D.C.2008, 590 F.Supp.2d 113. Federal Civil Procedure 2497.1

Federal agency employer's scheduling of training for volunteer program to assist in the preparation of tax returns for low-income individuals and senior citizens was not an "adverse employment action," as required to establish prima facie case of Title VII employment discrimination; the program was not related to employee's official duties, so the requirement that the employee partake in the training on her own time did not effect her employment. Watson v. Paulson, S.D.N.Y.2008, 578 F.Supp.2d 554, affirmed 355 Fed.Appx. 482, 2009 WL 4431051. Civil Rights 1126

Denial of flex time schedule so that female federal employee could take her children to school and start work fifteen minutes late on some days was not disparate treatment based on sex; no similarly situated male was granted flex time. Krop v. Nicholson, M.D.Fla.2007, 506 F.Supp.2d 1170. Civil Rights 1172

42k. ---- Leaves of absence, adverse employment actions, discriminatory practices prohibited

Placement of African-American employee of Internal Revenue Service (IRS) on absent without leave (AWOL) status and leave without pay (LWOP) were "adverse employment actions," with demonstrable effect and involving objectively tangible harm, as required for prima facie claim of race discrimination in violation of Title VII, since employee testified of serious hardship as result of AWOL status, offered letter regarding her personal bankruptcy and two real estate foreclosures, averred in affidavit that she had borrowed money for education and therapy for her disabled child, and averred that LWOP and AWOL designations negatively marked her employment record which adversely affected her employment benefits and potentially jeopardized her future employment opportunities. Greer v. Paulson, C.A.D.C.2007, 505 F.3d 1306, 378 U.S.App.D.C. 295. Civil Rights ⚿1126; Civil Rights ⚿1136

United States Postal Service's (USPS) changing of African-American employee's request for leave without pay (LWOP) to sick pay for one-week period was not adverse action, as would support employee's discrimination claims under Title VII; only consequence suffered by employee was that he had to take sick leave instead of workers' compensation leave. Diggs v. Potter, D.D.C.2010, 700 F.Supp.2d 20. Civil Rights ⚿1136

Genuine issue of material fact existed regarding whether federal employer's actions against employee, which included placing employee on leave restriction, constituted adverse employment actions, as required to establish prima facie case of retaliation under Title VII, precluding summary judgment on employee's Title VII claim against employer. Laudadio v. Johanns, E.D.N.Y.2010, 677 F.Supp.2d 590. Federal Civil Procedure ⚿2497.1

Employee adequately alleged an adverse employment action regarding an administrative inquiry investigating whether she misrepresented her position to state a claim under Title VII and §§ 1981; if she was not selected for a promotional position because of the open investigation, the investigation had material consequences on her future employment opportunities and would qualify as an adverse employment action. Hutchinson v. Holder, D.D.C.2009, 668 F.Supp.2d 201. Civil Rights ⚿1395(8); Civil Rights ⚿1532

Brief delay of Federal Bureau of Investigation (FBI) and other federal agencies in responding to request by FBI employee for administrative leave to address matters related to his Equal Employment Opportunity (EEO) complaint did not constitute action sufficiently severe or pervasive to alter conditions of his employment and create abusive working environment, as would support employee's Title VII retaliatory hostile work environment claim. Graham v. Holder, D.D.C.2009, 657 F.Supp.2d 210. Civil Rights

1250; United States 36

Given African American federal employee's failure to schedule her leave earlier and in the context of her leave record showing numerous times where she had been granted annual leave, denial of her requests to take annual leave on particular dates did not constitute an adverse action for Title VII purposes. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Civil Rights 1136

Supervisor's alleged tampering with white female federal employee's sick leave records was not materially adverse action for purposes of employee's Title VII retaliation claim; only consequence was that employee had to use annual leave instead of sick leave on, at most, two occasions. Kline v. Springer, D.D.C.2009, 602 F.Supp.2d 234, affirmed 2010 WL 5258941, rehearing en banc denied. Civil Rights 1249(1); United States 36

United States Postal Service (USPS) employee failed to make out prima facie case of discrimination based on agency's treatment of her sick leave request; agency's error in charging employee with 32 hours of leave without pay (LWOP) instead of the sick leave she had properly requested, which was not corrected until after employee received at least one paycheck, did not constitute an "adverse employment action." West v. Potter, D.D.C.2008, 540 F.Supp.2d 91. Civil Rights 1136

United States Postal Service's explanation that if any employee failed to report as scheduled, management may take corrective action, including a charge of absent without leave (AWOL), for failure to report, was legitimate, non-discriminatory explanation for absent without leave (AWOL) charge against postal employee, precluding employee's retaliation claims against Postmaster General under Title VII. Gentile v. Potter, E.D.N.Y.2007, 509 F.Supp.2d 221. Civil Rights 1249(3); Postal Service 5

42l. ---- Medical leave, adverse employment action, discriminatory practices prohibited

Federal agency's requirement that employee provide medical documentation for medical visits in connection with his alleged disability was not sufficiently adverse to support employee's retaliation claims under ADEA, Title VII, and Rehabilitation Act. Koch v. Schapiro, D.D.C.2010, 699 F.Supp.2d 3. Civil Rights 1249(1); United States 36

43. Racial discrimination, discriminatory practices prohibited--Generally

White clinical nurse manager was not similarly situated to African-American clinical nurse manager for purposes of Title VII, where record did not indicate nature of white manager's alleged unsatisfactory performance or whether Department requested improvement plan from white manager, as it did from African-American manager. Dear v. Shinseki, C.A.7 (Ill.) 2009, 578 F.3d 605. Civil Rights 1138

Police department's proffered reasons for reorganizing canine unit from fixed to rotating shifts, that change would decrease likelihood of single squad within unit being responsible for large proportion of dog bites, and that officers on permanent night shift tended to become alienated from department, were not pretexts for race discrimination in violation of Title VII, as contended in single-motive case brought by members of predominantly white squad formerly assigned to fixed night shift. Ginger v. District of Columbia, C.A.D.C.2008, 527 F.3d 1340, 381 U.S.App.D.C. 252, rehearing en banc denied , certiorari denied 129 S.Ct. 930, 173 L.Ed.2d 112. Civil Rights 1234

Discharge because of absenteeism motivated by racial harassment from fellow workers and supervisors' failure to take reasonable measures to prevent or correct would not be "free from any discrimination based on race," even if ultimate decision maker was moved purely by legitimate concern for having personnel ready and willing to perform their duties. DeGrace v. Rumsfeld, C.A.1 (Mass.) 1980, 614 F.2d 796. Civil Rights 1122

Claim of federal employee that he had been discriminated against because, although he was white, he had, as union grievance delegate, represented a black fellow employee in a series of discrimination grievances came within ambit of this subchapter. Sperling v. U. S., C.A.3 (N.J.) 1975, 515 F.2d 465, certiorari denied 96 S.Ct. 2623, 426 U.S. 919, 49 L.Ed.2d 372. Civil Rights 1244

Genuine issue of material fact existed as to whether Federal Communications Commission (FCC) employee's supervisors acted with discriminatory intent with respect to criteria they used to determine that employee was not one of the three most-qualified candidates for a promotion, precluding summary judgment for FCC's Chairman on employee's claim that he was denied the promotion on basis of his race, in violation of Title VII. Jarmon v. Genachowski, D.D.C.2010, 720 F.Supp.2d 30. Federal Civil Procedure 2497.1

African-American special agent who was reassigned to position at Secret Service training center after his division posted fake memoranda was not similarly situated to Caucasian special agents who were also involved in memoranda incident but were not transferred, as required to establish that Service engaged in pattern of racial discrimination in violation of Title VII; Caucasian agents were under African-American agent's command and were not expected to exercise management of division. Sykes v. Napolitano, D.D.C.2010, 710 F.Supp.2d 133. Civil Rights 1139

There were no meaningful inconsistencies in selection process for Senior Special Agent positions in Department of Justice's Office of the Inspector General (OIG), as would demonstrate that process was retaliatory in violation of Title VII; plaintiff contended that his writing ability was "grossly misstated" to selection panel, that panel member's mem-

orandum to Assistant Inspector General for Investigations delineating panel's ranking of candidates omitted critical information about his investigative accomplishments as Special Agent for OIG, and that panel members did not independently rank candidates, but none of those arguments raised inference of retaliation. Pendleton v. Holder, D.D.C.2010, 697 F.Supp.2d 12, affirmed 2010 WL 4826442. Civil Rights 1249(1); Civil Rights 1541; United States 36

Genuine issue of material fact existed as to whether Director of Office of Small and Disadvantaged Business Utilization (OSDBU), which was office within Department of Health and Human Services, transferred African American Deputy Director's duties to white male OSDBU employee out of discriminatory motive, precluding summary judgment as to employee's Title VII race discrimination regarding alleged transfer of duties. Holmes-Martin v. Sebelius, D.D.C.2010, 693 F.Supp.2d 141. Federal Civil Procedure 2497.1

Even if not time-barred, Hispanic federal employee's complaint that her supervisor demeaned her during meeting in front of her team members by saying “Do you understand me, read my lips” and “Oh are you sleeping, go to sleep” failed to satisfy requirements for prima facie case of discrimination under Title VII; on their face, remarks did not relate to any of employee's protected classes, nor were they, in themselves, adverse employment actions, and employee failed to provide dates when they allegedly were made, essential to proximity. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1126; Civil Rights 1169

Reasons asserted by Department of Health and Human Services (HHS) for not placing older African-American employee into Lead Developmental Disability Specialist (LDDS) position for which she applied and was qualified, imposition of hiring controls and new managerial direction that accompanied change in leadership, were legitimate and nondiscriminatory and were not shown by employee to be pretext for discrimination based on her race or age; although agency never properly informed employee of its decision when it initially cancelled position it also never filled the position with another employee, and there was no evidence that agency cancelled vacancy for an impermissible reason, or that it designated position as non-bargaining unit position for a discriminatory reason. Evans v. Sebelius, D.D.C.2009, 674 F.Supp.2d 228. Civil Rights 1137; Civil Rights 1209

Title VII plaintiff can establish inference that her employer's nondiscriminatory reason for relevant employment action was pretext by presenting evidence that employer treated other employees of a different race more favorably in the same factual circumstances; to prove that she is “similarly situated” to another employee, plaintiff must demonstrate that all of the relevant aspects of her employment situation were nearly identical to those of allegedly comparable employee. Perry v. Clinton, D.D.C.2009, 674 F.Supp.2d 110. Civil Rights 1138; Civil Rights 1535

Supervisor's alleged reference to “you people” in presence of African-American Smithsonian Institution employee, even if intended to have derogatory meaning, did not alone create work environment of level of severity necessary for employee to sustain hostile work environment claim under Title VII or Rehabilitation Act. Bowden v. Clough, D.D.C.2009, 658 F.Supp.2d 61, appeal dismissed 2010 WL 2160010. Civil Rights 1147; Civil Rights 1224

African-American United States Postal Service (USPS) employee, a letter carrier, failed to establish prima facie case of race-based disparate treatment, absent assertion that non-African-American was hired to replace him or that purported comparators were nearly identical to him; first four alleged comparators were not terminated because their employer determined that they assaulted a supervisor, and there was no evidence regarding fifth comparator who allegedly hit supervisor twice with mail hamper. Moore v. Potter, S.D.Tex.2008, 716 F.Supp.2d 524. Civil Rights 1138

Federal Deposit Insurance Corporation's (FDIC) classification of a vacant position at a level at which employee was not eligible gave rise to an inference of discrimination, as element of employee's prima facie case of race discrimination under Title VII; employee pointed to other employees who were able to apply for positions outside their normal range, she provided testimony of other employees who suspected something was afoot given her inability to get a promotion despite her performance, and she pointed to discrepancies between defendants' statements as to their actions towards her. Chappell-Johnson v. Bair, D.D.C.2009, 636 F.Supp.2d 135, affirmed 2010 WL 605160. Civil Rights 1535

African American federal employee lacked sufficient evidence of pretext with respect to race to overcome the undisputed, legitimate disciplinary rationale behind letter of reprimand issued because of her failure to follow instructions and disrespectful conduct. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Civil Rights 1137

In Title VII employment discrimination case based on race, evidence of racial remarks, even unrelated to the particular employment decision, by a decision-maker may be probative of pretext and discriminatory intent. Pederson v. Mills, D.D.C.2009, 636 F.Supp.2d 78. Civil Rights 1544

There was no evidence that deadlines imposed on Caucasian United States Postal Service (USPS) probationary employee by performance action plan were unreasonable or that they were imposed as result of employee's race or color, as would support Title VII racial harassment claim. Mianulli v. Potter, D.D.C.2009, 634 F.Supp.2d 90, affirmed in part 2010 WL 604867, rehearing denied. Civil Rights 1234

Navy had legitimate, non-discriminatory reason for criticizing telephone usage of Afri-

can-American male employee, and thus criticism was not discrimination in violation of Title VII; employee admitted placement of 307 calls within 20 day period was excessive, all employees were subject to officewide audit of telephone usage and many employees were required to reimburse Navy for calls, and there was no evidence that charges were motivated by race or gender. Lipscomb v. Winter, D.D.C.2008, 577 F.Supp.2d 258, affirmed in part , remanded in part 2009 WL 1153442, on remand 699 F.Supp.2d 171. Civil Rights 1126; Civil Rights 1179

Library of Congress (LOC) did not discriminate or retaliate against organization of black LOC employees and individual employees when it refused to process their administrative complaint challenging LOC's refusal to recognize organization, since LOC refused to process the administrative complaint because it was not timely filed. Cook v. Billington, D.D.C.2008, 541 F.Supp.2d 358. Civil Rights 1126; Civil Rights 1249(1); United States 36

Federal Deposit Insurance Corporation (FDIC) stated a legitimate non-discriminatory reason for its action of denying its African American female employee a pay raise, as required under *McDonnell Douglas* burden-shifting framework for Title VII discrimination actions, where employer stated that employee failed to volunteer for field work and that her work was inadequate on two important projects. Brownfield v. Bair, D.D.C.2008, 541 F.Supp.2d 35. Civil Rights 1136

Older, African-American Secret Service officer in Dignitary Protection Division (DPD) was not subjected to a hostile work environment when he was required to undergo fitness for duty (FFD) examination following confrontation with superior officer; though a reasonable person could perceive intensive, three-appointment, full physical and psychiatric exam as harassment, and though officer claimed he did, he could not raise inference that DPD's Deputy Special Agent in Charge (DSAIC) ordered the FFD exam for a discriminatory reason. Williams v. Chertoff, D.D.C.2007, 495 F.Supp.2d 17. Civil Rights 1147; Civil Rights 1213

Even if African-American male employee's 10-hour forced administrative leave from position at Environmental Protection Agency (EPA) after dispute with intern to whom he was a mentor was adverse employment action, decision to place employee on leave was not discriminatory; decision to place employee and intern on leave was motivated by desire to separate them to avoid escalation of conflict, and allegation that labor relations specialist and supervisor who interviewed employee were Caucasian provided no basis for discrimination claim. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights 1137; Civil Rights 1179

African-American federal employee raised inference of race discrimination through evidence that his new immediate supervisor treated him “like a child” and yelled at him but did not subject the white employees in the office to similar treatment, that he was berat-

ed for the mistakes of at least one white employee, that supervisor conferred with white employee for advice and information on grants management issues which fell within purview of African-American employee's responsibilities, and that supervisor allocated additional staff to white employee while refusing to allocate any to African-American employee despite his requests. Bryant v. Leavitt, D.D.C.2007, 475 F.Supp.2d 15. Civil Rights 1535

African-American former Social Security Administration (SSA) employee stated valid claim of race discrimination, where amended complaint alleged that Commissioner of SSA was "engaged in a pattern or practice of using discipline and the threat of discipline to systematically remove career African-American staff persons or intimidate African-American staff persons into leaving their employment at SSA/(Office of General Counsel, Region III) and ultimately to replace them with non-African-Americans," that she and three other African American employees were replaced by Caucasian in that manner, and that she was treated less favorably than at least one similarly situated comparator; amended complaint gave Commissioner more than fair notice of basis for employee's claims and did not have to allege specific facts establishing each element of prima facie case. Harold v. Barnhart, E.D.Pa.2006, 450 F.Supp.2d 544. Civil Rights 1532

Denial of special recognition and monetary awards to Bureau of Alcohol, Tobacco and Firearms (ATF) employee for her work accomplishments was not "adverse employment action" that would support her prima facie case of race or sex discrimination under Title VII; employee identified no particular occasion on which she was denied bonus to which she claimed she otherwise would have been entitled. Nichols v. Truscott, D.D.C.2006, 424 F.Supp.2d 124. Civil Rights 1136; Civil Rights 1175

Performance evaluation that is lower than employee feels is warranted is not adverse employment action sufficient for claim of race discrimination under Title VII, but negative evaluations can be used as evidence of adverse employment action, particularly when they contribute to employee's demotion, disadvantageous transfer of positions, or failure to promote. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1119; Civil Rights 1135

Light-skinned black employee failed to prove that her darker-skinned black supervisor terminated her because of lighter color of her skin or because she visited Equal Employment Opportunity officer prior to her termination; it appeared undisputed that there was personality conflict between employee and her supervisor and there was considerable testimony that employee may have been insubordinate, immature, impatient, disrespectful and unmanageable. Walker v. Secretary of the Treasury, I.R.S., N.D.Ga.1990, 742 F.Supp. 670, affirmed 953 F.2d 650, certiorari denied 113 S.Ct. 156, 506 U.S. 853, 121 L.Ed.2d 106, rehearing denied 113 S.Ct. 1030, 506 U.S. 1072, 122 L.Ed.2d 175. Civil Rights 1544; Civil Rights 1553

Federal Aviation Administration's employment decision to decertify black female Puerto Rican as air traffic controller, and ultimately demote her to clerical position was motivated, at least in part, by unlawful discrimination where employee was victim of multiple racial and ethnic slurs voiced by her supervisors for several years. Cardona v. Skinner, D.Puerto Rico 1990, 729 F.Supp. 193. Civil Rights 1135

There was no evidence from which inference of improper animus could be drawn, as required to support former employee's claims pursuant to Title VII that former employer discriminated against her in terms and conditions of her employment based on race and national origin, retaliated against her for filing complaint with New York State Division of Human Rights, and constructively discharged her. Mathurin v. Skrivaneck, S.D.N.Y.2003, 2003 WL 21523977, Unreported, affirmed 96 Fed.Appx. 784, 2004 WL 1089081. Civil Rights 1251

43a. ---- Similarly situated employees, racial discrimination, discriminatory practices prohibited

Federal agency did not deny African-American male employee's request for accretion-of-duties promotion to higher grade level based on his new Contracting Officer Technical Representative (COTR) duties for discriminatory and/or retaliatory reasons; there was no evidence that comparators were actually “similarly situated” to him, i.e., held same position or worked in same branch of agency, or that any of them received any accretion of duties promotions due to COTR duties, and employee's supervisor did not, as employee claimed, lie to desk auditor about employee's job duties and hence his experience. Montgomery v. Chao, C.A.D.C.2008, 546 F.3d 703, 383 U.S.App.D.C. 290, rehearing en banc denied. Civil Rights 1138; Civil Rights 1179; Civil Rights 1249(1); United States 36

Employee failed to establish that similarly situated employees outside her protected class were treated more favorably, as required for prima facie Title VII and ADEA case with respect to her 10-day suspension, where she put forth no evidence of employees outside her various protected classes who acted in materially similar manner but were treated more favorably, and she failed to point to any other employee to serve as basis for comparison, but rather claimed that record was devoid of others in her division receiving similar treatment from supervisor and employer. Atanus v. Perry, C.A.7 (Ill.) 2008, 520 F.3d 662. Civil Rights 1138; Civil Rights 1210

African-American female employee, who was overseeing content on existing intranet, was not similarly situated to white male employee, who was developing new Internet site, as required to show adverse employment action on disparate treatment claim under Title VII, in denial to African-American female employee of access to one particular training course. Beckham v. National R.R. Passenger Corp., D.D.C.2010, 736 F.Supp.2d 130. Civil Rights 1138

Similarly qualified employee outside of protected class of plaintiff African American female federal employee did not fill position sought by plaintiff, as required for racial discrimination claim under Title VII, where similarly qualified employee within plaintiff's protected class filled that position. Oliver v. Napolitano, D.D.C.2010, 729 F.Supp.2d 291. Civil Rights 1135

Caucasian male former employee who sued Department of Labor failed to show that agency's allegedly differing treatment of co-employee evidenced pretext for discrimination, as required to maintain claims under Title VII and Age Discrimination in Employment Act (ADEA), since employee and co-employee were not similarly situated; although employees both worked in same office, they held different positions, and co-employee had hired counsel to defend herself on merits against negative performance review. Bennett v. Solis, D.D.C.2010, 729 F.Supp.2d 54. Civil Rights 1179; Civil Rights 1210; Civil Rights 1234

For purposes of African American federal employee's disparate treatment claim based on letter of reprimand issued by first-level supervisor for failure to follow instructions and disrespectful conduct, employees disciplined for different conduct or by second- and third-level supervisors were not valid comparators; letter of reprimand was too dissimilar for reasonable comparison to a hodgepodge of different disciplinary actions meted out by different supervisors at different times. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Civil Rights 1138

African American federal employee failed to establish a prima facie disparate treatment case with respect to the denial of her annual leave requests because all employees were required to submit leave planners, and she was the only employee who failed to submit a leave planner as required; additionally, employee could not establish a prima facie case with respect to the denial of her request for restoration of leave because she could not point to competent evidence of similarly situated employees outside of her protected class who were treated more favorably with respect to the restoration of annual leave. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Civil Rights 1138

African-American law enforcement recruit terminated from federal law enforcement training program after finding that he had engaged in assaultive conduct was aggressor in physical altercation in which he was involved was not similarly situated to two Caucasian officers who suffered no consequences stemming from incident in which recruits were drinking and wrestling, as required to establish prima facie case of race discrimination in African-American recruit's claims against training center alleging violations of Title VII and §§ 1981; it was determined that neither recruit intended to injure the other and that they had been engaged in horseplay. Turner v. Federal Law Enforcement Training Center, D.D.C.2007, 527 F.Supp.2d 63, affirmed 2008 WL 4898958, rehearing

en banc denied. Civil Rights 1138

African-American Federal Deposit Insurance Corporation (FDIC) "Examiner Trainee" who was not retained after her probationary period failed to establish prima facie case of race discrimination, absent showing she was similarly situated to white trainee who was not fired despite experiencing similar difficulties throughout training program; African-American trainee came to agency shortly after graduating from college and was hired to position which included one-year probationary period, whereas white trainee was lateral transfer to agency with fourteen years of federal work experience and was hired as permanent employee. McMillan v. Powell, D.D.C.2007, 526 F.Supp.2d 51, affirmed 304 Fed.Appx. 876, 2008 WL 5455693. Civil Rights 1138

Older, African-American Secret Service uniformed officer who was seeking to establish prima facie case of race or age discrimination in connection with his nine-day suspension following "verbal exchange, involving profanity and raised voices," with sergeant did not show that younger, white officers who were criminally charged with assault in domestic violence incidents but were not disciplined by employer, or the sergeant whom he confronted, were valid comparators; while like him the younger whites were uniformed officers, "inappropriate conduct while on duty" and alleged off-duty physical assaults were not offenses of comparable seriousness and disparate nature and context of their offenses precludes their service as comparators, and while sergeant never faced disciplinary action for subject events though he allegedly initiated exchange by yelling at uniformed officer in public, he was uniformed officer's supervisor. Williams v. Chertoff, D.D.C.2007, 495 F.Supp.2d 17. Civil Rights 1138; Civil Rights 1210

Caucasian female employee who lacked radiology technician's license was not similarly situated to African-American female employee alleging discrimination in failing to place Caucasian employee on emergency coverage/call-back roster for medical center; all certified technicians were on the roster, and Caucasian employee was not proper comparator because she lacked certification. Lester v. Secretary of Veterans Affairs, W.D.La.2007, 514 F.Supp.2d 866. Civil Rights 1138; Civil Rights 1172

White federal employee, an analyst in Publications Management Group (PMG) of Office of Personnel Management (OPM) whose trial period of working remotely from home, or "teleworking," was terminated and who was not allowed to telework when her mother became ill was not similarly situated to claimed comparators for purposes of race-based disparate treatment claim; one comparator, a black employee allowed to telework whose husband suffered several strokes, was one employment grade higher than plaintiff and had different responsibilities, including review of plaintiff's work, and the other minority comparator was temporary detailee who had been allowed to telework before her assignment to PMG. Kline v. Springer, D.D.C.2009, 602 F.Supp.2d 234, affirmed 2010 WL 5258941, rehearing en banc denied. Civil Rights 1234

African-American United States Postal Service (USPS) employee failed to establish prima facie case of discriminatory discipline, as she was not similarly situated to claimed Caucasian comparator; even though his misconduct was similar to hers in that each had failed to immediately report accident, failure to report was his only "active" infraction, i.e., occurring within two-year period, and he had not reached end of progressive disciplinary process when he broke reporting rules and failed to perform his work in safe manner. Mahomes v. Potter, D.S.C.2008, 590 F.Supp.2d 775. Civil Rights 🔑1138

African-American trainee of Federal Air Marshal Service (FAMS), who was terminated based on his belligerent and uncooperative behavior towards local law enforcement officer after being cited for open container infraction under state law, was not "similarly situated" to two white trainees who were riding in same vehicle and were not cited or terminated, as required to establish trainee's race discrimination claim under Title VII; African-American trainee was bellicose and refused to cooperate with local law enforcement, while other trainees cooperated and stated that "they did not want any trouble." Holloman v. Chertoff, D.D.C.2008, 533 F.Supp.2d 162, reconsideration denied 2008 WL 4543034. Civil Rights 🔑1138

White nurses who allegedly were not disciplined for their violations of hospital policy were not shown to be "similarly situated" to black registered nurse (RN), as required to establish prima facie case that termination of black nurse from temporary probationary position in Surgical Intensive Care Unit (SICU) at Veterans Administration (VA) hospital amounted to disparate treatment. Mitchell v. Secretary Veterans Affairs, D.S.C.2006, 467 F.Supp.2d 544, affirmed 268 Fed.Appx. 215, 2008 WL 636260, certiorari denied 128 S.Ct. 2978, 554 U.S. 920, 171 L.Ed.2d 889. Civil Rights 🔑1138

43b. ---- Investigators, racial discrimination, discriminatory practices prohibited

African-American United States Postal Service (USPS) employee's pre-disciplinary interview was not adverse action for purposes of his discrimination and retaliation claims under Title VII and Rehabilitation Act. Diggs v. Potter, D.D.C.2010, 700 F.Supp.2d 20. Civil Rights 🔑1126; Civil Rights 🔑1220; Civil Rights 🔑1249(3); Postal Service 🔑5

Fact that Federal Bureau of Investigation (FBI) may have more thoroughly investigated time and attendance slips of African American employee, who engaged in protected Equal Employment Opportunity (EEO) activity and participated in federal litigation against FBI, was insufficient to establish retaliatory hostile work environment claim under Title VII. Graham v. Holder, D.D.C.2009, 657 F.Supp.2d 210. Civil Rights 🔑1250; United States 🔑36

Navy had legitimate, non-discriminatory reason for investigation of African-American male employee for sexual harassment, and thus investigation was not race or gender

discrimination in violation of Title VII; Navy had affirmative duty to investigate all charges of sexual harassment, investigation was based on harassment charges by fellow employee, investigation was not excessive, and reassignment following investigation was not taken as form of discipline. Lipscomb v. Winter, D.D.C.2008, 577 F.Supp.2d 258, affirmed in part , remanded in part 2009 WL 1153442, on remand 699 F.Supp.2d 171. Civil Rights 1126; Civil Rights 1179

43c. ---- Continuing practice, racial discrimination, discriminatory practices prohibited

Caucasianmale former employee who sued Department of Labor failed to show that alleged discriminatory history of employee's department and management evidenced pretext for discrimination, as required to maintain claims under Title VII and Age Discrimination in Employment Act (ADEA); employee's assertions about department's environment were made without any reliable evidentiary support, and employee's own supervisors were among allegedly disfavored group. Bennett v. Solis, D.D.C.2010, 729 F.Supp.2d 54. Civil Rights 1179; Civil Rights 1209; Civil Rights 1234

African-American former employee of United States Department of State (DOS) failed to indicate how number of discrete work-related incidents, including poor performance evaluation and unwarranted reprimand, withholding of salary increase, unspecified number of allegedly demeaning comments made by supervisors, and extra coaching sessions, which occurred over at least five-year period, were connected in such way that they formed pervasive pattern of abuse, as required to sustain retaliation-based hostile work environment claim under Title VII. Na'im v. Clinton, D.D.C.2009, 626 F.Supp.2d 63. Civil Rights 1250; United States 36

43d. ---- Pretext, racial discrimination, discriminatory practices prohibited

Initial rating of African-American employee that was only marginally higher than person who had been selected for disputed position did not support inference under Title VII on allegation of racial discrimination that employer's claim that it hired based on merit was pretextual. Calhoun v. Johnson, C.A.D.C.2011, 2011 WL 192497. Civil Rights 1535

Former government employee failed to demonstrate that former employer's explanation that his misconduct motivated its decisions to place him on leave-without-pay status and to terminate him for cause was pretextual, as required for former employee to establish Title VII claims for race discrimination and retaliation based on such decisions; supervisor who allegedly made improper remarks was not decision-maker, there was no evidence that decision-maker was motivated by discriminatory animus, decision-maker did not find credible former employee's explanation regarding concerns related to his travel vouchers, and purported procedural flaws in termination were immaterial, occurred after final termination decision was made, and did not permit inference that true motivation was racially discriminatory. Hampton v. Vilsack, D.D.C.2011, 2011 WL 108383. United

States 36

African-American employee failed to demonstrate that Department of Labor's proffered legitimate, non-discriminatory reasons for removing him from federal service, specifically his failure to complete assignments and insubordination, were not Department's actual reasons and that Department intentionally discriminated against him based on race in violation of Title VII; employee failed to present direct evidence of disparate treatment discrimination and failed to demonstrate that Department's reasons were not credible. Adair v. Solis, D.D.C.2010, 742 F.Supp.2d 40. Civil Rights 1138

Former United States Department of Agriculture (USDA) employee failed to show that USDA's articulated legitimate, nondiscriminatory reasons for alleged adverse employment action, namely, suspicion of time and attendance abuses and need to monitor employee more closely, was pretext for retaliation for his discrimination complaints to the Equal Employment Opportunity Commission (EEOC), in violation of Title VII. Ghaly v. U.S. Dept. of Agriculture, E.D.N.Y.2010, 739 F.Supp.2d 185. Civil Rights 1251; United States 36

Genuine issue of material fact existed as to whether United States Postal Service's legitimate, non-discriminatory reason for not giving African-American part-time employee more hours, namely, to avoid paying excessive overtime, was pretext for racial discrimination, precluding summary judgment as to employee's Title VII discrimination claim based on disparate award of extra hours and additional pay. Johnson v. Potter, M.D.Fla.2010, 732 F.Supp.2d 1264. Federal Civil Procedure 2497.1

Reassignment of African American female employee to particular section of Department of Homeland Security without subsequent promotion was not pretext for retaliation in violation of Title VII, since Department had made decision to transfer her before she indicated her belief that she had been victim of discrimination. Oliver v. Napolitano, D.D.C.2010, 729 F.Supp.2d 291. Civil Rights 1251; United States 36

Postmaster General's alleged misapplication of collective bargaining agreement (CBA) so as to find United States Postal Service (USPS) employee ineligible for new position at another sub-station amounted to mere business error, and, thus, employee failed to show that Postmaster General's proffered legitimate, nondiscriminatory reason for rejection of his application for the new position was pretext for race, sex, and age discrimination in violation of Title VII and the ADEA. Anderson v. Potter, D.Mass.2010, 723 F.Supp.2d 368. Civil Rights 1263

United States Department of Agriculture's Foreign Service's legitimate, non-discriminatory reasons for inclusion of critical comments in performance evaluation were not pretextual, for purposes of Title VII race and national origin discrimination claims alleged by African-American U.S. citizen of Hispanic descent, originally born in Panama;

comments were included in attempt to alleviate communication problems and resolve conflicts between employee and colleagues. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1137

United States Department of Agriculture's Foreign Service's legitimate, non-discriminatory reasons for exclusion of former employee from meeting were not pretextual, for purposes of Title VII race and national origin discrimination claims alleged by African-American U.S. citizen of Hispanic descent, originally born in Panama; issues to be discussed were not financial in nature, supervisor felt comfortable discussing any financial-related matters that might arise, and meeting was limited to executive committee which did not include employee. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1137

United States Postal Service's (USPS) legitimate, nondiscriminatory reasons for changing African-American employee's request for leave without pay (LWOP) to sick leave for one-week period, namely, that manager believed that employee asked to be granted sick leave, and because employee did nothing to disabuse him of that belief, was not pretext for unlawful discrimination under Title VII. Diggs v. Potter, D.D.C.2010, 700 F.Supp.2d 20. Civil Rights 1137

44. ---- Hiring, racial discrimination, discriminatory practices prohibited

Even if changed job duties of federal employee who was over 70 years old and "brown-skinned" Muslim from Pakistan constituted adverse employment action after hiring of another employee, employer's proffered legitimate, non-discriminatory reasons that another employee was hired to return office to previous strength and to fill identified gaps in experience were not pretext for race, religion, age, and disability discrimination in violation of ADEA, Rehabilitation Act, and Title VII. Baloch v. Kempthorne, C.A.D.C.2008, 550 F.3d 1191, 384 U.S.App.D.C. 85. Civil Rights 1137; Civil Rights 1158; Civil Rights 1209; Civil Rights 1221

Job applicant failed to show that legitimate, nondiscriminatory reason proffered by the United States Citizenship and Immigration Services (USCIS) for failing to hire him, namely, that he was not as qualified and did not interview as well as the person hired for the position, was pretext for race and national origin discrimination in violation of Title VII, where applicant did not clearly possess stronger academic credentials than the person hired, and there was no evidence that other black applicants were excluded, or that USCIS used improper selection criteria unrelated to job performance. Onyewuchi v. Mayorkas, D.D.C.2011, 2011 WL 652369. Civil Rights 1137

Caucasian female United States Postal Service (USPS) employee, opposing USPS's motion for summary judgment in her Title VII action alleging race and sex discrimination, established a prima facie case under *McDonnell-Douglas* framework by alleging

that she was not hired for the Honaunau postmaster position because of her race and gender and that she was not hired for the Hawi postmaster position because of her race, and demonstrating that she was qualified for both positions, and that a male of Japanese ancestry was hired for the Honaunau position, and that a female of Asian ancestry was hired for the Hawi position. Walker v. Potter, D.Hawai'i 2009, 629 F.Supp.2d 1148. Civil Rights 1169; Civil Rights 1234

Hispanic job applicant failed to show that federal agency employer's proffered reason for not hiring applicant, that they decided only to hire applicants with prior experience at the agency, was pretext for race or national origin discrimination, as required to prevail in Title VII claim; even if statistics showed that Hispanic employees were underrepresented at agency for higher-level positions, there was no evidence as to the number of qualified Hispanic applicants for higher-level jobs as compared to other groups, or that the employer systematically excluded Hispanic applicants. Aguilar v. Salazar, D.D.C.2009, 626 F.Supp.2d 36. Civil Rights 1137

A subjective reason for a hiring decision can be legally sufficient, legitimate, and nondiscriminatory, for purposes of non-selection claim under Title VII or Age Discrimination in Employment Act (ADEA), if the employer articulates a clear and reasonably specific factual basis on which it based its subjective opinion. Pearsall v. Holder, D.D.C.2009, 610 F.Supp.2d 87. Civil Rights 1121; Civil Rights 1201

Genuine issues of material fact precluded summary judgment on claims, by former Voice of America (VOA) Arabic Service employees who were not hired for new station, of discriminatory failure to promote or hire based on their national origin, religion and age; there was dispute about why three different lists of candidates were produced, who made final decision about who was hired, and why plaintiffs were not hired. Abdelkarim v. Tomlinson, D.D.C.2009, 605 F.Supp.2d 116. Federal Civil Procedure 2497.1

Supervisor's legitimate, non-retaliatory reason for recommending that Asian-American female Foreign Service officer not be hired immediately to fill position of Public Affairs Officer in Jakarta, Indonesia, namely, that to hire “very best” officer in light of sudden prominence of post due to tsunami, wide-ranging search was necessary, was not pretext for retaliation under Title VII. Farris v. Clinton, D.D.C.2009, 602 F.Supp.2d 74. Civil Rights 1251; United States 36

Federal agency's proffered reasons for repeatedly not hiring 48-year-old Hispanic male, including failure to submit additional application materials, hiring of higher-ranked candidate, lack of qualifications, and cancellation of position, constituted legitimate non-sex, non-national-origin, non-age-based reasons under Title VII and Age Discrimination in Employment Act (ADEA). Moncada v. Peters, D.D.C.2008, 579 F.Supp.2d 46. Civil Rights 1126; Civil Rights 1179; Civil Rights 1207

United States Department of Labor's (DOL's) proffered reasons for not selecting African-American applicant for contract specialist position, because he was not the most highly qualified applicant based on comparison of his application with other eligible candidates and because white applicant selected was the “first applicant on the certificate,” i.e., the highest rated, had experience needed for job, had qualifications, and selecting official was familiar with her abilities because he was working with her, were legitimate and nondiscriminatory and rendered irrelevant African-American applicant's ability to establish prima facie case of racially discriminatory failure to hire. Washington v. Chao, D.D.C.2008, 577 F.Supp.2d 27. Civil Rights 1127

Genuine issue of material fact as to whether statistical disparities in rejection rates of applicants for special agent positions with the Federal Bureau of Investigation (FBI) sufficiently demonstrated pretext in rescinding applicant's job offer precluded summary judgment in Title VII action alleging disparate treatment based on race. Jones v. Mukasey, D.D.C.2008, 565 F.Supp.2d 68. Federal Civil Procedure 2497.1

There was nothing in the background circumstances to the selection of African-American employees over that of Caucasian employee for promotion that supported the suspicion that employer was that unusual employer who discriminated against the majority; Caucasian employee did not show in what ways he was more skilled than African-American employees, fact that selecting official discounted African-American employee's lack of computer training in light of her significant experience working in unit was not so “irrational” as to support inference of racism, and African-American employees were at least as well qualified as Caucasian employee. Hairsine v. James, D.D.C.2007, 517 F.Supp.2d 301. Civil Rights 1234; Civil Rights 1535

African-American male applicant failed to establish prima facie case of discriminatory failure to hire with respect to Temporary Security Investigator position with Department of State that did not remain open following his rejection; instead of hiring another candidate, hiring officer decided to leave the position vacant. Henderson v. Rice, D.D.C.2005, 407 F.Supp.2d 47. Civil Rights 1127

Library of Congress employee established prima faciecase of discrimination on basis of national origin and age regarding denial of promotion to position of Librarian Cataloger in Korean/Chinese team; employee was of Korean national origin and over the age of forty, was qualified candidate for position, and was denied position in favor of selectee of Chinese national origin who was under forty years of age at time of selection. Kwon v. Billington, D.D.C.2005, 370 F.Supp.2d 177. Civil Rights 1135; Civil Rights 1207

Federal Bureau of Investigation (FBI) provided race neutral reason for nonselection of black female executive for a section chief position in its information resources division (IRD), precluding claim of disparate treatment based on race, in violation of Title VII, by

imposing requirement that applicants have served in FBI field office; requirement was reasonable, as IRD serviced field offices. Davis v. Ashcroft, D.D.C.2005, 355 F.Supp.2d 330. Civil Rights 1138

Federal employee failed to present sufficient evidence of hostile work environment through disparaging comments that he was an "abrasive East Coast Greek" and a "malcontent" or a "fucking malcontent," destruction of letter of commendation, and tape recording by supervisor. Letares v. Ashcroft, D.Neb.2004, 302 F.Supp.2d 1092. Civil Rights 1150

Army hospital did not discriminate on basis of race or age against job applicant, a Black male in his mid-fifties, by failing to hire him for medical technologist position in hospital's microbiology and infectious disease department, where applicant was not qualified for the position given his lack of current microbiological bench experience, person hired for position had current experience as microbiological technologist, and applicant was not competing with that person for position, as there were four vacancies to be filled. Moore v. West, D.D.C.1998, 991 F.Supp. 11, affirmed 1998 WL 796216. Civil Rights 1127; Civil Rights 1207

44a. ---- Racial comments, racial discrimination, discriminatory practices prohibited

Derogatory comments about Puerto Rican employees allegedly tolerated and even made by United States Postal Service employee's supervisor did not amount to an adverse employment action, and did not rise to level of conduct that would support hostile work environment claim under Title VII, although they were in poor taste. de Jesus v. Potter, D.Puerto Rico 2005, 397 F.Supp.2d 319, affirmed in part, vacated in part and remanded 211 Fed.Appx. 5, 2006 WL 3782922. Civil Rights 1126; Civil Rights 1147

Supervisor's alleged racial comments to African-American civilian employee with the United States Air Force (USAF) to the effect that "when he looks out on the floor, blacks are below average compared to whites," and that he would not let his son date an African-American, did not constitute adverse employment actions, as required for prima facie case of race discrimination under Title VII; comments to employee did not result in "materially adverse" change in her employment status or in terms and conditions of her employment. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1126; Civil Rights 1147

45. ---- Promotions, racial discrimination, discriminatory practices prohibited

Navy produced legitimate, nondiscriminatory reasons for denying engineering technician, who provided technical, repair and modernization services to Navy's ships and weapons systems, requested training on new missile launch system, as required to re-

but Title VII claim alleging Navy's refusal to provide such training was in retaliation for filing race discrimination claims; Navy alleged that there was no vacant position that would use such training, that employee would not be qualified to work on new system even with such training, and that training employee would be cost-prohibitive. Munoz v. Mabus, C.A.9 (Hawai'i) 2010, 630 F.3d 856. Civil Rights 1249(1)

United States Agency for International Development's (USAID's) proffered reason for denying promotion to black employee, that another candidate was more qualified, was not pretext for race discrimination and retaliation for employee's prior protected activity, even though selecting officer for the position had been involved in prior retaliation against employee; position responsibilities included rendering final agency decisions on grievances and representing USAID before Foreign Service Labor Relations Board, selected candidate was a lawyer who had represented USAID before the Board and drafted numerous grievance decisions, and employee did not have a law degree and had never prepared a final agency decision. Porter v. Shah, C.A.D.C.2010, 606 F.3d 809, 391 U.S.App.D.C. 41. Civil Rights 1137; Civil Rights 1251; United States 36

Federal agency's proffered reason for denying African-American male employee a GS 12/13 Accountant position, that it chose a more qualified applicant, was legitimate and nondiscriminatory and was not shown to be pretextual; employee admitted he had only associate's degree in marketing, 24 credit hours of college-level accounting courses, and experience limited to accounting for cash assets whereas person hired had undergraduate degree in finance, master's degree in accounting and fifteen years of accounting experience, including investment accounting. Montgomery v. Chao, C.A.D.C.2008, 546 F.3d 703, 383 U.S.App.D.C. 290, rehearing en banc denied. Civil Rights 1137; Civil Rights 1142; Civil Rights 1179

Footnote to text in agreement settling Title VII action between Drug Enforcement Administration (DEA) and African-American special agents was unambiguous and was reasonably read as DEA agents suggested, i.e., that while Administrator of Drug Enforcement Administration (DEA) could not promote to Senior Executive Service (SES) position a non-SES agent who was not on list of best-qualified candidates generated by the stipulated procedures, Administrator retained discretion to decide which candidate to select from that list or, instead, to choose current SES employee as lateral transfer. Segar v. Mukasey, C.A.D.C.2007, 508 F.3d 16, 390 U.S.App.D.C. 16. Officers And Public Employees 11.7

African-American employee was not significantly better qualified for position than Caucasian person selected for promotion, as required to infer that employer consciously selected less-qualified candidate as pretext for race discrimination in violation of Title VII. Jackson v. Gonzales, C.A.D.C.2007, 496 F.3d 703, 378 U.S.App.D.C. 112, rehearing en banc denied. Civil Rights 1137

African American federal employee in her fifties failed to establish that employing agency's non-discriminatory explanation for promotion of a younger, white woman for desired position, which was based on its preference for her greater operations experience over employee's greater supervisory and administrative experience, was a pretext for race or age discrimination. Barnette v. Chertoff, C.A.D.C.2006, 453 F.3d 513, 372 U.S.App.D.C. 41, rehearing en banc denied. Civil Rights 1137; Civil Rights 1209

Federal agency's proffered reason for not selecting African-American applicant for promotion was legitimate and nondiscriminatory; selecting official stated she chose white applicant "because she was the best applicant" and "the person with the best skills and abilities to do the job should be selected." Holcomb v. Powell, C.A.D.C.2006, 433 F.3d 889, 369 U.S.App.D.C. 122. Civil Rights 1135

African-American employee failed to establish that racial discrimination played role in Navy's failure to promote him for position for which he applied; employee did not receive score from rating panel that merited consideration as finalist for position, employee was ranked well below white applicant selected, employee submitted less complete information than applicant selected as applicant completed information form, and there was no indication that advertisement which disadvantaged employee by not mentioning availability of information form was intended to screen African-American applicants or to target employee personally for his filing of equal employment opportunity (EEO) complaint seven years earlier. Carter v. Ball, C.A.4 (Md.) 1994, 33 F.3d 450. Civil Rights 1135

Failure to promote black employee to position of accounts maintenance clerk at naval facility did not provide the basis for employment discrimination claim where, at time of denial of application for promotion, plaintiff did not believe that it was discrimination and, under routine procedures of facility, application would not have been considered where request for promotion was to GS-6, but vacancy was for position with GS-5 rating, and employee did not state that she wished to be considered for GS-5 rating. Woodard v. Lehman, C.A.4 (S.C.) 1983, 717 F.2d 909. Civil Rights 1135

In action brought under this subchapter, based on disparate treatment theory, by black postal employee who was twice denied promotions following recommendations by all white male review committees, proper object of inquiry was whether there had been discrimination in respect of "personnel actions" denying positions to plaintiff and not process by which review committee was constituted. Page v. Bolger, C.A.4 (Va.) 1981, 645 F.2d 227, certiorari denied 102 S.Ct. 388, 454 U.S. 892, 70 L.Ed.2d 206. Civil Rights 1138

Legitimate, non-discriminatory reason proffered by Broadcasting Board of Governors (BBG) in not promoting employee, a white female of French national origin who was naturalized citizen of the United States, to position of GS-13 international broadcaster,

namely, that candidate selected for position, a black male of Chadian national origin, was more qualified for position, was not pretext for sex, race, or national origin discrimination under Title VII. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1234

Federal employee failed to show that employer's legitimate, non-discriminatory reason for not hiring employee for director position, that another candidate was more qualified for position, was pretext to cover up discriminatory motive, and thus employer was not liable under Title VII, where hiring supervisor stated that he hired other candidate because of his superior qualifications, and supervisor was aware of relative qualifications of employee and candidate, having supervised both of them. Hayes v. Sebelius, D.D.C.2011, 2011 WL 316043. Civil Rights 1137

United States Customs and Border Protection's (CBP) proffered reason for not promoting field officer of Mexican descent to GS-14 position of customs inspector, that the other applicants it hired were better qualified, was not pretext for discrimination or retaliation, in violation of Title VII or ADEA, since field officer was not significantly better qualified for the job than Caucasian hirees; field inspector and all hirees were among the best qualified for the positions, since they met requirements set forth in position descriptions, and it was not court's role to second-guess how employer weighed particular factors in its hiring decision. Gilbert v. Napolitano, D.D.C.2011, 2011 WL 109568. United States 36

Former government employee failed to demonstrate that former employer's legitimate, nondiscriminatory reason for failing to promote former employee, that he had engaged in misconduct which led to investigation of misconduct, thereby affecting his ability to be promoted and triggering suspension of his security clearance, was pretextual, as required for former employee to establish Title VII claims for race discrimination and retaliation. Hampton v. Vilsack, D.D.C.2011, 2011 WL 108383. United States 36

Department of Housing and Urban Development's (HUD) refusal to allow one of its employees to compete for higher-grade employment position had materially adverse affect on terms and conditions of her future employment opportunities and thus, constituted adverse employment action for purposes of disparate impact racial discrimination claim under Title VII of Civil Rights Act; employee's harm was loss of significant pay raise. Perry v. Donovan, D.D.C.2010, 733 F.Supp.2d 114. Civil Rights 1140; Civil Rights 1141

Non-selection of African American female employee for vacancy in Department of Homeland Security was not pretext for racial discrimination in violation of Title VII, since African-American woman who held interviews had recommended different African-American female for that position because she believed her to be “more qualified” for that position “based on her interview” and other person involved in hiring process stated

that he believed that her "knowledge of the finance system was better than that of [plaintiff]." Oliver v. Napolitano, D.D.C.2010, 729 F.Supp.2d 291. Civil Rights 1137

Postmaster General articulated a legitimate, nondiscriminatory reason for rejection of United States Postal Service (USPS) employee's application for new position, namely, that under applicable collective bargaining agreement (CBA) only employees at sub-station where the new position was located were eligible for the new position, and employee did not work at that sub-station. Anderson v. Potter, D.Mass.2010, 723 F.Supp.2d 368. Civil Rights 1263

Chairman of the Federal Communications Commission (FCC) articulated a legitimate, nondiscriminatory reason for not promoting African-American employee, namely, that his supervisors did not believe that he was one of the three most-qualified candidates for the position, in employee's action alleging race discrimination in violation of Title VII. Jarmon v. Genachowski, D.D.C.2010, 720 F.Supp.2d 30. Civil Rights 1135

United States Department of Agriculture's Foreign Service's legitimate, non-discriminatory reasons for failure to convert employee to career foreign service were not pretextual, for purposes of Title VII race and national origin discrimination claims alleged by African-American U.S. citizen of Hispanic descent, originally born in Panama; decision to not convert employee was based on complete review of employee's last two performance evaluations and comments from employee's supervisor, reviewing official and regional director, and decision not to convert employee did not fatally affect employee's career. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1141

Reason proffered by United States Department of Transportation (DOT) for deciding not to promote white female Air Traffic Controller Specialist of Cuban national origin who was sixth on panel's overall ranking but received lower raw interview score to one of six Operations Supervisor positions, that manager believed applicants' interview performances were especially pertinent to his hiring decision and he gave their interview scores heavier weight when making determination, was legitimate and nondiscriminatory and shifted burden to the unsuccessful applicant to show that reason was a pretext for discrimination based on race, sex, and/or national origin. Delgado v. U.S. Dept. of Transp., S.D.Fla.2010, 709 F.Supp.2d 1360. Civil Rights 1135; Civil Rights 1169; Civil Rights 1234

African-American candidate who brought Title VII retaliation claim as result of his non-selection for Senior Special Agent position in Department of Justice's Office of the Inspector General (OIG) was not significantly more qualified than the two selectees; while plaintiff had more than 25 years of law enforcement investigative experience, including sixteen years at OIG, selectees also had more than two decades of similar experience, court would not give more weight to plaintiff's investigative experience, plaintiff did not explain why his completion of more "priority" investigations automatically outweighed

their investigative experience, and selectees demonstrated sustained leadership throughout their careers and were both considered good writers. Pendleton v. Holder, D.D.C.2010, 697 F.Supp.2d 12, affirmed 2010 WL 4826442. Civil Rights 1249(1); United States 36

Reasons proffered by United States Department of Education (DOE) for nonselection of African-American female employed as GS-13 Financial Management Specialist in Federal Student Aid (FSA) office for vacant GS-14 position as Management and Program Analyst in Operational Performance Analysis/Reporting and Intern Review Group, i.e. selecting official's determination that white male selectee was the best qualified candidate based on her evaluation of applications, interviews with candidates, talks with candidates' supervisors, and her firsthand knowledge of plaintiff's performance, were legitimate and nondiscriminatory and shifted burden to plaintiff to show that reason was pretextual and that nonselection was actually motivated by discriminatory intent. Benjamin v. Duncan, D.D.C.2010, 694 F.Supp.2d 1. Civil Rights 1135; Civil Rights 1169; Civil Rights 1536; Civil Rights 1537

Genuine issue of material fact existed as to whether Hispanic female employee of the Department of the Interior (DOI) was denied promotion based on her gender and national origin/race, precluding summary judgment as to employee's Title VII discrimination claim based on her non-selection for promotion. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Federal Civil Procedure 2497.1

Social Security Administration's (SSA's) proffered reasons for its decision to hire slightly younger white woman as Acting Director of office, because it wanted to fill the temporary, 120-day position “promptly” and “facilitate a smooth and effective transition[,]” and therefore only to hire someone from within office, were legitimate and were not shown to be pretext to discriminate against African-American employee of another office who was less than four years older on basis of her race or age or to retaliate against her for protected activity under Title VII or ADEA. Murchison v. Astrue, D.Md.2010, 689 F.Supp.2d 781. Civil Rights 1137; Civil Rights 1209; Civil Rights 1251; United States 36

African-American Department of Health and Human Services (HHS) employee failed to establish prima facie case of racially discriminatory failure to promote her to Lead Developmental Disability Specialist (LDDS) position, absent showing that other employees of similar qualifications who were not members of protected group were promoted at time her request was denied; none of the LDDS positions were filled. Evans v. Sebelius, D.D.C.2009, 674 F.Supp.2d 228. Civil Rights 1138

Reason offered by Secretary of State for not promoting African-American Website Manager to GS-13, that desk audit conducted by Human Resources confirmed that her position was properly classified as GS-12, was legitimate and nondiscriminatory and shifted

burden to employee to show it was pretext for race discrimination. Perry v. Clinton, D.D.C.2009, 674 F.Supp.2d 110. Civil Rights 1141; Civil Rights 1536

Former employee, a Hispanic male, failed to demonstrate that legitimate, non-discriminatory reason proffered by Department of Interior, his former employer, for not promoting him to revenue specialist position, specifically that there were better qualified candidates, was merely pretext for discrimination, as required for employee to prevail on his national origin and sex-based discrimination claims under Title VII and §§ 1981; Department's decision to interview employee over the phone was based on geography, not discriminatory animus, and candidate that was hired for position, a non-Hispanic woman, had more relevant experience than employee. Lara v. Kempthorne, S.D.Tex.2009, 673 F.Supp.2d 504. Civil Rights 1137; Civil Rights 1179

Smithsonian Institution's proffered legitimate, non-discriminatory reason for not promoting African-American employee, who suffered from various mental disabilities, to position of Supervisory Exhibits Specialist, namely, that Institution chose candidate with more production knowledge, more budgeting experience, and more project management experience than employee, was not pretext for discrimination under Title VII or Rehabilitation Act. Bowden v. Clough, D.D.C.2009, 658 F.Supp.2d 61, appeal dismissed 2010 WL 2160010. Civil Rights 1137; Civil Rights 1221

Agency's proffered reasons for not placing older, Caucasian, white, Catholic, female, second-generation Assyrian applicant on best-qualified list for writer/editor position were legitimate and nondiscriminatory and shifted burden to applicant to show pretext; those reasons were that (1) her score was too low to qualify her through delegated examining (DE) process, which was based solely on exam grade (2) she was not eligible under merit promotion (MP) process because her SF-50 form to verify previous federal employment was not received, and even if it had been received, she would not have been eligible because her responses to Quickhire questionnaire were not supported by her resume, and (3) she was not eligible under noncompetitive (NC) process because she did not request it and because her highest previous employment grade was GS-11, not GS-12. Atanus v. Sebelius, D.D.C.2009, 652 F.Supp.2d 4, affirmed 2010 WL 1255937. Civil Rights 1135; Civil Rights 1141; Civil Rights 1142; Civil Rights 1157; Civil Rights 1169; Civil Rights 1207

Agency's proffered reasons for not selecting African-American candidate for two vacant positions, that he was not interviewed for position of Assistant Internet Development Coordinator because his name did not appear on any certificates of eligibility from which panel, for nondiscriminatory reasons, chose to interview and that he was not selected for position of Assistant Internet Design Coordinator because he possessed less computer-related graphics expertise than selectees and therefore was less qualified for job, were legitimate and nondiscriminatory and shifted burden to candidate to show those reasons were pretext for race discrimination. Brown v. Broadcasting Bd. of Governors,

D.D.C.2009, 662 F.Supp.2d 41. Civil Rights 1135; Civil Rights 1536

Fact that an employer based its ultimate hiring decision on one or more specific factors encompassed within a broader and more general job description does not itself raise an inference of discrimination sufficient to overcome summary judgment in a Title VII suit; short of finding that the employer's stated reason for its selection decision was indeed a pretext for unlawful discrimination, the court must respect the employer's unfettered discretion to choose among qualified candidates. Reshard v. Peters, D.D.C.2008, 579 F.Supp.2d 57, affirmed 358 Fed.Appx. 196, 2009 WL 5125599. Civil Rights 1137; Federal Civil Procedure 2497.1

Proffered reason for the non-selection of an African-American female employee for a position in Department of Transportation, that she did not make the best qualified list based on a review by a panel, was not a pretext for race or gender discrimination under Title VII; all three panel members who rated the candidates concluded that the employee was minimally qualified for the position because she had limited experience in the required technical areas, an assessment that resulted from the panel members rating each application against technical rating criteria and not against other applicants. Reshard v. Peters, D.D.C.2008, 579 F.Supp.2d 57, affirmed 358 Fed.Appx. 196, 2009 WL 5125599. Civil Rights 1137; Civil Rights 1171

General Services Administration (GSA's) proffered reasons for nonselection of 56-year-old black female employee for position in Office of Information Technology (OIT), that Division Director worked with female Asian-American candidate over 40 for several years, that her work was always exemplary and she had already shown him she could perform the duties of the GS-14 position, and that he believed she was best qualified for the job, were legitimate, nondiscriminatory, and nonretaliatory, and employee failed to show those reasons were pretextual; testimony of Deputy Director who made selection in Division Director's absence that plaintiff was the best qualified candidate and selectee the least qualified and that decision to hire selectee “could have been” racially motivated was insufficiently probative of prohibited animus. Calhoun v. Prouty, D.D.C.2009, 643 F.Supp.2d 87, affirmed in part 2010 WL 605059, affirmed in part, reversed in part and remanded 2011 WL 192497. Civil Rights 1137; Civil Rights 1171; Civil Rights 1209; Civil Rights 1251; United States 36

Department of Labor (DOL) articulated a legitimate, nondiscriminatory, nonretaliatory reason under Title VII and the ADEA for its failure to promote African-American employee to the position of Chief of the Trade Policy and Negotiations Division in response to either of its vacancy announcements, and employee failed to present any evidence to rebut this showing, notwithstanding that a different federal agency had found that employee was eligible for a different position at the same grade level. Brookens v. Solis, D.D.C.2009, 635 F.Supp.2d 1. Civil Rights 1135; Civil Rights 1207; Civil Rights 1249(1); United States 36

Department of Labor (DOL) articulated a legitimate, nondiscriminatory, nonretaliatory reason under Title VII and the ADEA for its failure to promote African-American employee to the position of Chief of the Trade Policy and Negotiations Division in response to either of its vacancy announcements, and employee failed to present any evidence to rebut this showing; employee did not satisfy either the specialized experience or time-in-grade experience requirements for the position, while several others applicants did meet the requirements of the position. Brookens v. Solis, D.D.C.2009, 616 F.Supp.2d 81, reconsideration denied 635 F.Supp.2d 1, affirmed 2009 WL 5125192, rehearing en banc denied , certiorari denied 131 S.Ct. 225, 178 L.Ed.2d 136. Civil Rights 1135; Civil Rights 1207; Civil Rights 1249(1); United States 36; Civil Rights 1141

White, female employee of Internal Revenue Service (IRS), who was selected for position as safety manager over African-American male, who then brought Title VII non-selection claim against IRS, had requisite specialized experience to warrant selection, regardless of her inability to answer deposition questions regarding Occupational Safety and Health Act (OSHA), where white employee had three years' prior experience as safety manager, received perfect score on knowledge, skills, and abilities assessment, and had performed numerous high-level activities warranting her status at appropriate classification level for selection. Hamilton v. Geithner, D.D.C.2009, 616 F.Supp.2d 49. Civil Rights 1135; Civil Rights 1142; Civil Rights 1179

Fact that African-American Department of Justice (DOJ) employee had more years of supervisory experience than candidate who was selected for position of Supervisory Social Science Analyst (SSSA) within DOJ's Office of Community Oriented Policing Services (COPS) did not alone constitute qualifications gap so “wide and inexplicable” as to support inference of discrimination, for purposes of employee's non-selection claim under Title VII and Age Discrimination in Employment Act (ADEA). Pearsall v. Holder, D.D.C.2009, 610 F.Supp.2d 87. Civil Rights 1535; Civil Rights 1539

Reasons proffered by Environmental Protection Agency (EPA) for its failure to promote black employee from GS-13 to GS-14 level were legitimate and nondiscriminatory, and employee failed to show they were pretext for race discrimination by arguing her relative qualifications and agency's failure to promote competitively; employee's relative qualifications were irrelevant given that agency based its decision on her lack of interpersonal skills, and while agency did not fill the GS-14 positions competitively, it followed fair method of promoting employees and did not vary from established procedure. Nwachuku v. Jackson, D.D.C.2009, 605 F.Supp.2d 285, affirmed 368 Fed.Appx. 152, 2010 WL 1169796. Civil Rights 1135; Civil Rights 1137

Because there is nothing inherently suspicious about employer's decision to promote minority applicant instead of white applicant or to fire white employee, majority-group plaintiff alleging Title VII discrimination must show additional background circumstances

that support suspicion that defendant is that unusual employer who discriminates against the majority; two general categories of evidence constitute "background circumstances," evidence indicating that particular employer has some reason or inclination to discriminate invidiously against whites and evidence indicating that there is something fishy about facts of case at hand that raises inference of discrimination. Kline v. Springer, D.D.C.2009, 602 F.Supp.2d 234, affirmed 2010 WL 5258941, rehearing en banc denied. Civil Rights 1234

Black male Department of the Navy employee with claimed disability who sought promotion from GS-11 level failed to satisfy qualification element of prima facie case of discriminatory failure to promote; he had not shown that his qualification required his promotion and failed to demonstrate to his supervisors that he was able to perform at GS-12 level. Bolden v. Winter, D.D.C.2009, 602 F.Supp.2d 130. Civil Rights 1135; Civil Rights 1179; Civil Rights 1218(4)

State Department's reasons for choosing white, male Foreign Service officer over Asian-American female officer to fill position as USNATO Political Counselor, namely, that as "number two" political appointee at USNATO, male officer had experience taking on formidable negotiating and managerial responsibilities, and had considerable background in East-West and European issues, whereas female officer, although senior in rank, had virtually no European or NATO experience, little familiarity with national security bureaucracy, and no track record as negotiator, were legitimate and nondiscriminatory, for purposes of female officer's action alleging gender and racial discrimination under Title VII. Farris v. Clinton, D.D.C.2009, 602 F.Supp.2d 74. Civil Rights 1135; Civil Rights 1141; Civil Rights 1169

Federal employee, an African American, failed to present evidence that he was better qualified for administrative officer position with U.S. Agency for International Development, his employer, than Caucasian employee who was laterally transferred into position without providing African American employee an opportunity to apply, as required for court to infer that Agency's proffered reason for transferring Caucasian employee was pretext for an improper discriminatory motive, in employee's Title VII action against agency; employee offered only self-serving allegations as to his qualifications. Porter v. Fulgham, D.D.C.2009, 601 F.Supp.2d 205, affirmed in part , reversed in part 606 F.3d 809, 391 U.S.App.D.C. 41. Civil Rights 1535

Federal agency's failure to promote Native American employee because she was "difficult employee" who had trouble completing projects in timely manner and who had problems working with fellow employees was not pretext for racial discrimination, in violation of Title VII, even though her supervisor had rated her performance level as "achieved," and, on three occasions, approved her for monetary awards, where employee did not rebut agency's non-discriminatory reasons. Cochise v. Salazar, D.D.C.2009, 601 F.Supp.2d 196, affirmed 377 Fed.Appx. 29, 2010 WL 2203308, re-

hearing en banc denied. Civil Rights 1137

Genuine issues of material fact existed regarding whether employer's proffered reason for failure to promote African-American female employee, that decision was result of desk audit, was pretextual, precluding summary judgment on employee's failure to promote claim against employer under Title VII. Hawkins v. Holder, D.D.C.2009, 597 F.Supp.2d 4. Federal Civil Procedure 2497.1

Department of Agriculture's asserted reason for failing to promote employee, specifically, that an individual entering at employee's level would have been unlikely to have obtained a promotion to the desired grade level at the time of protected prior Equal Employment Opportunity Commission (EEOC) action, was legitimate, nondiscriminatory reason for failing to promote employee and was not pretext for retaliation. Felder v. Johanns, D.D.C.2009, 595 F.Supp.2d 46. Civil Rights 1249(1); Civil Rights 1251; United States 36

African-American employee of Internal Revenue Service (IRS), who alleged that director at IRS intentionally reclassified the series of a vacant position that was to be announced so as to render employee ineligible for the position, was qualified for the vacant position for purposes of establishing prima facie case in employee's Title VII racial discrimination action, though employee had not previously held a position in a specified series as stated as a requirement for the vacant position; having asserted the reclassification as the discriminatory act, failure to previously occupy a position as required by the reclassified position could not bar employee from establishing her prima facie case of discrimination. Robinson v. Paulson, D.D.C.2008, 591 F.Supp.2d 78. Civil Rights 1135

Genuine issues of material fact existed regarding question of whether federal government employee was not selected for mechanical engineering technician position because of racial discrimination or retaliation for his equal employment opportunity (EEO) related activities, precluding summary judgment on employee's Title VII claims of discrimination and retaliation. Walker v. England, D.D.C.2008, 590 F.Supp.2d 113. Federal Civil Procedure 2497.1

Federal agency employer's legitimate nondiscriminatory reason for not promoting employee to the next grade/level, that the desk audit required to finalize the process had not commenced before the agency reorganized and eliminated employee's position, thereby precluding any desk audit, was not pretext for discrimination, and thus, employee could not prevail in Title VII employment discrimination claim based on failure to promote. Watson v. Paulson, S.D.N.Y.2008, 578 F.Supp.2d 554, affirmed 355 Fed.Appx. 482, 2009 WL 4431051. Civil Rights 1137

Federal employer's proffered reason for not selecting black female employee for program analyst position, that employee, whom interview committee had found equally as

qualified as other top candidate, had potentially embellished her resume as revealed through discussion with her supervisor, was a legitimate non-discriminatory reason under Title VII for her non-selection. Vines v. Gates, D.D.C.2008, 577 F.Supp.2d 242. Civil Rights 1127

Federal employee, an African-American female senior trial attorney in Office of the General Counsel (OGC) for Government Accountability Office (GAO) Personnel Appeals Board (PAB) who was over the age of 40, failed to show that her nonpromotion to higher grade in-position was motivated by discriminatory animus; she could not identify a single Senior Trial Attorney of any race, age, or gender who was promoted to GS-15 level during her tenure at agency. Williams v. Dodaro, D.D.C.2008, 576 F.Supp.2d 72. Civil Rights 1137; Civil Rights 1171; Civil Rights 1209

State Department articulated a legitimate, non-discriminatory reason for its decision to select more than one applicant for position of Equal Opportunity Employment (EEO) Manager, namely, that it was common practice to do so and more efficient to make multiple selections rather than make multiple vacancy announcements, in Title VII action brought by African-American EEO employee, alleging that she was discriminated against on basis of her race in not being promoted to position. Prince v. Rice, D.D.C.2008, 570 F.Supp.2d 123, affirmed 2009 WL 5125223. Civil Rights 1135

Employer's failure to provide particular training requested by federal employee, an engineering technician who provided technical, repair and modernization services to various Navy ships and weapons systems, was not breach of Title VII race discrimination settlement agreement provision requiring employer to provide training to employee that would enhance his career, despite employee's contention that training provided by employer did not promote his advancement to higher grade positions, or result in any certification or full time position; agreement did not require employer to provide training that would result in promotion or certification, only training that would enhance employee's career, training provided gave employee new skills on systems that were related to his career and in demand by the Navy, and employee was later provided responsibilities related to that training. Munoz v. England, D.Hawai'i 2008, 557 F.Supp.2d 1145, affirmed in part , vacated in part 630 F.3d 856. Compromise And Settlement 20(1)

Promoted employee's specific responses to interview questions, ideas for change, original news stories, lengthy journalism career, and superior translator skills were legitimate, nondiscriminatory reasons for promoting him to position as international radio broadcaster within Broadcasting Board of Governors (BBG) instead of another BBG employee, precluding the latter employee's national origin claim under Title VII and age discrimination claim under Age Discrimination in Employment Act (ADEA). Nyunt v. Tomlinson, D.D.C.2008, 543 F.Supp.2d 25, affirmed 589 F.3d 445, 389 U.S.App.D.C. 13. Civil Rights 1135; Civil Rights 1207

Federal agency's proffered reason for selecting white female candidate over African-American candidate for safety manager position, their comparative performances during interview, was legitimate and nondiscriminatory and was not shown to be pretext for race or gender discrimination; unsuccessful candidate argued that agency's reason was unworthy of credence because of "inexplicable gulf" in candidates' comparative qualifications, irregularities in selection process, possible spoliation of evidence, contradictions between interview panelists' deposition testimony and their declarations and other evidence, and statistical evidence of disparate treatment within agency in favor of white women. Hamilton v. Paulson, D.D.C.2008, 542 F.Supp.2d 37, reconsideration denied in part 616 F.Supp.2d 49. Civil Rights 1135; Civil Rights 1137; Civil Rights 1179

United States Postal Service's (USPS) proffered reasons for selecting Caucasian candidates for postmaster and officer in charge (OIC) positions rather than Native American employee, that other candidates were better qualified or had appropriate experience, and that staffing needs in employee's office required that she remain there, were not pretext for racial discrimination in violation of Title VII. Smith-Barrett v. Potter, W.D.N.Y.2008, 541 F.Supp.2d 535. Civil Rights 1137

Selection of most qualified candidate for position of supervisor of maintenance operations (SMO) by legitimate first and second posting processes was non-discriminatory reason, under Title VII, for not promoting two employees for SMO position at United States Postal Service (USPS). Jones v. Potter, D.Conn.2007, 514 F.Supp.2d 274. Civil Rights 1135

While conclusion that recommending official preselected younger Caucasian female for promotion to Supervisory Contract Specialist (SCS) position with Department of the Navy was not wholly fanciful given sequence of job announcements and officials' selection of both panelists and questions they were to ask, it did not by itself prove discrimination based on age, race or gender against 56-year-old African-American male candidate. Jackson v. Winter, E.D.Va.2007, 497 F.Supp.2d 759. Civil Rights 1135; Civil Rights 1179; Civil Rights 1207

Assuming arguendo that older, African-American male federal employee, a GS-12 Financial Specialist who was assigned duties of Contracting Officer Technical Representative (COTR) that were formerly performed by GS-13 supervisory accountant, established prima facie case of age, race, or gender discrimination in connection with his failure to receive accretion of duties promotion, agency met its burden of providing legitimate, nondiscriminatory reason for its actions; agency claimed it did not promote him to GS-13 level because, according to desk audit, COTR duties were not grade-controlling, i.e., COTR duties involved mere oversight rather than accounting review and were not technical in nature. Montgomery v. Chao, D.D.C.2007, 495 F.Supp.2d 2, affirmed 546 F.3d 703, 383 U.S.App.D.C. 290, rehearing en banc denied. Civil Rights 1135; Civil

Rights 1179; Civil Rights 1207

Employee's failure to meet one of the key indicators for reclassification of her job position was a legitimate, non-discriminatory reason for the denial of reclassification request under Title VII. Wada v. Tomlinson, D.D.C.2007, 517 F.Supp.2d 148, affirmed 296 Fed.Appx. 77, 2008 WL 4569862, rehearing en banc denied. Civil Rights 1135

Employer's proffered reason for selecting another candidate for a promotional position, that the candidate demonstrated better communication skills, leadership experience, and a broader range of experiences with upper management and other agencies, was not a pretext for race, age, or gender discrimination against a male African-American employee over 52 years of age, thus defeating his Title VII and ADEA claims; while he claimed that he was the best qualified candidate for the position, his only objective proof for his assertion was that he had more years of overall experience. Harris v. Chao, D.D.C.2007, 480 F.Supp.2d 104. Civil Rights 1137; Civil Rights 1179; Civil Rights 1209

Assuming that African-American applicant made out prima facie case of race discrimination in connection with his nonselection for reposted newly created position of Director of Office of Patient Advocacy, Secretary of Department of Veterans Affairs (DVA)'s proffered reason for not selecting applicant, decision to cancel job announcement and instead reinstate abolished Lead Patient Advocate position, was legitimate and nondiscriminatory and shifted burden to applicant to show pretext; Executive Officer cancelled announcement less than one week after it was posted and was unaware anyone had even applied therefor, and applicant, a Patient Advocate, was not selected as Lead Patient Advocate because another individual had fulfilled that position for several years. Pierce v. Mansfield, D.D.C.2008, 530 F.Supp.2d 146. Civil Rights 1135; Civil Rights 1536

There was no evidence to support inference that African American special agent's non-selection for promotion to senior special agent with Department of Justice's (DOJ) Office of the Inspector General (OIG) was the result of racial animus by special agent in charge (SAC) or some general racial animus at OIG, as would have given rise to inference that reasons for his non-selection for promotion were pretextual under Title VII. Pendleton v. Gonzales, D.D.C.2007, 518 F.Supp.2d 45. Civil Rights 1535

African-American Department of the Treasury employee established a prima facie Title VII case of racial discrimination in connection with his non-selection for two vacancies for the position of acting assistant supervisor, as vacancies were filled by other applicants not in the employee's protected class. Thomas v. Paulson, D.D.C.2007, 507 F.Supp.2d 59. Civil Rights 1135

Environmental Protection Agency's (EPA) asserted reasons for not selecting African-

American employee for promotion, namely that he was not most qualified candidate because he did not show ability to meet and deal with non-scientific groups outside agency pertaining to children's health, although he possessed significant education and scientific experience, was legitimate, nondiscriminatory reason for promoting Caucasian instead of African-American; notwithstanding African-American employee's superior education credentials, he ranked sixth out of nine applicants. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights ⚿1135; Civil Rights ⚿1142

African-American female employee who sued Department of Agriculture (USDA), alleging racial and gender discrimination, properly stated adverse personnel action claim under Title VII; complaint averred that employee was discriminated against when USDA failed to promote her to permanent chief of staff position, and that she was not considered for or paid any cash awards because her supervisors failed to give her performance appraisals. Kriesch v. Johanns, D.D.C.2007, 468 F.Supp.2d 183. Civil Rights ⚿1135; Civil Rights ⚿1136; Civil Rights ⚿1169; Civil Rights ⚿1175

Federal Aviation Administration's (FAA's) articulated reasons for older African-American employee's nonselection for promotion to Team Lead positions, his inadequate interview performance and lack of previous supervisory experience, were legitimate and nondiscriminatory and shifted burden to employee to show those reasons were pretext for race or age discrimination. McIntyre v. Peters, D.D.C.2006, 460 F.Supp.2d 125. Civil Rights ⚿1135; Civil Rights ⚿1207; Civil Rights ⚿1536; Civil Rights ⚿1539

African-American GS-12 federal employee established prima facie case of race-based disparate treatment in connection with her nonpromotion to GS-13 position where she asserted that agency's actions led her to believe that vacancy announcement was meant to fill one position and chilled her from applying therefor, but that agency then actually filled five positions. Prince v. Rice, D.D.C.2006, 453 F.Supp.2d 14. Civil Rights ⚿1138

Evidence proffered by African-American candidate for GS-14 position with Department of Health and Human Services (HHS) at pretext stage of Title VII case failed to establish that her qualifications were sufficiently superior to those of white candidate selected to allow jury to infer discrimination; both candidates were highly qualified. Simpson v. Leavitt, D.D.C.2006, 437 F.Supp.2d 95. Civil Rights ⚿1137

Reason proffered by Department of Defense for not promoting employee to position of Supervisory Accounting Technician (SAT), i.e., that successful applicants had higher interview scores, was not pretext for race discrimination in violation of Title VII, given lack of evidence that 15-minute delay in start time of her interview, which allegedly caused her poor interview performance, was deliberate, and given that Department's stated reasons for nonpromotion were not contradictory. Harris v. Rumsfeld, E.D.Va.2006, 428 F.Supp.2d 460, appeal dismissed 207 Fed.Appx. 343, 2006 WL

3431942. Civil Rights 1137

Decision of Bureau of Indiana Affairs (BIA) to deny employee promotion was not based on employee's membership in Quapaw Tribe of Oklahoma, despite employee's contention that selecting officials had bias in favor of candidates from Great Plains regional tribes, where there was no direct evidence of any such bias, and person selected for position was not from Great Plains regional tribe. Hansford v. Norton, D.S.D.2006, 414 F.Supp.2d 918. Civil Rights 1135; Civil Rights 1137

African-American female Library of Congress employee failed to establish prima facie case of discriminatory failure to promote based on race, color and gender, where after her supervisor's retirement from parking program Library neither posted vacancy nor sought applicants for position, which employee admitted she did not apply for and was not qualified to hold. Clipper v. Billington, D.D.C.2006, 414 F.Supp.2d 16. Civil Rights 1135; Civil Rights 1169

African-American computer specialist for Statistics of Income (SOI) Division of Internal Revenue Service (IRS) failed to show that proffered legitimate, nondiscriminatory reason for his failure to be promoted from GS-13 to GS-14 level was pretext for race discrimination; while he pointed to racial makeup of his division and argued it had history of not promoting black employees, he failed to show actual statistics comparing rates of promotion between similarly situated black and white employees or even statistics comparing rates of hiring black and white applicants to their presence in applicant pool. Roberson v. Snow, D.D.C.2005, 404 F.Supp.2d 79. Civil Rights 1548

Library of Congress' proffered reasons for attempted removal of African-American employee, her failure to attend meetings despite written directives to do so, poor job performance, refusal to complete two critical projects, and persistently uncooperative attitude, insubordination, and misconduct, were legitimate and nondiscriminatory and were not shown to be pretext for discrimination based on her race or color. Nichols v. Billington, D.D.C.2005, 402 F.Supp.2d 48, affirmed 2006 WL 3018044, reconsideration denied. Civil Rights 1137

Genuine issues of material fact, as to whether agency's proffered legitimate, nondiscriminatory reasons for not selecting 54-year-old African-American female employee for vacant position were pretext to discriminate against her on basis of age, race, and/or sex, and whether agency's action was in retaliation for employee's prior Title VII activity, precluded summary judgment on employee's discrimination and retaliation claims under ADEA and Title VII. Banks v. Veneman, D.D.C.2005, 402 F.Supp.2d 43. Federal Civil Procedure 2497.1

Male African-American employee, who suffered from chronic facial pain disorder, failed to show that federal employer's proffered legitimate, non-discriminatory reason for not

granting employee non-competitive promotion, that employee was ineligible for non-competitive promotion due to fact that employee was not on career ladder prior to specified date, was pretext for race, sex, and disability discrimination in violation of Title VII and Rehabilitation Act, where white females without disabilities who were hired for positions at issue were properly grandfathered into career ladder scheme, unlike employee. Medlock v. Rumsfeld, D.Md.2002, 336 F.Supp.2d 452, reconsideration denied , affirmed 86 Fed.Appx. 665, 2004 WL 249566, certiorari denied 125 S.Ct. 275, 543 U.S. 874, 160 L.Ed.2d 125. Civil Rights 1137; Civil Rights 1179; Civil Rights 1221

United States Postal Service (USPS) did not discriminate against female African-American employee on basis of her sex and/or race when it did not promote her to vacant Customer Services Supervisor position, absent evidence that USPS's proffered legitimate, nondiscriminatory reason for her nonselection, that she did not follow procedure for submitting Form 991 because she submitted outdated supervisor's evaluation, was pretextual. Williams v. Potter, D.Kan.2004, 331 F.Supp.2d 1331, affirmed 149 Fed.Appx. 824, 2005 WL 2387828, certiorari denied 127 S.Ct. 83, 549 U.S. 818, 166 L.Ed.2d 30. Civil Rights 1137; Civil Rights 1171

Federal employee failed to establish that employer's failure to provide her with opportunity to temporarily fill vacant position was based on unlawful considerations of race and gender in violation of Title VII; co-workers temporarily placed in vacant position had requisite skills for promoted position and previously both black and white females had been assigned to position. Tolson v. James, D.D.C.2004, 315 F.Supp.2d 110. Civil Rights 1135; Civil Rights 1169

Navy employee was not qualified for a promotion position, as required for her prima facie case of Title VII race discrimination based on failure to promote, absent any evidence that she was performing program management or director of civilian personnel program functions at the time of her eligibility for promotion, or that she had been completing recruitment reports satisfactorily; employee was offered opportunities to prove that she could perform at next higher grade level, but she declined and later failed to perform the responsibilities, and her supervisors were not satisfied with her performance on high-priority recruitment reports. Nails v. England, D.D.C.2004, 311 F.Supp.2d 116. Civil Rights 1135

National Labor Relations Board (NLRB) Chairman did not discriminate or retaliate against Associate Executive Secretary through denial of promotion to acting Deputy Executive Secretary; denial did not result from “adverse act” within meaning of Title VII because she did not have opportunity to compete for position in the first place, and articulated reasons for her nonselection, desire to fill position through lateral assignment of current SES employee who had more seniority and experience, were legitimate and nondiscriminatory and were not shown to be pretextual. Weber v. Hurtgen, D.D.C.2003, 297 F.Supp.2d 58, affirmed in part, reversed in part and remanded 494 F.3d 179, 377

U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1135; Civil Rights 1141; Civil Rights 1249(1); United States 36

Issue of whether federal government's articulated legitimate, nondiscriminatory reasons for selecting white candidates over African-American candidates with greater seniority and practical experience were pretextual was for jury in Title VII race discrimination action; government argued that selection process was premised on simple arithmetic of who received highest scores in interviews, but plaintiffs presented evidence of deviation from merit selection plan and collective bargaining agreement, both of which required that selection be made using job-related criteria, and testimony that selecting official expressed goal of diversifying predominantly African-American workforce. Allen v. Perry, D.D.C.2003, 279 F.Supp.2d 36. Civil Rights 1555

African-American civilian employee with the United States Air Force (USAF), who did not have requisite time in grade for promotion, did not show that she was eligible or qualified for promotion, or that other non-eligible employees were considered during promotion process, as required for prima facie case of race discrimination under Title VII. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1141

Although black animal caretaker at USDA's Agricultural Research Service's (ARS) lab considered white coemployee's selection to animal caretaker wage leader position to be some form of nepotism because his stepfather worked in lab, no inference of pretext or racial discrimination could be drawn from this arrangement which was legal under both federal restrictions against nepotism and under USDA's written directives. Clement v. Madigan, W.D.Mich.1992, 820 F.Supp. 1039. Civil Rights 1535

Unsuccessful black applicant for promotion failed to establish race discrimination on disparate impact theory, even though department in question had never had minority employee permanently assigned to it; there had been no openings in department during 13-year period, there was no evidence addressing racial composition of qualified labor pool, no specific employment practice was identified, and there was no evidence showing that any employment practice lacked legitimate basis. Gibson v. Frank, S.D.Ohio 1990, 785 F.Supp. 677, affirmed 946 F.2d 1229. Civil Rights 1135

Statistical evidence presented by black nonattorneys employed by the Department of Justice's Tax Division adequately demonstrated a disparity in competitive promotion rates to support a prima facie case of disparate treatment; the statistics indicated that whites were promoted faster than blacks and that blacks were concentrated at lower GS grades. Mayfield v. Thornburgh, D.D.C.1990, 741 F.Supp. 284. Civil Rights 1548

Although Title VII might not prohibit Federal Bureau of Investigation from assigning Hispanic special agents to undercover work in disproportionate numbers, Title VII did pro-

hibit the Bureau from failing to credit adequately the contributions of the undercover agents to the mission of Bureau in terms of promotions and benefits; it was the FBI's evaluation of the contributions of Hispanic agents on undercover assignments, not the fact of making undercover assignments, which violated the Title VII prohibition against discrimination against members of protected groups for promotion and benefits. Perez v. F.B.I., W.D.Tex.1988, 707 F.Supp. 891, supplemented 714 F.Supp. 1414, affirmed 956 F.2d 265. Civil Rights 1135

Black government supervisor discriminated against black worker when he selected white for promotion to nonsupervisory position; black worker and white worker were exceptionally well and equally qualified, supervisor could not articulate his reasons for selecting white for promotion other than he acted on his "gut feeling", and evidence showed that supervisor was aware of staffing procedures emphasizing need for affirmative action when black and white candidates for promotion were equally qualified. Eccleston v. Secretary of Navy, D.D.C.1988, 700 F.Supp. 67. Civil Rights 1135

Under disparate-impact analysis, Defense Mapping Agency Aerospace Center discriminated against black female employee on basis of race when white female employee was promoted to vacant budget analyst position for which black employee was qualified; Center's white comptroller had "groomed" white female employee his secretary--for position and in fact preselected her without affording black female employee proper consideration. Cooper v. Rosenberg, E.D.Mo.1987, 694 F.Supp. 1377. Civil Rights 1140

Army range manager's refusal to support employee's verbal upgrade request was not an "adverse employment action" that would support African-American Target Systems Mechanic Leader's Title VII disparate treatment claim; ultimate decision to upgrade rested with Office of Personnel Management (OPM), so even if the refusal was discriminatory it had no more than de minimis impact on his future job opportunities, and he retained ability to formally apply for upgrade. Wilson v. Harvey, C.A.10 (Colo.) 2005, 156 Fed.Appx. 55, 2005 WL 3048006, Unreported. Civil Rights 1138

Postal Service's failure to promote employee on ground that she could not meet physical requirements of job was not pretext for age or race discrimination, absent evidence that proffered reason was not legitimate. Scott v. Potter, C.A.8 (Ark.) 2005, 134 Fed.Appx. 989, 2005 WL 1342497, Unreported. Civil Rights 1137; Civil Rights 1209

Four African-American employees of United States Postal Service (USPS) failed to establish that they were qualified for promotions, as element of prima facie case under *McDonnell Douglas* framework of racially discriminatory failure to promote in violation of Title VII; each employee scored so low on written examination of KSA (knowledge, skills, and abilities) that they would have failed to achieve satisfactory overall KSA

scores even in absence of allegedly racially discriminatory KSA evaluations by supervisors. Williams v. Henderson, C.A.4 (S.C.) 2005, 129 Fed.Appx. 806, 2005 WL 977587, Unreported, certiorari denied 126 S.Ct. 387, 546 U.S. 876, 163 L.Ed.2d 172. Civil Rights 1142

White male Internal Revenue Service (IRS) agent's Title VII claim that systematic reverse discrimination over many years prevented him from acquiring experience necessary to compete with revenue agents who were favored because of their race and gender and resulted in his failure to obtain promotion had to fail, absent showing of causal nexus between the alleged historic or current favoring of females and minorities and agent's failure to obtain promotion. Carter v. O'Neill, C.A.5 (La.) 2003, 78 Fed.Appx. 978, 2003 WL 22430742, Unreported. Civil Rights 1179; Civil Rights 1234

Bureau of Prisons (BOP) employee failed to show that denial of promotion to assistant manager position, based partly on her disciplinary infraction, occurred under circumstances giving rise to inference of discrimination, and she thus failed to establish prima facie case under Title VII; employee failed to show that decision makers were biased or that anyone interfered with screening, and her infraction was not sufficiently similar to that of co-worker who was not disciplined. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1535; Civil Rights 1548

45a. ----Demotion, racial discrimination

There was no evidence that after discharged African-American Deputy Director of Office of Small and Disadvantaged Business Utilization (OSDBU) was allegedly demoted to role of office staffer by OSDBU Director, Deputy Director's responsibility for conference was taken away, as would support Deputy Director's Title VII race discrimination and retaliation claims relating to conference. Holmes-Martin v. Sebelius, D.D.C.2010, 693 F.Supp.2d 141. Civil Rights 1249(1); Civil Rights 1135; United States 36

African-American female employee's violation of Federal Bureau of Investigation (FBI) policy by using a derogatory term to describe a superior, her insubordination, and her work substantially substandard performance constituted legitimate, non-discriminatory reasons under Title VII for employee's suspension and demotion. Dawson v. U.S., D.S.C.2008, 549 F.Supp.2d 736, affirmed 368 Fed.Appx. 374, 2010 WL 727648. Civil Rights 1126; Civil Rights 1135

Genuine issue of material fact, as to whether agency's proffered legitimate, nondiscriminatory reasons for its decision to demote older, African-American federal employee were pretextual, precluded summary judgment for agency on claims of race and age discrimination. Bryant v. Leavitt, D.D.C.2007, 475 F.Supp.2d 15. Federal Civil Procedure 2497.1

Decision of Bureau of Indian Affairs (BIA) to demote District Commander on ground that he did not work well with tribal leaders was not pretext for discrimination based upon fact that he was not member of Great Plains tribe, in violation of Title VII, where employee did not dispute that he had problems with agency superintendents, and employee was replaced by individual who was not member of Great Plains tribe. Hansford v. Norton, D.S.D.2006, 414 F.Supp.2d 918. Civil Rights 1137

46. ---- Rehiring, racial discrimination, discriminatory practices prohibited

United States Department of Agriculture's (USDA's) proffered reason why white male applicants were selected for Administrative Management Services (AMS) positions instead of black female applicant, because they were more qualified than she, was legitimate and nondiscriminatory; according to USDA, the white male applicants had more relevant job experience and performed better in their interviews. Fields v. Johanns, D.D.C.2008, 574 F.Supp.2d 159. Civil Rights 1127; Civil Rights 1169

Resolution Trust Corporation (RTC) had legitimate reason for not rehiring accountant, in that she was insufferable employee, and thus she could not maintain race discrimination claim based on allegations that RTC treated her differently in hopes of making her so disgruntled that it could justify not renewing her temporary appointment, by failing to provide her with formal training provided to others, and by tendering her performance evaluations late; regardless of whether she could do specific tasks involved in her job, accountant's most serious deficiencies, for which she was not rehired, were her inability to manage people, and any lack of training or feedback did not require RTC to excuse her behavior toward others. Carlton v. Ryan, N.D.Ill.1996, 916 F.Supp. 832. Civil Rights 1122

47. ---- Transfers, racial discrimination, discriminatory practices prohibited

Federal agency's proffered reasons for not selecting African-American male employee for GS-13 Collections Analyst position which was advertised under both status and nonstatus vacancy announcement, that they never received status application from him and did not consider anyone on nonstatus list, were legitimate, nondiscriminatory, and nonretaliatory and were not shown to be pretextual. Montgomery v. Chao, C.A.D.C.2008, 546 F.3d 703, 383 U.S.App.D.C. 290, rehearing en banc denied. Civil Rights 1137; Civil Rights 1251; United States 36

General Services Administration (GSA) employee failed to show that she suffered adverse employment action, as required for prima facie retaliation case under Title VII, when GSA transferred her from contract specialist GS-11 position to procurement analyst GS-11 position, where she failed to explain whether change in title entailed any change in work that she was performing, whether there was change in geographic location, and whether new position restricted her opportunities to advance within GSA. Ata-

nus v. Perry, C.A.7 (Ill.) 2008, 520 F.3d 662. Civil Rights 1249(1); United States 36

Former federal employee failed to show pretext in employer's explanations for transferring her to different position, for purposes of her race discrimination claim, based on her contention that her involuntary transfer was not consistent with treatment of other employees and that real purpose of transfer was to provide employment development for a white female at plaintiff's expense; plaintiff was transferred because there was almost no work for her to do in her original position, that condition was forecasted to continue and did in fact continue for at least a year, and white female did not take plaintiff's job, but took lower-level job in plaintiff's former division doing different work. Brown v. Brody, C.A.D.C.1999, 199 F.3d 446, 339 U.S.App.D.C. 233. Civil Rights 1137

Decision of employer to transfer employee from White Sands Missile Range was not a basis for establishing discrimination on basis of race where transfer was justified and legitimate in that there were intense personal conflicts within division where employee worked and those conflicts posed a serious threat to safety of missile tests. Hernandez v. Alexander, C.A.10 (N.M.) 1979, 607 F.2d 920. Civil Rights 1135

Even assuming African-American special agent established prima facie case of racial discrimination under Title VII based on his transfer to position at Secret Service training center, he failed to demonstrate that Service's proffered legitimate, non-discriminatory reason for his transfer, specifically that he was ineffective at managing his former division, was merely pretext for discrimination; agent was reassigned after routine office inspection, investigation into sexual harassment incident in his division, and fact-finding effort into his leadership abilities. Sykes v. Napolitano, D.D.C.2010, 710 F.Supp.2d 133. Civil Rights 1137

There was no causal connection between Office of Small and Disadvantaged Business Utilization (OSDBU) Director's alleged transfer of duties of African-American Deputy Director to white male OSDBU special advisor and Deputy Director's filing of formal administrative complaints, as would support Deputy Director's Title VII retaliation claim based on alleged transfer of duties. Holmes-Martin v. Sebelius, D.D.C.2010, 693 F.Supp.2d 141. Civil Rights 1252; United States 36

Lateral job transfer of federal employee, a black woman suffering from an arthritic hip, did not constitute a constructive demotion, as would demonstrate an adverse employment action necessary to establish Title VII race, gender, or disability discrimination, even though employee's new supervisor had a reputation for being “difficult” and had been “accused” of race and gender discrimination in the past, and even though new job offered less complexity, variety, responsibility, and opportunity, since none of the changes materially affected the terms, conditions, or privileges of employment. Martin v. Locke, D.D.C.2009, 659 F.Supp.2d 140. Civil Rights 1135; Civil Rights 1169;

Civil Rights 1220

Federal Bureau of Investigation (FBI) career board memorandum, which described why employee, an Egyptian-born American citizen, was not selected for transfer to unit chief position in FBI strategic information and operations center, constituted a legitimate, non-discriminatory justification for employee's non-selection under Title VII; board did not find that employee's application warranted a ranking in the top three positions, concluding that, unlike the ranked candidates, employee provided limited information in his application concerning his crisis management skills, which were essential elements for management, that employee's application failed to address his ability to assimilate and apply new technologies, and that, unlike the ranked candidates, employee's application did not identify whether he was the case agent managing and directing any of the cases he cited. Youssef v. F.B.I., D.D.C.2008, 541 F.Supp.2d 121, new trial denied 2011 WL 313289. Civil Rights 1135

African-American female employee who sued Navy failed to rebut as pretextual employer's proffered non-discriminatory reasons for its actions, as required to maintain retaliation claim under Title VII; supervisor's decision to eliminate employee's management analyst position was based on reduced functions, since department's policy had changed from requiring inventory of all property to requiring inventory of only high-value property. Mills v. Winter, D.D.C.2008, 540 F.Supp.2d 178. Armed Services 27(4); Civil Rights 1251

State's Department of Transportation satisfied its burden, in Caucasian employee's Title VII action for reverse discrimination, of articulating legitimate, nondiscriminatory reasons for transferring employee, who was a foreman, to another work group after several of his crew members filed complaint that he created hostile work environment; investigation found evidence to support allegations that employee used racial and other derogatory remarks in the workplace, it was determined that employee had engaged in equipment mismanagement and had committed safety violations, there was a need to defuse the situation among employee and his crewmembers, and transfer furthered Department's desire to maintain an efficient and productive work force. Tyree v. Department of Transp., New Mexico, D.N.M.2006, 468 F.Supp.2d 1351. Civil Rights 1234

Reasons proffered by Library of Congress for reassigning African-American female employee from parking specialist position, repeated instances of incompetence and apparent total inability to effectively fulfill her job duties, were legitimate and nondiscriminatory and were not shown by employee to be pretext for disparate treatment based on her race or sex. Clipper v. Billington, D.D.C.2006, 414 F.Supp.2d 16. Civil Rights 1138; Civil Rights 1172

Federal agency's proffered justifications for nonselection of older, African-American female applicant for position, assessment of rating panel which concluded she was less

qualified for position relative to other applicants and that her name thus should not be included on “best qualified” list forwarded to selecting official and fact selectee was essentially performing equivalent job at another agency, were legitimate and nondiscriminatory and were not shown to be pretext for age, race or sex discrimination. Oliver-Simon v. Nicholson, D.D.C.2005, 384 F.Supp.2d 298. Civil Rights 1137; Civil Rights 1171; Civil Rights 1209

Federal employee's failure to be selected for lateral transfer from one GS-15 position to another was not “adverse action” that would support discrimination and retaliation claims under Title VII. Weber v. Hurtgen, D.D.C.2003, 297 F.Supp.2d 58, affirmed in part, reversed in part and remanded 494 F.3d 179, 377 U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1135; Civil Rights 1249(1); United States 36

Findings in race discrimination action brought by black special agent of Federal Bureau of Investigation (FBI) that agent was denied request for transfer due to racial discrimination did not establish prima facie case of race discrimination against another black special agent who was denied request for transfer, where second agent failed to establish that he suffered injury as result of discrimination against first agent. Van Meter v. Barr, D.D.C.1992, 803 F.Supp. 444, affirmed 43 F.3d 713, 310 U.S.App.D.C. 62. Civil Rights 1545

47a. ---- Discharge, racial discrimination, discriminatory practices prohibited

Clinical nurse manager did not meet legitimate expectations of Department of Veterans Affairs, and Department thus was not liable under Title VII, despite her credentials, work experience, and previous positive job evaluations, where, at time of her demotion, there were concrete reasons to think that her supervisory performance was lacking, and she failed to comply with supervisor's order that she compose plan to deal with resulting low morale in her department. Dear v. Shinseki, C.A.7 (Ill.) 2009, 578 F.3d 605. Civil Rights 1135

Department of Labor articulated legitimate non-discriminatory reason for terminating Caucasian male employee, as required to rebut employee's prima facie claims under Title VII and Age Discrimination in Employment Act (ADEA); agency averred that it terminated employee pursuant to Proposal to Remove, which was based on employee's work product or lack of work product during Performance Improvement Plan (PIP) period. Bennett v. Solis, D.D.C.2010, 729 F.Supp.2d 54. Civil Rights 1179; Civil Rights 1207; Civil Rights 1234

United States Department of Agriculture's Foreign Service's legitimate, non-discriminatory reasons for employee's termination were not pretextual, for purposes of Title VII race and national origin discrimination claims alleged by African-American U.S. citizen of Hispanic descent, originally born in Panama; decision to terminate was based

on alphabetical ranking of employee among his peers indicating he was not competitive against them and ineligible for performance awards, decision not to convert employee to career foreign service status, and ongoing performance below what was expected of someone in employee's position. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1137; Civil Rights 1141

United States Postal Service's (USPS) legitimate, nondiscriminatory and nonretaliatory reasons for terminating African-American employee, namely, that employee failed to report to work as directed and failed to provide updated medical documentation showing either inability to work or ability to work with certain restrictions, were not pretext for discrimination or retaliation under Title VII or Rehabilitation Act. Diggs v. Potter, D.D.C.2010, 700 F.Supp.2d 20. Civil Rights 1137; Civil Rights 1221; Civil Rights 1251; Postal Service 5

Determination that African-American law enforcement recruit had engaged in misconduct by assaulting another recruit was legitimate, nondiscriminatory reason under Title VII for African-American recruit's removal from federal law enforcement training program. Turner v. Federal Law Enforcement Training Center, D.D.C.2007, 527 F.Supp.2d 63, affirmed 2008 WL 4898958, rehearing en banc denied. Civil Rights 1126

Even if one of Caucasian United States Postal Service (USPS) probationary employee's three supervisors, who was African-American, informed employee that he was "not planning on hand-holding the only white manager" and that he was glad there were not "more of him," such statement did not support inference, in and of itself, that employee's termination was result of reverse racial discrimination, in violation of Title VII; other two supervisors, who were of same race and color as employee, documented their concerns over employee's poor work performance before African-American supervisor became involved and were both part of decision-making process that led to employee's termination. Mianulli v. Potter, D.D.C.2009, 634 F.Supp.2d 90, affirmed in part 2010 WL 604867, rehearing denied. Civil Rights 1535

Environmental Protection Agency's (EPA's) proffered reasons for firing black environmental scientist, because among other things she (1) failed to follow her supervisors' instructions on numerous occasions, (2) took five-day absence without leave to attend conference in Florida she lacked permission to attend, (3) falsely told EPA's travel agency she was authorized to travel to the conference, and (4) expended agency's travel funds without authorization, thus causing false claim to be made against the federal government, were legitimate and nondiscriminatory and were not shown to be pretext to retaliate against her for filing discrimination complaints. Nwachuku v. Jackson, D.D.C.2009, 605 F.Supp.2d 285, affirmed 368 Fed.Appx. 152, 2010 WL 1169796. Civil Rights 1249(2); Civil Rights 1251; United States 36

Bangladeshi federal employee failed to establish that proffered explanation for his ter-

mination was pretext for discrimination on basis that similarly situated employees who were non-Bangladeshis were treated more favorably in similar factual circumstances; apart from employee's accusation that one or two other employees were not required to prepare peer review paper, employee offered no evidence of favorable treatment in factually similar circumstances. Chowdhury v. Schafer, D.D.C.2008, 587 F.Supp.2d 257. Civil Rights 1138

Employing agency's articulated reasons for removal of African-American employee from his position as laundry plant manager and then from agency altogether were legitimate and nondiscriminatory and shifted burden to employee to show they were pretext for race discrimination; employee regularly failed to complete assignments on time, if at all, and was previously reprimanded for using laundry room for his own personal laundry and suspended for disclosing confidential personnel information for use by coworker in lawsuit. Springs v. Nicholson, E.D.N.C.2008, 581 F.Supp.2d 744. Civil Rights 1128; Civil Rights 1536

Naval employee claiming that the Navy restricted his opportunity, retirement and job security failed to establish a prima facie case of race discrimination under Title VII; he was not meeting his supervisors' legitimate employment expectations in that he did not keep in touch with his health care provider, did not timely report back to work when he was medically able to do so, and did not keep his supervisor apprised of his whereabouts when he returned to work, and there was absolutely no evidence which would give rise to an inference of racism. Guion v. England, E.D.N.C.2008, 545 F.Supp.2d 524, affirmed 296 Fed.Appx. 347, 2008 WL 4600646. Civil Rights 1126; Civil Rights 1136

African-American trainee's belligerent and uncooperative behavior toward local law enforcement officer, following his citation for open container under state law, was legitimate nondiscriminatory reason for terminating trainee from Federal Air Marshal Service (FAMS) training program, precluding trainee's race discrimination claim under Title VII; marshal position required good judgment and frequent communication and cooperation with local law enforcement officials, and trainee's lapse in judgment fell below program's expectations. Holloman v. Chertoff, D.D.C.2008, 533 F.Supp.2d 162, reconsideration denied 2008 WL 4543034. Civil Rights 1128

Postal Service's discharge of employee for failing to disclose, as required by employment application, that he was previously employed by Postal Service and terminated for dishonest conduct was not discriminatory, and thus did not violate Title VII, absent evidence that others not in protected class were treated more favorably in same circumstances as employee. Fullman v. Potter, E.D.Pa.2007, 480 F.Supp.2d 782, affirmed 254 Fed.Appx. 919, 2007 WL 3215415. Civil Rights 1138

Five documented instances in which black registered nurse violated Veterans Admin-

istration (VA) hospital policy, in which his performance was uncontestedly substandard and failed to meet his employer's reasonable expectations, were legitimate, nondiscriminatory reasons for hospital's discharge of nurse. Mitchell v. Secretary Veterans Affairs, D.S.C.2006, 467 F.Supp.2d 544, affirmed 268 Fed.Appx. 215, 2008 WL 636260, certiorari denied 128 S.Ct. 2978, 554 U.S. 920, 171 L.Ed.2d 889. Civil Rights 1128

Federal employee failed to show that similarly situated employee received more favorable treatment than her suspension and removal from job, as required to establish prima facie case of Title VII disparate-treatment race discrimination; another employee who was reprimanded after allegedly lying to colleagues to cover up failure to perform job duty was not comparable to employee who was arrested for obstructing police officers, attempted to influence a witness who was being interviewed by police, gave false information during criminal investigation, and was found to have lied during agency's internal investigation. Willingham v. Gonzales, D.D.C.2005, 391 F.Supp.2d 52. Civil Rights 1138

47b. ---- Constructive discharge, racial discrimination, discriminatory practices prohibited

Alleged actions taken by African-American supervisor at United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) following white employee's filing of supportive statement in Equal Employment Opportunity Commission (EEOC) complaint of discrimination filed by another employee, namely, verbally harassing her and increasing his scrutiny of her work, did not create working conditions that a reasonable person would find intolerable, as required to establish Title VII constructive discharge claim based on racially hostile work environment. O'Brien v. Department of Agriculture, C.A.8 (Ark.) 2008, 532 F.3d 805. Civil Rights 1123

47c. ---- Assignments, racial discrimination, discriminatory practices prohibited

That allegations of misconduct made against government employee were initiated by employee's first-line supervisor, who purportedly made racially inappropriate comments, did not establish that employer's legitimate, nondiscriminatory reason for failing to promote employee and to select him for foreign assignment was pretextual, as would support Title VII race discrimination and retaliation claims; although supervisor officially “initiated” investigations into employee's conduct, those investigations were triggered by other individuals' reports of alleged misconduct to supervisor, and supervisor's alleged racially-tinged remarks, which had occurred at least one year earlier and had no relation to employee's alleged misconduct, did not automatically taint any actions taken by supervisor thereafter. Hampton v. Vilsack, D.D.C.2011, 2011 WL 108383. United States 36

48. ---- Evaluations, racial discrimination, discriminatory practices prohibited

Former federal employee's “fully satisfactory” performance rating and letter of admonishment did not qualify as “adverse employment action,” thus defeating Title VII race discrimination claim, where neither the letter nor the appraisal affected employee's grade or salary, and, while employee knew of administrative adjustment procedure for disputed evaluations, there was no evidence that she ever sought an adjustment. Brown v. Brody, C.A.D.C.1999, 199 F.3d 446, 339 U.S.App.D.C. 233. Civil Rights 1126

Employer's proffered legitimate non-discriminatory reasons for negative performance evaluations of a female, African-American employee, including application of performance standards to her work activities, incomplete or substandard work product, lack of initiative, lack of openness to constructive criticism, and inability to collaborate with others, were not a pretext for race or gender discrimination, thus defeating the employee's disparate treatment claims under Title VII, despite her claims that pretext was shown by higher performance ratings she received from other supervisors, remarks made by her superiors, comparisons drawn between herself and white coworkers, and statistical data of a discrepancy between the performance ratings of African-Americans and other analysts. Robertson v. Dodaro, D.D.C.2011, 2011 WL 768111. Civil Rights 1138

Federal Deposit Insurance Corporation's (FDIC) legitimate, nonretaliatory reason for awarding employee, who filed Equal Employment Opportunity Commission (EEOC) complaints, lower ratings on his pay for performance evaluation than he had received in previous years, namely, that evaluation accurately reflected both employee's accomplishments in first half of year and his poor performance on special assignment, was not pretext for retaliation under Title VII, Rehabilitation Act, or Age Discrimination in Employment Act (ADEA). Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Civil Rights 1251

Caucasian male former employee who sued Department of Labor failed to show that his termination despite prior positive evaluations evidenced pretext for discrimination, as required to maintain claims under Title VII and Age Discrimination in Employment Act (ADEA); although employee allegedly performed well during years prior to evaluations at issue, it was undisputed that his performance deteriorated thereafter and became unacceptable. Bennett v. Solis, D.D.C.2010, 729 F.Supp.2d 54. Civil Rights 1179; Civil Rights 1209; Civil Rights 1234

Employee's receipt of performance evaluation that contained critical comments did not constitute “adverse employment action,” as required for Title VII race and national origin discrimination claims alleged by African-American U.S. citizen of Hispanic descent, originally born in Panama, against United States Department of Agriculture's Foreign Service, where alleged harm, employee's non-conversion to Career Foreign Service status, was speculative. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1141

Legitimate, nondiscriminatory reason proffered by employer, the Employment and Labor Law Section (ELL) of the United States Postal Service, for giving employee, an African-American of Japanese ancestry, who worked as attorney, negative performance evaluation, namely, that employee's work for relevant reporting period was deficient, was not pretext for discrimination under Title VII based on employee's race and national origin. Manuel v. Potter, D.D.C.2010, 685 F.Supp.2d 46. Civil Rights 1137

White female federal employee's "fully successful" annual performance appraisal was not discriminatory, even though it precluded her consideration for Sustained Superior Performance Award and employee could not receive career ladder promotion if she had rating below "fully successful" on critical element; agency's proffered reasons for employee's rating, because she deserved it and had been warned about her performance long before evaluation was issued, were legitimate and nondiscriminatory, and employee's assertions about her own performance were self-serving and unsupported and would not give rise to inference of impermissible motive. Kline v. Springer, D.D.C.2009, 602 F.Supp.2d 234, affirmed 2010 WL 5258941, rehearing en banc denied. Civil Rights 1169; Civil Rights 1234; Civil Rights 1535; Civil Rights 1537

Older Bangladeshi federal employee failed to establish that proffered explanation for his termination, his unacceptable performance level and his failure to complete subsequent performance improvement plan (PIP) in order to raise his performance to acceptable level, was pretext for discrimination on basis that even though he may have failed to complete requirements under PIP, it would not justify his termination because peer review articles were noncritical elements of his job. Chowdhury v. Schafer, D.D.C.2008, 587 F.Supp.2d 257. Civil Rights 1137; Civil Rights 1209

Federal employee's "successful" performance evaluation did not constitute an "adverse action" that would support her prima facie case of discrimination under Title VII; employee did not argue that her grade or salary was affected by that evaluation. Kilby-Robb v. Spellings, D.D.C.2007, 522 F.Supp.2d 148, affirmed 309 Fed.Appx. 422, 2009 WL 377301. Civil Rights 1126

Supervisors' rating of Navy employee's performance as "pass[ing]" or "acceptable" after she had complained of race discrimination was not an adverse employment action, as required for prima facie cases of retaliation and race discrimination under Title VII, absent any evidence that evaluation affected employee's grade, salary, or working conditions, or that it had a tangible effect on her employment. Nails v. England, D.D.C.2004, 311 F.Supp.2d 116. Armed Services 27(4); Civil Rights 1126; Civil Rights 1249(1)

Even if National Labor Relations Board (NLRB) acted unfavorably in evaluating employee's work performance in two particular years, its actions were not sufficiently adverse

to establish prima facie case of discrimination or retaliation under Title VII; employee did not have her grade or salary impacted because in one of those years she, like other employees, was given time off for performance award and her performance rating for the other year was "commendable" rather than "outstanding" with no performance award given. Weber v. Hurtgen, D.D.C.2003, 297 F.Supp.2d 58, affirmed in part, reversed in part and remanded 494 F.3d 179, 377 U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1126; Civil Rights 1249(1); United States 36

Performance evaluation, indicating that African-American civilian employee's work was "superior," did not constitute adverse employment action, as required for employee's race discrimination action under Title VII, even though numerical score that employee received on evaluation was allegedly lower because of her color; there was no showing that appraisal affected any of employee's terms of employment. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1126

Bureau of Prisons (BOP) employee established that evaluation was adverse employment action, as required for prima facie Title VII case, even though evaluation assigned her second-highest rating, where she was required to receive highest rating to be eligible for salary increase and other perquisites. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1126; Civil Rights 1136

48a. ---- Work conditions, racial discrimination, discriminatory practices prohibited

Genuine issue of material fact existed as to whether United States Postal Service's decision to take two streets out of one route and assign them to another route, resulting in creation of two, rather than three, new full-time positions, thus delaying African-American part-time employee's promotion to full-time status for period of eight months, was made for discriminatory reasons, precluding summary judgment as to employee's Title VII racial discrimination claim based on employer's failure to create full-time position. Johnson v. Potter, M.D.Fla.2010, 732 F.Supp.2d 1264. Federal Civil Procedure 2497.1

United States Postal Service's (USPS) legitimate, nonretaliatory reason for denying African-American employee's request for overtime on single occasion, namely, that he was ineligible for overtime because he took two hours of annual leave during his shift that day, was not pretext for unlawful retaliation under Title VII or Rehabilitation Act. Diggs v. Potter, D.D.C.2010, 700 F.Supp.2d 20. Civil Rights 1251; Postal Service 5

Office of Small and Disadvantaged Business Utilization (OSDBU) Director's asserted justification for removing African-American Deputy Director's responsibility for Small Business Review Forms, namely, need to redistribute assignments among OSDBU staff due to realignment and to better balance workload in OSDBU, was not pretext for race

discrimination under Title VII; Director transferred responsibility for Forms to another African-American employee. Holmes-Martin v. Sebelius, D.D.C.2010, 693 F.Supp.2d 141. Civil Rights 1137

Alleged non-receipt of training by employee of Employment and Labor Law Section (ELL) of the United States Postal Service, an African-American attorney of Japanese ancestry who reported incident in which co-worker allegedly made racially discriminatory statement, was not materially adverse action, as would support employee's prima facie case of retaliation under Title VII, even crediting pattern of antagonism; employee's training hours exceeded Postal Service's minimum requirement, and he failed to identify opportunities wrongly denied to him with any specificity. Manuel v. Potter, D.D.C.2010, 685 F.Supp.2d 46. Civil Rights 1249(1); Postal Service 5

Desk audit accurately determined that position of African-American employee of Smithsonian Institution, who was practicing Baptist and suffered from various mental disabilities, was graded at an 11, and therefore that employee was adequately compensated according to applicable federal government pay grade schedule, and thus employee could not maintain his discrimination claim under Title VII and/or Rehabilitation Act based on his employer's alleged failure to properly compensate him or increase his grade level. Bowden v. Clough, D.D.C.2009, 658 F.Supp.2d 61, appeal dismissed 2010 WL 2160010. Civil Rights 1135; Civil Rights 1136; Civil Rights 1157; Civil Rights 1220

Alleged incidents in which Smithsonian Institution condoned at least one “assault” against African-American male employee, who was practicing Baptist and suffered from various mental disabilities, by not adequately responding when his female co-worker “rammed” him in shoulder as she passed, and refusing to make “accommodation” for him by allowing him to be physically absent from any meetings when co-worker who allegedly assaulted him was present, did not cause employee to sustain objectively reasonable material harm, as required to sustain hostile work environment claim under Title VII or Rehabilitation Act, given that employee sustained no physical harm or bruising; Institution met its obligations by cooperating with employee in regards to filing of police report, and upon assurance of employee's supervisor and discussion with co-worker, no similar conduct ever occurred. Bowden v. Clough, D.D.C.2009, 658 F.Supp.2d 61, appeal dismissed 2010 WL 2160010. Civil Rights 1147; Civil Rights 1149; Civil Rights 1161; Civil Rights 1186; Civil Rights 1189; Civil Rights 1224

Federal Bureau of Investigation's (FBI) assignment of allegedly inadequate vehicle to employee who engaged in protected Equal Employment Opportunity (EEO) activity and participated in litigation against FBI did not create retaliatory hostile working environment, in violation of Title VII. Graham v. Holder, D.D.C.2009, 657 F.Supp.2d 210. Civil Rights 1250; United States 36

Secretary of Labor proffered legitimate nondiscriminatory and nonretaliatory reasons under Title VII and the ADEA for denying Department of Labor (DOL) African-American employee's request for within-grade increase in pay (WGI), and employee failed to present any evidence to rebut this showing; Secretary denied employee's WGI based on his deficient performance, including his alleged continued unwillingness to accept additional assignments. Brookens v. Solis, D.D.C.2009, 616 F.Supp.2d 81, reconsideration denied 635 F.Supp.2d 1, affirmed 2009 WL 5125192, rehearing en banc denied , certiorari denied 131 S.Ct. 225, 178 L.Ed.2d 136. Civil Rights 1136; Civil Rights 1207; Civil Rights 1249(1); United States 36

Generally, placement on a performance improvement plan (PIP) is not, in and of itself, an adverse employment action, as required to demonstrate employment discrimination under Title VII; rather, placement on the PIP must have resulted in an adverse action, typically a change in the plaintiff's grade or salary. Chowdhury v. Bair, D.D.C.2009, 604 F.Supp.2d 90, subsequent determination 680 F.Supp.2d 176. Civil Rights 1119

Federal employee's acceptance of cash bonus, instead of raise or merit increase, did not amount to "adverse employment action," as required to establish prima facie employment discrimination action under Title VII, absent showing that employee suffered any material loss in income. Watson v. Paulson, S.D.N.Y.2008, 578 F.Supp.2d 554, affirmed 355 Fed.Appx. 482, 2009 WL 4431051. Civil Rights 1136

Federal employee's relocation to office with one less window was not "adverse action" that would support claim of discrimination or retaliation under Title VII. Weber v. Hurtgen, D.D.C.2003, 297 F.Supp.2d 58, affirmed in part, reversed in part and remanded 494 F.3d 179, 377 U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1126; Civil Rights 1249(1); United States 36

48b. ---- Performance improvement programs, racial discrimination, discriminatory practices prohibited

Employer's placement of federal employee on performance improvement plan and rating employee's performance as minimally successful was not discrimination on basis of race or retaliation for bringing discrimination claim, in violation of Title VII. Hayes v. Sebelius, D.D.C.2011, 2011 WL 316043. United States 36

Caucasian male former employee who sued Department of Labor failed to show that alleged subjectivity of agency's Performance Improvement Plan (PIP) evidenced pretext for discrimination, as required to maintain claims under Title VII and Age Discrimination in Employment Act (ADEA); standards and procedures used in PIPs of both employee and co-employee were identical, and employee and co-employee were members of different races and genders. Bennett v. Solis, D.D.C.2010, 729 F.Supp.2d 54. Civil Rights 1179; Civil Rights 1209; Civil Rights 1234

Alleged actions taken by United States Postal Service against employee, an African-American attorney of Japanese ancestry who reported alleged incident in which co-worker made racially discriminatory statement, including withholding cash awards, giving employee negative performance evaluation, and placing employee on mandatory performance improvement plan, qualified as adverse actions for purposes of employee's Title VII retaliation claim; given their connection to employee's wages, actions would have dissuaded reasonable employee from making charge of discrimination. Manuel v. Potter, D.D.C.2010, 685 F.Supp.2d 46. Civil Rights 1249(1); Postal Service 5

Placement of African-American employee on a performance improvement plan (PIP) did not constitute an "adverse employment action," as required to establish claim of race discrimination under Title VII against United States Small Business Administration; although employee's failure to fulfill the requirements of the PIP eventually led to his termination, the PIP itself had no effect on terms and conditions of employment. Kelly v. Mills, D.D.C.2010, 677 F.Supp.2d 206, affirmed 2010 WL 5110238. Civil Rights 1126

There was no evidence that employment status of Caucasian United States Postal Service (USPS) probationary employee was affected by performance action plan, as would support his Title VII discrimination claim based on his placement on plan. Mianulli v. Potter, D.D.C.2009, 634 F.Supp.2d 90, affirmed in part 2010 WL 604867, rehearing denied. Civil Rights 1234

Supervisor's actions in attempting to put African-American employee of United States Department of State (DOS) on performance improvement plan (PIP) and issuing poor performance evaluation were not materially adverse, as required to sustain Title VII retaliation claim; actions were overturned, and there was no evidence that they had any impact on employee's employment. Na'im v. Clinton, D.D.C.2009, 626 F.Supp.2d 63. Civil Rights 1249(1); United States 36

Older Bangladeshi federal employee failed to establish that proffered legitimate, nondiscriminatory reason for his termination, his unacceptable performance level and his failure to complete subsequent performance improvement plan (PIP) in order to raise his performance to acceptable level, was pretext for discrimination on basis that PIP created impossible goals and was thus designed such that he would fail. Chowdhury v. Schafer, D.D.C.2008, 587 F.Supp.2d 257. Civil Rights 1137; Civil Rights 1209

49. ---- Hostile work environment, racial discrimination, discriminatory practices prohibited

Clinical nurse manager was not subjected to hostile work environment, in violation of Title VII, at Veterans Affairs hospital, even if supervisor told her that she had to change

her voice and facial expressions, inasmuch as such statements could not be objectively construed as racist, and, although manager contended that only white employees were causing her problems, her second-level supervisor was African-American. Dear v. Shinseki, C.A.7 (Ill.) 2009, 578 F.3d 605. Civil Rights 1147

Disciplinary actions and sporadic workplace conflicts alleged by federal employee were not so severe or pervasive to have changed conditions of his employment, as required for hostile work environment claim against employer, under Title VII, where employer's actions did not focus on employee's race, religion, age, or disability, did not subject employee to tangible workplace consequences, and were undertaken for legitimate reasons and to provide constructive criticism. Baloch v. Kempthorne, C.A.D.C.2008, 550 F.3d 1191, 384 U.S.App.D.C. 85. Civil Rights 1147; Civil Rights 1161; Civil Rights 1213; Civil Rights 1224

African-American federal employee's Title VII race discrimination claim included a complaint for hostile work environment, where employee specifically requested reassignment to a less hostile working environment, and raised a constructive discharge claim premised on hostile work environment. Steele v. Schafer, C.A.D.C.2008, 535 F.3d 689, 383 U.S.App.D.C. 74. Civil Rights 1532

Alleged actions of African-American supervisor at United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), namely, verbally harassing two white employees and increasing his scrutiny of their work following one employee's filing of Equal Employment Opportunity Commission (EEOC) complaint of discrimination, in which other employee provided supportive statement, were not sufficiently severe or pervasive so as to create racially hostile work environment in violation of Title VII. O'Brien v. Department of Agriculture, C.A.8 (Ark.) 2008, 532 F.3d 805. Civil Rights 1234

Alleged conduct of supervisor and team leader, of addressing employee in loud, unprofessional tone during one meeting, if proven, was not severe and pervasive, and thus did not create hostile work environment in violation of Title VII. Atanus v. Perry, C.A.7 (Ill.) 2008, 520 F.3d 662. Civil Rights 1147

Employee absence from the workplace does not per se preclude consideration of work-related incidents as part of a hostile environment claim, in violation of Title VII. Greer v. Paulson, C.A.D.C.2007, 505 F.3d 1306, 378 U.S.App.D.C. 295. Civil Rights 1505(7)

Genuine issues of material fact existed regarding whether retaliatory harassment permeated the workplace and changed the conditions of employee's employment after she made report of unwanted sexual proposition which resulted in supervisor being transferred and terminated and whether employer failed to take prompt remedial action, precluding summary judgment in employee's Title VII retaliatory harassment claim against

employer. Jensen v. Potter, C.A.3 (Pa.) 2006, 435 F.3d 444. Federal Civil Procedure 2497.1

In employment discrimination action brought by employee, a postmaster, against Postal Service, evidence supported a jury instruction on hostile work environment based on national origin; employee began to receive hostile comments from customers and other residents based on her race, accent, and national origin almost immediately upon taking the job, several customers, including the mayor, expressed displeasure with having a Hispanic postmaster or criticized her accented English, and, employee also received threats to her life and safety, including an anonymous letter promising to "get rid of you foreigner," and, employee's car was vandalized in the post office lot. Galdamez v. Potter, C.A.9 (Or.) 2005, 415 F.3d 1015. Civil Rights 1556

Federal employee was not subjected to hostile work environment based on race in violation of Title VII, where white co-worker stated that supervisor had occasionally used word "nigger" in front of workers, but employee offered no evidence she was present when allegedly offensive remarks were made. Burkett v. Glickman, C.A.8 (Ark.) 2003, 327 F.3d 658. Civil Rights 1147

Discharged Federal Deposit Insurance Corporation (FDIC) employee's allegations that his former direct supervisors were "difficult" to work with reflected ordinary interpersonal conflict that did not rise to level of severe or pervasive, and thus could not form basis of employee's hostile work environment claims under Title VII, Rehabilitation Act, or Age Discrimination in Employment Act (ADEA). Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Civil Rights 1224

Alleged conduct of government employee's supervisor, in making jokes about employee's race, commenting that employee had skill sets which he should not have had due to his race, and making racially derogatory comment about employee to coworker, did not establish circumstances that were sufficiently severe or pervasive to alter conditions of employee's employment, as required to establish Title VII claim for hostile work environment, particularly where supervisor's alleged use of racial slur was not made in employee's presence but was relayed to him by another employee. Hampton v. Vilsack, D.D.C.2011, 2011 WL 108383. Civil Rights 1147

Employee failed to state a claim for hostile work environment under Title VII by alleging that employer failed to adequately investigate her complaints that she was the subject of a number of insulting e-mails attacking her as "psychotic," failed to investigate her complaint that opposing counsel representing the agency in employee's union grievance sent an e-mail stating that employee experienced "litigation induced hallucinations," failed to take corrective action when she was yelled at during a deposition, sought to obtain her signature acknowledging that she had received a memorandum sent to all employees regarding the inappropriate use of workplace resources, and failed to inves-

tigate her complaint that such a signature was requested from her; acts employee complained of did not alter the conditions of her employment and create an abusive working environment. Baird v. Snowbarger, D.D.C.2010, 2010 WL 3999000. Civil Rights 1147

Alleged conduct of African-American United States Postal Service employee's supervisors, including treating employee rudely, regularly talking down to employee, unfairly disciplining employee, denying employee extra hours above guaranteed minimum hours, making it administratively difficult for employee to obtain leave and correct pay, and giving employee pillow containing pictures of monkeys on which to rest her leg after she sustained leg injury, did not rise to level of "severe and pervasive" harassment that created abusive working environment, as required to sustain Title VII hostile workplace claim. Johnson v. Potter, M.D.Fla.2010, 732 F.Supp.2d 1264. Civil Rights 1147

There was no evidence that employee's work environment was objectively hostile, as required for hostile work environment claim against United States Department of Agriculture's Foreign Service under Title VII. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1147

Conduct of United States Postal Service (USPS), including changing African-American employee's status from full-time regular to part-time flexible, denying his leave request, suspending him, and denying him overtime on single occasion, did not translate into pervasive, insulting, discriminatory conduct that made employee's day-to-day work environment severely abusive, as would support employee's Title VII hostile work environment claim. Diggs v. Potter, D.D.C.2010, 700 F.Supp.2d 20. Civil Rights 1147

Allegations by employee, who was a native of the Democratic Republic of the Congo, were insufficient to plead discriminatory change in the terms of his employment at hospital, as required for employee's hostile work environment proceedings under Title VII and the District of Columbia Human Rights Act; employee alleged that a supervisor said many Americans were looking for a job and it would be easy to replace employee, that a manager criticized his accent in front of coworkers on more than one occasion, and that a manager said she would not hire other Africans. Badibanga v. Howard University Hosp., D.D.C.2010, 679 F.Supp.2d 99. Civil Rights 1147

Federal employer's alleged misconduct, including denying Hispanic female employee, who allegedly suffered from myofascial pain syndrome, telecommuting agreement, denying employee use of entrance door, closely monitoring employee, changing drafts of employee's engagement letters, assigning employee to small office, delaying employee's receipt of award for accomplishment, and denying employee's work requests, while perhaps subjectively offensive to employee, was not sufficiently severe or pervasive to affect term, condition, or privilege of employee's employment, as would support her Title VII hostile work environment claim. Lopez v. Kempthorne, S.D.Tex.2010, 684

F.Supp.2d 827. Civil Rights 1147; Civil Rights 1185

Federal employee failed to state hostile work environment claim under Title VII; his allegations of disparaging remarks, criticisms of his work, and other negative comments did not sufficiently demonstrate significant level of offensiveness, and alleged events were temporally diffuse, spread out over four-year period, suggesting lack of pervasiveness. Nurriddin v. Bolden, D.D.C.2009, 674 F.Supp.2d 64. Civil Rights 1147

Department of Interior's actions in admonishing former employee for using his personal radio at his desk, conducting his yearly performance review via telephone, denying his requests for coaching and training, and not granting his request for vacation leave until day before his vacation was to start were not actionable as harassment in employee's Title VII hostile work environment claim; there was no indication that Department's actions were racially or sexually offensive in nature, and they were not so severe or pervasive as to alter conditions of his employment. Lara v. Kempthorne, S.D.Tex.2009, 673 F.Supp.2d 504. Civil Rights 1147; Civil Rights 1186

Employee stated a hostile work environment claim under Title VII; she claimed that she was humiliated, falsely accused, and denigrated over a three-year period because of her sex, race, and prior Equal Employment Opportunity (EEO) activity such that her ability to perform her job was diminished and the terms of her employment were affected, and she listed dozens of incidents that she alleged constituted a hostile working environment. Hutchinson v. Holder, D.D.C.2009, 668 F.Supp.2d 201. Civil Rights 1532

Alleged incidents in which African-American Smithsonian Institution employee, who was practicing Baptist and suffered from various mental disabilities, was requested by his supervisors to perform tasks within realm of his employment responsibilities, account for his whereabouts, and abide by workplace procedures did not give rise to level of actionable hostile work environment claim under Title VII or Rehabilitation Act. Bowden v. Clough, D.D.C.2009, 658 F.Supp.2d 61, appeal dismissed 2010 WL 2160010. Civil Rights 1147; Civil Rights 1161; Civil Rights 1224

Work-related incidents, including Federal Bureau of Investigation's assigning of allegedly inadequate vehicle to employee who engaged in protected Equal Employment Opportunity (EEO) activity and participated in federal litigation against FBI, and FBI's warning employee about results of publishing classified information in connection with his appeal of dismissal of lawsuit against FBI, did not constitute pervasive pattern of abuse, as would support employee's Title VII retaliatory hostile work environment claim; incidents were infrequent and discrete, and did not unreasonably interfere with conditions of employee's employment. Graham v. Holder, D.D.C.2009, 657 F.Supp.2d 210. Civil Rights 1250; United States 36

That employee's performance ratings decreased, and that employee was not promoted,

following employee's discrimination complaint were not the types of action that could support a hostile work environment claim under Title VII. Hunter v. Clinton, D.D.C.2009, 653 F.Supp.2d 115. Civil Rights 1147

Even if African American federal employee was subjected to unwelcome harassment, she could not establish hostile workplace environment claim since she did not show that the harassment was based on her race, that the harassment was so severe and pervasive that it altered the conditions of her employment and created an abusive work environment, that the objectionable conduct was objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive, and that some basis for employer liability had been established. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Civil Rights 1147

Fact that African-American supervisor of Caucasian United States Postal Service (USPS) probationary employee may have instructed administrative assistant not to do project originally assigned employee, which employee had reassigned to assistant, did not amount to severe or pervasive harassment, as required to sustain Title VII racial harassment claim. Mianulli v. Potter, D.D.C.2009, 634 F.Supp.2d 90, affirmed in part 2010 WL 604867, rehearing denied. Civil Rights 1234

Issue of whether white continental-American Assistant Chief Deputy in U.S. Marshals Service in Puerto Rico was intentionally subjected to a hostile work environment based on his national origin was for jury in Title VII case; various witnesses testified that U.S. Marshal said at meeting that he would only promote Puerto Ricans, and Marshal's statements and staunch support for Puerto Rican candidate were sufficient to link subsequent hostile work environment to plaintiff's national origin. Orr v. Mukasey, D.Puerto Rico 2009, 631 F.Supp.2d 138. Civil Rights 1555

There was no link between African-American United States Department of State (DOS) employee's race and her employer's allegedly hostile behavior, including singling out employee, placing her on unwarranted performance improvement plans (PIP), giving her unjustified poor evaluations, and forcing her to endure humiliating “coaching sessions” to improve her work performance, as would support employee's race-based hostile work environment claim under Title VII. Na'im v. Clinton, D.D.C.2009, 626 F.Supp.2d 63. Civil Rights 1147

Fellow employee's sexually and racially derogatory conduct, in calling federal employee a “bitch” and a “red bone” and stating that union was not a place for a black woman, along with subsequent e-mail stating that “satan doesn't need [her] prayers,” a chair-bumping incident, and an arm-squeezing incident, were not sufficiently pervasive and extreme as to constitute a change in the conditions of her employment, as required to establish prima facie hostile work environment claim under Title VII; there was nothing tying the sexually and racially derogatory remarks with the subsequent conduct, and

there was no evidence that the later incidents were related to employee's race or gender. Tolson v. Springer, D.D.C.2009, 618 F.Supp.2d 14. Civil Rights 1147; Civil Rights 1185

Department of Justice (DOJ) employee's allegations in his complaint about "negative working environment" he experienced following his transfer to different position after engaging in protected activities, even if true, did not support retaliation-by-way-of-hostile work environment claims under Title VII; rather, indignities that employee identified were ordinary tribulations of workplace, which fell outside Title VII. Pearsall v. Holder, D.D.C.2009, 610 F.Supp.2d 87. Civil Rights 1250; United States 36

Genuine issues of material fact precluded summary judgment on hostile work environment claims, by former Voice of America (VOA) Arabic Service employees who were not hired for new station. Abdelkarim v. Tomlinson, D.D.C.2009, 605 F.Supp.2d 116. Federal Civil Procedure 2497.1

Allegedly offensive e-mail sent to white female federal employee, an analyst in Publications Management Group (PMG) of Office of Personnel Management (OPM), by her supervisor concerning visit paid to employee by coworker during which changes were made to Federal Register Management System was not a "material adverse act" under any standard, for purposes of employee's race and sex discrimination and retaliation claims; e-mail was work-related and contained no disparaging or antagonistic language, and employee had done nothing to undermine accuracy of its factual assertions. Kline v. Springer, D.D.C.2009, 602 F.Supp.2d 234, affirmed 2010 WL 5258941, rehearing en banc denied. Civil Rights 1169; Civil Rights 1234; Civil Rights 1249(1); United States 36

Federal employee claiming retaliation in form of hostile work environment failed to establish an objectively hostile or abusive work environment; written personnel measures contained no intimidation, ridicule, or insult, it was not alleged they were distributed publicly to humiliate employee, decisions were drafted, issued and processed with benign offensiveness attendant to bureaucratic proceduralism, measures were not issued at excessive frequency given timing of infractions alleged and their severity was mild both collectively and individually, and four incidents of supervisor's heated shouting at employee in private office over nine-month period did not establish hostile work environment. Baloch v. Norton, D.D.C.2007, 517 F.Supp.2d 345, affirmed 550 F.3d 1191, 384 U.S.App.D.C. 85. Civil Rights 1250; United States 36

Postal worker raised hostile work environment claim under Title VII in his complaint filed with Equal Employment Opportunity Commission (EEOC), as required for administrative exhaustion, when he asserted in complaint that hostile work environment to which he had been subjected had caused psychological, emotional, and physical trauma for which he should be compensated. Abraham v. Potter, D.Conn.2007, 494 F.Supp.2d

141. Civil Rights 1516

Older, African-American Secret Service uniformed officer who was seeking to establish prima facie case of race or age discrimination in connection with his nine-day suspension following "verbal exchange, involving profanity and raised voices," with sergeant did not show that younger, white officers who were criminally charged with assault in domestic violence incidents but were not disciplined by employer, or the sergeant whom he confronted, were valid comparators; while like him the younger whites were uniformed officers, "inappropriate conduct while on duty" and alleged off-duty physical assaults were not offenses of comparable seriousness and disparate nature and context of their offenses precludes their service as comparators, and while sergeant never faced disciplinary action for subject events though he allegedly initiated exchange by yelling at uniformed officer in public, he was uniformed officer's supervisor. Williams v. Chertoff, D.D.C.2007, 495 F.Supp.2d 17. Civil Rights 1138; Civil Rights 1210

Federal employee failed to show that her hostile work environment was result of racial discrimination or retaliation because of her protected activity, and thus failed to establish claim under Title VII, where none of employee's allegations indicated racial or retaliatory motive, and employee pointed to her supervisor's romantic relationship with subordinate as cause for hostile work environment. Cochise v. Salazar, D.D.C.2009, 601 F.Supp.2d 196, affirmed 377 Fed.Appx. 29, 2010 WL 2203308, rehearing en banc denied. Civil Rights 1147; Civil Rights 1250; United States 36

Postal Service's actions did not create hostile work environment for employee alleging Title VII and Rehabilitation Act workplace harassment claims; employee could not bootstrap discrete allegedly discriminatory or retaliatory acts by Postal Service into broader hostile work environment claim, and most of the acts that employee complained about were common workplace grievances and not the type of extreme conduct necessary to support his claim. Franklin v. Potter, D.D.C.2009, 600 F.Supp.2d 38. Civil Rights 1147; Civil Rights 1224; Civil Rights 1250; Postal Service 5

Employee's two encounters with a coworker where he allegedly felt insulted and threatened by her alleged aggressive behavior and foul comments, and a memo issued to employee by his supervisor expressing concern about his progress on a project that was to be completed within four days, were insufficient to create a hostile work environment under Title VII; there was no evidence that the actions of the co-worker or the supervisor were motivated by employee's race. Brown v. Paulson, D.D.C.2009, 597 F.Supp.2d 67. Civil Rights 1147

Bureau of Engraving and Printing (BEP) employee, a Muslim and native of Afghanistan, failed to establish prima facie case of hostile work environment based on race, color, national origin or religion; security investigation of employee after he returned from visit to Afghanistan was itself nondiscriminatory and while alleged separate and intermittent

incidents involving BEP personnel over nine-year period were distasteful and inappropriate, that conduct was not severe and pervasive, where employee failed in most instances to even identify individuals making comments or to provide frequency with which comments were made. Asghar v. Paulson, D.D.C.2008, 580 F.Supp.2d 30. Civil Rights 1147; Civil Rights 1161

African-American male employee alleging hostile work environment claim against Navy under Title VII was required to show that criticisms of his telephone usage, criticism and monitoring that arose from resident complaints, sexual harassment investigation, and performance evaluation by supervisor that allegedly blocked his permanent promotion were based on discrimination. Lipscomb v. Winter, D.D.C.2008, 577 F.Supp.2d 258, affirmed in part , remanded in part 2009 WL 1153442, on remand 699 F.Supp.2d 171. Civil Rights 1147; Civil Rights 1186

There was no evidence that alleged actions of Assistant Special Agent in Charge (ASAC) toward African-American female employee were based on her race or that the ASAC's alleged actions were sufficiently severe or pervasive to alter her conditions of employment and to create an abusive work environment, as required to establish hostile environment claim under Title VII; ASAC allegedly yelled at employee during counseling sessions, grabbed her by the arm at a retirement luncheon, and wore or possessed his firearm when he counseled her. Dawson v. U.S., D.S.C.2008, 549 F.Supp.2d 736, affirmed 368 Fed.Appx. 374, 2010 WL 727648. Civil Rights 1147

African-American female federal GS-13 employee failed to establish prima facie case of race or sex-based hostile work environment based on alleged incidents cited, including her failure to be promoted to GS-14 or to be provided with performance evaluation above “successful,” e-mails she received from her supervisor, one regarding her referral of calls and e-mails to him without prior consultation and the other regarding her amendment of meeting agenda without permission, refusal to grant her computer to work at home while she was ill, and supervisor's alleged isolated comments, not directed at employee, which under strained interpretation could be viewed as racist. Kilby-Robb v. Spellings, D.D.C.2007, 522 F.Supp.2d 148, affirmed 309 Fed.Appx. 422, 2009 WL 377301. Civil Rights 1147; Civil Rights 1185

Filipino employee of Army drug testing laboratory could not prevail on hostile work environment claim; only incident that related to her race or national origin was being told not to speak “Filipino,” and being told once not to speak Filipino in lab during approximately seven years of employment clearly was not severe or pervasive. Delacruz v. Tripler Army Medical, D.Hawai'i 2007, 507 F.Supp.2d 1117. Civil Rights 1147

None of acts alleged by former Federal Bureau of Investigation (FBI) legal attache in Saudi Arabia, whether considered alone or cumulatively, met demanding standards for hostile work environment claim under Title VII; former attache alleged 36 different acts,

some of them apparently based on the same incidents, with allegations grouped into denial of personnel and other resources requested after September 11th terrorist attacks,investigations and monitoring of attache and his office, undermining of his authority by excluding him from communications and meetings and cutting him out of chain of command, allegedly discriminatory comments and/or threats, and what he characterized as his "demotion" to New York position along with simultaneous improvements to the Saudi position after his departure. Rattigan v. Gonzales, D.D.C.2007, 503 F.Supp.2d 56. Civil Rights 1147

Genuine issues of material fact as to whether African-American Postal Service employee was subjected to managerial decision increasing weight of mail she had to deliver, which caused her to injure herself on several occasions, and whether motivation for decision was her race, precluded summary judgment on her Title VII claim of hostile work environment. Hudson v. Potter, W.D.N.Y.2007, 497 F.Supp.2d 491. Federal Civil Procedure 2497.1

Federal employee was not subjected to hostile work environment in retaliation for his Equal Employment Opportunity (EEO) activities; occasional verbal insults he allegedly suffered fell well short of actionable harassment under hostile work environment assessment and employee could not "bootstrap" the same series of incidents alleged as retaliation into broader hostile work environment claim. Edwards v. U.S. E.P.A., D.D.C.2006, 456 F.Supp.2d 72. Civil Rights 1250; United States 36

Employee's allegations that federal agency employer attempted to assign a co-worker to employee's team after the co-worker had allegedly threatened employee with violence, that employee was removed as co-chair from design workgroup, that employee's customer service awards were not recognized and that employee's request for flex-time was denied did not rise to the level of a hostile work environment, as required for claim under Title VII. Chaple v. Johnson, D.D.C.2006, 453 F.Supp.2d 63. Civil Rights 1147

Postal employee was not subjected to hostile work environment based on race, gender, and disability, in violation of Title VII and Rehabilitation Act, as result of supervisor's alleged harassment of employee, even if employee was treated differently from her coworkers, where supervisor's statements related to her perception that employee was not performing her job adequately, and supervisor never made any comments about employee's race, gender, or any alleged disability, and never used profanity, derogatory epithets, or any other comparably charged language. Lucenti v. Potter, S.D.N.Y.2006, 432 F.Supp.2d 347. Civil Rights 1147; Civil Rights 1185; Civil Rights 1224

African-American female federal employee failed to establish prima facie case of hostile work environment despite citing numerous instances of harassing conduct by unspecified coworkers, absent any relation between alleged harassment and her membership

in a protected class. Nichols v. Truscott, D.D.C.2006, 424 F.Supp.2d 124. Civil Rights 1147; Civil Rights 1185

Comments by officials with Bureau of Indian Affairs (BIA) to employee who was member of Quapaw Tribe that positions of authority within District I should be held by members of northern plains tribes and that he did not fit in were not sufficiently severe or pervasive to create objectively hostile work environment, in violation of Title VII. Hansford v. Norton, D.S.D.2006, 414 F.Supp.2d 918. Civil Rights 1147

African-American Library of Congress employee failed to establish prima facie case of hostile work environment; while employee perceived as offensive and degrading her supervisor's conduct of speaking to her in arrogant and verbally abusive manner, making her feel inferior to him, threatening her by banging his fist on table and staring her in eyes without blinking, insulting her in front of coworkers, and trying to force her to be insubordinate to him, there was no evidence conduct was based on employee's status as minority, and while confrontations between employee and supervisor were frequent they were of low severity, typically revolving around supervisor's tone of voice. Clipper v. Billington, D.D.C.2006, 414 F.Supp.2d 16. Civil Rights 1147

Older Filipino Department of the Treasury employee failed to establish he was subjected to a hostile work environment based on his age, race or national origin through statement “aha, another Filipino” attributed to his supervisor or statement that “all Filipinos are happy-go-lucky” attributed to another manager. Santa Cruz v. Snow, D.D.C.2005, 402 F.Supp.2d 113. Civil Rights 1147; Civil Rights 1213

Genuine issues of material fact existed as to whether alleged discrimination against civilian nurse, including Army major singling nurse out for criticism and avoiding speaking directly to her, was sufficiently pervasive to alter condition of employment and create abusive environment, precluding summary judgment as to nurse's Title VII claim of racially hostile work environment. Walker v. Brownlee, D.Kan.2005, 385 F.Supp.2d 1126. Federal Civil Procedure 2497.1

Alleged hostility experienced by Hispanic program manager at Central Intelligence Agency (CIA) office in Latin American country, if proven, was not sufficiently severe and pervasive to be actionable under Title VII, where alleged episodes of daily hostility, such as supervisor's description of host-country liaison personnel as “goddamn gerbils,” were mild, alleged use of term “spic” was not heard by employee, alleged attempt to humiliate employee apparently backfired, and there was no physical threatening or touching. Peary v. Goss, E.D.Va.2005, 365 F.Supp.2d 713, affirmed 180 Fed.Appx. 476, 2006 WL 1388762. Civil Rights 1147

Simple teasing, off-hand comments, and isolated incidences, unless extremely serious, are not enough to amount to discriminatory changes in the terms and conditions of em-

ployment, as required by the fourth element of prima facie hostile work environment under Title VII. Berger v. White, W.D.Ky.2003, 293 F.Supp.2d 721. Civil Rights 1147

African-American postal workers failed to show that management had knowledge of the alleged race-based harassment by white co-workers and failed to promptly respond, as required to establish a prima facie case for a Title VII race-based hostile work environment claim, where workers did not initially complain to supervisors about the harassment, and when complaints were made, the harassment ended, co-workers involved were admonished, and management apologized to the workers subjected to the abuse. Allen v. Potter, C.A.5 (La.) 2005, 152 Fed.Appx. 379, 2005 WL 2769530, Unreported. Civil Rights 1149

African-American federal employee did not establish that alleged harassment he experienced from supervisor was based on his race, as required for racially hostile work environment claim under Title VII; only one of twelve alleged harassing incidents bore any racial overtones, and that incident was not supported by any evidence. Upshur v. Dam, S.D.N.Y.2003, 2003 WL 135819, Unreported. Civil Rights 1147

49a. Compensation, discriminatory practices prohibited

Department of Navy's alleged failure to provide employee with year-end monetary award was not “adverse employment action” required to establish prima facie case of discrimination based on her race, gender and disability and in retaliation for her EEO activity. Rehabilitation Act of 1973, Carroll v. England, D.D.C.2004, 321 F.Supp.2d 58. Armed Services 27(4); Civil Rights 1136; Civil Rights 1175; Civil Rights 1220; Civil Rights 1249(1)

Navy's payment of $350 performance award to employee while white coworker was given a $500 performance award did not constitute an adverse employment action, as required for employee's prima facie cases of retaliation and race discrimination under Title VII, absent any evidence that employee was entitled to higher award or that she was similarly situated to male coworker. Nails v. England, D.D.C.2004, 311 F.Supp.2d 116. Armed Services 27(4); Civil Rights 1136; Civil Rights 1249(1)

Evidence of pay disparity between African-American and Caucasians selected for the same federal government position was not prejudicial in Title VII race discrimination action by nonselected African-American applicants; personnel management specialist testified that persons making selection had no involvement in determining pay and that her review of documents indicated that disparity was product of error by personnel specialist processing paperwork after selection was made. Allen v. Perry, D.D.C.2003, 279 F.Supp.2d 36. Federal Civil Procedure 2334

50. Religious discrimination, discriminatory practices prohibited

Letter carrier whose religious accommodation allowing him not to work on Saturdays to observe Jewish Sabbath was terminated did not suffer "materially adverse employment action," for purposes of establishing prima facie case of religious discrimination under Title VII, due to reduction in pay corresponding with time that letter carrier did not work in observance of Sabbath, given that such reduction did not affect letter carrier's employment opportunities or job status. Tepper v. Potter, C.A.6 (Ohio) 2007, 505 F.3d 508. Civil Rights 1157; Civil Rights 1162(2)

Employee's request that United States Postal Service (USPS) give him every Saturday off by changing his rotating schedule to accommodate his religious beliefs as member of Seventh-day Adventist Church would have imposed undue hardship on USPS, thus precluding employee's claim that USPS violated Title VII by failing to reasonably accommodate his religious beliefs, since requested accommodation would have violated collective bargaining agreement (CBA) by effecting unilateral change to employee's bid position so that he could operate under fixed rather than rotating schedule. Harrell v. Donahue, C.A.8 (Mo.) 2011, 638 F.3d 975. Civil Rights 1263

Religious beliefs and practices of plaintiff, a member of the Church of God, placed an undue hardship on the United States Postal Service and thus justified his dismissal as a flexible part-time postal clerk, where his religion forbade his working on Saturdays, where acceptance of his work demands would have resulted in an undue hardship on the effective operation of the small post office in question, and where the Postal Service made a good-faith effort to reasonably accommodate plaintiff's religious observances and practices by offering to allow him as many Saturdays off as possible or, alternatively, to recommend that he be transferred to a larger post office. Johnson v. U.S. Postal Service, C.A.5 (Fla.) 1974, 497 F.2d 128. Postal Service 5

Genuine issue of material fact, as to whether Muslim Federal Deposit Insurance Corporation (FDIC) employee alleged sufficient facts to establish causal connection between supervisor's conduct and either employee's religion or his protected Equal Employment Opportunity (EEO) activity, precluded summary judgment on his hostile work environment claim; employee alleged that supervisor referred to team as "Christian family" and repeated that often in his presence, with full knowledge that he was not Christian. Chowdhury v. Bair, D.D.C.2010, 680 F.Supp.2d 176. Federal Civil Procedure 2497.1

Former Electronics Engineer in Aviation Security Research and Development Lab of Federal Aviation Administration (FAA), an American citizen of Muslim religion and Egyptian national origin who was indefinitely suspended without pay following September 11th terrorist attacks, failed to establish prima facie case of discrimination based on religion or national origin, absent showing he was qualified for position; his former position required a top secret security clearance, and his had been revoked. Makky v. Chertoff,

D.N.J.2007, 489 F.Supp.2d 421, affirmed 541 F.3d 205. Civil Rights 1126; Civil Rights 1136; Civil Rights 1157

Alleged actions against Jewish Postal Service employee, including repeated comments about fact that he did not work on Saturdays, supervisor's isolated threats that did not refer to religion, and requirements that employee follow certain workplace regulations, if proven, did not create hostile work environment based on religion in violation of Title VII. Garvin v. Potter, S.D.N.Y.2005, 367 F.Supp.2d 548. Civil Rights 1161

Postal Service employee failed to establish bona fide religious belief, as required for prima facie case of religious discrimination under Title VII, where stated that she told manager she had "sworn to God" that she would not complete another form requesting or notifying Postal Service of absence, but she had previously submitted and resubmitted such form, and she failed to point to any evidence of bona fide religious belief, observance, or practice that required her to refrain from submitting such forms. Williams v. Potter, D.Kan.2004, 316 F.Supp.2d 1122, reconsideration overruled 2004 WL 1873226, affirmed 149 Fed.Appx. 824, 2005 WL 2387828, certiorari denied 127 S.Ct. 83, 549 U.S. 818, 166 L.Ed.2d 30. Civil Rights 1154

Employee failed to establish that ignorant and demeaning comments made to employee at three day conference affected terms or conditions of employment as would support prima facie Title VII case of religious and racial discrimination. Hartman v. Pena, N.D.Ill.1995, 914 F.Supp. 225. Civil Rights 1147; Civil Rights 1161

White, Jewish male employed as Deputy United States Marshall established hostile work environment claim under Title VII in connection with discrimination based on race and religion, where supervisor related joke about holocaust, Deputy Marshal was denied opportunity to work overtime in amount comparable to many deputies who were not white or Jewish, white deputies had desks at back of squadroom office, white deputies were referred to as "white asses" and "white boys," and Deputy Marshall was singled out for discipline in connection with prisoner's escape. Turner v. Barr, D.D.C.1993, 811 F.Supp. 1. Civil Rights 1147; Civil Rights 1161

Deputy marshal who was white, Jewish male established hostile work environment in violation of Title VII; he was subject to religious and ethnic jokes and racial harassment by African-American deputies and was suspended for role in escape of prisoner, although African-American employees involved in escape were not disciplined. Turner v. Barr, D.D.C.1992, 806 F.Supp. 1025. Civil Rights 1161; Civil Rights 1234

Postal Service provided reasonable accommodation of religious needs of Seventh Day Adventist employee who claimed that Service discriminated against her when it conditioned her status on overtime desired list upon her agreement to work on her Sabbath; Service gave employees option of signing overtime desired list to accommodate em-

ployees who, for religious or secular reasons, did not wish to work overtime, and selected employees who had not chosen to sign overtime desired list to work overtime on basis of seniority. Mann v. Frank, W.D.Mo.1992, 795 F.Supp. 1438, affirmed 7 F.3d 1365, rehearing denied. Civil Rights 1162(2)

Postal window clerk, who sought preliminary injunction to prohibit United States Postal Service from dismissing her for refusing to distribute draft registration materials, made a sufficient showing that her opposition to conscription and war was a bona fide religious belief, where the evidence showed that she had a long family history of involvement with the Society of Friends and that she was a long-time attender of Friends meetings, although she was not a formal member of any Society meeting. McGinnis v. U.S. Postal Service, N.D.Cal.1980, 512 F.Supp. 517. Civil Rights 1568

Postmaster General did not violate this subchapter by failing to guarantee postal employee, who was a Seventh Day Adventist, the Sabbath off in view of Postmaster's attempts to accommodate employee and undue hardship to post office business which would result from such guarantee. Cross v. Bailar, D.C.Or.1979, 477 F.Supp. 748. Civil Rights 1162(2)

Evidence that employee's failure to report to work on his religion's Sabbath, and his subsequent termination, were result of religious discrimination was sufficient to support finding that employer engaged in intentional discrimination in violation of Title VII; employee's supervisor repeatedly quizzed employee about his religious beliefs, asked him to work on his Sabbath, and referred to his religion as a “scam,” converted employee's permanent position to temporary position, requiring employee to bid for all days off and eliminating his seniority, approved personnel actions resulting in staffing shortage, and refused to cover employee's leave requests as required by union contract. Reed v. Mineta, C.A.10 (Colo.) 2004, 93 Fed.Appx. 195, 2004 WL 474003, Unreported. Civil Rights 1158

51. Sex discrimination, discriminatory practices prohibited--Generally

Toiling under a boss who is tough, insensitive, unfair, or unreasonable can be burdensome, but Title VII does not protect employees from the ordinary slings and arrows that suffuse the workplace every day; generally disagreeable behavior and discriminatory animus are two different things. Ahern v. Shinseki, C.A.1 (R.I.) 2010, 629 F.3d 49. Civil Rights 1137

Female federal employee could not prevail in Title VII gender stereotyping claim, absent any evidence that she behaved in a stereotypically masculine manner and that the harassment she suffered was based on her non-conformity with gender norms instead of her sexual orientation. Pagan v. Holder, D.N.J.2010, 741 F.Supp.2d 687. Civil Rights 1169; Civil Rights 1190

Female witness's proffered testimony that she suffered sex discrimination from a male supervisor while working at the United States Export-Import Bank was not relevant to whether another female Bank employee's supervisor retaliated against her and discriminated against her on the basis of gender, and thus testimony was not admissible in employee's Title VII gender discrimination and retaliation suit, since incidents that gave rise to witness's complaint occurred approximately ten years before events at issue in employee's case, and witness and the employee were not similarly situated because they had different titles, different job responsibilities, and reported to different supervisors. Nuskey v. Hochberg, D.D.C.2010, 723 F.Supp.2d 229. Civil Rights 1542

Bona-fide job classification system is factor that falls under fourth Equal Pay Act (EPA), and Title VII, exception permitting pay differential based on "any other factor other than sex," as long as system is applied in gender neutral manner. Thomas v. Vilsack, D.D.C.2010, 718 F.Supp.2d 106. Civil Rights 1175; Labor And Employment 2468

Caucasian male comparator whose "shameful record of incompetent work performance was commonly known by many" was not "similarly situated" to female Federal Bureau of Investigation (FBI) employee who was disciplined and terminated for poor performance, for purposes of her discrimination claim, even though they concededly held the same positions, performed the same duties and had the same responsibilities, had the same supervisor, and were each disciplined and given"Does Not Meet Expectations" summary ratings on their Performance Appraisal Reports (PARs); the comparisons stopped there. Evans v. Holder, D.D.C.2009, 618 F.Supp.2d 1. Civil Rights 1138; Civil Rights 1172

Library of Congress's revoking job offer with Congressional Research Service (CRS), based on difficulty comprehending applicant's decision to undergo male-to-female sex transition, and based on apprehension concerning reaction of members of Congress, constituted sex-stereotyping discrimination in violation of Title VII, regardless of whether withdrawal was due to perception that applicant was insufficiently masculine, insufficiently feminine, or inherently gender-nonconforming. Schroer v. Billington, D.D.C.2008, 577 F.Supp.2d 293. Civil Rights 1193

Federal employee failed to establish "adverse employment action" element of prima facie case of gender discrimination through lower performance appraisals or general allegations of mistreatment by her supervisor; employee herself pointed out she was never written up and did not receive any reprimands or have any disciplinary action taken against her. Mogenhan v. Chertoff, D.D.C.2008, 577 F.Supp.2d 210, affirmed in part , reversed in part 613 F.3d 1162, 392 U.S.App.D.C. 195. Civil Rights 1169

Older male federal employee who alleged that employing agency admittedly had policy

of advancing young women failed to establish prima facie case of gender discrimination under Title VII in connection with his failure to be promoted through agency official's deposition testimony in response to question from employee's counsel as to whether agency had a policy of promoting young women, "[o]nly in the context of EEO goals and objectives that would cover the gender issue"; at most, deposition testimony showed that agency has concern for diversity in the workplace. Jones v. Bernanke, D.D.C.2007, 493 F.Supp.2d 18, affirmed on other grounds 557 F.3d 670, 384 U.S.App.D.C. 443. Civil Rights 1179

While as legal concept, term "sex" as used in Title VII referred to much more than which chromosomes a person had, district court would not rule on question of whether that term as used included gender identity. Schroer v. Billington, D.D.C.2007, 525 F.Supp.2d 58. Civil Rights 1193

Genuine issue of material fact as to whether employer took reasonable efforts to accommodate Jewish employee's religious beliefs when employer required her to use annual leave for religious holidays precluded summary judgment on claim of religious discrimination. Krop v. Nicholson, M.D.Fla.2007, 506 F.Supp.2d 1170. Federal Civil Procedure 2497.1

Male-to-female transsexual who successfully interviewed for position as terrorism research analyst with Congressional Research Service (CRS) while presenting as man but was told position had been filled after revealing her gender dysphoria stated Title VII claim against Library of Congress; transsexual could prove facts which would support her claim that Library refused to hire her solely because of her sexual identity, and that in so doing, it discriminated against her "because of sex." Schroer v. Billington, D.D.C.2006, 424 F.Supp.2d 203. Civil Rights 1193

Federal employee stated adverse employment action element of her Title VII sexual discrimination claim against government by alleging that supervisor did not permit her to fulfill basic responsibilities of her job description, denigrated her achievements at every opportunity, circulated intimidating and false accusatory memoranda about her, and never gave her performance evaluations commensurate with her actual performance, preventing her proper advancement. Higbee v. Billington, D.D.C.2003, 246 F.Supp.2d 10, reconsideration denied 290 F.Supp.2d 105. Civil Rights 1169

Government librarian stated Title VII claim of gender discrimination against Library of Congress, by alleging that supervisor did not permit her to fulfill basic responsibilities of her position description, denigrated her achievements at every opportunity, circulated intimidating and false accusatory memoranda about her, and never gave her performance evaluations commensurate with actual performance of her duties, so that she never properly advanced in her career. Higbee v. Billington, D.D.C.2002, 2002 WL 32000661. Civil Rights 159; Civil Rights 167

Section 717(a) of Title VII prohibits gender discrimination even when the alleged offender is of the same sex as the plaintiff. Brunetti v. Rubin, D.Colo.1998, 999 F.Supp. 1408. Civil Rights 1180

To impose liability on employer for hostile work environment sexual harassment perpetrated by employee, on ground that employer manifested in the perpetrator the authority to act on its behalf, it is the employer who must create the impression that the perpetrator is acting under its authority, and fact that the perpetrator claimed such authority is not by itself determinative. Jense v. Runyon, D.Utah 1998, 990 F.Supp. 1320. Civil Rights 1528

Alleged acts of supervisor toward researcher at National Institute of Mental Health (NIMH) directly affected terms and conditions of researcher's employment and, thus, were sufficient to support disparate treatment claim of sex discrimination under Title VII, despite argument that supervisor merely made mediate decisions without immediate effect upon employment; researcher alleged that supervisor assigned inferior work, and provided inadequate training and guidance on basis of researcher's sex, and that type of work assigned did not allow researcher to continue for additional year of fellowship. Jensvold v. Shalala, D.Md.1993, 829 F.Supp. 131. Civil Rights 1172

Veterans Administration's (VA) requirement that chaplains serving in VA hospitals be ordained clergymen discriminated on basis of sex against female applicant for position of Roman Catholic chaplain; VA could accommodate religious needs of its patients, without discriminating against women, by requiring only ecclesiastical endorsement. Murphy v. Derwinski, D.Colo.1991, 776 F.Supp. 1466, affirmed 990 F.2d 540. Civil Rights 1169

Government Printing Office's separate classification system for female journeyman bindery worker jobs and male bookbinder jobs perpetuated effects of past discrimination was not justified for business purposes or for any other reason and constituted a pattern and practice of sex discrimination in violation of this subchapter. Thompson v. Boyle, D.C.D.C.1979, 499 F.Supp. 1147. Civil Rights 1169

Department of the Army career program, as evinced by the regulatory violations, the resentment of Office of Employment Policy and Grievance Review staff by personnel officers, and the dearth of referrals to qualified participants, served to perpetuate past sex discrimination in employment. Clark v. Alexander, D.C.D.C.1980, 489 F.Supp. 1236. Civil Rights 1169; Civil Rights 1172

Evidence established that submission to sexual advances of plaintiff's supervisor was “term and condition of employment” violative of this subchapter, and there was thus sex discrimination within prohibitions of this subchapter. Williams v. Civiletti, D.C.D.C.1980,

487 F.Supp. 1387. Civil Rights 1549

Although female postal employee's allegation of the receipt of a warning letter followed by a 14-day suspension, which was subsequently withdrawn, was sufficient to constitute an adverse employment action, she failed to demonstrate that any similarly-situated male employees were treated more favorably, as was required to establish prima facie case of gender discrimination under Title VII. Nickerson v. Potter, C.A.6 (Ohio) 2004, 102 Fed.Appx. 936, 2004 WL 1447644, Unreported, certiorari denied 125 S.Ct. 482, 543 U.S. 981, 160 L.Ed.2d 360. Civil Rights 1172

51a. ---- Investigation of employee, sex discrimination, discriminatory practices prohibited

African-American female employee unreasonably failed to use employer's complaint procedure to report alleged sexual harassment by supervisor, and thus employer had affirmative defense to employee's Title VII hostile workplace claim; although employee confided harassment shortly after it occurred to friend who was member of management, complaint procedure specifically required employee to report harassment to equal employment opportunity (EEO) counselor or EEO manager, and friend was neither. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1189

Small Business Administration (SBA) articulated a legitimate, non-discriminatory reason for subjecting employee to an investigation by the SBA Office of Inspector General (OIG), shifting burden to employee to show that proffered reason was a pretext for retaliation for her prior Equal Employment Opportunity (EEO) discrimination claims, in violation of Title VII, where SBA explained that the investigation of employee, during course of ongoing contracting fraud investigation, resulted from independent observations of two of employee's colleagues, who reported that her actions were unusual. Brown v. Mills, D.D.C.2009, 674 F.Supp.2d 182. Civil Rights 1249(1); Civil Rights 1541; United States 36

Subjecting federal employee to investigation did not amount to “adverse action,” for purpose of employee's claim under Title VII, since investigation resulted in employee's suspension and employee otherwise did not include that suspension in any of his discrimination claims. Runkle v. Gonzales, D.D.C.2005, 391 F.Supp.2d 210. Civil Rights 1126

52. ---- Quid pro quo, sex discrimination, discriminatory practices prohibited

Requirement for claim of quid pro quo workplace sexual harassment under Title VII, that employee's reaction to harassment affected her employment, was not satisfied when complainant's contract for work at Army hospital was allowed to lapse eight months after

she reported harassing conduct of supervisor, and employee could not show any connection between report and nonrenewal. Moret v. Geren, D.Md.2007, 494 F.Supp.2d 329. Civil Rights 1184

Genuine issue of material fact, as to whether United States Postal Service (USPS) employee's supervisor explicitly or implicitly conditioned her employment status upon her submission to his sexual demands, precluded summary judgment on employee's claim seeking to hold USPS vicariously liable for hostile work environment. Royal v. Potter, S.D.W.Va.2006, 416 F.Supp.2d 442. Federal Civil Procedure 2497.1

Essential element of claim of quid pro quo sexual harassment is that specific benefits of employment were conditioned on sexual demands. Jense v. Runyon, D.Utah 1998, 990 F.Supp. 1320. Civil Rights 1184

52a. ---- Monitoring, sex discrimination, discriminatory practices prohibited

Placement of Federal Housing Finance Agency (FHFA) employee on performance incentive plan (PIP) could have dissuaded reasonable employee from pursuing discrimination claim, and thus constituted adverse action for purposes of Title VII retaliation claim. Powell v. Lockhart, D.D.C.2009, 629 F.Supp.2d 23. Civil Rights 1249(1); United States 36

Closely supervising, scrupulously monitoring, or "watching" employee did not constitute "adverse employment action," for purpose of federal employee's claim under Title VII, since it was part of employer's job to ensure that employees were safely and properly carrying out their jobs and such actions were done in part for employee's own safety. Runkle v. Gonzales, D.D.C.2005, 391 F.Supp.2d 210. Civil Rights 1126

53. ---- Hostile work environment, sex discrimination, discriminatory practices prohibited

Supervisor's conduct that allegedly created a nerve-wracking environment for female Department of Veterans Affairs employees was not based on gender, and therefore, was not constructive discharge, as would violate Title VII, where review team report regarding allegations of discrimination found supervisor's conduct was not discriminatory in nature and indicated that he was an inefficient manager lacking in interpersonal skills. Ahern v. Shinseki, C.A.1 (R.I.) 2010, 629 F.3d 49. Civil Rights 1123

Civilian employee at Department of the Army (DOA) health clinic was subjected to conduct by co-employee, who later became her supervisor, that was so severe or pervasive that it altered terms and conditions of her employment, as required for gender-based hostile work environment claim under Title VII; employee was subject to constant harassment from co-employee over two-year period where co-employee complained about

her appearance on daily basis, regularly drew attention of her co-workers to her body and clothing, shadowed her closely when she interacted with patients, challenged her decisions, mocked her when she spoke to him and, on occasion, described her as a "street woman" to other employees and criticized her to doctors and patients. Rosario v. Dept. of Army, C.A.1 (Puerto Rico) 2010, 607 F.3d 241. Civil Rights 1185

African-American female employee's alleged fear of retaliation did not excuse delay of five or six months before reporting alleged sexual harassment by supervisor using employer's complaint procedure, and employer thus had affirmative defense to employee's Title VII hostile workplace claim due to employee's unreasonable delay before reporting; supervisor did not threaten employee with adverse employment action and in fact could not have done so because supervisor lacked authority to evaluate her performance or to take any action against her. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1189

Genuine issue of material fact existed as to whether purported remedial actions of federal employer were prompt and adequate to address ongoing sexual harassment of employee after learning of alleged harassment of employee, precluding summary judgment on employee's hostile work environment claim under Title VII. Andreoli v. Gates, C.A.3 (Pa.) 2007, 482 F.3d 641. Federal Civil Procedure 2497.1

Use of phrases "Sexy Papa" and "Sexy Mama" by female federal employee's male supervisor and female co-worker was not severe or pervasive enough to amount to hostile work environment under Title VII. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1185

Comments made by employee's supervisors regarding her personality did not create a race or gender-based hostile work environment for Title VII purposes; nothing in the employee's hostile work environment claim suggested that the comments or actions at issue had any connection to her gender or race, or that they were accompanied by physical threats, abusive or offensive language or any other characteristics of extreme conduct, nor were her workplace conflicts, however unpleasant, so severe or pervasive as to have altered the conditions of her employment. Robertson v. Dodaro, D.D.C.2011, 2011 WL 768111. Civil Rights 1185

Employee failed to state a claim for hostile work environment under Title VII by alleging that employer failed to adequately investigate her complaints that she was the subject of a number of insulting e-mails attacking her as "psychotic," failed to investigate her complaint that opposing counsel representing the agency in employee's union grievance sent an e-mail stating that employee experienced "litigation induced hallucinations," failed to take corrective action when she was yelled at during a deposition, sought to obtain her signature acknowledging that she had received a memorandum sent to all employees regarding the inappropriate use of workplace resources, and failed to inves-

tigate her complaint that such a signature was requested from her; acts employee complained of did not alter the conditions of her employment and create an abusive working environment. Baird v. Snowbarger, D.D.C.2010, 2010 WL 3999000. Civil Rights 1147

Female employee's complaints that her requests for days of annual leave were denied, that there was three-week delay in repairing an air conditioner, that her personal belongings were boxed up and removed from her former work station, that she received supervisory reports of her failure to comply with policies, and that she was not told to go home early in a snow storm did not amount to "adverse employment actions," as required to establish prima facie Title VII sex discrimination claim. Pagan v. Holder, D.N.J.2010, 741 F.Supp.2d 687. Civil Rights 1169

Single comment by former United States Department of Agriculture (USDA) employee's supervisor that employee should "go help your brother" did not amount to harassment so severe as to create a hostile work environment in violation of Title VII, where, even assuming the comment was a derogatory reference to both employees' skin color, it did not result in a negative change in the conditions of employee's working environment. Ghaly v. U.S. Dept. of Agriculture, E.D.N.Y.2010, 739 F.Supp.2d 185. Civil Rights 1147

Even though female wildlife biologist with National Forest Service (NFS) found comments, intimidation, and ridicule of co-workers and supervisor to be subjectively objectionable, in that they were made in response to her decision to breastfeed her children, comments which occurred over three year period did not create environment that was objectively hostile, in violation of Title VII; supervisor's comments about his own wife's breastfeeding activities were made during a discussion where biologist was requesting her own accommodations for breastfeeding, supervisor's comments about nursing mothers lining up like "cows" and his comment to ranchers that biologist had been "calving," while unflattering and unprofessional, were merely a "folksy" way of speaking to ranchers, and male co-worker's statement that employee could use the bathroom for the "ten minutes" she spent pumping breastmilk each day could not be interpreted that co-worker was "timing" her, only that he was assigning an approximate time period in which she pumped. White v. Schafer, D.Colo.2010, 738 F.Supp.2d 1121. Civil Rights 1185

There was no evidence that any unwelcome harassment experienced by male federal government employee was based on his sex, as required to establish prima facie case of hostile work environment under Title VII through gender-based harassment. Monk v. Potter, E.D.Va.2010, 723 F.Supp.2d 860, affirmed 2011 WL 108325. Civil Rights 1186

African-American male National Aeronautics and Space Administration (NASA) employee's complaints failed to rise to level of severity necessary to constitute a legitimate

hostile work environment claim. King v. Bolden, D.D.C.2010, 717 F.Supp.2d 65. Civil Rights ⚿1147; Civil Rights ⚿1186

Employee with United States Department of Agriculture (USDA) was not subjected to hostile work environment on the basis of her sex or gender in violation of Title VII, where employee's complaint were distinct and sporadic acts of incivility that were not based on her sex or gender. Minor v. Vilsack, D.D.C.2010, 714 F.Supp.2d 114. Civil Rights ⚿1185

Allegedly harassing conduct suffered by contract compliance officer for District of Columbia's Child and Family Services Agency (CFSA) by his superiors was not sufficiently severe or pervasive to create hostile work environment under Title VII; conduct, which included alleged discrimination in the approval and application of alternative work schedule program, unprofessional, negative and malicious behavior and comments from management, discriminatory practices and lack of adhering to contracting rules and regulations, disparagement of officer's work by his superiors, did not alter officer's conditions of employment. Hunter v. District of Columbia Child and Family Services Agency, D.D.C.2010, 710 F.Supp.2d 152. Civil Rights ⚿1147

Male employee's allegations that his female supervisor excluded him from meetings, commented negatively on his performance, and made harassing sex-based comments were insufficient to demonstrate hostile work environment under Title VII against National Aeronautics and Space Administration (NASA), his employer; employee's interactions with supervisor were limited, and his complaints amounted to nothing more than objections to supervisor's management style. Johnson v. Bolden, D.D.C.2010, 699 F.Supp.2d 295. Civil Rights ⚿1147; Civil Rights ⚿1186

Female Environmental Protection Agency (EPA) employee who suffered from migraine condition failed to establish prima facie case of hostile work environment based on her disability or sex where she alleged, inter alia, that her supervisors mocked her health problems, joked about her “moods and mental states,” disclosed embarrassing details about her medical condition to other employees, made comments and engaged in conduct that demonstrated stereotyped notions of women and bias against female researchers, and took actions that intentionally impeded plaintiff's career advancement; evidence of harassment, considered in light most favorable to employee, did not show the harassment to be so severe and pervasive that it altered conditions of her employment and created abusive working environment. Porter v. Jackson, D.D.C.2009, 668 F.Supp.2d 222, affirmed 2010 WL 5341881, rehearing en banc denied. Civil Rights ⚿1185; Civil Rights ⚿1224

Department of Veterans Affairs (VA) employee failed to establish she was subjected to hostile work environment sexual harassment during incident where coworker blocked her exit path from classroom with steel cart and told her he would not move until she

gave him a kiss; coworker did not act violently during the incident and did not initiate any physical contact with her or engage in lewd sexual commentary. Chavers v. Shinseki, D.D.C.2009, 667 F.Supp.2d 116, motion denied 2010 WL 2574102, appeal dismissed 2010 WL 4340538. Civil Rights 1185

Alleged behavior of second-line supervisor at Export-Import Bank of the United States, including stating that female probationary employee, who was over age of 40, seemed to think she was better educated and older than her colleagues, referring to employee as "strong woman" or "aggressive woman," and calling meeting to explain employee's termination other employees in allegedly disparaging terms, was not sufficiently severe or pervasive to alter conditions of employee's employment, as would support employee's Title VII hostile work environment claim. Nuskey v. Hochberg, D.D.C.2009, 657 F.Supp.2d 47. Civil Rights 1185; Civil Rights 1213

Employer's response to employee's claim that co-worker was sexually harassing her was adequate, reasonable and appropriate, thereby precluding employee's Title VII sexual harassment claim against employer; co-worker's harassment of employee ceased upon his one-day suspension for violation of company policy on sexual harassment, and after he was reinstated, co-worker never again bothered employee. Turrentine v. United Parcel Service, Inc., D.Kan.2009, 645 F.Supp.2d 976. Civil Rights 1189

Small Business Administration (SBA) employee was not subjected to retaliatory harassment in connection with discontinuation of practice of naming her "acting" supervisor in her superior's absence, investigation regarding her use of subordinates' parking spaces, or e-mail from district director intimating that she might not have enough work. Colon v. Mills, D.Puerto Rico 2009, 646 F.Supp.2d 224, affirmed 2011 WL 504049. Civil Rights 1250; United States 53(8)

Alleged statements by various managers concerning employee's appearance, calling her "sweetie," asking her if her hair was "red all over," and one manager's comment that he wanted to be employee's "close friend," were insufficiently severe and pervasive to constitute a hostile work environment under Title VII. Taylor v. Chao, D.D.C.2007, 516 F.Supp.2d 128, affirmed 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1185

Supervisor of Army hospital office employee did not create hostile work environment through sexual harassment, in violation of Title VII, when he allegedly propositioned her while discussing her salary and benefits, requested that she massage his buttocks, asked if she had strong fingers, asked that she speak to his son on phone, leered at her, and made comments about her appearance; conduct was insufficient both in level and frequency. Moret v. Geren, D.Md.2007, 494 F.Supp.2d 329. Civil Rights 1185

Genuine issues of material fact existed as to whether female Federal Housing Finance Agency (FHFA) employee's supervisor subjected employee to severe and pervasive hostile conduct, and as to whether actions complained of collectively constituted one unlawful employment practice based on employee's gender, precluding summary judgment on employee's gender-based hostile work environment claim under Title VII. Powell v. Lockhart, D.D.C.2009, 629 F.Supp.2d 23. Federal Civil Procedure 2497.1

Federal employee failed to establish that she was subjected to a hostile work environment based on gender; her supervisor's circulation of her job application to other employees stating she had credentials he was looking for could hardly be construed as harassment, general subjective allegations of rude behavior by supervisor, such as raising his voice louder than usual when talking to her and telling her she was "not civil" and was "difficult to work with," were at best merely offensive, and there was no compelling evidence that employee was physically threatened. Mogenhan v. Chertoff, D.D.C.2008, 577 F.Supp.2d 210, affirmed in part , reversed in part 613 F.3d 1162, 392 U.S.App.D.C. 195. Civil Rights 1185

African-American female federal employee over the age of 40 could not meet strict requirements for hostile work environment claim under ADEA or Title VII, despite litany of factual examples of discriminatory conduct that she contended, taken together, constituted a hostile workplace environment. Williams v. Dodaro, D.D.C.2008, 576 F.Supp.2d 72. Civil Rights 1147; Civil Rights 1185; Civil Rights 1213

Female former Immigration and Naturalization Service (INS) employee failed to present sufficient evidence to establish the existence of a hostile work environment; although she testified that on several occasions her male second-line supervisor made improper comments that bothered her, she also said he never crossed the line and she never told him to stop, and while she found his comments subjectively objectionable and offensive, they were infrequently made and were not harassing in an objective manner. Crespo Vargas v. U.S. Government, D.Puerto Rico 2008, 573 F.Supp.2d 532. Civil Rights 1185

Alleged actions of supervisor at Department of the Army (DOA) health clinic, namely, downloading sexually oriented jokes from computer and commenting on them loudly, telling "everyone" around office that female civilian employee was dressing like a whore, street woman, and prostitute, stating that employee always looked "disgusting," that she was fat, and that she had delinquent kids, and constantly addressing "dress code" with employee, did not qualify as type of severe conduct required to establish Title VII hostile work environment claim based on sex. Rosario v. Department of Army, D.Puerto Rico 2008, 573 F.Supp.2d 524, vacated 607 F.3d 241. Civil Rights 1185

African-American female employee who sued Department of Agriculture (USDA), alleging racial and gender discrimination, properly stated hostile work environment claims

under Title VII; complaint averred that co-worker sexually assaulted employee, spoke intimately about her daughter, and referred to her with racial epithets, and that putting her in close proximity to co-worker was calculated act of harassment. Kriesch v. Johanns, D.D.C.2007, 468 F.Supp.2d 183. Civil Rights 1147; Civil Rights 1185

Transportation Security Administration (TSA) employee failed to establish hostile work environment through assertion that he was "bullied" and "mobbed" on daily basis by removal of his "access to all facets of his assigned job functions, information that would be deemed imperative to screening operations, information regarding new screening checkpoint construction and configurations, and daily operational information regarding equipment and screening personnel"; while withholding information from employee might create difficult workplace environment, it was not actionable as hostile work environment claim under Title VII. Bankston v. Chertoff, D.N.D.2006, 460 F.Supp.2d 1074. Civil Rights 1147

Hostile work environment can give rise to a retaliation claim under Title VII; to prevail on such a claim, employee must show that her employer, in retaliation for her protected activity, subjected her to discriminatory intimidation, ridicule, and insult' of such severity or pervasiveness as to alter conditions of her employment and create an abusive working environment. Nichols v. Truscott, D.D.C.2006, 424 F.Supp.2d 124. Civil Rights 1250

United States Postal Service (USPS) employee alleged sufficient facts for actionable hostile work environment, at least one of the alleged acts contributing to claim occurred within filing period so entire time period of alleged hostile work environment could be considered by court, and within that time period employee alleged at least two tangible employment actions; employee claimed she was forced to submit to unwanted sexual contact with her supervisor on a weekly basis for over a year, that in order to meet his sexual demands she had to use some of her annual leave, and that she was forced to buy supervisor lunch or give him money on a weekly basis, and she alleged early termination of temporary supervisory assignment and failure to be promoted to available position. Royal v. Potter, S.D.W.Va.2006, 416 F.Supp.2d 442. Civil Rights 1185; Civil Rights 1505(7)

Employee stated hostile work environment claim under Title VII against Federal Bureau of Investigation (FBI), as employer, on allegations that various FBI officials subjected him to series of acts of retaliation over several years in response to his filing several administrative and Equal Employment Opportunity Commission (EEOC) charges and which included being suspended without pay, being physically removed from his workplace, and being subject to false accusations. Runkle v. Gonzales, D.D.C.2005, 391 F.Supp.2d 210. Civil Rights 1250; United States 36

Bureau of Land Management (BLM) employee was not subjected to sexually hostile work environment by her male supervisor's provision of oral and written criticism about

her to management and peers and to her during formal Employee Performance Plan and Results Report (EPPRR) sessions, and communication with her in manner that was often hostile, punitive, loud, and angry. West v. Norton, D.N.M.2004, 376 F.Supp.2d 1105. Civil Rights 1185

Alleged acts of physical and verbal abuse cannot be considered in a hostile work environment action under Title VII unless the employee can point to an act that is part of the same hostile work environment and that falls within the limitations period. Randall v. Potter, D.Me.2005, 366 F.Supp.2d 104. Civil Rights 1505(7)

Genuine issue of material fact, as to whether conduct of female Internal Revenue Service (IRS) employee's first- line supervisor gave rise to hostile work environment, precluded summary judgment for agency on Title VII sexual harassment claim; employee attested at deposition that supervisor always referred to his penis and crotch and made references about sexual act and characterized supervisor as "the kind of man who walks down the hall...grabbing his testicles and crotch and rearranging himself while he stares another woman in the face." Boyd v. Snow, D.D.C.2004, 335 F.Supp.2d 28. Federal Civil Procedure 2497.1

Female Library of Congress employee's proffered testimony from coworkers and former workers regarding her demeaning treatment by supervisor compared to that of male coworkers, as well as testimony concerning supervisor's alleged discriminatory actions toward other female employees, created fact issue as to frequency and pervasiveness of alleged conduct, how it interfered with employee's performance of her duties, and how it affected her psychologically, precluding summary judgment in employee's hostile work environment/sexual harassment Title VII claim against government. Higbee v. Billington, D.D.C.2003, 246 F.Supp.2d 10, reconsideration denied 290 F.Supp.2d 105. Federal Civil Procedure 2497.1

Material issues of fact, as to whether Library of Congress female librarian was interfered with in performance of her duties on gender grounds, precluded summary judgment that government did not create gender based hostile work environment claim under Title VII. Higbee v. Billington, D.D.C.2002, 2002 WL 32000661. Federal Civil Procedure 2497.1

Fact that female Postal Service employee, whom male employee alleged engaged in gender-based harassment against him, including by falsely accusing him of physical abuse in order to have his training blocked, was not supervisor, did not immunize Postal Service from liability on gender-based harassment claim; Postal Service allegedly had confirmed that charges female employee made against male employee were unsubstantiated but repeatedly punished male employee, by subjecting him to adverse employment actions, for what it had concluded was unfounded complaint. Oakstone v. Postmaster General, D.Me.2004, 332 F.Supp.2d 261. Civil Rights 1359

Employer will be liable for hostile work environment sexual harassment committed by one of its employees when: perpetrator committed the harassment while acting within the scope of his employment; employer knew about, or should have known about, the harassment and failed to respond in a reasonable manner; employer manifested in the perpetrator the authority to act on its behalf; or supervisor used his actual or apparent authority to aid or facilitate his perpetration of the harassment, even if a sexual harassment policy is in place and is made known to plaintiff. Jense v. Runyon, D.Utah 1998, 990 F.Supp. 1320. Civil Rights 1189; Civil Rights 1528

Female postal employee failed to establish a prima facie Title VII case of gender-based hostile work environment; employee simply alleged that she was subjected to a hostile work environment without providing any evidence to support her allegation, failed to produce any evidence that she was subjected to a hostile work environment because of her gender, and failed to demonstrate whether supervisor's alleged actions were sufficiently severe or pervasive so as to create an objectively hostile work environment. Nickerson v. Potter, C.A.6 (Ohio) 2004, 102 Fed.Appx. 936, 2004 WL 1447644, Unreported, certiorari denied 125 S.Ct. 482, 543 U.S. 981, 160 L.Ed.2d 360. Civil Rights 1549

Postal Service could not be liable for Title VII sexually hostile work environment claim based on its failure to respond to reports by female employee and other co-workers of sexual harassment, which occurred outside 300-day period for filing claim with Equal Employment Opportunity Commission (EEOC), where no actionable act occurred within filing period. Fairley v. Potter, N.D.Cal.2003, 2003 WL 403361, Unreported. Civil Rights 1505(3)

54. ---- Testing of applicants, sex discrimination, discriminatory practices prohibited

“Content validity” was shown, in sex discrimination action brought by female applicant who was refused employment as attorney advisor with Board of Veterans Appeals, Veterans Administration, in agency's action in giving to all applicants, as employment test, assignment of preparing sample of opinion based on actual Board case, representative of type of work performed by attorney advisors, and evaluated by same individuals for whom applicant would have prepared opinions had she been hired. Coopersmith v. Roudebush, C.A.D.C.1975, 517 F.2d 818, 170 U.S.App.D.C. 374. Civil Rights 1549

55. ---- Demotions, sex discrimination, discriminatory practices prohibited

Female employee at National Institutes of Health failed to demonstrate that her removal as project officer on clinical trials for experimental drugs was adverse employment action, as required to establish prima facie case of sex discrimination under Title VII; employee failed to demonstrate what her prospects as project officer would have been ab-

sent her disclosure of sensitive pricing information concerning one trial and Food and Drug Administration's (FDA) clinical hold on other trial. Bonds v. Leavitt, D.Md.2009, 647 F.Supp.2d 541, affirmed in part , reversed in part 629 F.3d 369. Civil Rights 1169

Genuine issues of material fact existed regarding whether reclassification of African-American female employee was adverse employment action, precluding summary judgment on employee's constructive demotion claim against employer under Title VII. Hawkins v. Holder, D.D.C.2009, 597 F.Supp.2d 4. Federal Civil Procedure 2497.1

Transportation Security Administration (TSA) employee failed to establish prima facie case of sex discrimination in connection with his relief from managerial duties and reassignment to another position following airport incident or his subsequent termination, even though his female subordinate who was also involved in the incident was given an opportunity to correct her mistakes; employee did not establish that he was treated differently than similarly situated person of the opposite sex. Bankston v. Chertoff, D.N.D.2006, 460 F.Supp.2d 1074. Civil Rights 1179

Employee's failure to apply for available position is not fatal to claim of disparate treatment based on nonpromotion, where facts pled actually challenge denial of opportunity to compete for position, and employee may satisfy her prima facie case burden by establishing merely that she suffered an adverse employment action that gives rise to an inference of discrimination. Prince v. Rice, D.D.C.2006, 453 F.Supp.2d 14. Civil Rights 1138

Federal employee stated adverse employment action element of her Title VII sexual discrimination claim against government by alleging that supervisor did not permit her to fulfill basic responsibilities of her job description, denigrated her achievements at every opportunity, circulated intimidating and false accusatory memoranda about her, and never gave her performance evaluations commensurate with her actual performance, preventing her proper advancement. Higbee v. Billington, D.D.C.2003, 246 F.Supp.2d 10, reconsideration denied 290 F.Supp.2d 105. Civil Rights 1169

Army employee failed to show that she was downgraded from equal opportunity officer to supply cataloger under circumstances which would give rise to inference of unlawful discrimination because she was a woman, was white and filed complaint of illegal discrimination, and Secretary of the Army articulated legitimate nondiscriminatory reason for his actions, which employee failed to show were pretext for illegal discrimination, namely, that employee was not capable of managing EEO office. Howard v. Marsh, E.D.Mo.1985, 616 F.Supp. 1116, affirmed 808 F.2d 841, certiorari denied 108 S.Ct. 84, 484 U.S. 822, 98 L.Ed.2d 46. Civil Rights 1549

55a. ---- Suspensions, sex discrimination, discriminatory practices prohibited

Unprofessionalism of federal employee, a black woman suffering from an arthritic hip, in procuring a permanent disabled parking permit for herself while acting in her capacity as parking coordinator without consulting anyone in her supervisory chain of command, proffered as reason for her suspension, was not pretext for disability, race, or gender discrimination in violation of Title VII, even if employee had not violated any rule or policy of Department of Commerce, even if the parking permit she had procured had not been revoked, and even if there were other individuals that had used their authority to issue parking permits for their own benefit who had not been disciplined for their involvement; employee's conduct was sufficient to warrant disciplinary action, and manager and medical officer who had not been disciplined were not similarly situated for purposes of proving disparate treatment, since they did not hold similar positions as employee, and in any event, did not engage in the conduct for which employee was disciplined. Martin v. Locke, D.D.C.2009, 659 F.Supp.2d 140. Civil Rights 1137; Civil Rights 1138; Civil Rights 1171; Civil Rights 1221

Older female nurse at mental hospital who was seeking to establish prima facie case of age and/or gender discrimination failed to put forth sufficient evidence that her nine-day suspension without pay was not due to her inadequate performance; nurse admittedly failed to timely record doctor's order of official one-to-one contact on medical record of patient with history of threatening and disruptive behavior who obtained knife and engaged in dangerous behavior on two separate occasions, first threatening to kill herself then attacking another nurse, and did not ensure one-to-one contact with that patient even though she knew doctor had ordered it. Banks v. District of Columbia, D.D.C.2007, 498 F.Supp.2d 228. Civil Rights 1168; Civil Rights 1204

56. ---- Discharge, sex discrimination, discriminatory practices prohibited

Judgment in favor of discharged United States Postal Service employee on his claim under Title VII of the Civil Rights Act [42 U.S.C.A. § 2000e et seq.] was premised on determination that employee was victim of impermissible gender-based discriminatory discharge, contrary to contention that necessary finding that employee was subject to discriminatory treatment because of his sex had not been made, where it was specifically found that the discharged employee and two female employees consistently violated Postal Service rule and that female employees were lightly disciplined or not disciplined at all for their violations of the rule, and it was noted that Postal Service had to apply method of discipline chosen equally to all violators and not protect violators because of their gender. Loeffler v. Carlin, C.A.8 (Mo.) 1985, 780 F.2d 1365, rehearing granted 788 F.2d 494, on rehearing 806 F.2d 817, certiorari granted 107 S.Ct. 3227, 483 U.S. 1004, 97 L.Ed.2d 733, reversed on other grounds 108 S.Ct. 1965, 486 U.S. 549, 100 L.Ed.2d 549, on remand 854 F.2d 1109. Civil Rights 1558

Employer's stated reasons for termination of employee for inappropriate conduct, name-

ly his repeated inappropriate comments and conduct toward women in violation of its anti-discrimination and anti-harassment policies, were not pretext for age and gender discrimination, thereby precluding employee's claims brought pursuant to Title VII of Civil Rights Act, the Age Discrimination in Employment Act (ADEA), and the District of Columbia Human Rights Act; when employer's human resources representative became aware of complaints, she conducted immediate and thorough investigation which resulted in disciplinary meeting and conduct memo placed in employee's file, and termination was not motivated by ongoing, unrelated class action sex discrimination lawsuit against employer. Aiello v. Novartis Pharmaceuticals Corp., D.D.C.2010, 2010 WL 4259617. Civil Rights 1179; Civil Rights 1209

There was no evidence that position of discharged male United States Postal Service employee was filled by woman, as required for employee to establish prima facie case of discriminatory discharge under Title VII based on his gender. Monk v. Potter, E.D.Va.2010, 723 F.Supp.2d 860, affirmed 2011 WL 108325. Civil Rights 1179

Genuine issue of material fact existed as to second-line supervisor of female probationary employee of Export-Import Bank of the United States was motivated, at least in part, by discriminatory animus based on gender stereotypes when he terminated employee, precluding summary judgment on employee's Title VII gender discrimination with regard to termination of her employment. Nuskey v. Hochberg, D.D.C.2009, 657 F.Supp.2d 47. Federal Civil Procedure 2497.1

Independent contractor established prima facie case that the Executive Office for United States Attorneys (EOUSA) of the Department of Justice (DOJ) terminated her services as a Personnel Security Specialist when her supervisor discovered that she was pregnant, in violation of Title VII; contractor's supervisor offered her the position at EOUSA before learning that she was pregnant, but then released her from the contract upon learning that she was pregnant, supervisor admitted she expressed surprise that contractor had not mentioned she was pregnant, and four female contract employees testified that supervisor released them around the time that she learned that they were pregnant. Harris v. Attorney General of U.S., D.D.C.2009, 657 F.Supp.2d 1. Civil Rights 1176

Employee's conduct in either making, or allowed her husband or son to make, 47 unauthorized telephone calls to Nigeria at a cost to the federal agency employer of $2,695.12 constituted a legitimate, non-discriminatory reason for her termination and was not pretext for sex, race, or religious discrimination in violation of Title VII. Wada v. Tomlinson, D.D.C.2007, 517 F.Supp.2d 148, affirmed 296 Fed.Appx. 77, 2008 WL 4569862, rehearing en banc denied. Civil Rights 1128; Civil Rights 1137; Civil Rights 1158; Civil Rights 1171

United States Agency for International Development (USAID) did not terminate female

employee in gender-discriminatory or retaliatory manner; two charges in Notice of Proposed Removal 'Misrepresentation of Material Fact" and "Providing False Information to a Supervisor," were independently terminable offenses. Talavera v. Fore, D.D.C.2009, 648 F.Supp.2d 118. Civil Rights 1169; Civil Rights 1249(2); United States 36

Female Small Business Administration (SBA) supervisory employee failed to establish prima facie case that her termination, purportedly because of her failure to accept directed reassignment, was due to gender bias; there was no indication in record as to how challenged decision was applied in discriminatory fashion either to women in general, or to plaintiff in particular, due to her sex, of the 114 employees given directed reassignments 67 were male and 47 female, and two male employees in the same office including plaintiff's subordinate, received reassignment letters along with plaintiff. Colon v. Mills, D.Puerto Rico 2009, 646 F.Supp.2d 224, affirmed 2011 WL 504049. Civil Rights 1171; Civil Rights 1172

Evidence presented by discharged female Immigration and Naturalization Service (INS) employee did not preponderate toward finding of gender-based discrimination, and employing agency presented evidence of valid, nonpretextual, nondiscriminatory reasons for employee's discharge; while evidence showed that employee's performance was fully successful her conduct, as reasonably perceived by her supervisors, was abrasive, her attitude was insubordinate, and her reaction to counseling was insulting. Crespo Vargas v. U.S. Government, D.Puerto Rico 2008, 573 F.Supp.2d 532. Civil Rights 1549

Female sheet metal mechanic failed to establish prima facie case of sex discrimination in connection with Navy's termination of her probationary employment; employee failed to show she was meeting her employer's legitimate expectations at time of her termination, or to identify similarly-situated male probationary employee who had similar record of absenteeism who was not terminated. Tarver v. Winter, E.D.N.C.2008, 535 F.Supp.2d 565. Civil Rights 1169; Civil Rights 1172

Postal Service's stated reasons for giving employee her first notice of termination, namely that she did not follow instructions and had unacceptable performance, were not pretexts for gender discrimination in violation of Title VII, where employee admitted that she did not follow instructions and was loud and confrontational, and employee failed to show that Postal Service applied certain performance measurement tool differently to male and female letter carriers. Lawson v. Potter, D.Kan.2006, 463 F.Supp.2d 1270, reconsideration denied 2007 WL 201121. Civil Rights 1171; Civil Rights 1172

Full-time distribution clerk with United States Postal Service (USPS) had not shown that its proffered legitimate, nondiscriminatory reason for her termination, her failure to alert USPS that she was able to return to work and to offer documentation for her absences which resulted in her listing as absent without leave (AWOL) for two months, was pre-

text for race and sex discrimination. Thompkins v. Potter, D.Conn.2006, 451 F.Supp.2d 349. Civil Rights 1137; Civil Rights 1171

Discharged employee of National Park Service who failed to show that reasons given for his firing were pretextual could not recover on his claim that his discharge was result of sex and age discrimination; deposition of employee's supervisor and his co-workers showed that employee did not follow instructions well, even in performing simple assignments. King v. Lujan, D.D.C.1992, 785 F.Supp. 206. Civil Rights 1179; Civil Rights 1209

In view of female former employee's allegations that the National Aeronautics and Space Administration discriminated against her on account of her sex in discharging her during a reduction in force and that she was denied due process by virtue of unlawful administrative structure and in view of decision of District Court of District of Columbia that the complained of administrative structure failed to properly implement the Civil Rights Act of 1964, Pub.L. 88-352, the employee satisfied condition precedent for suit against the National Aeronautics and Space Administration. Weltmann v. Fletcher, N.D.Ohio 1976, 431 F.Supp. 448. Civil Rights 1511

57. ---- Hiring, sex discrimination, discriminatory practices prohibited

Alleged practice of discriminatorily hiring predominately males for positions by Department of Veterans Affairs was not gender discrimination against female employees in violation of Title VII, where employees did not apply for the positions. Ahern v. Shinseki, C.A.1 (R.I.) 2010, 629 F.3d 49. Civil Rights 1169

Issue of material fact as to whether government agency's unusual decision to open applicant pool for new position to outsiders, so that veteran's preference applied to applicants' test scores, was pretext for discrimination precluded summary judgment on female employee's Title VII retaliation claim. Lathram v. Snow, C.A.D.C.2003, 336 F.3d 1085, 357 U.S.App.D.C. 413. Federal Civil Procedure 2497.1

Sixty-year-old applicant's sole allegation that federal employer did not employ women over 60 was insufficient to overcome summary judgment on her Title VII and Age Discrimination in Employment Act (ADEA) claims arising from employer's failure to hire her. Bloch v. U.S. Census Bureau, D.D.C.2010, 2010 WL 4925277. Federal Civil Procedure 2497.1

There was no evidence that position from which former employee was discharged or position for which he later applied remained open or were filled by someone else with similar qualifications as required to support Title VII and Rehabilitation Act claims alleging discriminatory termination and failure to re-hire on the basis of disability, sex, nationality, and race. Gonzalez Bermudez v. Potter, D.Puerto Rico 2009, 675 F.Supp.2d

251. Civil Rights 1138; Civil Rights 1179; Civil Rights 1222

United States Postal Service (USPS) identified a legitimate, non-discriminatory reason for Caucasian female employee's non-selection for the Honaunau postmaster position under *McDonnell-Douglas* framework, in employee's Title VII action alleging she was not hired for the position because of her race and gender, through testimony of the selecting official, in which the official stated he determined the individual selected for the position was the best qualified based on the interview, in particular noting that individual's involvement in the community, his knowledge of the postal system, and his answers to the interview questions. Walker v. Potter, D.Hawai'i 2009, 629 F.Supp.2d 1148. Civil Rights 1169; Civil Rights 1234

Federal agency's proffered reasons, including lack of qualifications, for not hiring 48-year-old Hispanic male applicant for several positions were not rendered pretextual for age, sex and national origin discrimination in violation of Title VII and Age Discrimination in Employment Act (ADEA) merely by virtue of fact that 23-year-old white female had been hired for position for which applicant believed he was more qualified; hiree had applied for position at three different grade levels and had been hired at lowest of those, while applicant had applied for same position only at highest grade level. Moncada v. Peters, D.D.C.2008, 579 F.Supp.2d 46. Civil Rights 1137; Civil Rights 1179; Civil Rights 1209

Library of Congress's proffered reason for not hiring male-to-female transsexual who applied for position with Congressional Research Service (CRS), that applicant would be unable to receive security clearance needed, was pretext for sex discrimination in violation of Title VII; hiring personnel made no effort to determine whether applicant's previous security clearance would receive reciprocal recognition, and supposed time pressure for having employee with clearance was not credible given that incumbent had lacked clearance during her first six months in job, without adverse effect. Schroer v. Billington, D.D.C.2008, 577 F.Supp.2d 293. Civil Rights 1193

There was no evidence that selecting official deviated from established Federal Deposit Insurance Corporation (FDIC) hiring procedures in filling human resource specialist position, as would evince discriminatory motive, in Title VII and Age Discrimination in Employment Act (ADEA) action brought by female FDIC employee who applied for but was not selected for position. Chappell-Johnson v. Bair, D.D.C.2008, 574 F.Supp.2d 87, affirmed 358 Fed.Appx. 200, 2009 WL 5127099. Civil Rights 1171; Civil Rights 1209

Amended complaint by male-to-female transsexual who successfully interviewed for position as terrorism research analyst with Congressional Research Service (CRS) in Library of Congress while presenting as man but was told position had been filled after revealing her gender dysphoria stated claim under Title VII based on sex stereotyping

theory. Schroer v. Billington, D.D.C.2007, 525 F.Supp.2d 58. Civil Rights 1193

Black female former probationary postal employee failed to establish that she was qualified for position of letter carrier and, thus, failed to establish a prima facie case of race and sex discrimination in violation of Title VII; employee was unable to case five linear feet of segmented mail per hour which was a job requirement, despite being given extra training in the hopes that she could master the requirement and given that she received at least twice as much training in casing mail as either the two comparison employees. Mays v. U.S. Postal Service, M.D.Ala.1996, 928 F.Supp. 1552, affirmed 122 F.3d 43. Civil Rights 1127; Civil Rights 1169

Administrator of the Veterans Administration's [now Secretary of Veterans Affair's] policy of submitting only names of veterans for employment as members of the Board of Veterans Appeals constituted sex discrimination under this chapter, since the administrator's practice had a disproportionate impact upon female attorneys and female physicians, and since the requirement was not sufficiently job-related to constitute an absolute precondition to appointment despite its impact on women. Krenzer v. Ford, D.C.D.C.1977, 429 F.Supp. 499. Civil Rights 1173

57a. ---- Pretext, sex discrimination, discriminatory practices prohibited

Alleged statement to female employee by a decisionmaker on her promotional application, made at least a year before the promotion decision, telling the employee that the men in the office had bonded because they had served in the military, was relevant to the employee's claim of gender discrimination, illustrative of statements by the decisionmaker's boss about the decisionmaker's animus toward women, and properly considered, on a summary judgment motion, in evaluating whether the totality of evidence shows the employer's explanation for the employee's non-selection for a promotional position was a pretext for gender discrimination violating Title VII. Talavera v. Shah, C.A.D.C.2011, 638 F.3d 303. Federal Civil Procedure 2545

Employer had legitimate nondiscriminatory reason for temporarily listing federal employee as absent without leave (AWOL), and resulting temporary deprivation of pay due to AWOL status was thus not retaliatory adverse action as might support employee's claim against employer under Title VII alleging retaliation for reporting sexual harassment; although employee alleged she had supervisor's oral approval for leave, human resources department directed supervisor to list employee as AWOL because leave slip she submitted appeared to indicate that she had not obtained prior approval for leave, and employee herself admitted that she erred in completing leave slip. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1249(1); United States 36

Former employee of the National Transportation Safety Board (NTSB) failed to show

that NTSB's proffered legitimate, nondiscriminatory reason for his removal, namely, poor performance, was pretext for sex discrimination in violation of Title VII, where evidence of sex discrimination he provided concerned the NTSB's decision to hire women for various positions for which he had applied, not his removal. Miller v. Hersman, D.D.C.2010, 2010 WL 5480725. Civil Rights 1179

Non-selection of African American female employee for vacancy in Department of Homeland Security was not pretext for retaliation in violation of Title VII, since Department had made selection decision before she indicated her belief that she had been victim of discrimination. Oliver v. Napolitano, D.D.C.2010, 729 F.Supp.2d 291. Civil Rights 1251; United States 36

Federal employer's legitimate, non-discriminatory reasons for terminating male employee, namely, that employee repeatedly incurred unauthorized overtime and was tardy, were not pretext for unlawful gender discrimination under Title VII. Monk v. Potter, E.D.Va.2010, 723 F.Supp.2d 860, affirmed 2011 WL 108325. Civil Rights 1179

United States Department of Agriculture's (USDA's) proffered reason for differences in pay between black female and white male who held Chief Information Officer (CIO) position, because its job classification changed from GS-15 to Senior Executive Service (SES) level prior to latter's selection as CIO, was legitimate and nondiscriminatory and was not shown to be pretext for race or gender discrimination. Thomas v. Vilsack, D.D.C.2010, 718 F.Supp.2d 106. Civil Rights 1137; Civil Rights 1175

Reason proffered by National Aeronautics and Space Administration (NASA) for not selecting male employed as Equal Opportunity Manager for position of Director of EEO Complaints Division, as well as for amount of his bonuses and his performance evaluations, was legitimate and nondiscriminatory and was not shown to be pretext for sex discrimination; there was concern among management officials that employee's case processing was lagging which in turn affected his promotional opportunities, amount of bonus he received, and nature of his performance. King v. Bolden, D.D.C.2010, 717 F.Supp.2d 65. Civil Rights 1179

African-American female GS-13 United States Department of Education (DOE) employee failed to show that DOE's proffered legitimate, nondiscriminatory reasons for her nonselection for GS-14 position were pretext for race and/or gender discrimination; while plaintiff argued that her qualifications were objectively superior to those of selectee, there was no stark gap in their qualifications, other events referred to by plaintiff did not provide background evidence of discrimination, and selecting official had not offered conflicting explanations for not selecting plaintiff. Benjamin v. Duncan, D.D.C.2010, 694 F.Supp.2d 1. Civil Rights 1137; Civil Rights 1171

Genuine issue of material fact existed as to whether employer's explanation that former

employee was not re-hired because he lied on previous employment application was pretextual, precluding summary judgment on Title VII and Rehabilitation Act claims alleging retaliatory failure to re-hire. Gonzalez Bermudez v. Potter, D.Puerto Rico 2009, 675 F.Supp.2d 251. Federal Civil Procedure 2497.1

Even if investigation of employee by the Small Business Administration (SBA) Office of Inspector General (OIG), and subsequent oral instruction she received, were materially adverse employment actions, employee failed to show that SBA's articulated legitimate, nondiscriminatory reason for the actions, namely, independent observations of two of employee's colleagues, who reported during course of ongoing contracting fraud investigation that her actions were unusual, was a pretext for retaliatory animus, as would support her retaliation claim under Title VII against the SBA. Brown v. Mills, D.D.C.2009, 674 F.Supp.2d 182. Civil Rights 1251; United States 36

Environmental Protection Agency's (EPA's) proffered reasons for constructive suspension and termination of female employee with migraine condition, because she accumulated 1040 hours of absence without leave (AWOL) and she failed to follow management's directives to return to her duty station, were legitimate and nondiscriminatory, and employee failed to show those reasons were pretext to discriminate against her based on her sex or disability or retaliate against her for engaging in protected activity. Porter v. Jackson, D.D.C.2009, 668 F.Supp.2d 222, affirmed 2010 WL 5341881, rehearing en banc denied. Civil Rights 1171; Civil Rights 1221; Civil Rights 1251; United States 36

Department of Veterans Affairs (VA) official's proffered reason for selecting another candidate instead of plaintiff for vacant position of Staff Assistant in Nursing Service, that even though both had “similar experiences” and “excellent [office] skills,” other candidate's experiences, qualifications, and references “made her a better candidate,” was legitimate, nondiscriminatory and nonretaliatory and was not shown to be pretext for disability discrimination or retaliation for protected complaint of sexual harassment. Chavers v. Shinseki, D.D.C.2009, 667 F.Supp.2d 116, motion denied 2010 WL 2574102, appeal dismissed 2010 WL 4340538. Armed Services 102; Civil Rights 1221; Civil Rights 1251

Commerce Department's legitimate, non-retaliatory reasons for not promoting female Hispanic employee, that employee failed to address in her applications for promotions a requested topic area concerning her knowledge, skills, and abilities (KSA) and failed to submit documentation in the format that was explicitly required to be granted a Veterans' Preference, were not pretext for retaliation for employee's having previously filed discrimination complaints; although human resources specialist who accepted and scored employee's application informed employee her application was complete, there was no showing this was anything more than a mistake, specialist had no reason to retaliate against employee, as none of employee's prior complaints concerned her, and

employee did not submit the documentation explicitly required by the application. Jagielo v. Wolfe, D.D.C.2009, 658 F.Supp.2d 1. Civil Rights 1251; Officers And Public Employees 10; Officers And Public Employees 11.7

United States Agency for International Development's (USAID's) proffered reason for female employee's nonselection for promotion to Lead Security Specialist position, her poor interview performance, was legitimate and nondiscriminatory and employee failed to show that reason was pretext for gender discrimination or retaliation; employee's theory of preselection was essential to her claim of pretext but was not supported by the record, even if male candidate was preselected there was no evidence it was done for discriminatory or retaliatory purpose, and employee also failed to show pretext through assertion that she was more qualified than selectee, based on fact her "objective score" based on her own self-assessment which placed her on "best qualified" list was higher than his. Talavera v. Fore, D.D.C.2009, 648 F.Supp.2d 118. Civil Rights 1169; Civil Rights 1171; Civil Rights 1251; United States 36

Female employee at National Institutes of Health failed to demonstrate that former employer's proffered nondiscriminatory reason for her termination, namely that she transmitted confidential and sensitive materials concerning clinical trials on experimental drugs, was mere pretext for discrimination, and thus employee could not prevail on her Title VII sex discrimination claim; employee's transmission of materials violated employer's confidentiality policy. Bonds v. Leavitt, D.Md.2009, 647 F.Supp.2d 541, affirmed in part , reversed in part 629 F.3d 369. Civil Rights 1171

Assuming that female Small Business Administration (SBA) supervisory employee established prima facie case of gender discrimination in connection with her two-day suspension, agency's proffered reason for that suspension, unprofessional conduct regarding her behavior during telecommuting training session and continued comments to employees that their positions would be eliminated or contracted out if they participated in the telecommuting program, was legitimate and nondiscriminatory and was not shown by employee to be pretext for gender discrimination; plaintiff alleged in conclusory fashion that at least eight female employees and no males were reprimanded and/or suspended during district director's tenure, but had not presented sufficient admissible evidence that her male counterparts engaged in similar disrespectful and disruptive behavior and were not subject to disciplinary measures. Colon v. Mills, D.Puerto Rico 2009, 646 F.Supp.2d 224, affirmed 2011 WL 504049. Civil Rights 1169; Civil Rights 1172

United States Postal Service (USPS) identified a legitimate reason unrelated to Caucasian employee's race for not selecting employee for Hawi postmaster position under *McDonnell-Douglas* framework, in employee's Title VII action alleging she was not hired for the position because of her race; selecting official testified that he felt that the individual he selected was the most qualified applicant, in light of that applicant's length of

service and her involvement in the community, and, in addition, because of the Caucasian employee's restriction to lifting no more than 25 pounds, the official believed that she could not perform the job without full-time assistance to lift items beyond that weight. Walker v. Potter, D.Hawai'i 2009, 629 F.Supp.2d 1148. Civil Rights 1234

Asserted non-discriminatory and non-retaliatory reasons of female Federal Housing Finance Agency (FHFA) employee's supervisor for failing to convert her part-time counsel position to full-time position after posting announcement of vacancy, namely, that he was unable to secure requisite funding and authorization to fill position, was not pretext for gender discrimination or retaliation under Title VII based on her non-selection for position. Powell v. Lockhart, D.D.C.2009, 629 F.Supp.2d 23. Civil Rights 1171; Civil Rights 1251; United States 36

Reasons proffered by Federal Bureau of Investigation (FBI) for its adverse employment actions against female Video Communications Specialist (VCS) were legitimate and nondiscriminatory; her decision to load personal video games on her computer at work threatened security of FBI's computer network, playing them during work hours was act of open defiance that threatened to impede FBI investigations throughout country and was serious enough to warrant Office of Professional Responsibility (OPR) investigation, she left her safe unlocked at night on four occasions, once claimed more compensatory time than she deserved, delayed and mishandled case she was requested to expedite, and attended training seminar three months after having been denied permission to do so, audit of five of her randomly selected cases discovered “errors, inaccuracies, and documentation issues” in each, and she twice failed to document information in her notes and to properly label evidence. Evans v. Holder, D.D.C.2009, 618 F.Supp.2d 1. Civil Rights 1126; Civil Rights 1169

Federal employer's proffered reasons for not hiring male-to-female transsexual, that applicant was not trustworthy and would be unable to focus on job, were pretexts for sex discrimination in violation of Title VII; there was no showing of anything that would have distracted applicant from performing duties of job, and hiring personnel thanked applicant for her honesty in course of rescinding job offer. Schroer v. Billington, D.D.C.2008, 577 F.Supp.2d 293. Civil Rights 1193

58. ---- Promotions, sex discrimination, discriminatory practices prohibited

Former female FBI agent's allegations that FBI officials referred her to the Office of Professional Responsibility (OPR) in order to prevent her from receiving promotions until the OPR complaints were resolved supported her claim of discrimination in violation of Title VII; preventing agent from receiving a promotion constituted an adverse employment action. Velikonja v. Gonzales, C.A.D.C.2006, 466 F.3d 122, 373 U.S.App.D.C. 276, on remand 501 F.Supp.2d 65. Civil Rights 1135

Manager's comment to white male federal employee that he had been "screwed" over decision to hire white woman and deny promotion to employee was insufficient to show discrimination; the manager did not refer to employee's race or gender in making the statement, and employee's belief that the manager was implicitly complaining about the affirmative action policy when he uttered the remark was too conjectural to serve as evidence of race or gender discrimination. Mlynczak v. Bodman, C.A.7 (Ill.) 2006, 442 F.3d 1050. Civil Rights 1179; Civil Rights 1234

Federal agency employer, by not promoting female agency employee, did not violate order in employee's previous Title VII sex discrimination action against agency, which required employee's placement at specific grade level, appropriate work assignments, on-the-job training, evaluation standards, and increased responsibilities as employee demonstrated the capabilities to assume such responsibilities, precluding civil contempt order based on non-promotion; order did not mandate promotion, and order permitted employer to rely its own assessments of employee's progress in determining whether to increase her responsibilities. Broderick v. Donaldson, C.A.D.C.2006, 437 F.3d 1226, 369 U.S.App.D.C. 374. Civil Rights 1564

Female federal employee failed to establish prima facie Title VII claim of discriminatory nonpromotion where she had never applied for, nor expressed interest in applying for, position in question, and there was no evidence that such application would have been futile. Lathram v. Snow, C.A.D.C.2003, 336 F.3d 1085, 357 U.S.App.D.C. 413. Civil Rights 1169

White female Air Traffic Controller Specialist of Cuban national origin who was sixth on panel's overall ranking but scored lower in interview that was given heavier weight in manager's ultimate determination, failed to establish that legitimate, nondiscriminatory reason proffered by United States Department of Transportation (DOT) for not promoting her to position of Operations Supervisor was pretext to discriminate against her on basis of her race, sex or national origin; there was no objective nexus between overall ranking by panel, which was not vested with decisionmaking authority, and applicant's qualification for job, and while vacancy announcement did not disclose interview component, that omission was not circumstantial evidence of pretext. Delgado v. U.S. Dept. of Transp., S.D.Fla.2010, 709 F.Supp.2d 1360. Civil Rights 1137; Civil Rights 1171; Civil Rights 1234

Although federal employee established a prima facie case of sex and national origin discrimination with regard to disparate treatment claims based on selection of higher rated candidate for job position and denial of her application of skill training, which employee did not request from her supervisors, federal employer articulated nondiscriminatory reasons for those actions which were not shown to be a pretext for discrimination based on sex or national origin. Garcia v. Peake, D.Puerto Rico 2010, 707 F.Supp.2d 275. Civil Rights 1138; Civil Rights 1172

Employer's legitimate, non-discriminatory reason that African-American female employee was not one of the two most-qualified candidates for supervisory printing specialist positions in Congressional Publishing Services was not pretext for discrimination in selection of white male candidates over employee, as required for employee's Title VII action, even though employee had more supervisory experience than one of the candidates; supervisory experience was only one of five qualifications listed in position announcement, and employee did not have experience in procurement, know laws and regulations related to position and did not have technical expertise and knowledge of congressional legislative process, which were listed as qualifications and which the other candidates had. Colbert v. Tapella, D.D.C.2010, 677 F.Supp.2d 289. Civil Rights 1137; Civil Rights 1171

Commerce Department employee's failure to address, in her applications for promotions she did not receive, a requested topic area concerning her knowledge, skills, and abilities (KSA), and her failure to submit documentation in the format that was explicitly required to be granted a Veterans' Preference, constituted legitimate, non-retaliatory reasons under Title VII for her not receiving credit for the KSA or Veterans' Preference. Jagielo v. Wolfe, D.D.C.2009, 658 F.Supp.2d 1. Civil Rights 1249(1); Officers And Public Employees 10; Officers And Public Employees 11.7

Department of Justice employee failed to demonstrate that employer's proffered legitimate, non-retaliatory reason for its decision not to promote her, namely that another candidate possessed stronger supervisory skills, was pretextual for retaliatory motive in violation of Title VII; employee offered only unsupported, conclusory assertions that she was in direct line for promotion and that she possessed more experience than other candidate, employer demonstrated clear and reasonably specific factual basis for its assessment of employee's supervisory skills and even if other candidate was pre-selected for promotion, it was not done out of intent to retaliate against employee. Gonzales v. Holder, D.D.C.2009, 656 F.Supp.2d 141. Civil Rights 1251; Civil Rights 1553; United States 36

Department of Health and Human Services (HHS) did not discriminate against 45-year-old white female applicant in determining that she would not have been selected even if she had established eligibility for merit promotion (MP) process; human resources specialist determined that applicant's Quickhire answers detailing her writing experience overstated her resume and would have precluded her from selection, and applicant could not show that discrimination was the real reason for her nonselection, particularly since all four selectees were white, one was female, and three of four were over age of 40, one of them 58. Atanus v. Sebelius, D.D.C.2009, 652 F.Supp.2d 4, affirmed 2010 WL 1255937. Civil Rights 1141; Civil Rights 1169; Civil Rights 1207

Older, African-American male federal employee, a Financial Specialist who was as-

signed duties of Contracting Officer Technical Representative (COTR), failed to show that agency's proffered legitimate, nondiscriminatory reason for failing to promote him based on accretion of duties was pretext for age, race or gender discrimination through argument that non-Black male employees within Financial Operations Division received accretion of duties promotions; employee failed to show that employees with qualifications similar to his were promoted on basis of accretion of COTR duties during relevant time period, and none of the five allegedly similarly-situated employees had the same position as his or worked in his branch. Montgomery v. Chao, D.D.C.2007, 495 F.Supp.2d 2, affirmed 546 F.3d 703, 383 U.S.App.D.C. 290, rehearing en banc denied. Civil Rights 1138; Civil Rights 1179; Civil Rights 1210

Employee's difficulties in resolving conflicts among staff and resolving administrative issues such as scheduling and shift rotation, as well as falsely representing herself as the "Deputy Chief" on agency's website constituted legitimate, nondiscriminatory reason for her nonselection for promotion and was not pretext for sex, race, or religious discrimination in violation of Title VII. Wada v. Tomlinson, D.D.C.2007, 517 F.Supp.2d 148, affirmed 296 Fed.Appx. 77, 2008 WL 4569862, rehearing en banc denied. Civil Rights 1135; Civil Rights 1137; Civil Rights 1158; Civil Rights 1171

United States Agency for International Development's (USAID's) proffered reason for female employee's nonselection for promotion to Security Specialist position, that her interview performance was inferior to that of male candidate who was ultimately selected, was legitimate and nondscriminatory and was not shown to be pretext for gender discrimination; evidence offered to show pretext included nonprobative statement by Director of Security to plaintiff that deciding official had problems working with women, hearsay statements allegedly made by another interviewee for Security Specialist position to demonstrate that plaintiff was asked different interview questions than male interviewees, statements allegedly made by selecting official that "men had a bond with each other because they had all served in the military," selected male interviewee's allegedly inferior qualifications, statistical evidence of preference for promoting men in Office of Security, and selecting official's at worst negligent destruction of his interview notes only two months after selection of male interviewee. Talavera v. Fore, D.D.C.2009, 648 F.Supp.2d 118. Civil Rights 1169; Civil Rights 1549

Federal employer's proffered nondiscriminatory reason for selecting white candidate instead of black female employee whom interview committee had found equally qualified for program analyst position, that black employee had potentially embellished her resume, which was based on discussion of her work with her supervisor, was not pretext for sex, race, or national origin discrimination. Vines v. Gates, D.D.C.2008, 577 F.Supp.2d 242. Civil Rights 1137; Civil Rights 1171

Agency offered legitimate, nondiscriminatory explanations for its nonpromotion of African-American female employee over the age of 40, a senior trial attorney in Office of

the General Counsel (OGC) for Government Accountability Office (GAO) Personnel Appeals Board (PAB), to higher grade in-position; employee's initial request was denied because it was directed to temporary Acting General Counsel, who had served only six weeks and felt it would be inappropriate for her to promote employee who had been on leave for more than two of those weeks, about whose work she had little direct knowledge, and agency disputed that alleged second request for promotion, with respect to which employee had not exhausted her administrative remedies, was even made. Williams v. Dodaro, D.D.C.2008, 576 F.Supp.2d 72. Civil Rights 1135; Civil Rights 1169; Civil Rights 1207

Genuine issue of material fact, as to pretextual nature of legitimate, nondiscriminatory explanation offered by United States Department of Agriculture (USDA) for selecting white male applicants instead of black female applicant for Administrative Management Services (AMS) positions, precluded summary judgment on her Title VII claims of race and gender discrimination; evidence in the record demonstrated that one of the white male applicants may have been preselected and that USDA may have violated regulations governing merit-based promotions regarding presence of civil rights observer during black female applicant's interview. Fields v. Johanns, D.D.C.2008, 574 F.Supp.2d 159. Federal Civil Procedure 2497.1

Proffered legitimate, nondiscriminatory reason for employee's non-selection for a position within the Federal Deposit Insurance Corporation (FDIC), that neither the selecting official nor two other interviewers determined her to be the best applicant, was not a pretext for race or age discrimination violating Title VII or the Age Discrimination in Employment Act (ADEA), despite the employee's belief that she was the most qualified applicant. Chappell-Johnson v. Bair, D.D.C.2008, 574 F.Supp.2d 103, affirmed 358 Fed.Appx. 202, 2009 WL 5127101. Civil Rights 1137; Civil Rights 1209

Federal Deposit Insurance Corporation (FDIC) proffered legitimate, non-discriminatory reason for female employee's non-selection for human resource specialist position, namely, that no one involved in selection process identified her as best candidate for job, in employee's action alleging sex discrimination and retaliation in violation of Title VII and age discrimination in violation of Age Discrimination in Employment Act (ADEA). Chappell-Johnson v. Bair, D.D.C.2008, 574 F.Supp.2d 87, affirmed 358 Fed.Appx. 200, 2009 WL 5127099. Banks And Banking 505; Civil Rights 1169; Civil Rights 1207; Civil Rights 1249(1)

African-American female federal GS-13 employee failed to establish prima facie case of disparate treatment with regard to her failure to be promoted to GS-14 grade, absent showing she was qualified for and applied for promotion or that other employees who were not members of protected group were indeed promoted at time her request for promotion was denied. Kilby-Robb v. Spellings, D.D.C.2007, 522 F.Supp.2d 148, affirmed 309 Fed.Appx. 422, 2009 WL 377301. Civil Rights 1138; Civil Rights

1172

Not permitting Bureau of Alcohol, Tobacco and Firearms (ATF) employee to serve as Acting Branch Chief for first eleven months of her tenure at Firearms and Explosives Imports Branch (FEIB) did not result in "adverse employment action" that would support prima facie case of race or sex discrimination under Title VII. Nichols v. Truscott, D.D.C.2006, 424 F.Supp.2d 124. Civil Rights 1135; Civil Rights 1169

Genuine issues of material fact, as to whether two junior female United States Postal Service (USPS) employees were valid comparators and whether they were given expediter training and work opportunities ahead of male USPS employee, precluded summary judgment for employer on male employee's gender discrimination claim under Title VII. Oakstone v. Postmaster General, D.Me.2005, 397 F.Supp.2d 48. Federal Civil Procedure 2497.1

Genuine issues of material fact as to whether selecting official's proffered reasons for promoting female candidate over male candidate were pretextual and whether there was pattern of gender bias operating within department precluded summary judgment in male candidate's Title VII gender discrimination action. Rainone v. Potter, E.D.N.Y.2005, 359 F.Supp.2d 250. Federal Civil Procedure 2497.1

Male postal service employee established prima facie case of gender discrimination; employee demonstrated he was qualified for expediter position, had been denied training and placement in position, and he alleged that females who were junior to him had been given expediter work he had been denied. Oakstone v. Postmaster General, D.Me.2004, 332 F.Supp.2d 261. Civil Rights 1549

Even if African-American female United States Postal Service (USPS) employee established prima facie case of disparate treatment based on race and sex in connection with her nonplacement in Associate Supervisor Program (ASP), employer's proffered reasons for failing to select her for ASP, that she did not earn composite score high enough to qualify for one of the twenty-six program positions and that her performance in interview was among the worst of all interviewees and resulted in low overall rating, were legitimate and nondiscriminatory. Williams v. Potter, D.Kan.2004, 331 F.Supp.2d 1331, affirmed 149 Fed.Appx. 824, 2005 WL 2387828, certiorari denied 127 S.Ct. 83, 549 U.S. 818, 166 L.Ed.2d 30. Civil Rights 1138; Civil Rights 1142; Civil Rights 1172

Male employee failed to show that proffered reason of government employer to not promote him to managerial position was merely pretext, in lawsuit under Title VII alleging reverse discrimination, where it was within selecting official's prerogative to place greater value on managerial experience of promoted employee and her lengthy experience in relevant department, selecting official was entitled to emphasize need for initia-

tive, which was listed in job description, because male employee was not markedly better candidate than promoted employee, and statistics proffered by male employee did not represent comparative analysis of similarly-situated individuals. Horvath v. Thompson, D.D.C.2004, 329 F.Supp.2d 1. Civil Rights 1179

Department of Navy employee did not establish prima facie case of discrimination in connection with her failure to be promoted to Management Analyst positions, where she did not apply for those positions and her failure to apply was not excused under futility or nonsolicitation exceptions to application requirement. Carroll v. England, D.D.C.2004, 321 F.Supp.2d 58. Civil Rights 1135

Federal employee failed to establish that employer's proffered reason for not promoting her, that employee did not have the required experience for promoted position, was pretext for race and gender discrimination as required to support Title VII claim against employer for failure to promote, where person hired for promoted position had 44 years of experience in relevant area. Tolson v. James, D.D.C.2004, 315 F.Supp.2d 110. Civil Rights 1137; Civil Rights 1171

Federal employee who alleged that he was denied an accretion promotion to GS-14 because of age and gender discrimination failed to establish that he was qualified for promotion to GS-14 by accretion of duties. Schamann v. O'Keefe, D.Md.2004, 314 F.Supp.2d 515. Civil Rights 1179; Civil Rights 1207

It was reasonable to infer, from evidence that black female over the age of 40 had been consistently rejected for all promotional positions with the Immigration Naturalization Service for which she applied until the office became the subject of an equal employment opportunity investigation and that she was then hired to fill the first position which became vacant, that it was more likely than not that the employer's actions were based on discriminatory criteria forbidden by Title VII. Prince v. Commissioner, U.S. I.N.S., E.D.Mich.1989, 713 F.Supp. 984. Civil Rights 1535

Request by National Institutes of Health employee, who alleged discrimination on account of sex because of agency's failure to promote her in 1971, for numerical hiring and timetables for promotion of women to higher level positions at agency was denied, where there was no proof of present broad-scale discrimination against women at agency and employee was unable to show that agency employees were suffering from present effects of past discrimination against women. Marimont v. Califano, D.C.D.C.1979, 464 F.Supp. 1220. Civil Rights 1564

Sexual discrimination against black male Postal Service employee was not shown in failure to promote him to position which was ultimately filled by another black male, either by fact that white female was initially selected for the position and later denied the appointment, or by fact that subsequently certain actions designated as reprisals were

taken against plaintiff, where it could not be said that such actions were racially or sexually discriminatory in intent or effect. Lee v. Bolger, S.D.N.Y.1978, 454 F.Supp. 226. Civil Rights 1548; Civil Rights 1549

Findings of the Civil Service Commission [now findings of the E.E.O.C.] that Department of Agriculture employee was not refused promotion because of sex discrimination were supported by a preponderance of the evidence. Perkins v. U. S. Dept. of Agriculture, E.D.La.1975, 399 F.Supp. 1371. Civil Rights 1509

58a. ---- Assignments, sex discrimination, discriminatory practices prohibited

Fact that federal employee had requested transfer to different position was not legitimate nondiscriminatory or nonretaliatory reason for adverse employment action in form of reassignment which resulted in permanent and drastic reduction in her duties. Thomas v. Vilsack, D.D.C.2010, 718 F.Supp.2d 106. Civil Rights 1135; Civil Rights 1249(1); United States 36

Reasons proffered by United States Postal Service (USPS) for change in employee's work schedule, employer's business needs, employee's seniority level, and employee's inability to work window duties due to her disability were legitimate and nondiscriminatory and shifted burden to employee to show they were pretext for gender discrimination. Armery v. Potter, D.Mass.2007, 497 F.Supp.2d 134. Civil Rights 1169; Civil Rights 1537

Genuine issue of material fact existed as to whether asserted justification of female former Federal Housing Finance Agency (FHFA) employee's supervisor for restricting employee's hours, namely, that he felt that he should not be in office alone with her given her inappropriate behavior during meeting over her performance review, was real reason for hours restriction, precluding summary judgment on employee's Title VII gender discrimination and retaliation claims relating to restriction. Powell v. Lockhart, D.D.C.2009, 629 F.Supp.2d 23. Federal Civil Procedure 2497.1

Claimed assignment of tedious work such as photocopying to federal employee over three-year period involved no “adverse employment action” and also failed to give rise to inference of discrimination, as needed to support prima facie case of race or sex discrimination under Title VII. Nichols v. Truscott, D.D.C.2006, 424 F.Supp.2d 124. Civil Rights 1126; Civil Rights 1169; Civil Rights 1535; Civil Rights 1537

Federal employee's temporary office assignment in trailer did not rise to level of an adverse action under Title VII; trailer to which employee was temporarily assigned was well-equipped with air conditioning, heat, private restroom, refrigerator, microwave, phone and facsimile service, copier, numerous cabinets, and computer. Moore v. Ashcroft, D.D.C.2005, 401 F.Supp.2d 1. Civil Rights 1135

Genuine issues of material fact, as to whether two junior female United States Postal Service (USPS) employees were valid comparators and whether they were given expediter training and work opportunities ahead of male USPS employee, precluded summary judgment for employer on male employee's gender discrimination claim under Title VII. Oakstone v. Postmaster General, D.Me.2005, 397 F.Supp.2d 48. Federal Civil Procedure ⚿2497.1

Delay by Federal Bureau of Investigation (FBI), as employer, in placing employee in permanent assignment did not constitute "adverse action," for purpose of employee's claim under Title VII. Runkle v. Gonzales, D.D.C.2005, 391 F.Supp.2d 210. Civil Rights ⚿1135

58b. ---- Compensation, sex discrimination, discriminatory practices prohibited

African-American female employed by United States Department of Agriculture (USDA) established prima facie case of pay discrimination, assuming it was proper to use white male who succeeded her as Chief Information Officer (CIO) as comparator; she was paid at a lower rate than he while performing under the same job description. Thomas v. Vilsack, D.D.C.2010, 718 F.Supp.2d 106. Civil Rights ⚿1138; Civil Rights ⚿1175

Male employee failed to demonstrate that legitimate, nondiscriminatory reason proffered by National Aeronautics and Space Administration (NASA), his employer, for giving him smaller bonus than other employees, specifically that deficiencies in his performance were affecting quality of his work, was pretextual, as required to prevail on his Title VII sex-based discrimination claim; employee was subjected to standard evaluation process and his bonus was determined according to his performance. Johnson v. Bolden, D.D.C.2010, 699 F.Supp.2d 295. Civil Rights ⚿1179

Change in grade level of position for which white male candidate was selected rather than African-American female employee was not discrimination in violation of Title VII, where decision to change grade level was made prior to posting of the announcement and prior to receipt of any applications from candidates of any race or gender. Colbert v. Tapella, D.D.C.2010, 677 F.Supp.2d 289. Civil Rights ⚿1135; Civil Rights ⚿1169

Library of Congress proffered legitimate, non-discriminatory reason for not paying female employee, who had permanent position as Chief of Arts and Sciences Cataloging Division but also served as temporary Assistant Director of Bibliographic Access, at senior level, namely, budgetary constraints, in employee's Title VII action alleging gender discrimination. Mansfield v. Billington, D.D.C.2008, 574 F.Supp.2d 69. Civil Rights ⚿1175

59. ---- Transfers, sex discrimination, discriminatory practices prohibited

District court's determination that Postal Service had legitimate, nondiscriminatory reasons for not transferring female employee from carrier to clerk position pursuant to request was clearly erroneous in that record revealed pretext, inconsistency, and contradictory explanations which changed every time they were recorded. Edwards v. U.S. Postal Service, C.A.8 (Ark.) 1990, 909 F.2d 320. Civil Rights 1171

A plaintiff who is made to undertake or who is denied a lateral transfer, that is, one in which she suffers no diminution in pay or benefits, does not suffer an actionable injury under Title VII unless there are some other materially adverse consequences affecting the terms, conditions, or privileges of her employment or her future employment opportunities such that a reasonable trier of fact could conclude that the plaintiff has suffered objectively tangible harm. Martin v. Locke, D.D.C.2009, 659 F.Supp.2d 140. Civil Rights 1135

Female career employee with Small Business Administration (SBA) disaster program failed to show that agency's proffered reason for her termination, her failure to accept directed reassignment, was pretext to retaliate against her for protected activity under Title VII; fact that factors set forth in agency's memorandum of understanding (MOU) with union regarding directed reassignment of certain employees were applied to non-union members did not necessarily render decision in her case retaliatory, reassignment decision included both disaster and regular funded employees, counselor to SBA administrator acknowledged review of employee's letter outlining her reasons for declining immediate relocation, and alleged disciplinary actions taken against employee did not qualify as protected conduct. Colon v. Mills, D.Puerto Rico 2009, 646 F.Supp.2d 224, affirmed 2011 WL 504049. Civil Rights 1251; United States 53(8)

Federal government produced sufficient evidence to rebut presumption of discrimination, and to warrant finding of legitimate, non-discriminatory reason for its adverse employment actions, on employee's Title VII claim of gender discrimination, by offering several reasons to demonstrate that its transfer and advancement decisions were legitimate and non-discriminatory. DeCaire v. Gonzales, D.Mass.2007, 474 F.Supp.2d 241, vacated 530 F.3d 1, corrected. Civil Rights 1549

Secretary of Commerce's proffered justification for involuntary reassignment of female Chairman of the Operating Committee on Export Policy of the Bureau of Industry and Security (BIS) to newly created position of Export Policy Analyst following her return from educational leave, that creation of position and assignment of returning employee to it were done to enhance BIS's ability to carry out its mission,and that reassignment was long contemplated, well-researched and necessary to fulfill agency's mission, was legitimate and nondiscriminatory and shifted burden to reassigned employee to show that reassignment was motivated by unlawful gender discrimination. Kalinoski v. Gutierrez, D.D.C.2006, 435 F.Supp.2d 55. Civil Rights 1169; Civil Rights 1537

Federal agency's proffered justifications for nonselection of older, African-American female applicant for position, assessment of rating panel which concluded she was less qualified for position relative to other applicants and that her name thus should not be included on "best qualified" list forwarded to selecting official and fact selectee was essentially performing equivalent job at another agency, were legitimate and nondiscriminatory and were not shown to be pretext for age, race or sex discrimination. Oliver-Simon v. Nicholson, D.D.C.2005, 384 F.Supp.2d 298. Civil Rights 1137; Civil Rights 1171; Civil Rights 1209

Bureau of Land Management (BLM) employee was not subjected to retaliation for her complaints of sex discrimination, as allegedly retaliatory acts of threatening to block her requested transfer to another office, ordering her early return from conference, proposing to issue letter of insubordination that was never actually filed, and making of disparaging remarks about her to one of her prospective supervisors in the other office, were not "adverse employment actions." West v. Norton, D.N.M.2004, 376 F.Supp.2d 1105. Civil Rights 1249(1)

Black female federal employee, in employment discrimination action, failed to carry her burden of showing that interagency transfer of black male to supervisory position for which she had applied was pretext for sexual discrimination. Canty v. Olivarez, N.D.Ga.1978, 452 F.Supp. 762. Civil Rights 1549

59a. ---- Miscellaneous actions, sex discrimination, discriminatory practices prohibited

Supervisors' lowering of federal employee's performance evaluation on two occasions did not constitute materially adverse action as might form basis of employee's claim against employer under Title VII alleging retaliation for reporting sexual harassment, where evaluations did not cause employee financial harm. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1249(1); United States 36

Even if female wildlife biologist with National Forest Service (NFS) established prima facie case of retaliation, in violation of Title VII, based on her employer's actions of restructuring her job duties as a result of her Equal Employment Opportunity Commission (EEOC) complaint, employer's reason for restructuring the position was legitimate, where biologist's co-worker's departure from the department left a need for someone to perform the duties, and employer believed that biologist's prior experience performing duties made her the best candidate to assume them. White v. Schafer, D.Colo.2010, 738 F.Supp.2d 1121. Civil Rights 1249(1); United States 36

Reason given by United States Department of Agriculture (USDA) for failure to complete employee's mid-year review was legitimate, non-retaliatory reason for its action

and not pretext for discrimination in violation of Title VII, where employee's supervisor began his position when the reports were due and was unable to complete them for any of his subordinates. Minor v. Vilsack, D.D.C.2010, 714 F.Supp.2d 114. Civil Rights 1249(1); Civil Rights 1251; United States 36

Department of State's proffered reason for employee's performance rating of "excellent", rather than "outstanding", that employee needed to show improvement in the communication, research and analysis related to his grant work, was not pretext for retaliation in violation of Title VII. Hunter v. Clinton, D.D.C.2009, 653 F.Supp.2d 115. Civil Rights 1251; United States 36

Applicant for employment as writer/editor at Department of Health and Human Services (HHS) was not discriminated against by virtue of her failure to receive additional points in selection process for being an "Outstanding Scholar"; applicant had not demonstrated her eligibility for Outstanding Scholar program, much less shown that her nonselection through program gave rise to inference of discrimination. Atanus v. Sebelius, D.D.C.2009, 652 F.Supp.2d 4, affirmed 2010 WL 1255937. Civil Rights 1127

Poor performance evaluation, which precluded female Federal Housing Finance Agency (FHFA) employee from receiving automatic increase in salary and made her ineligible for performance bonus, was materially adverse for purposes of employee's Title VII gender discrimination and retaliation claims based on evaluation. Powell v. Lockhart, D.D.C.2009, 629 F.Supp.2d 23. Civil Rights 1175; Civil Rights 1249(1); United States 36

Library of Congress's proffered reasons for not hiring male-to-female transsexual who applied for position with Congressional Research Service (CRS), that applicant might lack credibility with members of Congress, and might be unable to maintain her military contacts acquired as a male, violated Title VII's proscription against sex discrimination; former constituted deference to presumed biases of others, and latter was not backed up by any effort to discern reasonableness of such concern. Schroer v. Billington, D.D.C.2008, 577 F.Supp.2d 293. Civil Rights 1193

Federal employee failed to establish prima facie case of retaliation under Title VII, absent showing that lower performance appraisal she received after she sought EEO counseling and filed discrimination complaint was an "adverse employment action"; she received appraisals of "Fully Successful" and "Exceeds Fully Successful." Mogenhan v. Chertoff, D.D.C.2008, 577 F.Supp.2d 210, affirmed in part , reversed in part 613 F.3d 1162, 392 U.S.App.D.C. 195. Civil Rights 1249(1); United States 36

Genuine issues of material fact as to whether there were common elements of the employee performance appraisal system among bureaus within Department of Commerce that allowed decision-makers to exercise excessive subjectivity precluded summary

judgment in Title VII disparate impact action against department. Howard v. Gutierrez, D.D.C.2008, 571 F.Supp.2d 145. Federal Civil Procedure ⚷2497.1

Supervisor did not discriminate against female federal employee of United States Marshals' Service on basis of her gender in violation of Title VII by favoring less qualified persons than employee for positions in which employee was interested, where employee was affiliated with co-workers who had conflict with supervisor and supervisor sought to marginalize his opponents, and supervisor had personal relationship with, and vested more trust in, those less qualified persons; supervisor possessed discretionary prerogatives of management and court could not evaluate supervisor's management decisions so long as they were not unlawful. DeCaire v. Gonzales, D.Mass.2007, 474 F.Supp.2d 241, vacated 530 F.3d 1, corrected. Civil Rights ⚷1169

Failure of Federal Bureau of Investigation (FBI), as employer, to investigate employee's complaint against other employees did not constitute "adverse action," for purpose of employee's claim under Title VII. Runkle v. Gonzales, D.D.C.2005, 391 F.Supp.2d 210. Civil Rights ⚷1126

59b. ---- Evaluations, sex discrimination, discriminatory practices prohibited

A lower score on federal employee's performance evaluation, by itself, was not actionable under Title VII where employee, who claimed sexual harassment and retaliation, failed to establish that the lower score led to a more tangible form of adverse action, such as ineligibility for promotional opportunities. Brown v. Snow, C.A.11 (Ga.) 2006, 440 F.3d 1259. Civil Rights ⚷1186; Civil Rights ⚷1249(1); United States ⚷36

60. National origin discrimination, discriminatory practices prohibited--Generally

During trial on government employee's Title VII claim against employer alleging discrimination based on race and national origin, district court did not abuse its discretion by refusing to give employee's requested instruction stating that in a national origin case comments regarding a plaintiff's accent may constitute indirect evidence of discrimination where there is no showing that language difficulties would interfere with a plaintiff's ability to perform the duties of the job, where instructions given conveyed value of circumstantial evidence, pointed out that intentional discrimination was seldom admitted, and connection between employee's nationality and accent was clear from trial testimony. Zokari v. Gates, C.A.10 (Okla.) 2009, 561 F.3d 1076. Civil Rights ⚷1556

Federal agency was not liable to agency employee under Title VII for subjecting her to a hostile working environment because of her national origin, absent showing that coworkers' hostility toward employee was based on employee's being of Indian or foreign origin, rather than on her filing of complaints with her superiors about coworkers' competence and about their harassing her. Nair v. Nicholson, C.A.7 (Ill.) 2006, 464 F.3d

766, rehearing and rehearing en banc denied. Civil Rights 1147

Hispanic manager's philosophical desire for the hiring of minorities in federal government did not prove that any particular decision he made to promote women over white men was for discriminatory reasons. Mlynczak v. Bodman, C.A.7 (Ill.) 2006, 442 F.3d 1050. Civil Rights 1179; Civil Rights 1234

Claim of Bulgarian-born employee of the Voice of America that his employer discriminated on account of national origin was effectively rebutted by an uncontested evidentiary showing that the differentials in grade level and remuneration protested by employee were job-related and thus not violative of this section. Talev v. Reinhardt, C.A.D.C.1981, 662 F.2d 888, 213 U.S.App.D.C. 332. Civil Rights 1544

Applicant for attorney position with the United States Citizenship and Immigration Services (USCIS) failed to establish prima facie case of disparate treatment discrimination based on his race and national origin, in violation of Title VII, where he did not offer any statistical evidence to establish a significant disparity between make-up of the applicant pool and the selectees, and he did not offer any evidence, beyond his own non-selection, that reliance on law school rankings necessarily resulted in disproportionate exclusion of candidates who were graduates of traditionally black law schools. Onyewuchi v. Mayorkas, D.D.C.2011, 2011 WL 652369. Civil Rights 1545

Federal Deposit Insurance Corporation's (FDIC) legitimate, nonretaliatory reason for denying request of employee, who filed Equal Employment Opportunity Commission (EEOC) complaints, to telework, namely, that “catching up” on e-mails was not appropriate work to be performed while teleworking per FDIC policy, was not pretext for retaliation under Title VII, Rehabilitation Act, or Age Discrimination in Employment Act (ADEA). Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Civil Rights 1251

There was no evidence that employee, who was African-American U.S. citizen of Hispanic descent, originally born in Panama, was excluded from social events based on race or national origin, as required for Title VII race and national origin discrimination claims against United States Department of Agriculture's Foreign Service. Morgan v. Vilsack, D.D.C.2010, 715 F.Supp.2d 168. Civil Rights 1126

Issue of whether continental American Assistant Chief Deputy in U.S. Marshals Service in Puerto Rico was the subject of intentional discrimination because of his national origin was for jury in Title VII case; U..S. Marshal waited until he temporarily relocated to Virgin Islands to post opening for Chief Deputy position and attempted to award individual of Puerto Rican origin an improper double promotion to position of Acting Chief Deputy, his request for travel to interview for position was denied, first posting was cancelled when only he and another white continental American candidate appeared on certificate list, temporary Chief Deputy vacancy announcement was circulated only in

Puerto Rico, task force meeting was held in his absence at which comments providing strong evidence of discriminatory motive against non-Puerto Ricans were made, advertised temporary position was revealed to be his permanent position, U.S. Marshal called him an expletive after learning of his EEO complaint, he was belittled and his friends were punished on his return, and second vacancy announcement was posted, then cancelled when only the same two candidates emerged on list. Orr v. Mukasey, D.Puerto Rico 2009, 631 F.Supp.2d 138. Civil Rights 1555

Applicant for federal employment failed to establish a prima facie case of national origin discrimination under Title VII and a prima facie case of age discrimination under the ADEA against the Office of Personnel Management (OPM), based on OPM's failure to score him as high as he believed he should have been scored on certificate of eligibles that accompanied his application for a position of Russian interpreter with the Department of State, where OPM referred applicant's application to State Department and assigned it a score reflecting that he was well qualified for the position, but State Department cancelled vacancy announcement without filling the position due to changed needs. Hopkins v. Whipple, D.D.C.2009, 630 F.Supp.2d 33. Civil Rights 1127; Civil Rights 1207

Caucasian female United States Postal Service (USPS) employee was not "clearly more qualified" for the Honaunau postmaster position than male of Japanese ancestry selected for the position, so as to support Caucasian female employee's claim that USPS's proffered reason for selecting Japanese male for the position, that he was better qualified, was pretext for race and sex discrimination in violation of Title VII; two applicants were equally qualified, as Caucasian female employee had better qualifications in certain areas, including more years of experience with USPS, and more years experience as a postmaster, and Japanese male selected for the position had better qualifications in other areas, including more college-level credits, current experience as a postmaster, and more involvement in the community. Walker v. Potter, D.Hawai'i 2009, 629 F.Supp.2d 1148. Civil Rights 1171; Civil Rights 1234

Reason articulated by Bureau of Engraving and Printing (BEP) for not allowing employee to return to work after leave without pay, that Office of Security needed to complete investigation after employee traveled to his native Afghanistan because United States was engaged in armed conflict there, was legitimate and nondiscriminatory, and employee failed to show that investigation was motivated by retaliatory intent or by employee's race, color, national origin, or religion; employee's allegations that BEP employees lied about underlying reasons for reporting his foreign travel to Office of Security were insufficient. Asghar v. Paulson, D.D.C.2008, 580 F.Supp.2d 30. Civil Rights 1137; Civil Rights 1158; Civil Rights 1251; United States 36

Federal agency's proffered reasons, including lack of qualifications, for not hiring 48-year-old Hispanic male applicant for several positions were not rendered pretextual for

age, sex and national origin discrimination in violation of Title VII and Age Discrimination in Employment Act (ADEA) merely by virtue of fact that agency requested race and other demographic information as part of application process; agency was required by law to collect demographic information. Moncada v. Peters, D.D.C.2008, 579 F.Supp.2d 46. Civil Rights 1137; Civil Rights 1179; Civil Rights 1209

Federal Bureau of Investigation (FBI) career board's alleged misstatement or overstatement of candidates' qualifications for unit chief position in FBI strategic information and operations center did not give rise to an inference of national origin discrimination or pretext in FBI's decision not to transfer employee, an Egyptian-born American citizen, for transfer to said position; based on board's selection criteria, it was entitled to value the top-ranked candidate's broad base of experience to a greater extent than what it perceived as employee's more narrowly-focused counterterrorism and counterintelligence background, board concluded that employee's application, and not top-ranked candidate's application, lacked the necessary information, board identified employee's background experiences and weighed them accordingly, and board was not prevented from relying upon his or her own personal observations of the candidates in making their selection determination. Youssef v. F.B.I., D.D.C.2008, 541 F.Supp.2d 121, new trial denied 2011 WL 313289. Civil Rights 1535

Supervisor's statements, acts, and attitude toward civilian Army auditor-trainee constituted direct evidence that trainee was terminated because he was Egyptian, notwithstanding supervisor's denial that statements attributed to him were made. Yacoub v. McGovern, N.D.N.Y.1993, 840 F.Supp. 947. Civil Rights 1544

Applicant born in the Soviet Union failed to show that reasons offered for accepting application for federal position by a native-born United States citizen were pretext for discrimination on the basis of national origin; agency could conclude in good faith that successful applicant possessed sufficient comparable knowledge, skills and experience to satisfy specialized knowledge requirement so as to be minimally qualified for position, review of applications did not support alleged lopsided advantage in favor of disappointed applicant to allow finding that nonselection was based on impermissible factors, and record did not support contention that successful applicant was preferentially treated because of the position of her husband. Ficks v. Wick, D.D.C.1988, 691 F.Supp. 385. Civil Rights 1544

Supervisor's apparent dislike for federal employee was insufficient to create triable issue of fact as to whether employee's discharge was result of national origin or age discrimination, absent evidence that supervisor affected decision making process, or that his dislike for employee was based on her age or national origin. Kott v. Rumsfeld, C.A.9 (Alaska) 2003, 74 Fed.Appx. 777, 2003 WL 22097804, Unreported. Civil Rights 1128; Civil Rights 1207

60a. ---- Promotions, national original discrimination, discriminatory practices prohibited

Even if Broadcasting Board of Governors (BBG) violated provision of its personnel manual, which stated that non-United States citizen could be employed or promoted only if no equally or better qualified United States citizen was available to perform duties of position, in selecting non-United States citizen, who was employed by BBG, for promotion, for which citizen employed by BBG also applied, such violation did not suggest that its reasons for selecting non-citizen over citizen were pretext for discrimination under Title VII. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1137

Federal Bureau of Investigation (FBI) employee of Egyptian origin was not harmed by denial of his specific requests to go on inspections required for employee to obtain certification needed for promotions, and therefore, denials were not retaliation or discrimination based on his national origin in violation of Title VII; inspection assignments occurred frequently, typically twice a month, such that employee would have had multiple opportunities to go on another, inspection certification was just one of a series of significant prerequisites, employee never submitted an achievement inventory that was another prerequisite for promotion, and inspection denials were often due to a conflict with employees' work schedules. Youssef v. F.B.I., D.D.C.2011, 2011 WL 313289. United States 36

Former field officer with United States Customs and Border Protection (CBP), who was of Mexican descent, failed to exhaust administrative remedies for his claim that CBP failed to select him for promotional position, in violation of Title VII or ADEA, since he never included the non-selection event in his affidavit in support of complaint lodged with Equal Employment Opportunity Commission (EEOC). Gilbert v. Napolitano, D.D.C.2011, 2011 WL 109568. Civil Rights 1516

Employee of Department of Navy did not apply for promotion to position as supervisory naval architect, precluding employee's claim against Navy for discriminatory or retaliatory failure to promote under Title VII and Age Discrimination in Employment Act (ADEA). Stoyanov v. Winter, D.D.C.2009, 643 F.Supp.2d 4, affirmed 2010 WL 605083, rehearing en banc denied. Armed Services 27(4); Civil Rights 1135; Civil Rights 1207; Civil Rights 1249(1)

61. ---- Alienage distinguished, national origin discrimination, discriminatory practices prohibited

Claim of plaintiff, now a citizen but who had been denied federal civil service rating by reason of his prior alienage at time when he was a resident alien, for back pay was barred by doctrine of sovereign immunity, and provision of this section could not supply

necessary waiver in its provision that personnel actions shall be made free from any discrimination based on race, color, religion, sex or national origin, since term "national origin" does not include "aliens" but merely refers to country from which a person's ancestors came. Jalil v. Campbell, C.A.D.C.1978, 590 F.2d 1120, 192 U.S.App.D.C. 4. United States 125(15)

62. Handicap discrimination, discriminatory practices prohibited

United States Postal Service's (USPS) decision to administratively separate disabled employee was supported by a legitimate, non-discriminatory reason and was not in retaliation for her filing of an equal employment opportunity (EEO) complaint, in violation of Title VII; by the time that employee's separation became effective, she had been on leave without pay for over six years, and her physician had advised at least four times that she was permanently and totally disabled and would never be able to return to work. Fanning v. Potter, C.A.8 (Ark.) 2010, 614 F.3d 845. Civil Rights 1249(2); Postal Service 5

Terminated Postal Service employee was not entitled to handicap discrimination relief when he was not initially qualified for the position in that he would not have been offered employment had his application omissions been known at time of hiring, even though failure to complete the application truthfully was discovered posttermination. Dotson v. U.S. Postal Service, C.A.6 (Mich.) 1992, 977 F.2d 976, certiorari denied 113 S.Ct. 263, 506 U.S. 892, 121 L.Ed.2d 192, certiorari denied 113 S.Ct. 263, 506 U.S. 892, 121 L.Ed.2d 193. Civil Rights 1218(4)

There was no evidence that Federal Protective Service's (FPS) regional chief of staff believed that employee was opposing discrimination prohibited by Title VII when employee filed complaint with Office of Inspector General (OIG) in connection with unauthorized credential incident, as would support employee's Title VII retaliation claim arising from his suspension and ultimate termination; rather, it appeared that chief of staff was confused as to what Equal Employment Opportunity (EEO) complaint was. Scott v. Napolitano, S.D.Cal.2010, 717 F.Supp.2d 1071. Civil Rights 1244; United States 36

Genuine issues of material fact, regarding whether supervisor's allegedly harassing behavior interfered with female employee's work performance, precluded summary judgment on employee's Title VII claim against Postal Service, alleging hostile work environment. Lazcano v. Potter, N.D.Cal.2007, 468 F.Supp.2d 1161. Federal Civil Procedure 2497.1

Discharged postal service employee was not entitled to relief for handicap discrimination, even if he might have been discharged based on the handicap and even if supervisors were ignorant of the employee's omission on his employment application falsely

indicating that he had not been discharged from a job during time that his postal application was pending; employee's omission resulted in employee not being initially entitled to the job, and, thus, employee could not recover for handicap discrimination. Dotson v. U.S. Postal Service, E.D.Mich.1991, 794 F.Supp. 654, affirmed 977 F.2d 976, certiorari denied 113 S.Ct. 263, 506 U.S. 892, 121 L.Ed.2d 192, certiorari denied 113 S.Ct. 263, 506 U.S. 892, 121 L.Ed.2d 193. Civil Rights 1220

This section does not apply to discrimination against physically handicapped; it proscribes only discrimination based on race, color, religion, sex, or national origin. McNutt v. Hills, D.C.D.C.1977, 426 F.Supp. 990. Civil Rights 1216

62a. Union activity, discriminatory practices prohibited

Although Pension Benefit Guaranty Corporation (PBGC) employee was undoubtedly bothered by coworker's emails and the flyers criticizing his involvement in local union, which recurred fairly frequently, such actions were not so severe or pervasive as to constitute a hostile work environment given that their contents were not physically threatening, and did not unreasonably interfere with employee's work performance, and therefore, PBGC's failure to stop the circulation of flyers and emails did not subject it to liability for hostile work environment; furthermore, even assuming that the flyers and emails constituted a hostile work environment, employee failed to rebut the PBGC's explanation that it could not have stopped the flyers and emails because it honestly believed that they were protected union activity. Perry v. Gotbaum, D.D.C.2011, 2011 WL 686414. Civil Rights 1263

63. Reverse discrimination, discriminatory practices prohibited

White female federal employee, an analyst in Publications Management Group (PMG) at Office of Personnel Management (OPM), failed to prove background circumstances of reverse discrimination; even if record evidence properly supported her assertion that at times relevant to complaint only three percent of employees at PMG (one of 32) were white women as compared to comprising 17 percent of population in Washington Capital area and 27.5 percent of federal workforce, those numbers would not be enough without additional context, such as correctly defined pools. Kline v. Springer, D.D.C.2009, 602 F.Supp.2d 234, affirmed 2010 WL 5258941, rehearing en banc denied. Civil Rights 1234

There was nothing “fishy” about the selection process, whereby a Caucasian employee was not selected for three positions that were awarded to three African-Americans, that established “background circumstances” to support a prima facie case of reverse discrimination; there was nothing inherently suspect in selecting official's decision to solicit recommendations for promotions from African-American foreman who had worked in the unit, and there was nothing suspicious about selecting official's failure to consult

with Causation foreman, in that official sought out Causation foreman when he went looking for recommending official for these selections, but Caucasian foreman was not in the building. Hairsine v. James, D.D.C.2007, 517 F.Supp.2d 301. Civil Rights 1234

In a case under Title VII, in addition to setting forth the usual prima facie case, a reverse discrimination plaintiff must demonstrate additional background circumstances that support the suspicion that the defendant is that unusual employer who discriminates against the majority; the burden is even tougher when the plaintiff's gender is the same as that of the selecting official. Horvath v. Thompson, D.D.C.2004, 329 F.Supp.2d 1. Civil Rights 1179; Civil Rights 1233

In a reverse discrimination case under Title VII, the first part of the five-part test allows a majority plaintiff to establish a prima facie case of intentionally disparate treatment when the background circumstances support the allegation of the defendant being an unusual employer who discriminates against the majority; the remaining elements of the test are modified to reflect the requirement that the plaintiff demonstrate that he was treated differently than other similarly situated employees. Berger v. White, W.D.Ky.2003, 293 F.Supp.2d 721. Civil Rights 1233

Qualified white male applicant for managerial position in government agency could make out prima facie case of reverse sexual discrimination, based on agency's denial of application in favor of female applicant who may not even have interviewed for job, only by presenting at least some evidence that defendant was “unusual employer” who discriminated against majority. Lawson v. McPherson, D.D.C.1986, 679 F.Supp. 28. Civil Rights 1549

Department of Veterans Affairs' “desire and need” to place former associate chief of social work in a position of a similar grade as that from which she was being displaced as a result of facilities merger qualified, under Title VII, as a legitimate, non-discriminatory reason for declining to select white male employee for newly-created position. Kondrak v. Principi, C.A.11 (Ala.) 2005, 161 Fed.Appx. 817, 2005 WL 3529105, Unreported. Civil Rights 1179; Civil Rights 1234

64. Constructive discharge, discriminatory practices prohibited

District Court's rejection of African-American federal employee's Title VII constructive discharge claim on the ground that she did not show working conditions so intolerable, so aggravating, that any reasonable person would have felt compelled to quit, was insufficient to support rejection of employee's hostile work environment claim, where Court failed to address whether employee had successfully made the lesser showing for a hostile work environment claim that she experienced severe or pervasive harassment that altered the conditions of her employment. Steele v. Schafer, C.A.D.C.2008, 535

F.3d 689, 383 U.S.App.D.C. 74. Civil Rights 1147

Department of Commerce employee was not "constructively discharged" when she submitted her resignation, despite her claim that denial of her medical leave requests and placement on leave without pay amounted to aggravating factors that, together with her involuntary reassignment and nonselection to her former position created an unbearable work environment; personnel decisions, even if found unlawful under Title VII, might have been career-harming but were not shown to be career-ending. Kalinoski v. Gutierrez, D.D.C.2006, 435 F.Supp.2d 55. Civil Rights 1123

Postal Service employee was not constructively discharged for purposes of Title VII and ADA, where he testified that he retired because he was afraid he might be convicted in pending criminal trial and therefore lose his pension. Garvin v. Potter, S.D.N.Y.2005, 367 F.Supp.2d 548. Civil Rights 1123

Employee of Veterans Affairs Office of Equal Opportunity failed to show constructive discharge on basis of race or sex on ground that when she sought and received transfer away from supervisor, she was placed in temporary work space where noise made it impossible for plaintiff to work and that plaintiff was not assigned work commensurate with her training and abilities; there was no evidence that conditions following transfer were imposed intentionally on basis of race or sex, and fact that plaintiff, a white female, was a minority in the office was insufficient to support finding of intentional discrimination. Ramsey v. Derwinski, D.D.C.1992, 787 F.Supp. 8. Civil Rights 1123

In order to demonstrate intolerable condition supporting constructive discharge, employee must demonstrate more than one actionable instance of discrimination, but must also show "aggravating factors" such as continuous and pervasive discriminatory treatment spanning a substantial period of time. Lake v. Baker, D.D.C.1987, 662 F.Supp. 392. Civil Rights 1123

Doctrine of constructive discharge is applicable to cases brought under this subchapter and would allow same relief as though plaintiff had been formally terminated. Craig v. Department of Health, Ed. and Welfare, W.D.Mo.1981, 508 F.Supp. 1055. Civil Rights 1123; Civil Rights 1560

United States Postal Service (USPS) mail handler was not constructively discharged; employee did not establish that conditions in his workplace, including being assigned to work on loading dock, forbidden to go onto workroom floor where he might encounter coworker with whom he had altercation, and having restricted access to some common areas like restrooms and break rooms, were such that reasonable person would have felt he had no choice but to resign. Ross v. Potter, C.A.10 (Colo.) 2004, 119 Fed.Appx. 209, 2004 WL 2850083, Unreported. Civil Rights 1123

65. Sexual harassment, discriminatory practices prohibited

Genuine issue of material fact existed as to when employer learned that employee was being sexually harassed by coworker, precluding summary judgment in favor of employer on employee's Title VII claims of coworker and supervisor harassment. Jenkins v. Winter, C.A.8 (Mo.) 2008, 540 F.3d 742. Federal Civil Procedure 2497.1

To avoid undermining valid state policy underlying statutory rape laws by reclassifying sex that the state deems nonconsensual as consensual, to simplify employment-discrimination litigation, and to avoid intractable inquiries into maturity that legislatures invariably pretermit by basing entitlements to public benefits on specified ages rather than on a standard of maturity, federal courts, rather than deciding whether a particular Title VII minor employee was capable of welcoming the sexual advances of an adult supervisor or employer, should defer to the judgment of average maturity in sexual matters that is reflected in the age of consent in the state in which the plaintiff is employed. Doe v. Oberweis Dairy, C.A.7 (Ill.) 2006, 456 F.3d 704, rehearing en banc denied , certiorari denied 127 S.Ct. 1815, 549 U.S. 1278, 167 L.Ed.2d 317, certiorari denied 127 S.Ct. 1828, 549 U.S. 1278, 167 L.Ed.2d 317. Civil Rights 1188; Federal Courts 411

If female government employee's job was abolished because she repulsed her male superior's sexual advances, superior's conduct violated this subchapter. Barnes v. Costle, C.A.D.C.1977, 561 F.2d 983, 183 U.S.App.D.C. 90. Civil Rights 1184

Library of Congress employee made out prima facie case of sexual harassment through allegations that multiple coworkers engaged in various acts of offensive, intimidating, harassing and threatening conduct toward her over two-year period, during which time she repeatedly requested reassignment and filed EEO complaint. Baker v. Library of Congress, D.D.C.2003, 260 F.Supp.2d 59. Civil Rights 1185

Employer established affirmative defense to employee's Title VII sexual harassment claim that was based on alleged suggestive comments by manager; the employee did not complain about the alleged harassment for several months, in spite of employer's policy against sexual harassment, and when she did complain the employer investigated quickly and the alleged harassment ceased. Taylor v. Chao, D.D.C.2007, 516 F.Supp.2d 128, affirmed 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1189

Incident in which supervisor at Department of the Army (DOA) health clinic threw away female civilian employee's food, and removed her pictures, purse, bills, and other personal things from her desk, although discourteous, did not create sexually hostile work environment under Title VII; far from being a sexual advance, supervisor's conduct confirmed his unprofessional conduct toward his subordinates. Rosario v. Department of

Army, D.Puerto Rico 2008, 573 F.Supp.2d 524, vacated 607 F.3d 241. Civil Rights 1185

Genuine issues of material fact as to whether harassment claimed by an employee of the United States Postal Service (USPS) was of a kind or to a degree that a reasonable person would have felt that it affected the conditions of her employment precluded summary judgment for the Postmaster General in the employee's Title VII suit. MacDougall v. Potter, D.Mass.2006, 431 F.Supp.2d 124. Federal Civil Procedure 2497.1

Genuine issue of material fact, as to whether actions of United States Postal Service (USPS) in restricting male employee's work as expediter were directly linked to and even controlled by female coworker's gender-based animus, her utilization of male stereotype of abuser in order to retaliate against him for ending their romantic relationship, precluded summary judgment that USPS was not liable for male employee's sexual harassment under Title VII. Oakstone v. Postmaster General, D.Me.2005, 397 F.Supp.2d 48. Federal Civil Procedure 2497.1

For incidents of sexual harassment to constitute a continuing violation for purposes of Title VII, the pre- and post-statute events be part of the same actionable hostile environment claim. Randall v. Potter, D.Me.2005, 366 F.Supp.2d 104. Civil Rights 1505(7)

Male employee of federal agency failed to establish Title VII sexual harassment claim based on allegation that female Equal Employment Opportunity (EEO) officer disseminated false information about him was during her investigation of female subordinate's sexual harassment charge against him; although false accusations may be a form of sexual harassment in some circumstances, plaintiff did not articulate how the alleged discrimination was on account of his sex, and presented no evidence that a female employee would have been treated any differently under the same circumstances. Kipnis v. Baram, N.D.Ill.1996, 949 F.Supp. 618. Civil Rights 1186

Federal employee's allegations that supervisor invited her to his room in suggestive manner, that supervisor required her to take meal breaks with employees within her group, and that she generally felt uncomfortable, did not allege objectively hostile conduct required to support hostile environment sexual harassment claim. Carlton v. Ryan, N.D.Ill.1996, 916 F.Supp. 832. Civil Rights 1185

Although one supervisor did engage in some unprofessional behavior, employee failed to establish existence of hostile work environment in violation of Title VII, absent proof of connection between alleged harassment and her termination. Jones v. Secretary, Dept. of Army, D.Kan.1995, 912 F.Supp. 1397. Civil Rights 1185

Title VII provides protection against quid pro quo sexual conduct, and that protection is

not withdrawn merely upon showing that victim of harassment had in past entered into consensual sexual relationship with perpetrator. Babcock v. Frank, S.D.N.Y.1990, 729 F.Supp. 279. Civil Rights 1188

Hostile work environment claim is actionable under Title VII if unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are so pervasive that it can reasonably be said that they create a hostile or offensive work environment. Broderick v. Ruder, D.D.C.1988, 685 F.Supp. 1269. Civil Rights 1185

66. Retaliation for exercise of rights, discriminatory practices prohibited

See, also, Notes of Decisions under section 2000e-3 of this title.

Federal-sector provision of the Age Discrimination in Employment Act (ADEA) was patterned directly after Title VII's federal-sector discrimination ban. Gomez-Perez v. Potter, U.S.2008, 128 S.Ct. 1931, 553 U.S. 474, 170 L.Ed.2d 887. Civil Rights 1207

Delay in training female Department of Veterans Affairs employees was not retaliation for complaining about alleged gender discrimination by supervisor, as would violate Title VII, where delay was temporary and was required for employee to complete a preexisting commitment to other training. Civil Rights Act of 1964, §§ 704(a), 42 U.S.C.A. §§ 2000e-3(a). Ahern v. Shinseki, C.A.1 (R.I.) 2010, 629 F.3d 49. Civil Rights 1249(1)

United States Postal Service (USPS) provided legitimate, nonretaliatory reason for its decision to reassign local responsibility for rollout of marketing program that employee had helped prepare to two postmasters, rather than employee, who had filed equal employment opportunity (EEO) complaint, shifting burden to employee to show that the reason was pretextual in her Title VII retaliation action; responsibility for the program was reassigned because it relied on mail carriers to deliver marketing materials and recruit customers, and would be more effectively run by the postmasters, who managed mail carriers. Roman v. Potter, C.A.1 (Puerto Rico) 2010, 604 F.3d 34. Civil Rights 1249(1); Civil Rights 1541; Postal Service 5

Supervisor placed federal employee on absent without leave (AWOL) status based on employee's experience and presumed knowledge of proper channels to apply for leave, precluding employee's claim that placement on AWOL statute was in retaliation for his Equal Employment Opportunity (EEO) activity. Pardo-Kronemann v. Donovan, C.A.D.C.2010, 601 F.3d 599, 390 U.S.App.D.C. 178. Civil Rights 1249(3); United States 36

Proximity in time between federal employee's filing sexual harassment suit against employer and employer's listing of employee as absent without leave (AWOL) two and one-

half months later did not raise inference of retaliatory motive as would support employee's claim against employer under Title VII alleging retaliation for reporting sexual harassment. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1541; United States 36

Department of Defense employee failed to inform his employer that he refused to take the English class they offered because he believed their request constituted improper discrimination based on his race and national origin, as required to establish a prima facie case of retaliation under Title VII; only reason employee gave for refusing to take class was that failure of others to understand him was due to their lack of exposure to people with an accent, a problem that would disappear over time. Zokari v. Gates, C.A.10 (Okla.) 2009, 561 F.3d 1076. Civil Rights 1244; United States 36

Federal employee's sick leave restrictions, proposed suspensions, letters of counseling and reprimand, unsatisfactory performance review, and alleged verbal altercations with supervisor did not constitute adverse employment actions, as required for claim that employer retaliated against employee for filing administrative complaint, in violation of ADEA, Rehabilitation Act, and Title VII, where employee's sick leave was always granted, his suspensions were not actually served, his letters contained only job-related constructive criticism, his evaluation did not affect his position, grade level, salary, or promotion opportunities, and his altercations with supervisor were sporadic and not severe. Baloch v. Kempthorne, C.A.D.C.2008, 550 F.3d 1191, 384 U.S.App.D.C. 85. Civil Rights 1249(1); Civil Rights 1249(3); United States 36

Department of Agriculture's alleged denial of cash bonus to employee, the alleged issuance of the lowest performance rating of her career combined with the lowest performance bonus in her branch, the alleged denial of special act award, and the alleged false report to unemployment compensation office contesting employee's unemployment benefits could support employee's Title VII retaliation claim. Steele v. Schafer, C.A.D.C.2008, 535 F.3d 689, 383 U.S.App.D.C. 74. Agriculture 2; Civil Rights 1249(1)

Former employee of Department of Veterans Affairs could not bring action for retaliation which had not been exhausted before the Equal Employment Opportunity Commission (EEOC) when underlying Title VII violation claim similarly was not exhausted before EEOC; since administrative remedies had not been exhausted with respect to other Title VII claims, there was nothing properly before court to which retaliation claim could have been bootstrapped. Franceschi v. U.S. Dept. of Veterans Affairs, C.A.1 (Puerto Rico) 2008, 514 F.3d 81. Armed Services 102; Civil Rights 1516

Even if federal agency could be liable to agency employee for Title VII retaliation based on coworkers' harassment of employee based on their mistaken belief that employee had complained to Equal Employment Opportunity Commission about their actions,

agency was not liable absent showing that agency had negligently failed to take proper preventative or corrective measures to prevent employee's harassment by coworkers. Nair v. Nicholson, C.A.7 (Ill.) 2006, 464 F.3d 766, rehearing and rehearing en banc denied. Civil Rights 1250; United States 36

Scope of Title VII's general ban on retaliation, which encompasses retaliatory acts that do not constitute adverse personnel actions or otherwise relate to employee's employment, extends to Title VII actions against government employers. Rochon v. Gonzales, C.A.D.C.2006, 438 F.3d 1211, 370 U.S.App.D.C. 74, rehearing en banc denied. Civil Rights 1116(1); Civil Rights 1249(1)

Female federal agency employee's previous Title VII sexual harassment action against employing agency was "protected activity" under Title VII retaliation provision. Broderick v. Donaldson, C.A.D.C.2006, 437 F.3d 1226, 369 U.S.App.D.C. 374. Civil Rights 1244; United States 36

Postal employee established intentional discrimination element of prima facie case of Title VII retaliatory harassment claim based on her prior report of unwanted sexual proposition which resulted in supervisor being transferred and terminated; coworker's habitual insults directed at employee expressly referenced transfer of supervisor, another coworker who had previously been a friend began menacing employee with heavy equipment after supervisor was transferred and expressed disagreement with transfer decision, and employee's car was repeatedly vandalized after report. Jensen v. Potter, C.A.3 (Pa.) 2006, 435 F.3d 444. Civil Rights 1251; Postal Service 5

Adjudication of criminal investigator's Title VII claims that she was terminated by Transportation Security Administration (TSA) due to discrimination and retaliation would require trier of fact to consider merits of TSA's explanation, which was supported by substantial evidence, that termination was based on investigator's inability to sustain security clearance, even though originally proffered reason for termination was negative suitability determination and investigator claimed that security clearance explanation was pretextual, and therefore district court lacked jurisdiction over Title VII claims. Bennett v. Chertoff, C.A.D.C.2005, 425 F.3d 999, 368 U.S.App.D.C. 123. War And National Emergency 1136

Justice of the peace's ostracism towards female clerk who had complained of sexual harassment, and his sending of letter to county sheriff accusing clerk's husband, who was also a county employee, of stealing a county sledgehammer, were not "ultimate employment decisions," as required for clerk's claim of retaliation under the Government Employee Rights Act (GERA); alleged ostracism did nothing more than affect conditions in the workplace, and the letter regarding clerk's husband was sent after clerk's resignation. Brazoria County, Tex. v. E.E.O.C., C.A.5 2004, 391 F.3d 685, rehearing and rehearing en banc denied 130 Fed.Appx. 705, 2005 WL 196725. Civil Rights 1249(1);

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Question of fact was presented, on District of Columbia agency employee's Title VII hostile work environment claim, by evidence that, in addition to allegedly discriminatory failure to promote and failure to provide employee with necessary tools to accomplish his assignments, agency intentionally assigned employee to work in unheated storage room for more than a year and a half, allegedly in retaliation for filing discrimination complaint, even though other offices were available, and failed to give him an official job description for six years. Singletary v. District of Columbia, C.A.D.C.2003, 351 F.3d 519, 359 U.S.App.D.C. 1. Civil Rights 1555

Federal employee failed to make out prima facie Title VII retaliation claim, absent showing that supervisor's allegedly retaliatory acts, changing employee's first-line supervisor and modifying her performance plan, constituted adverse employment actions; there was no evidence that changes had material adverse effect upon terms or conditions of employee's employment. Taylor v. Small, C.A.D.C.2003, 350 F.3d 1286, 358 U.S.App.D.C. 439. Civil Rights 1249(1); United States 36

Postal employee suffered cognizable "adverse employment actions," as required for Title VII retaliation claim, when employer, in alleged retaliation for employee's complaints concerning management's treatment of women employees, eliminated employee meetings and flexible start-time policy, instituted "lockdown" of workplace, and reduced employee's workload and salary disproportionately to reductions faced by other employees; actions decreased employee's pay, decreased amount of time he had to complete same amount of work, and decreased his ability to influence workplace policy, and so were reasonably likely to deter employees from complaining about workplace discrimination. Ray v. Henderson, C.A.9 (Cal.) 2000, 217 F.3d 1234. Postal Service 5

Employee failed to establish prima facie case of retaliatory discrimination arising from process of settling prior race discrimination claim with employer; employee failed to demonstrate that failure to settle claim was adverse employment action or that causal connection existed between protected activity and nonsettlement of claim. Mosley v. Pena, C.A.10 (Okla.) 1996, 100 F.3d 1515. United States 36

Naval employee established prima facie case of retaliation under Title VII; employee filed two equal employment opportunity (EEO) complaints, co-worker with supervisory responsibility knew of at least one of complaints, and employee was demoted less than two years after filing first complaint, approximately six months after filing second complaint, and approximately six weeks after de novo hearing on second complaint. Carter v. Ball, C.A.4 (Md.) 1994, 33 F.3d 450. Armed Services 27(4); Civil Rights 1249(1)

In enacting this section which extended provisions of this subchapter to federal employ-

ees, Congress intended to and did incorporate into this section, those provisions of § 2000e-3 of this title which prohibit harassment or retaliation for the exercise of remedial rights established by this subchapter and, therefore, district court had jurisdiction to consider female federal employee's charge that she was subjected to retaliatory harassment because she filed a sex discrimination complaint. Ayon v. Sampson, C.A.9 (Wash.) 1976, 547 F.2d 446. Civil Rights 1249(1); Federal Courts 225

Postal worker failed to establish that supervisor issued warning letters regarding driving violation and time wasting practices in retaliation for worker's filing of complaint with Equal Employment Opportunity Commission (EEOC), in violation of Title VII, when there was interval of more than one year between complaint and letters. Martinez v. Henderson, D.N.M.2002, 252 F.Supp.2d 1226, affirmed 347 F.3d 1208. Postal Service 5; Civil Rights 1252

Postal service provided unrebutted nondiscriminatory reason for actions taken against postal worker, precluding claim under Title VII that worker was discriminated against in retaliation for complaints filed with Equal Employment Opportunity Commission (EEOC); warning letters were based on rules violations, and increase in his work load was part of work balancing plan, and to supply him with legitimate eight hours of work. Martinez v. Henderson, D.N.M.2002, 252 F.Supp.2d 1226, affirmed 347 F.3d 1208. Postal Service 5; Civil Rights 1249(1); Civil Rights 1249(3)

Federal employee's complaints to her supervisor about alleged sexually charged conduct in workplace, which included e-mails sent by co-worker that employee interpreted as sexually suggestive but which were also susceptible to innocent interpretations, use of phrases “Sexy Papa” and “Sexy Mama” by supervisor and female co-worker, excessive hugging and kissing by co-workers during greetings, and use of term “master” by female co-worker to address supervisor, did not qualify as protected activity for purposes of employee's Title VII retaliation claim; no reasonable employee could have believed that conduct about which employee complained amounted to hostile work environment. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. United States 36

Air traffic controller formerly employed by Federal Aviation Administration (FAA) failed to show a causal connection between her union and her termination by the FAA, as would support her claim that union violated Title VII by causing or attempting to cause the FAA to retaliate against her for protected activity by terminating her employment; controller did not show that union had any particular influence over FAA's decision to terminate her employment, nor that she asked union to file a grievance on her behalf regarding her termination and that it failed or refused to do so. Pueschel v. National Air Traffic Controllers Ass'n, D.D.C.2011, 2011 WL 1097435. Civil Rights 1261

Federal employee's informal complaint of discrimination about disagreement with agen-

cy's human resources employee over his salary constituted oppositionactivity, and not participation activity, and thus was not protected by Title VII's anti-retaliation provision, where informal complaint alleged discrimination on basis of race, gender, and color, but employee provided to evidence other than his conclusory allegations to support his charge, and sequence of actions to attempt to justify employee's dismissal, and that ultimately led to his dismissal, occurred after informal complaint. Perry v. Kappos, E.D.Va.2011, 2011 WL 836935. United States 36

For purposes of his Title VII retaliation claim, former Pension Benefit Guaranty Corporation (PBGC) employee did not suffer a materially adverse action by PBGC's issuance of SF-50 forms containing language referencing parties' settlement agreement; the SF-50 forms were issued for the purpose of implementing the settlement agreement, which had been filed as part of the public record in employee's prior lawsuits, the language on the forms did not denigrate employee, but merely acknowledged that the settlement agreement was the reason for taking certain personnel actions, and employee did not show that he would have been required to provide an SF-50 form to any prospective employers. Perry v. Gotbaum, D.D.C.2011, 2011 WL 686414. United States 53(5)

Federal Deposit Insurance Corporation's (FDIC) legitimate, nonretaliatory reason for denying request of employee, who filed Equal Employment Opportunity Commission (EEOC) complaints, for advance sick leave, namely, that employee failed to provide necessary medical documentation, was not pretext for retaliation under Title VII, Rehabilitation Act, or Age Discrimination in Employment Act (ADEA). Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Civil Rights 1251

Federal employer's proffered reason for not involving employee in technology change, that others were better equipped for the task, was not pretext for retaliation in violation of Title VII. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. United States 36

Federal employee could bring neither retaliation claim against employer, under Title VII, based on evidence that impermissible consideration was “a motivating factor” in employer's decision not to hire employee for director position, nor mixed-motive retaliation claim against employer under *Price Waterhouse v. Hopkins*. Hayes v. Sebelius, D.D.C.2011, 2011 WL 316043. United States 36

United States Customs and Border Protection's (CBP) failure to promote field officer to position of customs inspector was not temporally proximate to field officer's filing of complaints of discrimination with Equal Employment Opportunity Commission (EEOC), and thus decision was not made in retaliation for complaints in violation of Title VII or ADEA, where CBP's decision not to promote field officer took place nearly six years after officer's initial counseling with EEOC. Gilbert v. Napolitano, D.D.C.2011, 2011 WL 109568. United States 36

Government employee's prior protected activity as member of class action that was settled could not be basis for Title VII retaliation claim where at least four years had elapsed between employee's prior activity and allegations against him related to retaliation claim, and employee offered no additional evidence suggesting causal relationship between the two. Hampton v. Vilsack, D.D.C.2011, 2011 WL 108383. United States 36

Although posting of job vacancy did not occur in the usual places nor was it posted through the usual procedures, federal employee, who knew via email that the posting was to occur and could have sought additional time to complete the application but chose not to, could not establish discriminatory retaliation claim where he failed to show that he was treated differently than other persons that were interested in the position but received no notice. Koch v. Schapiro, D.D.C.2011, 2011 WL 38980. United States 36

Even assuming that former National Transportation Safety Board (NTSB) employee's activities in filing Equal Employment Opportunity Commission (EEOC) complaints, worker's compensation claim, and whistleblower claim were protected, they all occurred well before he was removed from his position, and, thus, temporal proximity of employee's allegedly protected activities and removal was not sufficiently close to give rise to an inference of causation, as would support employee's retaliation claim under Title VII, the Age Discrimination in Employment Act (ADEA), and the Rehabilitation Act. Miller v. Hersman, D.D.C.2010, 2010 WL 5480725. United States 36

Employee of government corporation failed to allege a materially adverse consequence that resulted from employer's request to obtain her signature acknowledging that she had received a memorandum sent to all employees regarding the inappropriate use of employer resources, as required to state a Title VII retaliation claim based on the employer's request. Baird v. Snowbarger, D.D.C.2010, 2010 WL 3999000. Civil Rights 1249(1); United States 53(5)

Even if former United States Department of Agriculture (USDA) employee's paid administrative suspension and his subsequent transfer to daytime shifts at cargo area constituted adverse employment actions, employee failed to establish causal connection between his discrimination complaints to the Equal Employment Opportunity Commission (EEOC) and the alleged adverse employment actions, as required to state a retaliation claim under Title VII against the Secretary of Agriculture, where employee filed his first EEOC complaint approximately nine months before he was placed on paid administrative leave and filed his next complaint approximately one year before his transfer to cargo area, nine other employees were also suspended with pay in connection with the investigation in which employee was implicated, and employee was the only one who was not subsequently fired or suspended for an additional period without pay, and employee's tardiness, attendance, and need to supervise him more closely justified his transfer.

Ghaly v. U.S. Dept. of Agriculture, E.D.N.Y.2010, 739 F.Supp.2d 185. Civil Rights 1252; United States 36

Genuine issues of material fact existed as to whether actions taken by United States Postal Service against African-American employee who engaged in protected Equal Employment Opportunity Office (EEO) activity, including denying employee extra pay, were adverse, as to whether causal link existed between Postal Service's actions and employee's EEO activity, and as to whether Postal Service's reasons for its actions were pretext for retaliation, precluding summary judgment as to employee's Title VII retaliation claim. Johnson v. Potter, M.D.Fla.2010, 732 F.Supp.2d 1264. Federal Civil Procedure 2497.1

Postal worker's suspension was not retaliation in violation of Title VII and the Rehabilitation Act for her equal employment opportunity (EEO) proceedings alleging discrimination two years prior, where supervisors had no knowledge of her prior complaints. Cherry v. Potter, S.D.N.Y.2010, 709 F.Supp.2d 213. Civil Rights 1249(3); Postal Service 5

Discrimination complaint by husband of employee, both employed by the Department of the Army, was not “protected activity” by employee under Title VII, as required for employee's retaliation claim, where employee did not testify, assist or other participate in husband's complaints. Torres v. McHugh, D.N.M.2010, 701 F.Supp.2d 1215. Armed Services 27(4); Civil Rights 1244

African-American United States Postal Service (USPS) employee's complaints of racial discrimination to his superiors at roundtable discussion coupled with his complaints of unfair treatment in his performance evaluations constituted protected activity for purposes of employee's Title VII retaliation claim. Moore v. Potter, D.Or.2010, 701 F.Supp.2d 1171. Civil Rights 1244; Postal Service 5

Temporal proximity between African-American Special Agent's protected activity of filing discrimination charge and his nonselection for Senior Special Agent positions, standing alone, was insufficient to rebut Office of Inspector General's (OIG's) legitimate, nonretaliatory reason for that nonselection under Title VII. Pendleton v. Holder, D.D.C.2010, 697 F.Supp.2d 12, affirmed 2010 WL 4826442. Civil Rights 1252; United States 36

African-American female United States Department of Education (DOE) employee failed to establish prima facie case of retaliation under Title VII, absent showing of causal connection between her participation in class action brought by African-American employees at DOE headquarters and her nonselection for GS-14 position, where approximately three years elapsed between settlement in class action and employee's nonselection. Benjamin v. Duncan, D.D.C.2010, 694 F.Supp.2d 1. Civil Rights 1252; United States 36

Discharged African-American employee, who was Deputy Director of Office of Small and Disadvantaged Business Utilization (OSDBU), failed to establish link between OSDBU's transfer of her responsibility for Small Business Review Forms to another employee, as would support her Title VII retaliation claim based on transfer of that responsibility. Holmes-Martin v. Sebelius, D.D.C.2010, 693 F.Supp.2d 141. United States 36; Civil Rights 1252

Allegations that after former employee of Federal Reserve Bank (FRB), a certified public accountant (CPA), received his performance evaluation, his direct supervisor explained she was under pressure to "hammer" employee and that her supervisors had complained that she had not "hammered" him enough, that employee received marginal assessment of his ability to interact well with staff of other divisions, Reserve Banks and other agencies and regulated institutions despite the fact that prior to his filing of an Equal Employment Opportunity Commission (EEOC) complaint he had been praised for his communication skills, and that employer issued employee's performance evaluation shortly after employee filed his complaint, were sufficient to state claim that his performance evaluation was not honest assessment of employee's performance but was instead given in retaliation for his involvement in protected activity so as to violate Title VII of Civil Rights Act and Age Discrimination in Employment Act (ADEA). Jones v. Bernanke, D.D.C.2010, 685 F.Supp.2d 31. Banks And Banking 353; Civil Rights 1249(1)

Alleged actions of federal employer, including not giving Hispanic female employee, who filed complaint with Equal Employment Opportunity (EEO) for denial of promotion and made formal Equal Employment Opportunity Commission (EEOC) charge of discrimination, more work assignments, locking door next to employee's office, closely monitoring employee's work, delaying employee's receipt of award for accomplishment, and giving her small office, were not materially adverse, as would support employee's Title VII retaliation claim. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1249(1); United States 36

Former Postal Service employee's sworn statement that personnel manager told him he could not be re-hired until his Equal Employment Opportunity Commission (EEOC) complaint was resolved raised fact question as to Postal Service's knowledge of employee's contact with Postal Service's EEO Office, precluding summary judgment on claims of retaliatory failure to re-hire under Title VII and Rehabilitation Act. Gonzalez Bermudez v. Potter, D.Puerto Rico 2009, 675 F.Supp.2d 251. Federal Civil Procedure 2497.1

Employer, the Secretary of the Army, did not discriminate against former employee because of his depression, or retaliate against him for his prior Equal Employment Opportunity administrative complaints and lawsuit, so as to violate Rehabilitation Act or Title

VII of Civil Rights Act; employee had frequent and prolonged absences from work in violation of the employer's standard leave policy and in violation of leave restrictions that were imposed upon him as result of his failure to abide by leave policy or to maintain a regular work schedule, there was no evidence that it was employee's depression rather than his absenteeism that was the actual reason for charging some of his absences as without leave (AWOL), for extending leave restrictions imposed on him, or for refusing to place him on without pay, and employee's pay was not any less than that of others of similar tenure. Washington v. Geren, D.D.C.2009, 675 F.Supp.2d 26, affirmed 2010 WL 4976510. Armed Services 27(4); Civil Rights 1220; Civil Rights 1249(1)

Federal employee satisfied causal connection element of Title VII retaliation claim, as he had produced both direct and circumstantial evidence of retaliatory animus; temporal proximity existed between employee's protected activity of initiating contact with an EEO counselor, filing EEO complaints, and prior lawsuit and adverse actions. Nurriddin v. Bolden, D.D.C.2009, 674 F.Supp.2d 64. Civil Rights 1553; United States 36

Even assuming Department of Interior's actions in admonishing former employee for using his personal radio at his desk and conducting his yearly performance review via telephone were adverse employment actions, employee failed to demonstrate causal connection between filing of his Equal Employment Opportunity Commission (EEOC) discrimination claim and Department's actions, as required to establish prima facie case of retaliation under Title VII; employee's supervisor was unaware of his EEOC claim, and Department's actions were taken more than four months after his claim was filed. Lara v. Kempthorne, S.D.Tex.2009, 673 F.Supp.2d 504. Civil Rights 1252; United States 36

Smithsonian Institution's proffered legitimate, non-discriminatory reason for not promoting African-American employee, who suffered from various mental disabilities, to position of Supervisory Exhibits Specialist, namely, that Institution chose candidate with more production knowledge, more budgeting experience, and more project management experience, was not pretext for retaliation under Title VII or Rehabilitation Act. Bowden v. Clough, D.D.C.2009, 658 F.Supp.2d 61, appeal dismissed 2010 WL 2160010. Civil Rights 1251; United States 53(6.1)

Federal employee's complaints to second-line supervisor at Export-Import Bank of the United States that she felt she was being treated differently from her male colleagues with regard to inclusion in meetings and department activities constituted opposition to practice made unlawful by Title VII, for purposes of employee's claim that she was discharged in retaliation for engaging in protected activity; employee demonstrated good faith, reasonable belief that challenged practices violated Title VII. Nuskey v. Hochberg, D.D.C.2009, 657 F.Supp.2d 47. Civil Rights 1244; United States 36

Department of State's proffered reason for its decision not to reassign high-value grants

to employee, that employee received at least one grant in excess of $1.5 million, that he was already assigned a full load of cases, that most of the grants were reassigned to newer employees who had a smaller volume of open assignments, and that grants for particular organizations were assigned to employees who had more experience with those organizations, was not pretext for discrimination in violation of Title VII. Hunter v. Clinton, D.D.C.2009, 653 F.Supp.2d 115. Civil Rights 1251; United States 36

Federal employee failed to establish causal connection element of prima facie case of retaliation; by acknowledging that none of selecting officials was aware of his prior EEO activity, and by failing to identify any other way in which that activity affected or could have affected his candidacy for positions, employee had in effect acknowledged that there was no evidence of causal relationship between exercise of his EEO rights and hiring decisions at issue. Brown v. Broadcasting Bd. of Governors, D.D.C.2009, 662 F.Supp.2d 41. Civil Rights 1252; United States 36

Genuine issue of material fact as to whether employer's alleged acts in retaliation for employee's reporting of co-employee's sexual harassment rose to level of materially adverse action precluded summary judgment on employee's claim that employer engaged in retaliatory harassment in violation of Title VII. Turrentine v. United Parcel Service, Inc., D.Kan.2009, 645 F.Supp.2d 976. Federal Civil Procedure 2497.1

Failure to promote and fourteen-day suspension, which were actions upon which federal employee based her Title VII retaliation claim, which occurred between six and twelve months after the filing of her Equal Employment Opportunity (EEO) complaint, could not reasonably be attributed to retaliation, and therefore could not satisfy causal connection requirement. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Civil Rights 1252; United States 36

There was no causal connection between federal employee's prior protected activity, a Title VII proceeding against her employer, and her non-selection for a position in Department of Transportation nearly 20 years later, thus defeating her Title VII claim of retaliation. Reshard v. Peters, D.D.C.2008, 579 F.Supp.2d 57, affirmed 358 Fed.Appx. 196, 2009 WL 5125599. Civil Rights 1252; United States 36

United States Agency for International Development (USAID) employee failed to establish prima facie case of retaliation under Title VII in connection with her nonselection for Security Specialist position; employee's former supervisor claimed he had no knowledge of EEO complaint until four months after he made his selection for that position, and employee presented no evidence to refute that assertion. Talavera v. Fore, D.D.C.2009, 648 F.Supp.2d 118. Civil Rights 1252; United States 36

Female employee failed to demonstrate causal relationship between her participation in Equal Employment Opportunity Commission (EEOC) proceedings and former employ-

er's decision to terminate her employment at National Institutes of Health, as required to state prima facie case of retaliation under Title VII; there was no direct evidence of retaliatory intent by supervisors responsible for employee's termination, several years passed between employee's participation in initial EEOC proceedings and her termination and supervisors had no knowledge of employee's participation in later EEOC proceedings. Bonds v. Leavitt, D.Md.2009, 647 F.Supp.2d 541, affirmed in part , reversed in part 629 F.3d 369. Civil Rights 1252; United States 36

Federal supervisory employee's retaliation theory as motive for her two-day suspension at Small Business Administration (SBA), purportedly for her unprofessional conduct at telecommuting training session, was not legally plausible under Title VII; no evidence had been submitted that either deputy district director or district director, both of whom were present at training session in question, were aware until after suspension was served of employee's earlier informal complaint, there was ample basis for deputy district director to propose and for district to decide to suspend employee, and, even more crucial, no disciplinary measures befell either of other two signatories of informal complaint. Colon v. Mills, D.Puerto Rico 2009, 646 F.Supp.2d 224, affirmed 2011 WL 504049. Civil Rights 1249(3); United States 53(8)

There was no evidence that supervisor who made decision to terminate Caucasian United States Postal Service (USPS) probationary employee had any knowledge of employee's alleged telephone call to second-line supervisor complaining of racial harassment, as required to sustain Title VII retaliation claim. Mianulli v. Potter, D.D.C.2009, 634 F.Supp.2d 90, affirmed in part 2010 WL 604867, rehearing denied. Civil Rights 1249(2); Postal Service 5

Issue of whether Assistant Chief Deputy in U.S. Marshals Service in Puerto Rico was denied promotion to GS-15 Chief Deputy Marshal position in retaliation for his filing of EEO complaint was for jury in Title VII case; fact he was subjected to various indignities immediately upon returning from temporary assignment in the Virgin Islands, where he had filed EEO complaint, provided additional proof of causation. Orr v. Mukasey, D.Puerto Rico 2009, 631 F.Supp.2d 138. Civil Rights 1555; United States Marshals 3

Female Federal Housing Finance Agency (FHFA) employee's informing her supervisor during performance review meeting that she believed that her review was discriminatory and that she intended to hire attorney was protected activity within meaning of Title VII. Powell v. Lockhart, D.D.C.2009, 629 F.Supp.2d 23. Civil Rights 1244; United States 36

Office of Personnel Management's (OPM) initial denial of federal employee's request for leave under the Family and Medical Leave Act (FMLA) because she failed to submit adequate documentation was not a materially adverse act, as element of Title VII retali-

ation claim; when employee submitted documentation, her request for FMLA leave was granted, and any delay was caused by employee's failure to earlier provide required medical documentation. Tolson v. Springer, D.D.C.2009, 618 F.Supp.2d 14. Civil Rights 1249(1); United States 36

Federal Bureau of Investigation (FBI) employee, a Video Communications Specialist (VCS), failed to sufficiently prove that agency's proffered performance-related reasons for taking adverse employment actions against her were a pretext for retaliation; employee's statement that, even though she could not prove it or pinpoint why, she felt Management within Forensic Audio Video and Image Analysis (FAVIA) Unit retaliated against those who spoke out or against those who did not fit into their mold, was purely subjective as well as speculative and was not corroborated by any other evidence in the record, made only generalized allegation, and made no specific reference to her, to any particular supervisor who might have retaliated against her, or to any specific incident of retaliation. Evans v. Holder, D.D.C.2009, 618 F.Supp.2d 1. Civil Rights 1251; United States 36

Year-plus length of time between Department of Justice (DOJ) employee's protected activity and his transfer to another position was too great to support inference of causation, for purposes of retaliation claim under Title VII and Age Discrimination in Employment Act (ADEA). Pearsall v. Holder, D.D.C.2009, 610 F.Supp.2d 87. Civil Rights 1541; United States 36

No causal connection existed between United States Postal Service (USPS) employee's negative attendance evaluations and other disciplinary measures taken by employee's supervisor relating to employee's attendance and employee's filing of second Equal Employment Opportunity (EEO) charge, as would support employee's Title VII retaliation claim based on disciplinary measures; disciplinary measures pre-dated supervisor's knowledge of charge. Gonzalez-Rodriguez v. Potter, D.Puerto Rico 2009, 605 F.Supp.2d 349. Civil Rights 1252; Postal Service 5

Black African Environmental Protection Agency (EPA) employee of Nigerian descent failed to establish she was fired in retaliation for filing discrimination complaints on basis of temporal proximity, where she was fired more than five years after filing her initial Equal Employment Opportunity (EEO) complaint. Nwachuku v. Jackson, D.D.C.2009, 605 F.Supp.2d 285, affirmed 368 Fed.Appx. 152, 2010 WL 1169796. Civil Rights 1252; United States 36

White female federal employee's “fully successful” performance evaluation was not retaliatory; employee had neither adduced evidence nor pointed to anything in the record indicating that supervisor knew about her Equal Employment Opportunity (EEO) activity when he gave her the appraisal, and there was significant evidence in the record that employee knew about her performance appraisal long before she commenced her EEO

activity. Kline v. Springer, D.D.C.2009, 602 F.Supp.2d 234, affirmed 2010 WL 5258941, rehearing en banc denied. Civil Rights 1249(1); United States 36

Evidence proffered in support of Title VII retaliation claim of Asian-American female former Foreign Service officer, who was subject of waste, fraud, and abuse investigation by her supervisor, that supervisor had never conducted any other such investigation while stationed in city of employee's post was not relevant to pretext, absent evidence that other officers had, in fact, committed waste, fraud, and abuse, and that supervisor was aware of such conduct and had decided not to pursue investigations in those cases, and thus evidence was insufficient to withstand summary judgment. Farris v. Clinton, D.D.C.2009, 602 F.Supp.2d 74. Civil Rights 1251; United States 36

Federal employee failed to present evidence of a causal connection between the initiation of his prior Title VII employment discrimination action against U.S. Agency for International Development, his employer, and Agency's decision to deny his application for supervisory labor relations position, as required to prevail in his present Title VII retaliation action, although Agency's denial occurred in same month as employee's prior Title VII action was initiated; employee failed to present evidence to rebut Agency's contention that all candidates for the position were considered on the same basis. Porter v. Fulgham, D.D.C.2009, 601 F.Supp.2d 205, affirmed in part , reversed in part 606 F.3d 809, 391 U.S.App.D.C. 41. Civil Rights 1252; United States 36

Supervisor's newly promoted status in her position at time that Internal Revenue Service (IRS) employee filed his grievances, her misunderstanding that she would receive processing assistance from labor relations, and her attention on training matters, were legitimate, non-retaliatory reasons, under Title VII, for any delay in processing employee's grievance requests. Twisdale v. Paulson, S.D.W.Va.2009, 595 F.Supp.2d 686. Civil Rights 1249(1); United States 36

Supervisor's legitimate, nonretaliatory reason for refusing to allow federal employee to transfer with her slot, that division did not want to lose allocated staff position, was not pretext for retaliation for employee's earlier filing of discrimination complaint, as required for employee to establish Title VII retaliation claim. Hines v. Bair, D.D.C.2009, 594 F.Supp.2d 17. Civil Rights 1251; United States 36

Denial of overtime work in retaliation for equal employment opportunity (EEO) related activities would clearly constitute an adverse action for Title VII retaliation purposes, if the denial of overtime work would result in the denial of overtime pay. Walker v. England, D.D.C.2008, 590 F.Supp.2d 113. Civil Rights 1245

Older Bangladeshi federal employee failed to establish that proffered explanation for his termination was pretext for retaliation; given federal agency's nondiscriminatory explanations for actions complained of, no reasonable jury could find that agency retaliated

against employee in response to filing EEO complaint. Chowdhury v. Schafer, D.D.C.2008, 587 F.Supp.2d 257. Civil Rights 1251; United States 36

Federal employee's reassignment to a different division after she filed discrimination complaint with the Equal Employment Opportunity (EEO) counselor was not "adverse employment action," as required to establish prima facie Title VII retaliation claim, where the reassignment was conducted consistent with collective bargaining agreements (CBA) following federal agency's reorganization. Watson v. Paulson, S.D.N.Y.2008, 578 F.Supp.2d 554, affirmed 355 Fed.Appx. 482, 2009 WL 4431051. Civil Rights 1263; United States 36

Almost four-month interval between the filing of federal employee's Equal Employment Opportunity Commission (EEOC) complaint and the first purported adverse action, and the approximate ten-month hiatus from denial of employee's relocation request on which charge was based, were too attenuated to establish causal connection for prima facie case of retaliation under Title VII. Vines v. Gates, D.D.C.2008, 577 F.Supp.2d 242. Civil Rights 1252; United States 36

Federal employee in Department of the Interior failed to establish sufficient causal connection between protected activity and rewriting of position descriptions, two months before he first engaged in and eight months after he last engaged in protected activity, in action alleging retaliation under Title VII. Hill v. Kempthorne, D.D.C.2008, 577 F.Supp.2d 58. Civil Rights 1252; United States 36

Genuine issue of material fact as to whether causal connection existed between United States Department of Housing and Urban Development's (HUD) Office of Inspector General (OIG) employee's providing of unfavorable deposition testimony in connection with co-worker's discrimination complaint and his involuntary reassignment and receipt of negative job reference precluded summary judgment as to employee's retaliation claims under Title VII and Age Discrimination in Employment Act (ADEA). Beard v. Preston, D.D.C.2008, 576 F.Supp.2d 93. Federal Civil Procedure 2497.1

Government Accountability Office (GAO) Personnel Appeals Board (PAB) employee's denial of promotion one month before her first protected activity, e-mailing PAB's executive director to state she wished to file EEO complaint regarding PAB's discriminatory pay and practices, was not causally connected to alleged protected activity, as required to establish prima facie retaliation claim under ADEA and Title VII. Williams v. Dodaro, D.D.C.2008, 576 F.Supp.2d 72. Civil Rights 1252; United States 36

Selecting official did not intentionally misrepresent her knowledge of female Federal Deposit Insurance Corporation (FDIC) employee's past Equal Employment Opportunity (EEO) activity, as would support employee's claim that FDIC's legitimate, non-discriminatory reason for not selecting her for position as human resource specialist

was mere pretext for gender discrimination under Title VII and age discrimination under Age Discrimination in Employment Act (ADEA). Chappell-Johnson v. Bair, D.D.C.2008, 574 F.Supp.2d 87, affirmed 358 Fed.Appx. 200, 2009 WL 5127099. Civil Rights 1171; Civil Rights 1209

Evidence presented by discharged Immigration and Naturalization Service (INS) probationary employee did not preponderate toward finding that there was probably a nexus between employee's protected conduct and her discharge, as required to support her Title VII retaliatory discharge claim, even if members of management knew she had made complaint and one said "That sunk you!" and even though first-line supervisor was told by coworker that employee would file complaint once she became permanent. Crespo Vargas v. U.S. Government, D.Puerto Rico 2008, 573 F.Supp.2d 532. Civil Rights 1553; United States 36

There was no causal connection between State Department employee's filing of Equal Employment Opportunity (EEO) complaint and Department's decision to remove her EEO Counselor responsibilities, as would support employee's claim that removal of those duties constituted retaliation in violation of Title VII; duties were removed at least four years prior to employee's filing of complaint, and employee actually requested that duties be reassigned to another employee. Prince v. Rice, D.D.C.2008, 570 F.Supp.2d 123, affirmed 2009 WL 5125223. Civil Rights 1252; United States 36

United States Postal Service (USPS) employee failed to establish prima facie case of retaliation in connection with his protected activity of making Equal Employment Opportunity Commission (EEOC) contact; being stared at by manager one day and yelled at during subsequent meeting did not satisfy "adverse employment action" requirement, absent additional repercussions, and employee's one-day suspension for calling his supervisor "gay" at meeting was not causally related to the protected activity. Davila v. Potter, D.Puerto Rico 2007, 550 F.Supp.2d 234. Civil Rights 1249(1); Civil Rights 1252; Postal Service 5

African-American female employee of the Federal Bureau of Investigation (FBI) failed to establish that Assistant Special Agent in Charge (ASAC) had knowledge, at the time of any allegedly retaliatory action, that employee had filed or had announced an intent to file or otherwise assert a claim of racial discrimination, as required to establish prima facie case of retaliation under Title VII. Dawson v. U.S., D.S.C.2008, 549 F.Supp.2d 736, affirmed 368 Fed.Appx. 374, 2010 WL 727648. Civil Rights 1249(1); United States 36

There was no causal connection between employee's prior protected activity and the adverse employment actions of which he complained, as required for a prima facie case of retaliation under Title VII; the amount of time between the protected activity and the adverse employment actions, at least ten months, was too lengthy to establish a causal

connection where there was no other evidence of retaliatory intent. Guion v. England, E.D.N.C.2008, 545 F.Supp.2d 524, affirmed 296 Fed.Appx. 347, 2008 WL 4600646. Armed Services 27(4); Civil Rights 1252

Federal agency employee failed to establish prima facie case of retaliation based on his denial of selection to noncompetitive detail six months after his initial EEO complaint. Hamilton v. Paulson, D.D.C.2008, 542 F.Supp.2d 37, reconsideration denied in part 616 F.Supp.2d 49. Civil Rights 1252; United States 36

United States Postal Service (USPS) did not retaliate against employee who had filed charges of race and gender discrimination with Equal Employment Opportunity Commission (EEOC), in violation of Title VII, when USPS reduced employee's hours and changed her schedule, since changes occurred in response to shifting staffing needs in employee's office and the slower summer season, and employee's status as a part-time flexible employee did not entitle her to any more hours than she was assigned, or to work a particular schedule. Smith-Barrett v. Potter, W.D.N.Y.2008, 541 F.Supp.2d 535. Civil Rights 1249(1); Postal Service 5

Federal employee failed to establish that his reassignment, which was made two years and eight months after his Equal Employment Opportunity (EEO) activity, was for a retaliatory reason; employer, which believed that employee would be more satisfied and more productive in reassigned position, put forward a legitimate, non-discriminatory reason for its action, and employee failed to show that the asserted explanation was a mere pretext for unlawful retaliation. Pardo-Kronemann v. Jackson, D.D.C.2008, 541 F.Supp.2d 210, affirmed in part , reversed in part 601 F.3d 599, 390 U.S.App.D.C. 178. Civil Rights 1251; Civil Rights 1252; United States 36

African American female employee of Federal Deposit Insurance Corporation (FDIC) established a causal connection between employee filing formal Equal Employment Opportunity (EEO) complaint and employee's supervisor reducing employee's workload, as required to establish a prima facie case of Title VII retaliation, although six months passed between EEO complaint and first documented request for additional work, where employee alleged that her workload "immediately" diminished after EEO complaint, and employee's low placement in pay raise system, which resulted in employee not receiving a pay raise, was based on performance period affected by diminished workload. Brownfield v. Bair, D.D.C.2008, 541 F.Supp.2d 35. Banks And Banking 505; Civil Rights 1252

Former Federal Reserve Board (FRB) employee, a certified public accountant (CPA), failed to show that his direct supervisors knew about his request for an Equal Employment Opportunity Commission (EEOC) hearing prior to allegedly taking adverse employment action against him, as required to establish prima facie case of retaliation in violation of Title VII and the ADEA, although letter providing notice of hearing request

was sent to FRB's EEO programs director. Jones v. Bernanke, D.D.C.2008, 538 F.Supp.2d 53, reversed 557 F.3d 670, 384 U.S.App.D.C. 443. Banks And Banking 353; Civil Rights 1249(1)

Acts of federal employee's first-line supervisor, considered collectively, were not retaliatory under employment discrimination laws when none of them individually were retaliatory, and objection to charge of collective retaliation was not waived; employee's amended complaint did not clearly indicate that instances of retaliation should be considered collectively as well as individually and refutation of charges individually implicitly refuted umbrella charge that acts collectively constituted retaliation, and collective retaliation claim could be no greater than the sum of its parts. Baloch v. Norton, D.D.C.2007, 517 F.Supp.2d 345, affirmed 550 F.3d 1191, 384 U.S.App.D.C. 85. Civil Rights 1249(1); Civil Rights 1532; United States 36

Written reprimand placed in Navy employee's personnel file two days after he filed discrimination complaint was not "adverse employment action" that would support prima facie case of retaliation under ADEA or Title VII; while he might subjectively view reprimand as adverse, it had no impact on his rank, salary, or employment benefits and was temporary in nature, being intended to remain in his official personnel folder for only two years and essentially a warning that future unprofessional behavior would not be tolerated. Jackson v. Winter, E.D.Va.2007, 497 F.Supp.2d 759. Armed Services 27(4); Civil Rights 1249(3)

Army hospital did not take retaliatory action against employee exercising her protected right to complaint of sexual harassment, in violation of Title VII, when her supervisor allegedly treated her rudely and was difficult, denied her request for new computer, and when her contract was not renewed; conduct was not sufficiently materially adverse. Moret v. Geren, D.Md.2007, 494 F.Supp.2d 329. Armed Services 27(4); Civil Rights 1249(1); Civil Rights 1249(2)

Letter of reprimand issued to federal employee was not causally connected to her statutorily protected conduct of filing a complaint with the Equal Employment Opportunity Commission (EEOC), as required for employee's Title VII retaliation claim; letter of reprimand was issued more than a year after she filed the complaint with the EEOC and the deciding official for the letter of reprimand was an individual who was in no way involved in the events underlying employee's EEOC complaint. Wada v. Tomlinson, D.D.C.2007, 517 F.Supp.2d 148, affirmed 296 Fed.Appx. 77, 2008 WL 4569862, rehearing en banc denied. Civil Rights 1252; United States 36

Department of Commerce (DOC) employee engaged in "protected activity" as required to establish prima facie case of retaliation under Title VII when she first contacted Equal Employment Opportunity (EEO) Counselor to complain of workplace discrimination, and again when she declined Office of Security's (OSY's) offer of resolution and expressed

her intention to proceed with formal complaint. Richardson v. Gutierrez, D.D.C.2007, 477 F.Supp.2d 22. Civil Rights 1244; United States 36

Federal Bureau of Investigation (FBI) employee's filing of Equal Employment Opportunity Commission (EEOC) complaint, meeting with FBI Director and Congressman to oppose perceived discrimination, and initiating a lawsuit, were statutorily protected activities, as element of prima facie case of retaliation under Title VII. Youssef v. F.B.I., D.D.C.2008, 541 F.Supp.2d 121, new trial denied 2011 WL 313289. Civil Rights 1244; United States 36

Federal agency's adoption of new medical certification requirement for continued inclusion in program for accommodating employees injured because of their exposure to toxic substances in office building was not in retaliation for employee's complaint about program, in violation of Title VII and Rehabilitation Act, where agency proposed modifying existing policy long before employee contacted agency's administrator to protest policy. Dage v. Johnson, D.D.C.2008, 537 F.Supp.2d 43. Civil Rights 1252; United States 36

Department of Veterans' Affairs (DVA) Patient Advocate failed to establish prima facie case of retaliation under Title VII, absent causal connection between his nonselection for position of Director of Office of Patient Advocacy and his prior Equal Employment Opportunity Commission (EEOC) activity; while agency official who made final decision to reinstate abolished Lead Patient Advocate position and cancel Director position had knowledge of plaintiff's prior EEOC activity and was an indirect decisionmaker, causal connection was substantially tempered because of his reliance on recommendation of Executive Officer, the selecting official for Director position, who denied having any knowledge of plaintiff's prior protected activity. Pierce v. Mansfield, D.D.C.2008, 530 F.Supp.2d 146. Armed Services 102; Civil Rights 1252

Postal employee's allegations that his work codes were mysteriously changed and that he was forced to file a grievance were insufficient to make prima facie case of retaliation under Title VII; there was no protected activity with which to link alleged retaliation, and changes did not affect employee's salary, benefits, vacation and leave time, or his job assignments. Gentile v. Potter, E.D.N.Y.2007, 509 F.Supp.2d 221. Civil Rights 1244; Civil Rights 1249(1); Postal Service 5

Older, African-American employee of Office of Cuba Broadcasting (OCB) satisfied causation element of prima facie case of retaliation notwithstanding seventeen-month lapse between his initial EEO contact and the decision to remove him from his position, through showing that Director of OCB's Office of Technical Compliance first learned that employee had filed EEO complaint less than two months before he recommended employee's removal. Alexander v. Tomlinson, D.D.C.2007, 507 F.Supp.2d 2. Civil Rights 1252; United States 36

Federal Bureau of Investigation (FBI) legal attache in Saudi Arabia stated Title VII retaliation claims based on alleged monitoring and investigation of him and his work performance, even though the same alleged acts did not rise to actionable level for purposes of discrimination claims; "adverse actions" involved were file review conducted by Supervisory Special Agent, on-site review conducted by Unit Chief, debriefing of temporary duty personnel returning from Riyadh for information about attache, and loyalty investigation of attache conducted by FBI's security division after his conversion to Islam. Rattigan v. Gonzales, D.D.C.2007, 503 F.Supp.2d 56. Civil Rights 1249(1); United States 36

Environmental Protection Agency's placement of African-American male employee on forced administrative leave after dispute with intern for whom he was a mentor was not in retaliation for his prior Equal Employment Opportunity (EEO) charge against EPA in violation of Title VII; reasonable employee would not have been dissuaded from making or supporting charge of discrimination because of 10-hour period of leave, and both employee and intern were placed on leave and received same memo which instructed them to have no contact with each other. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights 1249(3); United States 36

Temporal proximity between Federal Bureau of Investigation (FBI) agent's protected contact of EEO counselor and subsequent pursuit of EEO remedies and agent's second referral to Office of Professional Responsibility (OPR) was not close enough to establish causal connection required for prima facie case of retaliation; agent's supervisor had already made up his mind to report discrepancies in her time and attendance records to OPR before agent's initial EEO contact and thus could not have known of her EEO activity when he decided to make referral. Velikonja v. Gonzales, D.D.C.2007, 501 F.Supp.2d 65, affirmed 298 Fed.Appx. 8, 2008 WL 4844773. Civil Rights 1252; United States 36

Claim by employee of Department of Labor that Department gave her lower performance rating than she otherwise would have received, and that Department consequently denied her a bonus and placed her on a plan to improve her performance, were sufficient to allege an adverse action, as an element of establishing Title VII retaliation for her having filed and pursued a prior employment discrimination lawsuit, even though employee did not expressly allege that the improper use of the new performance standards caused her to receive a negative job appraisal, resulting in her being placed on a performance plan or being denied her performance award. Vance v. Chao, D.D.C.2007, 496 F.Supp.2d 182. Civil Rights 1249(1); United States 36

Postal Service's discharge of employee for failing to disclose, as required by employment application, that he was previously employed by Postal Service and terminated for dishonest conduct was not in retaliation for employee's prior administrative discrimina-

tion charge, and thus did not violate Title VII, where charge was filed three years before employee's discharge, and there was no evidence that individual who terminated employee was involved in, or had any knowledge of, employee's prior activity. Fullman v. Potter, E.D.Pa.2007, 480 F.Supp.2d 782, affirmed 254 Fed.Appx. 919, 2007 WL 3215415. Civil Rights 1252; Postal Service 5

Taking away of ability of federal employee, a Financial Management Specialist in United States Department of Agriculture (USDA), to certify funds availability and concomitant reduction in employee's duties was "materially adverse action" that would support his prima facie case of retaliation. Pedicini v. U.S., D.Mass.2007, 480 F.Supp.2d 438. Agriculture 2; Civil Rights 1249(1)

Federal employee of United States Marshals' Service suffered adverse employment actions, as required for her Title VII claim against federal government alleging retaliation for filing gender discrimination claim, where employee was transferred and then transferred back to prior position, she was assigned light duty under oppressive work conditions, and she was passed over for advancement opportunities for which she was qualified and which were given to other persons with less experience. DeCaire v. Gonzales, D.Mass.2007, 474 F.Supp.2d 241, vacated 530 F.3d 1, corrected. Civil Rights 1249(1); Civil Rights 1250; United States Marshals 34

Unsupported conclusory allegation by Caucasian employee of state's Department of Transportation, that he complained to his supervisors that he was being discriminated against because he was Caucasian, was not sufficient to create a genuine issue of material fact as to whether he had engaged in protected opposition to discrimination, for purposes of precluding summary judgment on his Title VII retaliation claim against the Department. Tyree v. Department of Transp., New Mexico, D.N.M.2006, 468 F.Supp.2d 1351. Federal Civil Procedure 2497.1

Genuine issues of material fact, regarding whether employer's proffered reasons for adverse employment actions were pretext for retaliation, precluded summary judgment on female employee's Title VII claim against Postal Service, alleging gender discrimination. Lazcano v. Potter, N.D.Cal.2007, 468 F.Supp.2d 1161. Federal Civil Procedure 2497.1

Refusal by Director of the Office of Departmental Equal Employment Opportunity (ODEEO) to sign court-ordered declaration in a class action suit brought against former Secretary of Housing and Urban Development (HUD) and Equal Employment Opportunity Commission (EEOC) Chair was not in opposition to an "unlawful employment practice" as defined by Title VII and, thus, did not qualify as "protected activity" for the purposes of establishing a prima facie case of retaliation; although Director alleged that HUD's failure to have affirmative employment plan in place would violate Title VII, HUD's failure to satisfy affirmative action plan reporting requirement of Title VII was not

included among the "unlawful employment practices" explicitly set forth in Title VII. King v. Jackson, D.D.C.2006, 468 F.Supp.2d 33, affirmed 487 F.3d 970, 376 U.S.App.D.C. 284. Civil Rights 1244; United States 36

Transportation Security Administration (TSA) employee failed to establish prima facie case of retaliation, where he did not establish that his direct supervisor had knowledge of his Equal Employment Opportunity (EEO) activity prior to his termination and/or that supervisor's posttermination letter threatening criminal action resulted in adverse employment action. Bankston v. Chertoff, D.N.D.2006, 460 F.Supp.2d 1074. Civil Rights 1252; United States 36

Older African-American employee's meeting with Federal Aviation Administration (FAA) official to request explanation as to difference between new position given to white employee and position he had proposed in mediation on his Equal Employment Opportunity Commission (EEOC) charge did not qualify as "protected activity" that would support Title VII retaliation claim; there was no evidence he indicated to official that he attributed white employee's promotion to race or age discrimination. McIntyre v. Peters, D.D.C.2006, 460 F.Supp.2d 125. Civil Rights 1244; United States 36

Environmental Protection Agency (EPA) employee failed to establish prima facie case of retaliation under Title VII in connection with erosion of his duties after he filed Equal Employment Opportunity (EEO) complaint, absent causal connection between that protected activity and the adverse employment action well over one year later. Edwards v. U.S. E.P.A., D.D.C.2006, 456 F.Supp.2d 72. Civil Rights 1252; United States 36

Genuine issues of material fact existed as to whether employee's transfer to a new position was a demotion in form and substance, and thus an adverse employment action, precluding summary judgment for federal agency employer on employee's Title VII discrimination claim. Chaple v. Johnson, D.D.C.2006, 453 F.Supp.2d 63. Federal Civil Procedure 2497.1

African-American federal employee, an Equal Employment Opportunity (EEO) Specialist in Office of Civil Rights, established prima facie case of retaliation based on downgraded job responsibilities in form of removal of her EEO counselor-coordinator duties after she complained of discrimination based on race, gender and age in connection with Assistant Secretary's failure to redraft her position as allegedly promised. Prince v. Rice, D.D.C.2006, 453 F.Supp.2d 14. Civil Rights 1249(1); United States 36

United States Postal Service (USPS) employee established prima facie case of retaliation under Rehabilitation Act and Title VII through evidence she was terminated after she filed discrimination complaint with Connecticut Human Rights Office (CHRO), although fact that attorney for USPS responded to the CHRO concerning complainant by asserting that CHRO lacked jurisdiction over federal employees did not establish that

any of employee's managers knew she had filed the complaint. Thompkins v. Potter, D.Conn.2006, 451 F.Supp.2d 349. Civil Rights 1249(2); Postal Service 5

Federal employee failed to demonstrate causal relationship between her filing of discrimination charges with Equal Employment Opportunity Commission (EEOC) and increase in her work duties necessary to establish retaliation claim under Title VII, where increase in her duties did not occur in close temporal proximity with any EEOC activity, and majority of events to which employee pointed occurred after her duties were allegedly increased. Meyer v. Nicholson, W.D.Pa.2006, 441 F.Supp.2d 735. Civil Rights 1252; United States 36

Supervisor's alleged harassment of postal employee did not constitute "adverse employment action" necessary to support employee's Title VII retaliation claim, even though supervisor was aware of employee's prior discrimination complaints, reprimanded employee, and required her to help on additional routes, where employee was not removed from her job, supervisor never made any comment regarding employee's prior discrimination complaints, and record indicated that supervisor's actions were motivated by concern over employee's job performance. Lucenti v. Potter, S.D.N.Y.2006, 432 F.Supp.2d 347. Civil Rights 1250; Postal Service 5

Federal employee who alleged that employer reduced her duties and responsibilities by abolishing her position, under which she had formerly managed a staff of 550 employees and a budget of $40 million, and reducing her to a position where she supervised only 75 employees and managed a budget of only $4.4 million, sufficiently pleaded adverse employment action element of prima facie case of retaliation under Title VII. Mansfield v. Billington, D.D.C.2006, 432 F.Supp.2d 64, on reconsideration in part 669 F.Supp.2d 11. Civil Rights 1249(1); United States 36

Forest ranger failed to satisfy causality requirement, for claim that United States Forest Service discriminated against him for filing of complaint with Equal Employment Opportunity Commission (EEOC) in violation of Title VII, by denying him credit for time spent in temporary job carrying higher civil service classification; there was no showing that officials denying credit knew that supervisor recommended denial for allegedly improper reason, and in any event five-month interval between EEOC complaint and denial was too long. Serrano v. Veneman, D.N.M.2005, 410 F.Supp.2d 1049. Civil Rights 1252; Woods And Forests 7

African-American male applicant for position with Department of State could not establish causal connection between his Equal Employment Opportunity (EEO) activity and his nonselection for position, as required to establish prima facie case of retaliation; applicant had not sufficiently demonstrated that selecting official knew of his protected conduct with his affidavit stating that "on information and belief" she was aware of his EEO counseling. Henderson v. Rice, D.D.C.2005, 407 F.Supp.2d 47. Civil Rights

1252; United States 36

Federal employee failed to show that agency's proffered justification for investigations, his arrest, and his criminal prosecution, coworker reports of alleged threats he made against other agency employees, were pretext to retaliate against him for filing discrimination grievance; while employee was acquitted of criminal charges, there was no evidence management knew, or had reason to know, that reports of threats were fabricated. Roberson v. Snow, D.D.C.2005, 404 F.Supp.2d 79. Civil Rights 1251; United States 36

Postal employee established a prima facie case under Title VII of retaliation by the postmaster for her activities of filing a complaint with the Equal Employment Opportunity Commission (EEOC); the alleged actions, including a letter of warning, a letter of removal, and two notices of emergency suspension, as well as not allowing her to use the telephone, the copy machine or the air conditioning, occurred within 30 days upon becoming knowledgeable of her EEOC activities. Bajana v. Potter, D.Puerto Rico 2005, 396 F.Supp.2d 78. Civil Rights 1249(3); Civil Rights 1252; Postal Service 5

Unsuccessful applicant failed to establish prima facie case of retaliation under Title VII in connection with her nonselection for various positions at United States Department of Veterans Affairs (VA), absent showing of causal connection between her discrimination complaints and the nonselection decisions many months later; while one instance of nonselection occurred only a couple of months after she contacted Equal Employment Opportunity Commission (EEOC), there was no evidence in record that interview panel was aware of that contact. Oliver-Simon v. Nicholson, D.D.C.2005, 384 F.Supp.2d 298. Armed Services 102; Civil Rights 1252

Genuine issue of material fact as to whether postal worker was denied promotion in retaliation for his prior filing of gender discrimination charge precluded summary judgment in worker's Title VII retaliation suit. Rainone v. Potter, E.D.N.Y.2005, 359 F.Supp.2d 250. Federal Civil Procedure 2497.1

Lack of any causal connection precluded claim that black female former executive with Federal Bureau of Investigation (FBI) was retaliated against for equal employment opportunity activities, in violation of Title VII, when field service she did not have was included in requirements of position for which she was applying. Davis v. Ashcroft, D.D.C.2005, 355 F.Supp.2d 330. Civil Rights 1252; United States 36

Federal employee's First Amendment retaliation claim that her advocacy of the use of flex-time and flexi-place was a substantial or motivating factor in adverse actions her employer took against her was not preempted by Title VII, where employee's First Amendment claim rested upon alleged retaliation for speech on an issue not related to either her discrimination claim or to protected activities conducted to seek redress for

alleged discrimination. Velikonja v. Mueller, D.D.C.2004, 315 F.Supp.2d 66, affirmed in part , reversed in part 466 F.3d 122, 373 U.S.App.D.C. 276, on remand 501 F.Supp.2d 65. Civil Rights 1312; Civil Rights 1502

African-American civilian employee with United States Air Force (USAF) did not establish that her termination for misuse of credit cards was causally connected to her protected activity of filing complaints with Equal Employment Opportunity (EEO) office, as required for prima facie case of retaliation under Title VII; supervisor that allegedly retaliated against employee was not the individual who was responsible for decision to terminate her. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Armed Services 27(5); Civil Rights 1252

Although an employee need not be fired, demoted or transferred for an "adverse employment action" to occur, as required to support a retaliation claim under Title VII, an employment decision does not rise to the level of an actionable adverse action unless there is a tangible change in the duties or working conditions constituting a material employment disadvantage. Brodetski v. Duffey, D.D.C.2001, 141 F.Supp.2d 35. Civil Rights 1245

Federal employee established prima facie case of retaliation under Title VII; employer knew of employee's protected Equal Employment Opportunity (EEO) activity, termination of employee was disadvantaging to employee, and employee established causal connection between her EEO activity and her termination. Kahmann v. Reno, N.D.N.Y.1996, 928 F.Supp. 1209. Civil Rights 1249(2); United States 36

Even if an employee was able to show a causal connection between her nonselection for a promotion and her previous equal employment opportunity (EEO) complaints, employer articulated a legitimate nondiscriminatory reason for failing to promote the employee based upon recommendation of hiring panel; panel did not recommend the employee for the promotion because it found that another candidate best demonstrated the experience and job related knowledge and skills to perform the job and person in charge of hiring indicated that he selected the person for the promotion based solely on the recommendation of the panel. Parnell v. Stone, E.D.Mich.1992, 793 F.Supp. 742, affirmed 12 F.3d 213. Civil Rights 1246

Employment applicant failed to demonstrate sufficient causal connection between his employment discrimination action against Postal Service and decision of Postal Service not to rehire him to establish prima facie case of retaliation, where officials who made decision testified they had no personal knowledge of suit and that documents they reviewed did not apprise them of applicant's legal activities, and evaluation prepared by supervisor who was most likely aware of suit was no more critical of applicant's performance than other information in file. Rogers v. Frank, E.D.Mo.1992, 782 F.Supp. 91, affirmed 972 F.2d 354. Postal Service 5

Female employee failed to establish that agency's failure to promote her and that its reduction of her job responsibilities following desk audit had been retaliatory or otherwise discriminatory. Shamey v. Administrator, General Services Admin., D.D.C.1990, 732 F.Supp. 122, affirmed 925 F.2d 490, 288 U.S.App.D.C. 259, rehearing denied. Civil Rights 1135; Officers And Public Employees 11.7; Officers And Public Employees 72.63

Remedies against retaliatory discharges were intended by Congress to be included in 1972 amendments to this section. Sorrells v. Veterans Admin., S.D.Ohio 1983, 576 F.Supp. 1254.

United States Information Agency's (USIA) denial of employee's request to transfer during reduction in force after she pursued gender discrimination claims against agency was not adverse employment action necessary to support employee's Title VII retaliation claim; while employee raised a possibility of a transfer with agency officials, her request amounted to a recommendation that a new position be created. Black v. Tomlinson, D.D.C.2006, 235 F.R.D. 532. Civil Rights 1249(2); United States 36

Federal agency's proffered reasons for terminating black employee, i.e. intentional falsification of time and attendance record, lack of candor with management, and absence without leave, constituted legitimate, non-race-based reasons for termination, precluding recovery in employee's Title VII race discrimination and retaliation action. Crawford v. Chao, C.A.11 (Ga.) 2005, 158 Fed.Appx. 216, 2005 WL 3303998, Unreported, rehearing and rehearing en banc denied 179 Fed.Appx. 685, 2006 WL 1112957. Civil Rights 1122; Civil Rights 1249(2); United States 36

Fourteen-day suspension letter received by postal worker did not rise to level of adverse employment action supporting Title VII retaliation claim, given that worker did not serve suspension and letter was removed from his personnel file, such that letter was not materially adverse to his job status; that worker allegedly had adverse reaction to letter, resulting in medical treatment, did not make letter adverse employment action. Candelaria v. Potter, C.A.10 (N.M.) 2005, 132 Fed.Appx. 225, 2005 WL 1231923, Unreported. Civil Rights 1249(3); Postal Service 5

Alleged retaliatory harassment that federal employee suffered during five months following his filing of discrimination complaint, which included supervisor's comments about needing to show his superiors that he was supervising employee, and supervisor exploding at employee when he requested leave time to engage in Equal Employment Opportunity (EEO) activity and when he asked for day off due to sickness, constituted adverse employment action, as required for prima facie case of retaliation under Title VII. Upshur v. Dam, S.D.N.Y.2003, 2003 WL 135819, Unreported. Civil Rights 1249(1); United States 36

66a. ---- Promotion denial, retaliation for exercise of rights, discriminatory practices prohibited

Federal employee's non-promotion was not the result of unlawful retaliation for her equal employment opportunity (EEO) complaint regarding an allegedly unwarranted referral for a mental health screening, thus defeating her Title VII claim of retaliation; there was no more than speculative evidence that the decisionmaker knew of the referral. Talavera v. Shah, C.A.D.C.2011, 638 F.3d 303. United States 36

Supervisor's failure to recommend federal employee for new position employer was considering creating but ultimately did not create was not a materially adverse action as might form basis of employee's claim against employer under Title VII alleging retaliation for reporting sexual harassment; although a refusal to promote could be materially adverse action, employee was not denied tangible opportunity to advance her career because there was no position to which she might have been promoted, and in any event the non-recommendation for a hypothetical position would not have dissuaded a reasonable employee from coming forward. Taylor v. Solis, C.A.D.C.2009, 571 F.3d 1313, 387 U.S.App.D.C. 230, rehearing en banc denied. Civil Rights 1249(1); United States 36

Fact that applicant was prior federal employee at GS-11 level did not mean she should have been considered under noncompetitive (NC) process for writer/editor position, where vacancy announcement for that position clearly stated that both highest promotion level was GS-12 and that applicants invoking NC process must have served in position with equal or greater promotion potential than position advertised; in addition to failing to request consideration under NC process, applicant gave no reason why she was qualified despite being below required GS-12 status. Atanus v. Sebelius, D.D.C.2009, 652 F.Supp.2d 4, affirmed 2010 WL 1255937. Officers And Public Employees 11.7

African-American candidate failed to show that Broadcast Board of Governors' (BBG's) legitimate, nondiscriminatory reasons for not selecting him for either of two vacant positions, one of which he interviewed for, were pretext for race discrimination; agency policy did not prohibit “all-Caucasian” selection panels, racial homogeneity of selection panel was easily explained by fact all management officials within Office of Internet Development (OID) were Caucasian, while all selectees were Caucasian at least one African-American was interviewed for each of the two positions, BBG's failure to place plaintiff on one certificate of eligibility could have resulted from innocent mistake rather than intent to discriminate, while plaintiff claimed his credentials were vastly superior to those of selectee for one position, he failed to identify qualifications gap so wide and inexplicable as to support inference of discrimination, and even assuming that he was interviewed for the other position only as “cover,” reasonable jury could not infer he suffered discrimination when he was not selected for that position. Brown v. Broadcasting

Bd. of Governors, D.D.C.2009, 662 F.Supp.2d 41. Civil Rights 1135; Civil Rights 1535

Employee of Department of Navy was not qualified for promotion to position as supervisory naval architect in view of hiring decisionmaker, precluding employee's claim against Navy for discriminatory or retaliatory failure to promote under Title VII and Age Discrimination in Employment Act (ADEA), regardless of employee's favorable self-assessment. Stoyanov v. Winter, D.D.C.2009, 643 F.Supp.2d 4, affirmed 2010 WL 605083, rehearing en banc denied. Armed Services 27(4); Civil Rights 1548; Civil Rights 1551; Civil Rights 1553

Assuming arguendo that older, African-American male federal employee established prima facie case of discrimination or retaliation in connection with his failure to receive accountant position, he failed to show that agency's nondiscriminatory reasons for selecting another candidate were pretext for age, race or gender discrimination or retaliation; employee's contention that he possessed required skills for the position was based on his own opinions of his skills, and employee had not shown he was significantly better qualified than applicant who got job. Montgomery v. Chao, D.D.C.2007, 495 F.Supp.2d 2, affirmed 546 F.3d 703, 383 U.S.App.D.C. 290, rehearing en banc denied. Civil Rights 1137; Civil Rights 1179; Civil Rights 1209; Civil Rights 1251; United States 36

Director of General Services Administration's (GSA's) Office of Real Property (ORP) did not discriminate against older black female employee on basis of age, sex or race or in retaliation for protected activity when he did not select her for three GS-14 positions in ORP; GSA's proffered reason that selectees' "real property experience" made them more qualified than plaintiff was legitimate, nondiscriminatory, and nonretaliatory, and plaintiff's response that human resources assigned her a higher personnel rating than two of the selectees was insufficient to show pretext. Calhoun v. Prouty, D.D.C.2009, 643 F.Supp.2d 87, affirmed in part 2010 WL 605059, affirmed in part, reversed in part and remanded 2011 WL 192497. Civil Rights 1137; Civil Rights 1171; Civil Rights 1209; Civil Rights 1251; United States 36

There was no evidence to support causal link between federal government employee's equal employment opportunity (EEO) related activities and the denial of employee's application for the leadership development initiative (LDI) program, as required to establish retaliation under Title VII; employee's application was missing a signed verification of eligibility form and the LDI program handbook specifically stated that incomplete applications were not accepted for consideration. Walker v. England, D.D.C.2008, 590 F.Supp.2d 113. Civil Rights 1252; United States 36

Older Department of Homeland Security (DHS) officer failed to rebut Secretary's proffered nondiscriminatory justifications for officers' nonpromotion to temporary position of

sergeant or supervisor; while three officers younger than he received promotions, two of them were only two and four years younger, he had recent disciplinary issues, he was not assigned to the new unit as were the promoted officers, and decision not to advertise position was done for administrative rather than discriminatory purposes. Short v. Chertoff, D.D.C.2008, 555 F.Supp.2d 166. Civil Rights 1207

African-American male employee failed to make prima facie case that his non-selection for promotion by Environmental Protection Agency (EPA) was result of retaliatory animus for prior Equal Employment Opportunity (EEO) activity, in violation of Title VII; only prior EEO activity cited was discrimination charge filed against EPA three years prior to promotion decision, which was too remote to create presumption of retaliation. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights 1541; United States 36

Federal agency's failure to promote employee on ground that she was not qualified for position was not pretext for retaliating against her for filing employment discrimination charges, in violation of Title VII, despite testimony that deciding official expressed optimism about employee's promotion, where agency handbook indicated that promotion required work at facility with higher level of complexity than facility in which employee worked, and deciding official had not recommended anyone from facility for promotion to position. Meyer v. Nicholson, W.D.Pa.2006, 441 F.Supp.2d 735. Civil Rights 1251; United States 36

67. Transfers, discriminatory practices prohibited

Federal agency's proffered reasons for transferring supervisory employee, namely that he had requested to be transferred away from manager with whom his relationship was beyond repair, and that transfer responded to congressional concerns and furthered new mobility program aimed at all of agency's senior executives, was not pretext for retaliation in violation of Title VII, in that deciding official was concerned with incessant quarreling rather than employee's discrimination claims, and, even if deciding official breached promise not to involuntarily reassign employee, such fact did not in itself indicate retaliation. Patterson v. Johnson, C.A.D.C.2007, 505 F.3d 1296, 378 U.S.App.D.C. 285, rehearing en banc denied. Civil Rights 1251; United States 36

Decision of United States Postal Service (USPS) management to return employee who had filed equal employment opportunity (EEO) complaint to her regular position after completion of a temporary assignment did not support employee's Title VII retaliation claim; employee had been detailed to the temporary assignment for two years, her manager had attempted to meet with her to tell her that, if she wished to stay in that assignment, she needed to bid for a permanent position, and employee refused to meet with the manager. Roman v. Potter, C.A.1 (Puerto Rico) 2010, 604 F.3d 34. Civil Rights 1249(1); Postal Service 5

Genuine issues of material fact as to whether reassignment of federal agency employee to a different position left her with significantly different supervisory and programmatic responsibilities, so as to constitute an adverse employment action, and as to whether employee was reassigned for a discriminatory reason, precluded summary judgment in employee's Title VII gender discrimination action against employer. Czekalski v. Peters, C.A.D.C.2007, 475 F.3d 360, 374 U.S.App.D.C. 351, on remand 577 F.Supp.2d 120. Federal Civil Procedure 2497.1

Supervisor's refusal to transfer federal employee with her slot was not adverse employment action supporting employee's Title VII retaliation claim, given absence of evidence that employee or any other coworker was entitled to expect that her division, upon request, would forfeit allocated employee position to accommodate an employee's desire to transfer laterally. Hines v. Bair, D.D.C.2009, 594 F.Supp.2d 17. Civil Rights 1249(1); United States 36

United States Department of Housing and Urban Development's (HUD) Office of Inspector General (OIG) asserted legitimate, nondiscriminatory reason for 56-year-old employee's involuntary reassignment, namely, performance-related issues involving his leadership and various audits he supervised, in employee's action against OIG under Age Discrimination in Employment Act (ADEA). Beard v. Preston, D.D.C.2008, 576 F.Supp.2d 93. Civil Rights 1207

Federal Bureau of Investigation (FBI) employee's non-selection for transfer to unit chief position in FBI strategic information and operations center constituted an adverse action, as element of his prima facie case of national origin discrimination; even though position change would have constituted a lateral transfer, the employee's selection for the position would have resulted in materially changed job-related consequences, including a supervisory authority over 44 persons instead of one employee, and a broader range of responsibilities and opportunities for advancement within the FBI. Youssef v. F.B.I., D.D.C.2008, 541 F.Supp.2d 121, new trial denied 2011 WL 313289. Civil Rights 1135

Assignment of postal employee to another station by United States Postal Service (USPS) did not constitute, under Title VII, an adverse action taken against him due to his marital status, where employee was a part-time flexible employee who only worked 20 hours a week, and after the reassignment, he was guaranteed 40 hours. Cardona v. Potter, D.Puerto Rico 2008, 536 F.Supp.2d 172. Civil Rights 1197

Failure to approve requested “job swap” of older, African-American employee of Office of Cuba Broadcasting (OCB), or to find him permanent position in Washington, D.C. that would have allowed him to remain there in lieu of moving to Miami as part of OCB's relocation was not an “adverse employment action” that would support prima facie case of

discrimination; employee failed to show that supervisory broadcast technician position in Miami, which was identical to position he held in Washington before the OCB relocation, was objectively inferior to Voice of America (VOA) position he sought to swap into, or to any other position he should have been offered in Washington, and although understandable, employee's subjective desire to remain in Washington was not the sort of job-related attribute that would serve to convert lateral transfer into adverse employment action. Alexander v. Tomlinson, D.D.C.2007, 507 F.Supp.2d 2. Civil Rights 1135; Civil Rights 1207

Genuine issues of material fact existed as to whether the removal of employee's committee assignment could have dissuaded a reasonable worker from making or supporting a charge of discrimination, precluding summary judgment for employer in employee's Title VII claim that removing him from the committee position constituted retaliation for prior equal employment opportunity activity. Chaple v. Johnson, D.D.C.2006, 453 F.Supp.2d 63. Federal Civil Procedure 2497.1

Program manager's reassignment by Central Intelligence Agency (CIA), from major city in Latin American country to more remote city in same country, was not "adverse employment action" for purposes of Title VII and Age Discrimination in Employment Act (ADEA), inasmuch as both positions involved intelligence gathering, her rank, salary, and benefits remained constant before and after reassignment, reassignment did not bring diminution in opportunity for career advancement despite Chief of Station (COS) referring to new program as "decoy," and, even if remote city was more dangerous than major city, traveling to more dangerous location was within range of foreseeable risks when program manager accepted posting to major city. Peary v. Goss, E.D.Va.2005, 365 F.Supp.2d 713, affirmed 180 Fed.Appx. 476, 2006 WL 1388762. Civil Rights 1135; Civil Rights 1207

Evidence did not show that denial of post office employee's request for job transfer was motivated by intentional discrimination; fact that other employees were transferred did not show intentional discrimination particularly absent any evidence of animus against or mistreatment of any Hispanic employee in post office. Machado v. Frank, D.R.I.1991, 767 F.Supp. 416. Civil Rights 1548

68. Reappointment to position, discriminatory practices prohibited--Generally

Older white male sergeant with United States Park Police (USPP) presented prima facie case of gender, race and age discrimination with regard to his failure to be reassigned to Line Dog position, and prima facie case of age discrimination with regard to his non-appointments to Bomb Dog and Patrol Dog positions; he applied for and was qualified for all three positions, and USPP did not promote him but instead placed younger Hispanic woman in first position and younger white men in the other two positions. McNally v. Norton, D.D.C.2007, 498 F.Supp.2d 167. Civil Rights 1126; Civil Rights 1169;

Civil Rights 🔑1207

Genuine issue of material fact, as to whether nonselection of female Department of Commerce employee's application for her former position/denial of her request for lateral transfer back to that position constituted "objectively tangible harm," precluded summary judgment for Secretary of Commerce on employee's Title VII sex discrimination claim based on employee's failure to establish prima facie case; employee was member of protected class, and inference of discrimination arose because someone outside the protected class, a male, was chosen for the position. Kalinoski v. Gutierrez, D.D.C.2006, 435 F.Supp.2d 55. Federal Civil Procedure 🔑2497.1

Lack of need for postal employee's services was legitimate, non-retaliatory reason for Postal Service's failure to immediately reappoint employee, who was casual employee, to position, and such reason was not pretext for retaliation in violation of Title VII. Fairley v. Potter, N.D.Cal.2003, 2003 WL 403361, Unreported. Postal Service 🔑5

69. ---- Similarly situated employees, reappointment to position, discriminatory practices prohibited

General Services Administration (GSA) employee failed to show that coemployees who received letters of instruction were similarly situated to her, as required to establish prima facie Title VII or ADEA case based on receipt of letter, where letter she received was not written by manager who issued letters to coemployees, and employee's letter, unlike those of coemployees, was for failing to follow same GSA regulation. Atanus v. Perry, C.A.7 (Ill.) 2008, 520 F.3d 662. Civil Rights 🔑1138; Civil Rights 🔑1210

Male federal employee's female co-workers, who were allegedly disciplined less harshly than employee for similar infractions, were not similarly situated to employee, as would support employee's prima facie case of discriminatory discipline under Title VII; two of the female co-workers were not mail carriers, as was employee, but temporary employees, and alleged infractions committed by co-workers were not comparable to those of employee. Monk v. Potter, E.D.Va.2010, 723 F.Supp.2d 860, affirmed 2011 WL 108325. Civil Rights 🔑1138

African-American Department of Health and Human Services (HHS) employee was not "similarly situated" to Caucasian employee who obtained position of Executive Assistant to Commissioner, absent demonstration that all of the relevant aspects of her employment situation were nearly identical to those of her alleged comparator, who was already a GS-14 level employee in another division of agency, had preexisting relationship with Commissioner, and applied for position by responding to vacancy announcement. Evans v. Sebelius, D.D.C.2009, 674 F.Supp.2d 228. Civil Rights 🔑1138

Female employee was not similarly situated to male employee who was allegedly treat-

ed more favorably than employee following a work incident, as required for employee's Title VII disparate discipline claim; on the date of the alleged misconduct by the employees, the male employee was only the master of ceremonies while the female employee was the responsible editor. Wada v. Tomlinson, D.D.C.2007, 517 F.Supp.2d 148, affirmed 296 Fed.Appx. 77, 2008 WL 4569862, rehearing en banc denied. Civil Rights 1172

There was no evidence that any Library of Congress employees similarly situated to female employee, who was Chief of Arts and Sciences Cataloging Division and also served as temporary Assistant Director of Bibliographic Access, either outside or inside employee's protected class, were promoted or given pay raises after her supervisor requested that she receive one, as would support her Title VII gender discrimination claim. Mansfield v. Billington, D.D.C.2008, 574 F.Supp.2d 69. Civil Rights 1175

Older female nurse at District of Columbia mental hospital who was seeking to establish prima facie case of gender and/or age discrimination in connection with her nine-day suspension without pay failed to show that she and her nurse manager were "similarly situated," where there was difference of seven grade levels in their positions and their duties varied considerably; while both had some degree of control over nursing staff, nurse manager's responsibilities heavily outweighed those of plaintiff. Banks v. District of Columbia, D.D.C.2007, 498 F.Supp.2d 228. Civil Rights 1138

In evaluating whether employment discrimination plaintiff and relevant coworker are "similarly situated," nature of offenses committed and punishments imposed are most significant variables in case alleging discrimination in connection with disciplinary actions. Santa Cruz v. Snow, D.D.C.2005, 402 F.Supp.2d 113. Civil Rights 1138

Assuming that Immigration and Naturalization Service (INS)'s articulated reasons for challenged employment decisions were legitimate and nondiscriminatory, employee did not present sufficient evidence to establish those reasons were pretext for discrimination; work assignments were based on experience and office needs, employee's position, per job description, required extensive supervision, and no formal discipline was ever taken against employee, who received high evaluations, promotions and significant raises. Letares v. Ashcroft, D.Neb.2004, 302 F.Supp.2d 1092. Civil Rights 1137

Caucasian civilian employee with United States Air Force (USAF), who was allegedly assured promotion once she served time in grade, was not similarly-situated to African-American employee, who was not given the same assurances or the promotion, as required for prima facie case of race discrimination under Title VII; Caucasian employee worked on different program than plaintiff, and there was no showing that employee and plaintiff worked for same supervisor, or that two programs required individuals with similar qualifications. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1138; Civil Rights 1141

70. Weight, discriminatory practices prohibited

Title VII does not proscribe discrimination based upon employee's excessive weight. Taylor v. Small, C.A.D.C.2003, 350 F.3d 1286, 358 U.S.App.D.C. 439. Civil Rights 1218(3); Civil Rights 1231

Even if female Library of Congress employee, who was Chief of Arts and Sciences Cataloging Division and also served as temporary Acting Director for Cataloging and Assistant Director of Bibliographic Access, could demonstrate that employer was not experiencing budgetary constraints, she was unable to demonstrate that real reason employer refused to upgrade her salary was because of her sex, as would support her Title VII gender discrimination claim; employer denied another male chief salary upgrade along with employee, and, at time that employee was Acting Director, three of eight cataloging chiefs, not including employee, were women, and two of those three women were paid at higher level. Mansfield v. Billington, D.D.C.2008, 574 F.Supp.2d 69. Civil Rights 1175

Federal agency's destruction of case file of former employee prejudiced former employee's ability to establish pretext for his Title VII retaliation claim, supporting former employee's claim for sanctions against agency for spoliation of evidence, given that destroyed, undisclosed notes of employee relations specialist covered information presented to discipline review board (DRB), the DRB proceedings, and specialist's discussions with deciding official and might have documented why no internal affairs investigation into allegations of misconduct was performed, contrary to agency's routine procedures, and that notes, which represented informal contemporaneous record of process underlying former employee's termination, were highly relevant to proving that agency's proffered reasons for termination were nothing more than pretext. Brown v. Chertoff, S.D.Ga.2008, 563 F.Supp.2d 1372. Federal Civil Procedure 1636.1

Department of the Treasury employee seeking to withstand summary judgment motion could not defer his obligation to establish prima facie case of discrimination under ADEA or Title VII to give him opportunity to engage in expert discovery to show that less than stellar performance evaluations negatively impacted terms of his employment, including but not limited to promotions for which he had applied and been rejected; hypothetical future expert testimony could not substitute for present showing that those evaluations actually had negative consequences for him. Santa Cruz v. Snow, D.D.C.2005, 402 F.Supp.2d 113. Federal Civil Procedure 2552

71. Miscellaneous status, discriminatory practices prohibited

Title VII does not protect against discrimination on the basis of marital status. Cardona v. Potter, D.Puerto Rico 2008, 536 F.Supp.2d 172. Civil Rights 1196

Job applicant's status as convicted felon was not protected class under Title VII, precluding Title VII claim for alleged employment discrimination based on such status. Gillum v. Nassau Downs Regional Off Track Betting Corp. of Nassau, E.D.N.Y.2005, 357 F.Supp.2d 564. Civil Rights 1231

72. Retaliation for opposition to unlawful acts, discriminatory practices prohibited

Internal e-mail discussion by United States Postal Service (USPS) employees about whether disabled employee might be a candidate for vocational rehabilitation after she filed an equal employment opportunity (EEO) complaint was not a materially adverse employment action that could support retaliation claim under Title VII, where the discussion had no effect on employee's Office of Workers' Compensation Program (OWCP) disability compensation benefits. Fanning v. Potter, C.A.8 (Ark.) 2010, 614 F.3d 845. Civil Rights 1249(1); Postal Service 5

Alleged conduct of African-American supervisor at United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) at meeting with white employee preceded employee's Equal Employment Opportunity Commission (EEOC) complaints of racial discrimination, in which another white employee provided supporting statement, that led to employees' filing of Title VII action against USDA, and thus could not constitute retaliation for those complaints. O'Brien v. Department of Agriculture, C.A.8 (Ark.) 2008, 532 F.3d 805. Civil Rights 1252; United States 36

Even if Department of Housing and Urban Development's (HUD) refusal to renew its affirmative employment plan violated Title VII provision concerning such plans, HUD's refusal to renew its plan did not constitute an “unlawful employment practice” for purposes of suit brought pursuant to Title VII's opposition clause by former director of HUD's Office of Departmental Equal Employment Opportunity (ODEEO), alleging that he was forced to resign for opposing HUD's refusal to renew its affirmative employment plan; former's director's belief that HUD's possible Title VII violation qualified as an unlawful employment practice was unreasonable. King v. Jackson, C.A.D.C.2007, 487 F.3d 970, 376 U.S.App.D.C. 284. Civil Rights 1244; United States 36

Discharged federal employee's filing of Equal Employment Opportunity (EEO) complaints prior to his receipt of notice of proposed termination was not protected activity within meaning of Title VII's anti-retaliation provision, where EEO complaints did not allege unlawful discrimination, but rather harassment in general sense or retaliation. Monk v. Potter, E.D.Va.2010, 723 F.Supp.2d 860, affirmed 2011 WL 108325. Civil Rights 1244; United States 36

Allegations that contract compliance officer for District of Columbia's Child and Family Services Agency (CFSA) was required to undergo a “fitness for duty” exam at his own

expense, and was denied an alternative work schedule while other employees had their schedule requests approved, was sufficient to state prima facie claims of discrimination and retaliation, in violation of Title VII, against District of Columbia. Hunter v. District of Columbia Child and Family Services Agency, D.D.C.2010, 710 F.Supp.2d 152. Civil Rights 1126; Civil Rights 1249(1); District Of Columbia 7

State Department employee failed to show that agency's proffered legitimate, nonretaliatory justifications for his negative evaluation reports and involuntary curtailment from his position as Chief of Division of Cultural Programs, i.e. various shortcomings in his performance including his failure to appear at two meetings, his failure to contact supervisor after he returned to work following an extended period of leave, his failure to prepare for award ceremony, and his problematic managerial style, were pretext to retaliate against him for his refusal to terminate African-American subordinate and his filing of complaint with Equal Employment Opportunity Commission (EEOC). McGrath v. Clinton, D.D.C.2009, 674 F.Supp.2d 131, appeal denied 2010 WL 3199835. Civil Rights 1251; United States 36

Unprofessionalism of federal employee, a black woman with an arthritic hip, in procuring her own disabled parking permit as the parking coordinator, proffered by Department of Commerce as justification for her suspension, was not pretext for Title VII retaliation for having filed disability, race, and gender discrimination allegations. Martin v. Locke, D.D.C.2009, 659 F.Supp.2d 140. Civil Rights 1251; United States 36

There was no evidence that Caucasian United States Postal Service (USPS) probationary employee was terminated as result of telephone call he allegedly made to his second-line supervisor complaining of racial discrimination, as would support Title VII retaliation claim. Mianulli v. Potter, D.D.C.2009, 634 F.Supp.2d 90, affirmed in part 2010 WL 604867, rehearing denied. Civil Rights 1252; Postal Service 5

Female federal employee suffered adverse employment action when her temporary position as Assistant Director of Bibliographic Access at Library of Congress was abolished and she was reassigned to her permanent position as Chief of Arts and Sciences Cataloging Division, as supported her Title VII retaliation claim; all temporary positions were abolished due to employee's letter to employer complaining that her pay was lower than that of male employees performing similar work, when employee was removed as Assistant Director she lost many of her supervisory duties, and employee's permanent position occupied lower rung on employer's hierarchical ladder than Assistant Director position. Mansfield v. Billington, D.D.C.2008, 574 F.Supp.2d 69. Civil Rights 1249(1); United States 36

African American female employee of Federal Deposit Insurance Corporation (FDIC) established the adverse employment action element of a prima facie case of Title VII retaliation; following her contacting an Equal Employment Opportunity (EEO) counselor

and filing formal administrative complaint about lack of pay raise, FDIC reduced employee's workload despite her requests for more assignments, which resulted in employee's low ranking in system to determine pay raises and subsequently not receiving a pay raise. Brownfield v. Bair, D.D.C.2008, 541 F.Supp.2d 35. Banks And Banking 505; Civil Rights 1249(1)

African-American female employee who sued Navy failed to establish causal connection between her Equal Employment Opportunity (EEO) complaint and alleged adverse employment action, as required to maintain prima facie retaliation claim under Title VII; supervisors approved staffing plan eliminating employee's management analyst position more than one year after she had filed first EEO complaint. Mills v. Winter, D.D.C.2008, 540 F.Supp.2d 178. Armed Services 27(4); Civil Rights 1252

Even if change in postal employee's break time from 5:30 am to 5:00 am had occurred after he filed Equal Employment Opportunity (EEO) complaint, as required for action to be retaliatory under Title VII, employee could not establish prima facie case of retaliation in action against Postmaster General, where change in break time did not constitute materially adverse change in employment. Gentile v. Potter, E.D.N.Y.2007, 509 F.Supp.2d 221. Civil Rights 1249(1); Postal Service 5

Environmental Protection Agency's (EPA) transmission of letter of reprimand issued to African-American employee to in-house counsel, and counsel's use of letter to counter class certification on charge of race, gender, and retaliatory discrimination filed by employee, were not retaliatory "adverse actions" within the meaning of *Burlington Northern* and Title VII; in light of employee's Equal Employment Opportunity (EEO) charge involving letter, it was not improper for agency to retain letter beyond two-year period it was to remain in employee's personnel file, and letter was relevant to employee's ability to serve as class representative. Walker v. Johnson, D.D.C.2007, 501 F.Supp.2d 156. Civil Rights 1249(3); United States 36

III. TIME FOR ADMINISTRATIVE ACTION

<Subdivision Index>

91. Time for administrative action generally

This subchapter contemplates invocation of administrative remedies as condition precedent to litigation. Cooper v. Bell, C.A.9 (Cal.) 1980, 628 F.2d 1208. Civil Rights 1513

Timely filing of administrative complaint is condition precedent to bringing discrimination suit under this subchapter. Hoffman v. Boeing, C.A.5 (Fla.) 1979, 596 F.2d 683. Civil Rights 1513

Timely assertion of administrative remedies is prerequisite to filing employment discrimination suit under Title VII Civil Rights Act. Saunders v. Stone, E.D.Va.1991, 758 F.Supp. 1143, affirmed 948 F.2d 1282. Civil Rights 1505(4)

92. Initial charge, time for administrative action--Generally

Federal employee's letter to her employer stating that she rejected Equal Employment Opportunity officer's resolution of her employment discrimination claim and would pursue litigation was a sufficient formal complaint filed within 15 days of the final interview; although letter was not entitled “formal complaint,” it contained facts and legal theory of her sexual discrimination claim, put EEO officer on notice that plaintiff found his suggested resolution of dispute unacceptable and that she intended to proceed with litigation, was timely filed, sent to and received by the proper people, and sent by her attor-

ney, a representative designated in writing. Stocke v. Marsh, C.A.9 (Wash.) 1990, 912 F.2d 381. Civil Rights 1525

Even if formal charge by employee of the Department of Health, Education and Welfare was tardy, her inauguration of administrative processing of her Title VII employment discrimination claim was seasonable, in light of fact that request for reopening of claim described basis for her suspicion of unredressed discrimination with sufficient clarity and specificity to constitute an "initial charge." Loe v. Heckler, C.A.D.C.1985, 768 F.2d 409, 247 U.S.App.D.C. 292. Civil Rights 1505(3)

A charge of reprisal, as opposed to a new Equal Employment Opportunity complaint alleging reprisal, does not function as a complaint providing a path for judicial review; however, federal employee who filed a charge of reprisal rather than an Equal Employment Opportunity complaint and who is not satisfied with the results of the reprisal procedure may still file the Equal Employment Opportunity complaint which could ultimately culminate in a civil action. Porter v. Adams, C.A.5 (La.) 1981, 639 F.2d 273.

Federal employee failed to exhaust her administrative remedies with respect to her Title VII hostile work environment claim to extent that claim relied on allegations that were not "like or reasonably related to" those she raised in her formal complaint with Equal Employment Opportunity Commission (EEOC), which included employer's failure to update employee's position description, reduction in employee's responsibilities, cessation of direct interaction from employee's supervisor, and letter of admonition. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1516

93. ---- Necessity of filing initial charge, time for administrative action

Before complainant files suit in federal district court on discrimination claim pursuant to Equal Employment Opportunity Act, Act demands that she first file her initial charge with employing agency. McRae v. Librarian of Congress, C.A.D.C.1988, 843 F.2d 1494, 269 U.S.App.D.C. 166. Administrative Law And Procedure 229; Civil Rights 1511

Although time limitations for filing administrative charges in federal employment discrimination cases should not be construed to erect jurisdictional prerequisite to suit in district court, parties complaining of federal employment discrimination in violation of this section should not be waived into court without filing any initial charge with agency whose practice is challenged. Kizas v. Webster, C.A.D.C.1983, 707 F.2d 524, 227 U.S.App.D.C. 327, certiorari denied 104 S.Ct. 709, 464 U.S. 1042, 79 L.Ed.2d 173. Civil Rights 1505(5); Civil Rights 1519

The failure of a federal employee to file a timely discrimination complaint with the Equal Employment Opportunity Commission (EEOC) within the 15-day period allowed by Title

VII after receiving notice of a right to do so constitutes a failure to exhaust administrative remedies and is grounds for dismissal of the case by the federal agency, subject to equitable tolling. Koch v. Donaldson, D.D.C.2003, 260 F.Supp.2d 86, affirmed 2004 WL 758957. Civil Rights ⚿1505(6); Civil Rights ⚿1513

94. Cooperation with investigation, time for administrative action

Former employee of the Federal Deposit Insurance Corporation (FDIC) failed to exhaust her administrative remedies, precluding Title VII employment discrimination suit, where claimant failed to cooperate with the FDIC in responding to its request to identify specific acts of discrimination which would enable it to investigate timeliness of, and issues raised in, her complaint; moreover, by rejecting FDIC's proposed issue for investigation, claimant's attorney removed any basis upon which the FDIC could investigate her vague assertions. Matos v. Hove, S.D.N.Y.1996, 940 F.Supp. 67. Administrative Law And Procedure ⚿229; Civil Rights ⚿1518

95. Jurisdictional nature of provisions, time for administrative action

The 30-day period for bringing a complaint to the attention of an EEO counselor is not a jurisdictional prerequisite for federal employee's filing an employment discrimination action in district court; disagreeing with *Sims v. Heckler*, 725 F.2d 1143 (7th Cir.). Boddy v. Dean, C.A.6 (Tenn.) 1987, 821 F.2d 346. See, also, Ross v. U.S. Postal Service, C.A.11 (Ga.) 1987, 814 F.2d 616.

While it is clear that a timely administrative charge is a prerequisite to initiation of an employment discrimination action, time-filing requirements are not jurisdictional prerequisites to suit, but are more like a statute of limitations, subject to waiver, estoppel, and equitable tolling. Jarrell v. U.S. Postal Service, C.A.D.C.1985, 753 F.2d 1088, 243 U.S.App.D.C. 350. Civil Rights ⚿1505(4)

Requirement that federal employee file for administrative remedies within 30 days of alleged employment discrimination is jurisdictional in nature and, thus, failure to comply warrants dismissal of employment discrimination action. Barrett v. Frank, N.D.Ill.1991, 776 F.Supp. 1312. Civil Rights ⚿1505(4)

Timely filing of an Equal Employment Opportunity Commission (EEOC) charge is not a jurisdictional requirement to sue a federal employer for discrimination, but is like a statute of limitation which is subject to equitable tolling. Hatcher-Capers v. Haley, D.D.C.1991, 773 F.Supp. 486. Civil Rights ⚿1505(6)

Any failure to satisfy timeliness requirement for filing formal, written administrative complaint, while perhaps not subject matter jurisdiction defect, constitutes failure to state proper judicial claim under provision of civil rights statute providing sole and exclusive

remedy for civil rights claims of federal employees. Lopez v. Louisiana Nat. Guard, E.D.La.1990, 733 F.Supp. 1059, affirmed 917 F.2d 561. Civil Rights 1505(4)

Timely filing of an administrative complaint and exhaustion of administrative remedies are generally prerequisites to bringing suit under this subchapter; however, these procedural requirements do not involve district court's subject-matter jurisdiction. Goza v. Bolger, N.D.Ga.1982, 538 F.Supp. 1012, affirmed 741 F.2d 1383. See, also, Williams v. Casey, S.D.N.Y. 1987, 657 F.Supp. 921. Civil Rights 1513; Federal Courts 219.1

96. Time for contacting counselor, time for administrative action--Generally

United States Postal Service (USPS) employee failed to exhaust administrative remedies by failing to contact EEO counselor within 45 days after three of four alleged incidents of discrimination and harassment, and, assuming it had discretion to toll time limits for EEO prerequisites to suit, district court would not exercise that discretion to do so. Moore v. Potter, S.D.Tex.2008, 716 F.Supp.2d 524. Civil Rights 1505(4); Civil Rights 1505(6); Civil Rights 1514

Foreign language proficiency awards claim by Hispanic special agents of United States Customs Service was not properly before district court; although both class counseling report and administrative charge mentioned discrimination in compensation for use of language skills, there was no indication in record that claim was brought to attention of Equal Employment Opportunity Commission (EEOC) counselor in timely manner, or that claim was like or reasonably related to exhausted claim of discriminatory denial of promotions. Contreras v. Ridge, D.D.C.2004, 305 F.Supp.2d 126. Civil Rights 1516

Federal employee seeking to challenge federal classification scheme or its impact must do so by seeking discrimination counseling within 45 days after becoming subject to classification scheme or being notified that he or she was subject to such scheme. Mullins v. Crowell, N.D.Ala.1999, 74 F.Supp.2d 1067, affirmed in part , reversed in part 228 F.3d 1305, rehearing and suggestion for rehearing en banc denied 251 F.3d 165. Civil Rights 1505(3)

Federal employee's claim that memorandum written by branch chief denying employee any relief from her negative annual performance appraisal was discriminatory was properly exhausted and satisfied the 45-day limitations period for notifying Equal Employment Opportunity (EEO) counselor of allegedly discriminatory act. Foster v. Bentsen, N.D.Ill.1996, 919 F.Supp. 293. Administrative Law And Procedure 229; Civil Rights 1505(3); Civil Rights 1514

A federal employee must submit a discrimination complaint to the Equal Employment Opportunity Commission (EEOC) counselor within 30 days of the alleged discriminatory

event or action, or within 30 days of the date she knew or reasonably should have known of the discriminatory event or action. Hatcher-Capers v. Haley, D.D.C.1991, 773 F.Supp. 486. Civil Rights 1505(2); Civil Rights 1505(3)

Female employee failed to comply with requirement of contacting EEO counselor within 30 days of learning of discrimination where, although she was aware that she was not being compensated at same pay and grade level as male employees when she was temporarily assigned to fulfill a different position, she did not file administrative claim. Janczewski v. Secretary, Smithsonian Inst., D.D.C.1991, 767 F.Supp. 1. Civil Rights 1505(3)

Army employee's contention that he was unable to take immediate legal action on alleged discrimination as result of office relocations did not justify his failure to pursue EEO counseling or to file formal complaint, and, thus, action not brought within 30-day limitations period was time barred. Saunders v. Stone, E.D.Va.1991, 758 F.Supp. 1143, affirmed 948 F.2d 1282. Civil Rights 1505(4)

Former federal employee's complaint with Equal Employment Opportunity Commission was timely filed, where complaint was filed within statutory period after former employee discovered that she had been paid discriminatory salary. Chavez Colon v. Chairman of Bd. of Directors of Federal Deposit Ins. Corp., D.Puerto Rico 1989, 723 F.Supp. 842. Administrative Law And Procedure 456; Civil Rights 1505(3)

Civilian Army employee was barred from seeking judicial remedy under Vocational and Rehabilitation Act with respect to claim that he was forced to resign after he had tested positive for presence of Human-Immunodeficiency Virus based on employee's failure to initiate administrative review within 30 days of being advised of exhaustion requirement and 30-day limitation period. Plowman v. Cheney, E.D.Va.1989, 714 F.Supp. 196.

97. ---- Commencement of time, time for contacting counselor, time for administrative action

Thirty-day time limit for federal employee to raise discrimination claim with Equal Employment Opportunity (EEO) counselor is treated as statute of limitations for filing suit and is subject to waiver, equitable tolling, and estoppel. Johnson v. U.S. Treasury Dept., C.A.9 (Cal.) 1994, 27 F.3d 415. Civil Rights 1505(4)

Thirty-day period for Hispanic federal employee to notify equal employment opportunity counselor began to run on date of resignation, rather than discovery of allegedly more favorable treatment of white employee three years later. Pacheco v. Rice, C.A.5 (Tex.) 1992, 966 F.2d 904. Civil Rights 1505(3)

Limitations period in which former Federal Bureau of Investigation (FBI) employee was

required to contact Equal Employment Opportunity Commission (EEOC) counselor prior to filing Title VII and Rehabilitation Act claims against FBI accrued on date of his termination, rather than on date he learned of possible discriminatory motive. Fortune v. Holder, D.D.C.2011, 2011 WL 723111. Civil Rights 1505(3)

For purposes of Title VII's requirement that administrative remedies be timely exhausted, the time period to initiate administrative proceedings regarding employee's failure to promote claims began to run one year after the application dates, by which time the employee should have learned of, or have had a reasonable suspicion of, his non-selection. Adesalu v. Copps, D.D.C.2009, 606 F.Supp.2d 97. Civil Rights 1505(3)

The 180-day time period for plaintiff to file administrative charge for a Title VII claim with the Equal Employment Opportunity Commission (EEOC) and 300-day period for plaintiff to file charge with the District of Columbia Office of Human Rights began to run when plaintiff had a reasonable suspicion of discrimination, rather than when direct proof of the discrimination was allegedly revealed at subsequent trial in separate Title VII action. Johnson v. Holder, D.D.C.2009, 598 F.Supp.2d 50, affirmed 377 Fed.Appx. 31, 2010 WL 2162171, rehearing en banc denied. Civil Rights 1505(3); Civil Rights 1507

Forty-five-day time period within which federal employee had to contact equal employment opportunity (EEO) counselor so as to exhaust administrative remedies before bringing race, sex, and disability discrimination action against employer pursuant to Title VII and Rehabilitation Act began to run when employee received notice of his non-selection for promotion; even if employee learned earlier that he would not be receiving non-competitive promotion and such notice only related to competitive position, employee did not suffer tangible adverse action until he was denied competitive promotion, and employee did not have access to successful applicants' notice of personnel action forms prior to date employee received such notice. Medlock v. Rumsfeld, D.Md.2002, 336 F.Supp.2d 452, reconsideration denied , affirmed 86 Fed.Appx. 665, 2004 WL 249566, certiorari denied 125 S.Ct. 275, 543 U.S. 874, 160 L.Ed.2d 125. Civil Rights 1505(3)

Forty-five day period during which federal employees were required to contact Equal Employment Opportunity (EEO) counselor, in order to exhaust administrative remedies prior to bringing Title VII action, began to run when employees were reassigned to new position or reduced in grade pursuant to reduction in force (RIF), not when they received notice of decision to abolish their current positions and to offer them new positions. James v. England, D.D.C.2004, 332 F.Supp.2d 239, clarified on denial of reconsideration 226 F.R.D. 2. Civil Rights 1505(3)

Employees of Tennessee Valley Authority (TVA) who had been receiving Federal Employees Compensation Act (FECA) payments, and who were separately classified for purposes of payment and retention from other TVA employees when they were rehired,

were required to raise any disparate treatment claims relating to classifications under Rehabilitation Act by seeking discrimination counseling from TVA within 45 days of becoming subject to classification scheme, not when they were ultimately terminated. Mullins v. Crowell, N.D.Ala.1999, 74 F.Supp.2d 1067, affirmed in part , reversed in part 228 F.3d 1305, rehearing and suggestion for rehearing en banc denied 251 F.3d 165. Civil Rights 1505(3)

98. Time for filing formal administrative complaint, time for administrative action

Evidence that employee of Architect of the Capitol, who was not selected for position of custodial worker assistant supervisor, had lowest score among all applicants established a legitimate, nondiscriminatory basis for failing to select that employee, who claimed religious discrimination, for the position. Johnson v. Office of Senate Fair Employment Practices, C.A.Fed.1994, 35 F.3d 1566, rehearing denied , in banc suggestion declined. Civil Rights 1157

Federal employee's discovery of racial background of person responsible for making adverse decision regarding his grievance did not trigger 45-day period for employee to initiate administrative review of employee's claim that denial of his grievance was discriminatory, in violation of Title VII, despite employee's assertion that prior to that revelation he did not and should not have suspected discrimination in denial of his grievance. Holdmeyer v. Veneman, D.Conn.2004, 321 F.Supp.2d 374, affirmed 146 Fed.Appx. 535, 2005 WL 2114115. Civil Rights 1505(3)

To invoke doctrine of equitable tolling, for purposes of excusing failure to comply with Title VII administrative filing deadlines, federal employee must show that he was actively pursuing his legal rights and that he was actively misled by agency into allowing administrative deadline to pass. Higgins v. Runyon, E.D.Mich.1996, 921 F.Supp. 465. Civil Rights 1505(6)

Former employee bringing Title VII employment discrimination case did not satisfy requirement of filing formal complaint with Equal Employment Opportunity Commission within 15 days of her final interview, even though she had attempted to file formal complaint prior to interview which had been denied as premature. Baunchand v. Runyon, M.D.La.1994, 847 F.Supp. 449. Civil Rights 1505(3)

Female civilian employee of Air Force Reserve sufficiently alleged that she was victim of pattern of continuing discrimination and, thus, she would be allowed to pursue her Title VII claims of discriminatory failure to promote and retaliation, even if she did not file written complaint with appropriate agency official within 15 days of receiving EEO counselor's notice of right to file complaint; if employee could show that one of the continuous acts of discrimination occurred within 15-day time period immediately preceding her formal complaint of discrimination, her promotion and retaliation claims would not be

barred for failure to exhaust administrative remedies. McDowell v. Cheney, M.D.Ga.1989, 718 F.Supp. 1531. Armed Services 27(7); Civil Rights 1505(7)

99. Time for appeal of agency decision to EEOC, time for administrative action

Equal Employment Opportunity Commission (EEOC) did not abuse its discretion in denying black female federal employee's request to extend 20-day time limit for appealing to EEOC from final agency action on her administrative complaint and not accepting employee's appeal; employee contended that she was busy, lost notice of when to file, and suffered from respiratory ailment. Ganheart v. Lujan, E.D.La.1990, 733 F.Supp. 1053. Civil Rights 1505(4)

100. Modification of time periods, time for administrative action--Generally

To qualify for equitable modification of 30-day limitation period in which federal employee must contact Equal Employment Opportunity counselor regarding Title VII claim, employee must allege and prove not only that he had no reason to be aware of his employer's improper motivation when putative violation occurred, but also that employer actively misled him and that he relied on misconduct to his detriment. Jensen v. Frank, C.A.1 (Mass.) 1990, 912 F.2d 517. Civil Rights 1505(4)

Former Postal Service employee alleging violation of Rehabilitation Act failed to meet burden of justifying equitable modification of 30-day period within which to bring to attention of Postal Service's equal employment opportunity (EEO) counselor complaint of alleged discrimination and, thus, employee could not maintain claim based on reinstatement rejection regarding which she did not contact EEO officer within 30 days. Kupferschmidt v. Runyon, E.D.Wis.1993, 827 F.Supp. 570. Civil Rights 1505(4)

Under Title VII, even if 30-day limitation period for contacting Equal Employment Opportunity (EEO) counselor is subject to equitable modification, discharged postal clerk failed to show that he contacted counselor within 30 days of learning that his removal was due to unlawful national origin discrimination; thus, clerk's employment discrimination claim was untimely. Jensen v. Frank, D.Mass.1989, 725 F.Supp. 649, affirmed 912 F.2d 517. Civil Rights 1505(4)

Employee's filing of his formal complaint with Equal Employment Opportunity Commission two days after limitations period would be forgiven, even though equal employment opportunity counselor had advised employee both verbally and by written notice of time limitations, for purposes of determining whether employee had exhausted his administrative remedies so as to permit him to file court action claiming violation of Title VII of the Civil Rights Act [42 U.S.C.A. § 2000e et seq.], which proscribes employment discrimination, where plaintiff employee was proceeding without a lawyer and claimed that the additional two days were necessary for completion of study and research in an effort

to properly present his case. Royall v. U.S. Postal Service, E.D.N.Y.1985, 624 F.Supp. 211, affirmed 849 F.2d 1467. Civil Rights 1505(4)

101. ---- Power of court, modification of time periods, time for administrative action

Court's power to review agency action or inaction in extending time limit to file formal administrative complaint with employing agency in federal employee employment discrimination action is limited to determining whether agency in fact exercised discretion to extend deadline to make otherwise untimely complaint timely, and, if agency did not do so, whether agency abused its discretion in not doing so. Lopez v. Louisiana Nat. Guard, E.D.La.1990, 733 F.Supp. 1059, affirmed 917 F.2d 561. Administrative Law And Procedure 762; Civil Rights 1510

102. ---- Tolling, modification of time periods, time for administrative action

Title VII's 30-day limitations period for federal employee's filing complaint would not be equitably tolled; employee was not prevented by circumstances beyond his control from timely submitting matter, and his failure to confirm advice allegedly received from equal employment opportunity (EEO) counselor showed absence of due diligence. Robinson v. Dalton, C.A.3 (Pa.) 1997, 107 F.3d 1018. Civil Rights 1505(6)

Actions of Equal Employment Opportunity Commission (EEOC) did not actively mislead federal employee, for purposes of determining whether time for filing her Title VII claim should be equitably tolled after she failed to file claim within 90 days of receipt of notice of final action by EEOC; employee's reliance on mailing practices of non-EEOC agencies to support claim that EEOC misled her was misplaced, her argument that she relied upon EEOC statements of which she was not yet aware was disingenuous, and, because she did not claim to have relied upon regulations that she cited, her argument that she was misled by EEOC's failure to comply with them was unpersuasive. Mosley v. Pena, C.A.10 (Okla.) 1996, 100 F.3d 1515. Civil Rights 1530

Equal employment opportunity officer for Air Force was not entitled to equitable tolling of 30-day period to notify equal employment opportunity counselor; at time of resignation, officer could have raised issue that investigation of sexual harassment charges against him were not performed in accordance with air force regulations and policies, whereas similar investigations involving employees of another race were done by the book. Pacheco v. Rice, C.A.5 (Tex.) 1992, 966 F.2d 904. Civil Rights 1505(6)

Where employee fails to make timely contact with Equal Employment Opportunity (EEO) office, courts will equitably toll statute of limitations applicable to Title VII suit only when government should be estopped from asserting time bar or if employee did not know about time requirement. Nealon v. Stone, C.A.4 (Va.) 1992, 958 F.2d 584. Civil Rights 1505(5); Civil Rights 1505(6)

Fifteen-day statute of limitations period for filing discrimination claim against employer with Equal Employment Opportunity Commission (EEOC) was equitably tolled from time federal employee attempted to fax his complaint to the EEOC until the next reasonable opportunity he had to file his complaint, the next day, where employee made five unsuccessful attempts to fax his complaint within the applicable time period and successfully mailed and faxed his complaint the next day. Koch v. Donaldson, D.D.C.2003, 260 F.Supp.2d 86, affirmed 2004 WL 758957. Civil Rights 1505(6)

In order to gain the benefit of equitable tolling for filing an administrative complaint of discrimination with the Equal Employment Opportunity Commission (EEOC) in a case by a federal employee, the plaintiff bears the burden of pleading and proving facts supporting equitable avoidance of the defense; a plaintiff must establish that he or she acted diligently to preserve the claim. Koch v. Donaldson, D.D.C.2003, 260 F.Supp.2d 86, affirmed 2004 WL 758957. Civil Rights 1505(6); Civil Rights 1532

Federal employee's contention that his sleep apnea made it difficult for him to file within specified time periods was insufficient to permit equitable tolling of time period allowed for filing of discrimination complaint with Equal Employment Opportunity Commission (EEOC). Koch v. Donaldson, D.D.C.2003, 260 F.Supp.2d 86, affirmed 2004 WL 758957. Civil Rights 1505(6)

Federal employee's Title VII claims for discrimination and retaliation based on any reduction in her workplace responsibilities that occurred more than 45 days before she initiated Equal Employment Opportunity (EEO) counseling were unexhausted. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. United States 36

The 45-day deadline for United States Air Force (USAF) medical center chiropractor to contact Air Force EEO Office following denial of his request for religious accommodation of immunization requirement was equitably tolled and his presentation of those claims in court was therefore timely; colonel and captain's clear and unambiguous statements to chiropractor that healthcare professionals staffing firm with which USAF contracted, not USAF itself, was his employer and that any further inquiries regarding his employment should be directed solely to that firm, constituted actions that USAF clearly should have understood would cause chiropractor to delay contacting the Air Force EEO Office, and he did not fail to exercise due diligence in seeking to preserve his legal rights. Zell v. Donley, D.Md.2010, 2010 WL 3781668. Civil Rights 1505(6)

Regulatory requirements that federal employee seek counseling within 45 days of alleged discriminatory acts, and file complaint with Equal Employment Opportunity Commission (EEOC) within 15 days of receiving notice to do so, would not be equitably tolled, or extended on equitable estoppel grounds, when EEOC representative ex-

plained options to Army hospital employee claiming sexual harassment by supervisor, and then obtained employee's signature to forms certifying receipt of instructions regarding procedures, despite claim that representative left employee with impression that she could not file with EEOC until parallel investigation being conducted by Army was concluded. Moret v. Geren, D.Md.2007, 494 F.Supp.2d 329. Civil Rights 1505(5); Civil Rights 1505(6)

Retention of counsel, an attorney who represented numerous plaintiffs in employment discrimination cases against both private and public entities, provided private government contractor's employee with constructive knowledge of requirement to seek informal counseling within 45 days of her termination as prerequisite to bringing Title VII action against government, and thus, equitable tolling of time limit for lack of notice was not warranted, regardless of whether government failed to provide actual notice of time limit. Pollock v. Chertoff, W.D.N.Y.2005, 361 F.Supp.2d 126. Civil Rights 1505(6)

Tolling of time limitation for Internal Revenue Service (IRS) employee, an experienced trial attorney, to contact Equal Employment Opportunity (EEO) counselor was appropriate, where employee submitted affidavit declaring she was unaware of her obligation to do so within 45 days of act of sexual harassment or retaliation and agency did not demonstrate that employee ever attended training session on EEO procedures or that it otherwise adequately informed her of time limit. Boyd v. Snow, D.D.C.2004, 335 F.Supp.2d 28. Civil Rights 1505(6)

Black FBI agent did not have notice sufficient to trigger statute of limitations for Title VII action against FBI for race discrimination until he received findings of fact in another black agent's case, and thus, statute of limitations was tolled with respect to initiation of administrative complaint alleging discrimination in FBI's failure to assign him to Chicago three years after denial of assignment; although plaintiff knew of another black agent's allegations of racial discrimination in another office, plaintiff had not experienced racial discrimination in office where he was stationed and felt that his initial denial of transfer was for legitimate reasons. Van Meter v. Barr, D.D.C.1992, 803 F.Supp. 444, affirmed 43 F.3d 713, 310 U.S.App.D.C. 62. Civil Rights 1505(6)

Former federal employee failed to provide any basis for equitable tolling of 30-day time limit on seeking administrative remedies for alleged employment discrimination and, therefore, action was time barred, even though Postal Service had waived objection to employee's failure to comply with time limits. Barrett v. Frank, N.D.Ill.1991, 776 F.Supp. 1312. Civil Rights 1505(5); Civil Rights 1505(6)

Employee's claim of discrimination based on failure to transfer him to requested position was untimely and was not saved by equitable tolling absent evidence that the personnel manager for the post office actively misled him, particularly where denial of his request for a transfer had placed him on inquiry notice. Machado v. Frank, D.R.I.1991, 767

F.Supp. 416. Civil Rights 1505(6)

Period of 30 days for filing complaint with Equal Employment Opportunity Commission (EEOC) was subject to equitable tolling. Madrid v. Rice, D.Wyo.1990, 730 F.Supp. 1078. Civil Rights 1505(6)

Internal appeal of postal service's decision not to hire applicant did not, as matter of law, toll statute of limitations for bringing administrative employment discrimination complaint against postal service. Alvidrez v. Tisch, D.Kan.1988, 684 F.Supp. 651. Civil Rights 1505(6)

Limitations period of filing requirement in employment discrimination statute would not be tolled by federal employee's ostensible but unproved ignorance of timeliness regulation. Neves v. Kolaski, D.C.R.I.1985, 602 F.Supp. 645. Civil Rights 1505(6)

Agency's time limitations for filing employment discrimination action must be complied with as prerequisite to commencement of civil action; however, limitations may be subject to “equitable tolling” in certain circumstances. Brown v. Brown, D.C.N.J.1981, 528 F.Supp. 686. Civil Rights 1529; Civil Rights 1530

103. ---- Notice of rights, modification of time periods, time for administrative action

Terminated post office employee's delay from time of his termination until his initial United States Postal Service Equal Employment Opportunity Office (EEO office) contact more than 15 months later was justified in employee's sex discrimination action under Title VII against United States Postal Service; employee was hired on three-month probationary basis, publication given to employee stated that termination during probationary period could be at will with no recourse, and employee alleged that first time he was informed of 30-day time limit for bringing complaint to attention of EEO office was over 15 months following his termination when he contacted EEO office by telephone. Richardson v. Frank, C.A.10 (Wyo.) 1991, 975 F.2d 1433. Civil Rights 1505(4)

Where relevant agency regulation stated that the agency “shall” extend the time limits for filing an administrative complaint when the complainant shows that he was not notified of the time limits and was not otherwise aware of them, allegation of federal civil service employee that she was not informed of any time limit on filing administrative complaint with the Commission and that she did not know of the requirement raised an issue of fact that required an evidentiary hearing in civil rights suit. Bragg v. Reed, C.A.10 (Okla.) 1979, 592 F.2d 1136. Civil Rights 1555

Testimony to the effect that Title VII plaintiff did not see the Equal Employment Opportunity (EEO) notices is not, by itself, sufficient to establish that the notices were not, in fact, posted for purposes of determining whether 45-day limitations period for initiating

Equal Employment Opportunity (EEO) counseling should be tolled. Foster v. Gonzales, D.D.C.2007, 516 F.Supp.2d 17. Civil Rights 1505(6)

Navy employee's failure to report alleged sexual harassment by civilian employees within 30 days of conduct complained of, was required by Civil Rights Act, was excused where plaintiff was not informed of filing requirements. Kent v. Howard, S.D.Cal.1992, 801 F.Supp. 329. Civil Rights 1505(4)

Once employee's request for transfer to different status was denied, employee was placed on notice that he might have been discriminated against and had obligation to investigate further in order to safeguard his rights and, thus, fact that he did not know with any certainty whether he had been discriminated against until he discovered old employee transfer notices did not change calculation of 30-day limitation period. Machado v. Frank, D.R.I.1991, 767 F.Supp. 416. Civil Rights 1505(3)

Regulation providing that agency shall extend the time limits for federal employee to bring employment discrimination complaint to attention of equal employment opportunity counselor, when complainant shows that he was not notified of time limit and was not otherwise aware of it, should not be applied coextensively with common-law estoppel; rather, in evaluating whether complainant was notified of 30-day rule, court must determine whether notification was reasonably geared to inform complainant of the rule, such that the rule was or should have been apparent to an employee similarly situated who had reasonably prudent regard for his or her rights. Theard v. U.S. Army, M.D.N.C.1987, 653 F.Supp. 536. Civil Rights 1505(4); Civil Rights 1505(5)

Fact that Equal Employment Opportunity counselor failed to give government employee written notice of right to sue as required by regulation did not require extension of time limits where employee was aware of time limit for filing complaint. Edwards v. Crosby, E.D.Pa.1982, 540 F.Supp. 60. Civil Rights 1530

104. ---- Circumstances beyond control of complainant, modification of time periods, time for administrative action

Where black employee, who asserted that he was hired at lower pay level than white employees performing same job, alleged that he did not know facts supporting his claim of discrimination in hiring until date over nine months after he was hired and within 30 days of filing of his discrimination complaint, he alleged facts sufficient to fall within exception to 30-day filing limit in regulation providing for such an extension, inter alia, when complainant is prevented from timely compliance by circumstances beyond his control. Wolfolk v. Rivera, C.A.7 (Ill.) 1984, 729 F.2d 1114. Civil Rights 1505(4)

Term “prevented” in provision of Equal Employment Opportunity Commission (EEOC) regulation authorizing agency to extend time in which federal employee asserting dis-

crimination claim must file formal administrative complaint does not mean "was deterred" or "was adversely affected," but rather, is directed toward circumstances in which employee is physically unable to file her complaint in timely fashion. Lopez v. Louisiana Nat. Guard, E.D.La.1990, 733 F.Supp. 1059, affirmed 917 F.2d 561. Civil Rights 1505(4)

105. ---- Continuing violations, modification of time periods, time for administrative action

Title VII hostile work environment claims are subject to continuing violation rule; provided that act contributing to claim occurred within 300-day filing period, entire time period of hostile environment may be considered by court for purpose of determining liability. Singletary v. District of Columbia, C.A.D.C.2003, 351 F.3d 519, 359 U.S.App.D.C. 1. Civil Rights 1505(7)

Former federal employee adequately exhausted her administrative remedies with regard to her hostile work environment claim, even though claim was based on actions that occurred outside of limitations period, where employee alleged in her complaint with Equal Employment Opportunity Commission (EEOC) that she had been subjected to ongoingcourse of discriminationin form of hostile work environment because she was woman and not Mormon. Story v. Napolitano, E.D.Wash.2011, 2011 WL 611818. Civil Rights 1505(7)

African-American former employee's 45-day filing period to contact Equal Employment Opportunity Commission (EEOC) counselor regarding Title VII race discrimination charge was not restarted on grounds of alleged ongoing discriminatory practices by Department of Labor's (DOL) failure to provide employee with equal pay for equal work allegedly due his race, since alleged failure to promote was discrete act requiring satisfaction of filing requirements, but employee did not contact EEOC counselor until four years after latest discrete act of discrimination occurred when his employment at DOL ended. Hayes v. Chao, D.D.C.2008, 592 F.Supp.2d 51. Civil Rights 1505(7)

Denial of cash award, denial of promotion, and cancellation of planned meeting, assuming they were discriminatory, were distinct events or acts, rather than pattern of discrimination, and thus continuing violation theory was not available to toll 45-day limitations period that was applicable to African American federal employee's claims of racial discrimination under Title VII, since each event possessed degree of permanence which should have caused employee to have been aware of her obligation to contact Equal Employment Opportunity Commission (EEOC) counselor. Blount v. Dept. of Health and Human Services, D.Md.2004, 400 F.Supp.2d 838, affirmed 122 Fed.Appx. 64, 2005 WL 430102, certiorari denied 126 S.Ct. 758, 546 U.S. 1043, 163 L.Ed.2d 589. Civil Rights 1505(7)

Alleged race-based discriminatory performance appraisal that African-American civilian employee with United States Air Force (USAF) was subjected to outside limitations period in which she had to contact Equal Employment Opportunity counselor, under Title VII, constituted a discrete act of discrimination, for which continuing violations doctrine was inapplicable. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1505(7)

Continuing violation theory was not applicable so as to make federal employee's discrimination claim timely; employee failed to show that the acts were closely related under the relevant factors and failed to show that employer had covertly followed a practice of discrimination. Foster v. Bentsen, N.D.Ill.1996, 919 F.Supp. 293. Civil Rights 1505(7)

Continuing violation exception to 30-day time limitation for federal employee to contact equal employment counselor about discriminatory conduct did not extend to situations in which postal employees failed to timely file suit in federal court after timely filing complaints with equal employment counselor and receiving right to sue letters and in which employees alleged breach of settlement agreement after timely filing complaints with equal employment counselor. Martin v. Frank, D.Del.1992, 788 F.Supp. 821. Civil Rights 1505(7)

Black female employee's allegations with respect to agency's failure to promote her in 1980 and 1982 were not time barred under Title VII; though employee did not contact EEOC within 30 days of her failure to be promoted on those occasions and did not contend that she was unaware of 30-day time limit or that she was prevented from timely presenting claims, she sufficiently alleged pattern of continuing discrimination which included performance appraisals and denial of leave as further discriminatory acts. Shepard v. Adams, D.D.C.1987, 670 F.Supp. 22. Civil Rights 1505(7)

106. Waiver, time for administrative action

Internal Revenue Service employee's tardiness in notifying Commission counselor of employment discrimination complaint and in filing of written administrative complaint could be waived, or commencement of running of time period might be subject to equitable delay until employee knew or should have known facts that would give rise to claim under this subchapter; also, federal agency, by merely accepting and investigating tardy employment discrimination complaint, does not automatically waive its objection to complainant's failure to comply with prescribed time delays, but such automatic waiver is limited to situation in which agency has in fact made finding of discrimination. Oaxaca v. Roscoe, C.A.5 (Tex.) 1981, 641 F.2d 386. Civil Rights 1525

United States Information Agency's acceptance and investigation of former employee's civil rights complaint, which alleged both a timely claim and numerous untimely claims,

was not a waiver of the 30-day limit for the untimely claims where there had been no application to the agency for a waiver and there had been no express determination by the Agency that the waiver of the 30-day limit for filing administrative charges was warranted. DeMedina v. Reinhardt, D.C.D.C.1978, 444 F.Supp. 573. Civil Rights 1505(5)

107. Class actions, time for administrative action

Where original class, i.e., all blacks and females employed at space center, was subsequently altered so as to exclude claims based on sex, females would be permitted to file administrative complaints within the following time periods after receipt of decertification notice: (1) those members seeking relief for discriminatory acts that occurred prior to date on which initial complaint was filed were required to file within the time remaining in the original 30-day limitations period and (2) those seeking relief for discriminatory acts that occurred between the original filing and date of receipt of notice were required to file within 30 days of receipt. Barrett v. U. S. Civil Service Commission, D.C.D.C.1977, 439 F.Supp. 216. Civil Rights 1505(3)

108. Discovery and inspection, time for administrative action

Federal employee did not fail to exhaust his administrative remedies, as required prior to filing suit under Title VII against Chairman of Broadcasting Board of Governors, by failing to timely cooperate with discovery requests pertaining to administrative hearing before the Equal Employment Opportunity Commission (EEOC), where he had filed his complaint with the EEOC and had cooperated in the EEOC's investigation for 180 days, and his complaint was not dismissed by the EEOC for failure to cooperate, but, rather, he withdrew his request for a hearing after 180 days, and he served notice of his intent to file a civil action. Brown v. Tomlinson, D.D.C.2006, 462 F.Supp.2d 16. Civil Rights 1518

Federal Deposit Insurance Corporation (FDIC) was not required to provide former employee with her personnel file and its personnel rules in order for former employee to determine whether she had an employment discrimination claim; to impose such disclosure obligation on agency would unjustifiably burden agency without advancing Title VII's conciliatory purpose. Matos v. Hove, S.D.N.Y.1996, 940 F.Supp. 67. Civil Rights 1508

IV. CIVIL ACTION

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131. Civil action generally

Subsec. (c) of this section permits an aggrieved employee to file a civil action in a federal district court to review his claim of employment discrimination; attached to that right, however, are certain preconditions: initially, the complainant must seek relief in the agency that has allegedly discriminated against him; he then may seek further administrative review with the Civil Service Commission [now with the EEOC] or, alternatively, he may, within 30 days [now 90 days] of receipt of notice of the agency's final decision, file suit in federal district court without appealing to the Civil Service Commission [now to the EEOC], and, if he does appeal to the Commission, he may file suit within 30 days of the Commission's final decision; in any event, the complainant may file a civil action if, after 180 days from the filing of the charge or the appeal, the agency or Civil Service Commission has not taken final action. Brown v. General Services Administration,

U.S.N.Y.1976, 96 S.Ct. 1961, 425 U.S. 820, 48 L.Ed.2d 402.

Employee's right to trial de novo upon filing civil action for judicial review of agency determination on complaint alleging employment discrimination, 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. Payne v. Salazar, C.A.D.C.2010, 619 F.3d 56, 393 U.S.App.D.C. 112. Civil Rights 1510; Civil Rights 1511

Title VII provision barring discrimination in personnel actions affecting employees in military departments does not supersede the *Feres* doctrine and thus does not permit a Guard Technician to pursue a Title VII claim if the claim: (1) challenges conduct integrally related to the military's unique structure, or (2) is not purely civilian. Overton v. New York State Div. of Military and Naval Affairs, C.A.2 (N.Y.) 2004, 373 F.3d 83. Civil Rights 1116(3); United States 78(16)

Federal job applicant's alleged actions in refusing to confirm attendance at his deposition, cure his alleged deficient discovery responses, and respond to employer's repeated attempts to communicate were not so egregious as to constitute abandonment of administrative process, as would preclude applicant from bringing Title VII gender discrimination action in federal court arising from his non-selection for position. Payne v. Locke, D.D.C.2011, 2011 WL 713713. Civil Rights 1518

For female employee of Library of Congress, who served in temporary assistant director position, to succeed on her motion for summary judgment on her Title VII retaliation claim, she was required to show that she was entitled to judgment as a matter of law, that is, that employer intended to retaliate against her by returning her to her permanent position as Chief of Arts and Sciences Cataloging Division after she wrote letter to employer complaining that her pay was lower than that of male employees performing similar work. Mansfield v. Billington, D.D.C.2008, 574 F.Supp.2d 69. Civil Rights 1251; Federal Civil Procedure 2497.1; United States 36

White male federal employee's claim, that employer violated Due Process Clause of Fifth Amendment by subjecting him to system of preferential hiring and promotion, was cognizable under, and thus was foreclosed by, Title VII, notwithstanding that employee sought injunctive relief, where employee alleged discrimination on basis of race and gender, and utilized identical factual allegations to support both his Fifth Amendment and Title VII claims. Worth v. Jackson, D.D.C.2005, 377 F.Supp.2d 177, affirmed in part, vacated in part and remanded 451 F.3d 854, 371 U.S.App.D.C. 339. Civil Rights 1502

Federal employee could not press state intentional infliction of emotional distress claim against either his supervisor in his official capacity or against employing agency through

agency head; Title VII provided exclusive avenue of redress for federal employees for discrimination claims. Roland v. Potter, S.D.Ga.2005, 366 F.Supp.2d 1233. Civil Rights 1502; Damages 57.58

Federal employee was not required to file second charge with Equal Employment Opportunity Commission (EEOC) in order to exhaust his administrative remedies with regard to constructive discharge claim, since constructive discharge claim was reasonably related to his initial discrimination charges. Mitchell v. Chao, N.D.N.Y.2005, 358 F.Supp.2d 106. Civil Rights 1516

Aggrieved federal employee must follow statutory and regulatory procedures when asserting either discrimination or retaliation claims under Title VII. Schaefer v. U.S. Postal Service, S.D.Ohio 2002, 254 F.Supp.2d 741. Civil Rights 1504; Civil Rights 1501; United States 36

Plaintiff must exhaust his administrative remedies before instituting Title VII action in federal court. Lynch v. Frank, S.D.Miss.1994, 848 F.Supp. 1272. Administrative Law And Procedure 229; Civil Rights 1513

132. Exhaustion of administrative remedies, civil action--Generally

Federal employee forfeited his argument on appeal that he should be excused from mandatory 180-day waiting period for filing a Title VII suit because he had to file his civil action related to his contract claims within 90 days of the Equal Employment Opportunity Commission's (EEOC) decision on those claims, where employee raised this argument only in his motion to alter or amend the district court's grant of summary judgment to the government on Title VII claim on grounds of failure to exhaust. Murthy v. Vilsack, C.A.D.C.2010, 609 F.3d 460, 391 U.S.App.D.C. 251. Federal Courts 617

Second retaliation claim filed by federal employee, which was based on Interior Department's alleged refusal to provide her light-duty work, did not arise from administrative investigation that followed complaints she filed with Interior four years previously, which concerned religious discrimination and retaliation, and thus employee was required to timely exhaust her administrative remedies before bringing second retaliation claim to federal court, since employee's second retaliation claim was not “like or reasonably related” to her first retaliation claim. Payne v. Salazar, C.A.D.C.2010, 619 F.3d 56, 393 U.S.App.D.C. 112. Civil Rights 1516; United States 36

In addition to those claims which were previously charged to the Equal Employment Opportunity Commission (EEOC), Title VII plaintiffs may also litigate claims which are like or reasonably related to the allegations of the administrative charge and growing out of such allegations; this liberal standard is satisfied if there is a reasonable relationship between allegations in the charge and those in complaint, and the claim in the complaint

could reasonably be expected to be discovered in the course of the EEOC's investigation. Teal v. Potter, C.A.7 (Ill.) 2009, 559 F.3d 687. Civil Rights 1516

Genuine issue of material fact as to date that African-American employee of Department of Agriculture first contacted an Equal Employment Opportunity (EEO) counselor at the agency precluded summary judgment on issue of whether employee exhausted her administrative remedies within the required 45-day period, in employee's Title VII race discrimination, hostile work environment, and retaliation claims. Steele v. Schafer, C.A.D.C.2008, 535 F.3d 689, 383 U.S.App.D.C. 74. Federal Civil Procedure 2497.1

In discrimination cases against government agencies, federal employees must exhaust their administrative remedies prior to filing civil action in federal district court. Watson v. O'Neill, C.A.8 (Mo.) 2004, 365 F.3d 609. Civil Rights 1513

District court's judgment in Title VII action, consisting of dismissal of some claims on merits and dismissal of other claims without prejudice on ground of failure to exhaust administrative remedies, did not necessarily entitle claimant to exhaust those remedies before Equal Employment Opportunity Commission (EEOC) and then return to court; EEOC could conclude that attempt to exhaust was untimely. Hill v. Potter, C.A.7 (Ill.) 2003, 352 F.3d 1142. Civil Rights 1505(3); Civil Rights 1514

By ruling on the merits of federal employee's claims without addressing his failure to timely file his formal complaint of discrimination in the administrative proceedings, agency waived its right to argue, in a subsequent Title VII lawsuit, that employee failed to timely exhaust the administrative remedies available to him. Ester v. Principi, C.A.7 (Ill.) 2001, 250 F.3d 1068, on remand 2004 WL 838031. Civil Rights 1505(5)

Former Smithsonian Institute employee who was paid out of the Smithsonian Trust and not from federal funds was still a federal employee required to exhaust his administrative remedies before bringing discrimination suit against Smithsonian under Title VII, as would permit district court to exercise jurisdiction; doctrine of sovereign immunity focused on nature of entity being sued, rather than claimant. Misra v. Smithsonian Astrophysical Observatory, C.A.1 (Mass.) 2001, 248 F.3d 37. Civil Rights 1116(1); Civil Rights 1514

Pro se litigant's Title VII action was not barred by her failure to accept her former employer's offer of relief on grounds that she failed to exhaust her administrative remedies and could not thereafter press her claim before the judiciary; requiring pro se litigant to make legal assessment as to whether offer was “offer of full relief” for Title VII purposes violated policies and principles of Title VII. Greenlaw v. Garrett, C.A.9 (Cal.) 1995, 59 F.3d 994, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 110, 519 U.S. 836, 136 L.Ed.2d 63. Administrative Law And Procedure 229; Civil Rights 1515

In pure discrimination case, federal employee who chooses negotiated grievance procedure rather than statutory procedure must first appeal arbitrator's award to Equal Employment Opportunity Commission (EEOC) before bringing suit in district court. Johnson v. Peterson, C.A.D.C.1993, 996 F.2d 397, 302 U.S.App.D.C. 131. Civil Rights 1513

District court should have considered whether employee's untimely filed administrative charge alleging discrimination in termination was sufficiently related to her prior timely filed administrative charges alleging discrimination in suspensions to come within rule that administrative remedies would be deemed exhausted with regard to all incidents fairly encompassed within scope of administrative charges on which court action could properly be brought, rather than dismissing action for failure to pursue administrative remedies. Anderson v. Block, C.A.8 (Minn.) 1986, 807 F.2d 145. Administrative Law And Procedure 229; Civil Rights 1516

Federal employee seeking to litigate class claims of Title VII discrimination in federal court is required to exhaust administrative remedies relating to class complaints; employee who has exhausted individual administrative remedies may not litigate class claims related to the individual claims presented and investigated at administrative level. Wade v. Secretary of Army, C.A.11 (Ga.) 1986, 796 F.2d 1369. Federal Civil Procedure 184.25

Once administrative remedies have been exhausted, an individual is entitled to de novo consideration of his employment discrimination claim in the district court. Prewitt v. U.S. Postal Service, C.A.5 (Miss.) 1981, 662 F.2d 292. Civil Rights 1513

Former federal employee's decision to exhaust administrative process before filing her Title VII action alleging discrimination and hostile work environment because of sex and religion was reasonable, and thus laches did not bar suit, even though employee could have filed suit several years earlier, and one of her supervisors died before suit was filed, where employee never abandoned her claim, and delay was due to agency's failure to comply with federal regulation giving it sixty days to issue final decision. Story v. Napolitano, E.D.Wash.2011, 2011 WL 611818. Civil Rights 1530

Federal agency's unsworn submission of Equal Employment Opportunity Commission (EEOC) decision involving several claims pending in employee's discrimination suit was insufficient to establish that employee did not exhaust his administrative remedies with regard to his claims under ADEA and Title VII, where it was not clear that this was only relevant administrative decision regarding employee, and agency failed to attach affidavit or declaration from anyone at EEOC stating that employee had no other relevant contact with EEOC. Koch v. Schapiro, D.D.C.2010, 699 F.Supp.2d 3. Civil Rights 1516

Federal employee's Title VII discrimination claims would not be dismissed for failure to exhaust administrative remedies, as that defense had been waived by issuance of final agency decision on the merits. Nurriddin v. Bolden, D.D.C.2009, 674 F.Supp.2d 64. Civil Rights 1519

Former Peace Corps volunteer was required to exhaust administrative remedies as prerequisite to filing suit against Peace Corps under Rehabilitation Act and Americans with Disabilities Act (ADA). Pailes v. U.S. Peace Corps, D.D.C.2009, 2009 WL 3535482, appeal dismissed 2010 WL 2160012, rehearing denied. Civil Rights 1313

Prison officials were not deliberately indifferent to inmate's medical needs in connection with testicular pain, thus defeating his Eighth Amendment claim under §§ 1983; his testicular condition was not ignored, but was monitored and treated prior to surgical intervention, and after a urologist reviewed a third ultrasound, which revealed that benign testicular cysts were larger, he discussed the possibility of surgical procedures as a means to relieve the inmate's pain, and once the surgery was recommended, it was approved and took place in a little over a month following the urologist's recommendation. Wenzke v. Correctional Medical Services, D.Del.2009, 603 F.Supp.2d 770. Prisons 203; Sentencing And Punishment 1546

While Title VII contemplates the invocation of administrative remedies as a condition precedent to suits in the federal courts, Congress did not speak to the consequences of the failure to exhaust those remedies, let alone unequivocally indicate that such a failure deprives the court of jurisdiction to hear the unexhausted claim, and thus, the failure to exhaust administrative remedies is not jurisdictional but instead pertains to whether the complaint fails to state a claim because the complaint and any legitimate attachment to it reveal that the claimant did not exhaust her administrative remedies. Slaughter v. Peters, D.D.C.2009, 597 F.Supp.2d 103. Civil Rights 1513

Federal employee was required to exhaust her administrative remedies by requesting right-to-sue letter from Equal Employment Opportunity Commission (EEOC) prior to filing Title VII discrimination action against her employer in district court; it was not sufficient for the employee to simply withdraw her charge with EEOC. Hernandez v. Potter, D.Puerto Rico 2007, 552 F.Supp.2d 209. Civil Rights 1518; Civil Rights 1523

African American female employee's claims against employer, the Federal Deposit Insurance Corporation (FDIC), regarding employee's non-selection for promotion, placement of employee's position on list of jobs to be eliminated, and “counseling email” sent to employee by supervisor could not be pursued as individual claims under Title VII due to employee's failure to exhaust administrative remedies, but could be considered background information to support her properly exhausted claim of discrimination. Brownfield v. Bair, D.D.C.2008, 541 F.Supp.2d 35. Civil Rights 1514; Civil Rights 1542

Civil procedure rules did not require federal employee, in her Title VII action against employing agency, to demonstrate exhaustion of administrative remedies, an affirmative defense, in her complaint; failure to so demonstrate did not warrant grant of motion for more definite statement. Howard v. Gutierrez, D.D.C.2007, 474 F.Supp.2d 41, reconsideration denied 503 F.Supp.2d 392. Civil Rights 1532; Federal Civil Procedure 988.1

Federal employee cannot maintain civil action under Title VII if she failed to exhaust administrative remedies provided for by federal regulation; moreover, each discrete incident of alleged discrimination or retaliation constitutes a separate actionable event under Title VII. Kalinoski v. Gutierrez, D.D.C.2006, 435 F.Supp.2d 55. Civil Rights 1513

Filing complaint with Equal Employment Opportunity Commission (EEOC) is requirement for filing civil suit under Title VII that is subject to waiver, estoppel, and equitable tolling. Bryant v. The Orkand Corp., D.D.C.2005, 407 F.Supp.2d 29. Civil Rights 1505(4); Civil Rights 1513

If a person filing a complaint with the Equal Employment Opportunity Commission (EEOC) forces an agency to dismiss or cancel the complaint by failing to provide sufficient information to enable the agency to investigate the claim, he may not file suit. Smith v. Koplan, D.D.C.2005, 362 F.Supp.2d 266. Civil Rights 1518

Equitable estoppel did not apply to preclude government from raising exhaustion defense against Title VII suit brought by terminated employee of private company under contract with government; private company's conduct in telling employee during her tenure that she was not federal employee and directing her follow “chain of command” within company organization, did not prevent her from knowing that she was required to exhaust administrative remedies, given that she was represented by counsel two days after she was terminated and counsel admitted knowing that there was potential joint employer relationship between government and private company. Pollock v. Chertoff, W.D.N.Y.2005, 361 F.Supp.2d 126. Civil Rights 1519

Any discrimination or retaliation claims related to federal employee's encounter with his then-supervisor, during which he admonished employee loudly resulting in anxiety, stress, and hypertension, could be considered as background information but were not properly before court as separate claims, where employee did not include any claims regarding that encounter in his Equal Employment Opportunity (EEO) charge. Newby v. Whitman, M.D.N.C.2004, 340 F.Supp.2d 637. Civil Rights 1516; Civil Rights 1542; United States 36

Federal court security officers' noncompliance with administrative precomplaint procedure was not fatal to their Title VII claim against U.S. Marshal Service (USMS), although

it was for agency, not court, to decide in the first instance whether that time limit would be equitably tolled. Lebron-Rios v. U.S. Marshal Service, D.Puerto Rico 2004, 307 F.Supp.2d 335. Civil Rights 1510; Civil Rights 1514

Claim by Hispanic United States Customs Service agents of discriminatory denial of promotions was timely exhausted; named plaintiff first contacted Equal Employment Opportunity Commission (EEOC) counselor three days after learning he had not been selected for vacant position of Supervisory Criminal Investigator and both EEOC class counseling report and class administrative charge repeatedly alleged discriminatory denial of promotions to Hispanic agents. Contreras v. Ridge, D.D.C.2004, 305 F.Supp.2d 126. Civil Rights 1505(3)

Postal worker's general reference to Equal Employment Opportunity Commission (EEOC), to Merit Systems Protection Board (MSPB), United States Postal Service (USPS) and other proceedings initiated by worker or other postal employees did not give agencies sufficient notice of claims of class-wide discrimination and worker's contention that agencies failed or refused to investigate the claims did not excuse failure to exhaust administrative remedies required under Title VII, the ADEA, or the Rehabilitation Act; no document could be construed as “class complaint” or could be considered notice of right to file class complaint. Persons v. Runyon, D.Kan.1998, 998 F.Supp. 1166, affirmed 172 F.3d 879. Civil Rights 1516

Plaintiff alleging employment discrimination bears burden of pleading and proving in district court equitable reasons for noncompliance with requirement that discrimination be reported to Equal Employment Opportunity counselor within 45 days. Williamson v. Shalala, D.D.C.1998, 992 F.Supp. 454, affirmed 1998 WL 545420, certiorari denied 119 S.Ct. 263, 525 U.S. 915, 142 L.Ed.2d 216, rehearing denied 119 S.Ct. 534, 525 U.S. 1013, 142 L.Ed.2d 445. Civil Rights 1532

Administrative exhaustion requirement for bringing suit for employment discrimination gives administrative agency opportunity to investigate, mediate, and take remedial action, encourages settlement of discrimination disputes through conciliation and voluntary compliance. Fausto v. Reno, S.D.N.Y.1997, 955 F.Supp. 286. Civil Rights 1515

Federal employees, prior to instituting court action under Title VII, must first exhaust their administrative remedies before agency charged with employment discrimination. Bullock v. Widnall, M.D.Ala.1996, 953 F.Supp. 1461, affirmed 149 F.3d 1196. Civil Rights 1513

Dismissal of former Postal Service employee's handicap and race discrimination claims was required in light of former Postal Service employee's failure to allege that he had exhausted administrative remedies prior to bringing lawsuit and his failure to allege facts indicating that he had pursued administrative prerequisites or that tolling doctrine would

apply to permit deviation from established procedure. Coffey v. U.S., E.D.N.Y.1996, 939 F.Supp. 185. Civil Rights 1514

Exhaustion of administrative remedies under Title VII is prerequisite to the filing of a civil suit asserting claims of discrimination and this exhaustion requirement includes timely compliance with any regulations governing the processing of complaints; if plaintiff fails to meet these requirements, his claim will be time barred. Janneh v. Runyon, N.D.N.Y.1996, 932 F.Supp. 412, affirmed 108 F.3d 329, certiorari denied 118 S.Ct. 150, 522 U.S. 854, 139 L.Ed.2d 96, rehearing denied 118 S.Ct. 1180, 522 U.S. 1154, 140 L.Ed.2d 187. Administrative Law And Procedure 229; Civil Rights 1505(4); Civil Rights 1518

Administrative remedial scheme of Title VII requires that federal employee who seeks to file court action based on Title VII must first exhaust available administrative remedies and right to bring court action regarding equal employment in federal government is predicated on timely exhaustion of these remedies. Johnson v. Frank, S.D.N.Y.1993, 828 F.Supp. 1143. Administrative Law And Procedure 229; Civil Rights 1513

Right to bring Title VII case against federal government as result of deprivation of rights is dependent upon federal employee's timely exhaustion of his administrative remedies. Barrett v. Frank, N.D.Ill.1991, 776 F.Supp. 1312. Administrative Law And Procedure 229; Civil Rights 1513

Federal employee could not obtain relief on racial discrimination claim without exhausting administrative remedies with the Equal Employment Opportunity Commission. Williams v. Reilly, S.D.N.Y.1990, 743 F.Supp. 168. Administrative Law And Procedure 229; Civil Rights 1514

Bureau of Prisons (BOP) employee became aware of alleged discriminatory denial of promotion to assistant manager, for purposes of determining whether she timely exhausted administrative remedies prior to bringing Title VII claim, no later than when another person became assistant manager. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1505(3)

133. ---- Jurisdictional nature of provision, exhaustion of administrative remedies, civil action

Exhaustion of administrative remedies is a jurisdictional prerequisite to employment discrimination suit under this section. Sampson v. Civiletti, C.A.10 (Okla.) 1980, 632 F.2d 860. Civil Rights 1513

Federal employee's race-based discrimination claims under Title VII, relating to disciplinary actions occurring after employee had filed prior complaint with Equal Employment

Opportunity Commission (EEOC), were barred for failure to exhaust administrative remedies, where employee's administrative complaint stated that such actions were part of a hostile work environment in reprisal for engaging in prior protected EEO activity. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. Civil Rights 1516

Federal employee failed to exhaust administrative remedies, barring suit on Title VII retaliation claim, where there was no indication that she received a "right to sue" letter from employing agency or the Equal Employment Opportunity Commission (EEOC), and her complaint was filed before 180-day period had expired. Jordan v. Evans, D.D.C.2004, 355 F.Supp.2d 72, subsequent determination 404 F.Supp.2d 28. Civil Rights 1514; Civil Rights 1530; United States 36

In employee's action for redress of grievances against United States Postal Service (USPS), employee failed to exhaust remedies as to claim that USPS discriminated and retaliated against him, in violation of Rehabilitation Act, in carrying out requirements of Final Agency Decision (FAD), and District Court thus lacked jurisdiction over claim, where he failed to present such claims to Equal Employment Opportunity Commission (EEOC). Tshudy v. Potter, D.N.M.2004, 350 F.Supp.2d 901. Civil Rights 1514

Federal employee's employment discrimination suit after failure to avail herself of administrative remedies, or after failure to avail herself of those remedies in a timely fashion, does not trigger waiver of sovereign immunity and deprives federal court of subject matter jurisdiction to hear that employee's claim. Dillard v. Runyon, S.D.N.Y.1996, 928 F.Supp. 1316, affirmed 108 F.3d 1369. United States 125(9)

Federal employee failed to timely and properly exhaust his administrative remedies for alleged age discrimination, where employee failed to timely appeal to the Equal Employment Opportunity Commission (EEOC) within 20 days of receipt of final agency decision, and thus district court lacked subject matter jurisdiction over case, notwithstanding that employee subsequently filed suit within 30 days [now 90 days] of receipt of EEOC's decision. Demesme v. Frank, M.D.La.1990, 753 F.Supp. 187. Administrative Law And Procedure 229; Civil Rights 1518

134. ---- Mandatory nature of provision, exhaustion of administrative remedies, civil action

Bad faith of African-American secretaries' employed or formerly employed by Federal Reserve Board, if any, in engaging in counseling sessions mandated by regulation requiring Board employees to "consult a Counselor" to informally resolve disputes before filing administrative complaint did not completely frustrate Board's ability to investigate secretaries' complaints of race discrimination under Title VII, and thus secretaries exhausted their administrative remedies by participating in counseling sessions, since secretaries, during sessions, conveyed more than bare notice of basis of their complaint.

Artis v. Bernanke, C.A.D.C.2011, 630 F.3d 1031. Civil Rights ⚿1518

Prior to instituting court action under Title VII, plaintiff alleging discrimination in federal employment must proceed before agency charged with discrimination, and this administrative remedies exhaustion requirement is mandatory. Bayer v. U.S. Dept. of Treasury, C.A.D.C.1992, 956 F.2d 330, 294 U.S.App.D.C. 44. Administrative Law And Procedure ⚿229; Civil Rights ⚿1513

Exhaustion requirement for federal employees barring civil rights claims is an absolute prerequisite to suit. Porter v. Adams, C.A.5 (La.) 1981, 639 F.2d 273. Civil Rights ⚿1525

Library of Congress employee failed to exhaust her administrative remedies with regard to majority of her allegations of national origin and gender discrimination under Title VII; although employee filed complaint with Library's EEOCO, only box she checked was marked "Sexual Harassment." Baker v. Library of Congress, D.D.C.2003, 260 F.Supp.2d 59. Civil Rights ⚿1516

Federal employee bringing lawsuit under Title VII is required to timely exhaust his or her administrative remedies, and failure to do so will ordinarily bar a judicial remedy. Bell v. Donley, D.D.C.2010, 724 F.Supp.2d 1. Civil Rights ⚿1505(4); Civil Rights ⚿1513

Decision of state's Department of Transportation to suspend Caucasian employee for three days was a discrete employment action for which the employee was required to seek an administrative remedy, prior to bringing Title VII suit claiming the suspension was in retaliation for the employee's prior filing of Equal Employment Opportunity Commission (EEOC) complaint; employee was required to file EEOC complaint for any discrete retaliatory actions occurring after the filing of the EEOC complaint, and could not rely on continuing violation theory. Tyree v. Department of Transp., New Mexico, D.N.M.2006, 468 F.Supp.2d 1351. Civil Rights ⚿1505(7); States ⚿53

Claim of employee of Environmental Protection Agency (EPA), that EPA violated Title VII by retaliating against her for bringing earlier disability discrimination claim under Rehabilitation Act, involved discrete act which occurred at fixed time, and thus, employee was required to exhaust administrative remedies before bringing retaliation claim, even though she had exhausted her administrative remedies in connection with earlier discrimination claim, and she alleged that the retaliatory act was tied to her exhausted complaints. Coleman-Adebayo v. Leavitt, D.D.C.2004, 326 F.Supp.2d 132, amended on reconsideration in part 400 F.Supp.2d 257. Civil Rights ⚿1516; United States ⚿36

Title VII's exhaustion requirement is mandatory and serves to allow the agency an opportunity to resolve the matter internally and avoid unnecessarily burdening the courts. Bush v. Engleman, D.D.C.2003, 266 F.Supp.2d 97. Civil Rights ⚿1513

Civilian Army employee alleging that commanding officer's decision not to permit employee's children to enroll in school operated by Department of Defense was result of discrimination and retaliation was required to exhaust her administrative remedies before bringing Title VII action in federal court. Millet v. U.S. Dept. of Army, D.Puerto Rico 2002, 245 F.Supp.2d 344, on reconsideration. Armed Services 27(7); Civil Rights 1514

Exhaustion of administrative remedies is a condition precedent to the initiation of a civil action for employment discrimination in federal, including postal, employment in violation of Title VII, and in order properly to exhaust administrative remedies, a complainant must first contact an EEO counselor within 45 days of the alleged act of discrimination, subject to four circumstances in which the 45-day limit may be extended. Jense v. Runyon, D.Utah 1998, 990 F.Supp. 1320. Civil Rights 1522

Decision of Equal Employment Opportunity Commission (EEOC) dismissing employee's claim was converted from final action into nonfinal action by employer agency's request to reopen EEOC decision, and employee thus was barred by her failure to exhaust administrative remedies from bringing Title VII action. Sheahan v. Brady, S.D.N.Y.1994, 866 F.Supp. 770. Administrative Law And Procedure 229; Civil Rights 1514

Before federal employee may pursue employment discrimination claim in courts, administrative remedies in employee's own agency must be exhausted. Eagle v. Regan, N.D.Ohio 1984, 599 F.Supp. 38. See, also, Moffett v. Bolger, W.D.Pa.1981, 527 F.Supp. 1098. Civil Rights 1513

Former Federal Bureau of Investigation (FBI) employee failed to timely exhaust his administrative remedies, warranting dismissal of his Title VII claims against Attorney General and other federal employees, where he did not file administrative charge until years after discriminatory actions allegedly took place. Johnson v. Mukasey, D.D.C.2008, 248 F.R.D. 347, affirmed 2009 WL 3568647, rehearing denied. Civil Rights 1505(3); Civil Rights 1514

135. ---- Amendment of complaint, exhaustion of administrative remedies, civil action

Failure of unsuccessful job applicant to invoke and exhaust administrative procedures with respect to his proposed Title VII retaliation claim rendered amendment of his employment discrimination complaint to add such claim “futile,” warranting denial of leave to amend. Ponce v. Billington, D.D.C.2009, 652 F.Supp.2d 71. Federal Civil Procedure 851

Black Secret Service agents would not be permitted to amend their discrimination complaint to add Department of Treasury as defendant; head of department was proper de-

fendant in Title VII suit against federal agency, and substituting Secretary of Department of Homeland Security for Secretary of Treasury did not run afoul of Homeland Security Act because civil litigation was not impeded thereby. Moore v. Chertoff, D.D.C.2006, 424 F.Supp.2d 145, order clarified on reconsideration 437 F.Supp.2d 156. Federal Civil Procedure 392

In former Federal Bureau of Investigation (FBI) employee's discrimination suit, district court could not rule on Attorney General's argument that claims not barred by res judicata were subject to dismissal for failure to exhaust administrative remedies, and Attorney General would be permitted to renew motion to dismiss on exhaustion grounds, if appropriate, after employee filed amended complaint; allegations in complaint about when retaliatory and discriminatory events occurred were so vague as to preclude any determination of whether employee in fact had exhausted administrative remedies. Velikonja v. Ashcroft, D.D.C.2005, 355 F.Supp.2d 197. Federal Civil Procedure 1831

Although allegedly race-based discriminatory incidents that occurred outside limitations period, in which African-American civilian employee with United States Air Force (USAF) had to contact Equal Employment Opportunity Commission (EEOC), could not be viewed as separate claims of discrimination, such incidents could constitute relevant background evidence for employee's exhausted discrimination claims under Title VII. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1542

Requirement of Title VII that discrimination claims against federal government first be raised with appropriate agency precluded employee's proposed amendment adding claim for compensatory damages pursuant to Civil Rights Act of 1991; to permit employee to add claim without first pursuing administrative remedies would impermissibly expand district court's jurisdiction and government's waiver of sovereign immunity. Sudtelgte v. Sessions, W.D.Mo.1992, 789 F.Supp. 312. Administrative Law And Procedure 229; Civil Rights 1514

Internal Revenue Service (IRS) employee failed to exhaust administrative remedies as to discharge claim, as required to file Title VII action, where she added this claim to her amended civil complaint less than 120 days after she had filed an untimely complaint with agency's Equal Employment Office (EEO). Hendrix v. Snow, C.A.11 (Ga.) 2006, 170 Fed.Appx. 68, 2006 WL 288099, Unreported, certiorari denied 127 S.Ct. 1332, 549 U.S. 1208, 167 L.Ed.2d 79. Civil Rights 1514

135a. ---- Excused, exhaustion of administrative remedies, civil action

In declining to apply equitable principles to excuse federal employee's failure to exhaust administrative remedies prior to filing Title VII complaint, district court erred in failing to consider unique circumstances of case not specifically addressed by Civil Service Reform Act (CSRA), including facts that employee irrevocably elected to pursue pure dis-

crimination case under negotiated procedure, that such choice prevented him from pursuing statutory process in first instance, that his grievance was withdrawn by his union without his consent before final decision in arbitration could be given, that appeal from result of arbitration thus was foreclosed, and that employee applied for relief from Equal Employment Opportunity Commission (EEOC) following union's withdrawal from arbitration. Fernandez v. Chertoff, C.A.2 (N.Y.) 2006, 471 F.3d 45. Civil Rights 1519

Independent contractor for Department of Justice (DOJ) was not required to exhaust her administrative remedies prior to bringing Title VII action, since exhaustion would have been futile, given that DOJ did not deem contractor a federal employee and thus would not have investigated her administrative claim. Harris v. Attorney General of U.S., D.D.C.2009, 657 F.Supp.2d 1. Civil Rights 1519

Postal worker did not put Equal Employment Opportunity Commission (EEOC) on notice that he had engaged in type of protected activities needed to support Title VII retaliation claim against Postal Service, and therefore retaliation claim asserted in worker's Title VII action did not fall within exception to administrative exhaustion requirement applicable when conduct complained of fell within scope of EEOC investigation that could reasonably be expected to grow out of worker's filed charge. Abraham v. Potter, D.Conn.2007, 494 F.Supp.2d 141. Civil Rights 1516; Postal Service 5

Federal Bureau of Investigation (FBI) employee's application for promotion to open senior executive service position was not futile, so as to excuse his failure to apply, as element of employee's prima facie case of discrimination for non-promotion; notwithstanding employee's argument that FBI did not allow him to become inspection certified, policy allowing employees to become inspection certified applied uniformly to all special agents, and employee lacked knowledge at time of application of any policy that allegedly would have rendered his application futile. Youssef v. F.B.I., D.D.C.2008, 541 F.Supp.2d 121, new trial denied 2011 WL 313289. Civil Rights 1135

136. ---- Continuing violations, exhaustion of administrative remedies, civil action

Postal worker was precluded from bringing claim of wrongful termination, by failure to first file complaint with Equal Employment Opportunity Commission (EEOC), despite claim that termination was continuation of earlier conduct which resulted in EEOC complaint; earlier conduct had involved alleged retaliatory activities different from present case. Martinez v. Henderson, D.N.M.2002, 252 F.Supp.2d 1226, affirmed 347 F.3d 1208. Civil Rights 1516; Postal Service 5

Employer's alleged acts of racial harassment towards African-American employee were not sufficiently linked before and after her workplace absence for 16 months to consider entire time period as part of whole, as required to extend employee's timely administrative exhaustion of post-absence harassing incidents to her pre-absence allegations to

form part of same actionable hostile work environment claim, in violation of Title VII; new supervisor's denial of employee's leave and requirement that she return to work after her temporary assignment did not perpetuate or condone racially hostile environment allegedly created by previous supervisor, employee offered no evidence that workplace would not have been remedied if she had returned to work and sought redress from new supervisor, new supervisor's hearsay statement was not admissible, and union representative's affidavit raised no inference of new supervisor's animus or hostile action. Greer v. Paulson, C.A.D.C.2007, 505 F.3d 1306, 378 U.S.App.D.C. 295. Civil Rights 1505(7)

Title VII plaintiff is required to exhaust his or her administrative remedies with respect to each discrete allegedly discriminatory or retaliatory act; a "continuing violation" theory does not permit plaintiffs to recover for discrete acts of discrimination and retaliation that were not exhausted but were "sufficiently related" to exhausted claims. Payne v. Salazar, D.D.C.2009, 628 F.Supp.2d 42, affirmed in part , reversed in part 619 F.3d 56, 393 U.S.App.D.C. 112. Civil Rights 1505(7); Civil Rights 1516

Rejections of employee's applications for promotion did not form one continuing violation of Title VII, for purposes of Title VII's requirement that administrative remedies be timely exhausted. Adesalu v. Copps, D.D.C.2009, 606 F.Supp.2d 97. Civil Rights 1505(7)

Continuing violation theory was inapplicable to government employee's Title VII action, where employee failed to provide any evidence of ongoing discriminatory practice or policy, employee submitted no evidence government had been aware of related instances of discrimination and had failed over period of time to remedy them, and none of employee's allegations were timely. Pauling v. Secretary of Dept. of Interior, S.D.N.Y.1997, 960 F.Supp. 793. Civil Rights 1530

Continuing violation doctrine, which carves out exception to requirement that federal employee must exhaust available administrative remedies before filing court action based on Title VII, applies when discriminatory employment practice manifests itself as series of related acts over time, rather than as series of discrete acts; party cannot evade statute of limitations merely by characterizing completed act of discrimination as continuing violation. Johnson v. Frank, S.D.N.Y.1993, 828 F.Supp. 1143. Administrative Law And Procedure 229; Civil Rights 1505(7)

Where Equal Employment Opportunity Commission had notice of federal employee's claim that her termination was part of continuing course of discrimination by the Immigration Naturalization Service, she exhausted her administrative remedies with respect to that issue. Prince v. Commissioner, U.S. I.N.S., E.D.Mich.1989, 713 F.Supp. 984. Administrative Law And Procedure 229; Civil Rights 1516

137. ---- Single filing rule, exhaustion of administrative remedies, civil action

Timely filed complaint of black United States Secret Service agent to Equal Employment Opportunity Commission (EEOC) was sufficient to exhaust Title VII building blocks of promotion racial discrimination claims that were reasonably contemporaneous with and subsequent to agent's complaint, since agent timely contacted Equal Employment Opportunity (EEO) counselor after his non-selection and complaint explicitly alleged discriminatory denial of promotions to entire class of agents. Moore v. Chertoff, D.D.C.2006, 437 F.Supp.2d 156. Civil Rights 1517

Government employee's Title VII claims were not sufficiently similar to those of another government employee to relieve first employee of obligation to exhaust administrative remedies under single filing rule, where employees worked in different departments, complained of different supervisors, and identified different types of wrongs, and only unifying fact was that they alleged racial discrimination at same location. Pauling v. Secretary of Dept. of Interior, S.D.N.Y.1997, 960 F.Supp. 793. Civil Rights 1517

137a. ---- Withdrawing complaint, exhaustion of administrative remedies, civil action

Federal job applicant's voluntary withdrawal of his Equal Employment Opportunity (EEO) complaint more than 180 days after its filing and requesting final agency decision (FAD) did not render his administrative proceedings unexhausted, as would preclude applicant from bringing Title VII gender discrimination action in federal court based on his non-selection for position. Payne v. Locke, D.D.C.2011, 2011 WL 713713. Civil Rights 1523

By filing and then withdrawing Equal Employment Opportunity (EEO) complaint alleging that his transfer and “functional demotion” it occasioned harmed his career, Department of Justice (DOJ) employee did not exhaust administrative remedies before bringing Title VII and Age Discrimination in Employment Act (ADEA) action against DOJ. Pearsall v. Holder, D.D.C.2009, 610 F.Supp.2d 87. Civil Rights 1518

138. ---- Federal agencies, exhaustion of administrative remedies, civil action

Employee of Department of Homeland Security (DHS) raised pure rather than mixed discrimination claim within meaning of Civil Service Reform Act (CSRA), and thus, in order to exhaust administrative remedies prior to filing Title VII claim, was required to appeal to Equal Employment Opportunity Commission (EEOC) rather than to Merit Systems Protection Board (MSPB), where he was advised by letter that final decision on grievance could be appealed to EEOC, Department recognized that he raised pure discrimination claim, and form complaint provided to him stated that he was required to obtain right-to-sue letter from EEOC. Fernandez v. Chertoff, C.A.2 (N.Y.) 2006, 471 F.3d 45. Civil Rights 1514; Officers And Public Employees 72.41(2)

Title VII claim against federal defendants by terminated former employee of private provider of services at federal detention center pursuant to government services contract with Immigration and Naturalization Service (INS) would not be dismissed for failure to exhaust administrative remedies, as it was unclear whether employee was obligated to pursue informal counseling with INS within 45 days of her termination; federal defendants may have waived their right to insist on compliance with administrative regulations if, at time of employee's termination or grievance, they had taken position they did on motion to dismiss and other pleadings that she was not federal employee, and it was also unclear whether Equal Employment Opportunity Commission (EEOC) or agency considered employee's complaint letter timely. Pollock v. Ridge, W.D.N.Y.2004, 310 F.Supp.2d 519. Civil Rights 1519

United States Postal Service (USPS) is "government agency" entitled to the same protection as other agencies under statutes that require the filing of administrative complaints or notices prior to bringing a lawsuit under Title VII, the ADEA, or the Rehabilitation Act; by law, USPS is independent establishment of the government of the United States. Persons v. Runyon, D.Kan.1998, 998 F.Supp. 1166, affirmed 172 F.3d 879. Civil Rights 1513

139. ---- Arbitration, exhaustion of administrative remedies, civil action

Provision of this section authorizing civil action in district court for discrimination only after appeal to Equal Employment Opportunity Commission (EEOC) or final action taken by department, agency or unit did not apply to arbitrator's decision issued pursuant to negotiated grievance procedure, where provision laid out in part statutory procedure employee may use to pursue his appeal and federal employees chose negotiated procedure rather than statutory procedure. Johnson v. Peterson, C.A.D.C.1993, 996 F.2d 397, 302 U.S.App.D.C. 131. Labor And Employment 1549(17)

140. ---- Particular cases remedies exhausted, exhaustion of administrative remedies, civil action

Information provided by African-American secretaries employed or formerly employed by Federal Reserve Board during counseling sessions, pursuant to regulation requiring Board employees to "consult a Counselor" to informally resolve disputes before filing administrative complaint, was sufficient to give Board opportunity to investigate and try to resolve their claims of race discrimination, and thus employees exhausted their administrative remedies for purposes of Title VII action alleging race discrimination, where information included written descriptions of secretaries' class allegations and individual anecdotes of disparate treatment. Artis v. Bernanke, C.A.D.C.2011, 630 F.3d 1031. Civil Rights 1515

Federal agency employee who had filed Title VII sex and national-origin discrimination complaint with Office of Equal Employment Opportunity (OEEO) concerning her nonselection as agency's Acting Deputy Executive Secretary administratively exhausted second claim arising from appointment of someone else to position of Deputy Executive Secretary, by notifying OEEO that she wished to amend her pending charges; employee did not have to seek informal counseling as to second claim, since it could have reasonably been expected to grow out of already-filed complaint, i.e. two claims were like or related. Weber v. Battista, C.A.D.C.2007, 494 F.3d 179, 377 U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1516

Federal employee's Equal Employment Opportunity (EEO) complaint was sufficient to exhaust remedies prior to filing of Title VII claim of hostile work environment, in that Title VII claim implicated same conduct and same people as her administrative claim. Dear v. Shinseki, C.A.7 (Ill.) 2009, 578 F.3d 605. Civil Rights 1516; Civil Rights 1517

Federal employees who have cooperated in administrative process for 180 days from filing of initial appeal to Equal Employment Opportunity Commission (EEOC) of final agency action by employing agency are entitled to seek de novo review in district court, even if they no longer cooperate after expiration of 180-day period; refusal to cooperate for more than 180 days does not result in failure to exhaust administrative remedies. Charles v. Garrett, C.A.9 (Cal.) 1993, 12 F.3d 870. Administrative Law And Procedure 744.1; Civil Rights 1518

Air Force employees exhausted administrative remedies with regard to their Title VII employment discrimination action against Air Force after 180 days elapsed since filing of initial administrative claim; although Air Force claimed that the employees abandoned the administrative process so that they could bring a federal class action with a larger class than that allowed in administrative proceedings, neither side had taken discovery during last six months of administrative process and there was no evidence that the employees had failed to cooperate or otherwise attempted to frustrate administrative process. Munoz v. Aldridge, C.A.5 (Tex.) 1990, 894 F.2d 1489. Administrative Law And Procedure 229; Civil Rights 1518

Inasmuch as the confusing Civil Service Commission regulations in existence in 1971 provided no clear means by which class action claims could be raised at the administrative level and that the administrative complaint filed by the Postal Service employee satisfied the purpose of the administrative exhaustion requirement, employee's third-party complaint satisfied requirement of exhaustion of administrative remedies and could serve as the basis for Title VII class action suit. Griffin v. Carlin, C.A.11 (Fla.) 1985, 755 F.2d 1516. Civil Rights 1514

While allegedly discriminatory officials and acts were different in present action brought under this section and prior Commission complaint, the core grievance, retaliation, was

the same and allegations of discharged employee's complaint fell within scope of district director's investigation of charges contained in 1979 formal complaint, and thus this suit was not barred by requirement that discharged employee exhaust administrative remedies before commencing legal action. Waiters v. Parsons, C.A.3 (Pa.) 1984, 729 F.2d 233.

Federal employee, who contended that she had been denied promotion in violation of this subchapter, adequately exhausted her administrative remedies when the facts stated at administrative level were sufficient to put agency on notice that promotion was an issue, contrary to contention that employee did not exhaust her administrative remedies because, during the course of the investigation, she did not identify any particular position for which she had unsuccessfully applied. Mangiapane v. Adams, C.A.D.C.1981, 661 F.2d 1388, 213 U.S.App.D.C. 152. Civil Rights 1516

Federal employee's claims, in Title VII action, regarding instance wherein supervisor asked a contractor “leading questions” about employee's performance on a telephone project and the negative evaluation remark employee received about the project were reasonably related to employee's complaint at the administrative level that supervisor had instructed a contractor on the telephone project not to speak with employee, and thus such claims were properly before the District Court; claims all related to the same fundamental theme, that supervisors were displeased with employee concerning the telephone project. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. Civil Rights 1516

Former Postal Service employee's original Equal Employment Opportunity Commission (EEOC) charge satisfied exhaustion requirements with respect to proposed claim in district court alleging that employee's final termination was retaliatory in violation of Title VII, although claim regarding final termination was not included in original EEOC charge because final termination occurred after employee filed original charge, and employee would therefore be permitted to amend complaint to include proposed claim without first filing new EEOC charge; proposed claim was related to and arose out of same factual scenario as original EEOC charge, because final termination was allegedly in retaliation for filing original charge. Plunkett v. Potter, D.Md.2010, 2010 WL 4668978. Civil Rights 1516

Federal employee exhausted administrative remedies as required to bring Title VII retaliation claim against Department of Labor (DOL) with respect to allegation that employee's first-line supervisor denied her sufficient time during work day to work on her administrative Equal Employment Opportunity (EEO) complaints, where administrative judge considered whether employee was subjected to ongoing hostile work environment by having her requests for official time to work on her EEO case denied, concluded that there was no evidence of such discrimination, and entered judgment for DOL. Uzlyan v. Solis, D.D.C.2010, 706 F.Supp.2d 44. Civil Rights 1516; United States 36

Federal employee adequately exhausted her administrative remedies prior to bringing Title VII action for race and sex discrimination in federal court, where employee cooperated with agency investigation for more than 180 days prior to withdrawing her complaint from administrative hearing process. Augustus v. Locke, D.D.C.2010, 699 F.Supp.2d 65. Civil Rights 1518

Title VII and Age Discrimination in Employment Act (ADEA) retaliation claims asserted by former employee of Federal Reserve Board (FRB), a certified public accountant (CPA), alleging that his former employer retaliated against him by lowering his performance ratings after he filed charges of age and gender discrimination with the Equal Employment Opportunity Commission (EEOC), were not barred for failure to exhaust administrative remedies, where EEOC charges which predated the alleged retaliatory conduct asserted ongoing and continuing retaliation on the basis of negative performance evaluations. Jones v. Bernanke, D.D.C.2010, 685 F.Supp.2d 31. Banks And Banking 353; Civil Rights 1516

United States Department of Agriculture (USDA) employee exhausted administrative remedies prior to filing Title VII claims against employer in federal court; employee participated in good faith in administrative process with USDA, and employee waited 180 days without final action from USDA before he withdrew complaint. Laudadio v. Johanns, E.D.N.Y.2010, 677 F.Supp.2d 590. Civil Rights 1518

Older African-American Department of Health and Human Services (HHS) employee contacted her EEO counselor within 45 days of time she first suspected discrimination upon receiving response to her Freedom of Information Act (FOIA) request concerning cancellation of Lead Developmental Disability Specialist (LDDS) position she sought, and she therefore timely exhausted her administrative remedies regarding failure to promote claim before initiating case; employee was not notified of position's cancellation on date it allegedly occurred, three weeks later when she allegedly received labor relations officer's e-mail, or eleven days thereafter when she received e-mail from her union representative, and employee did not forestall initiating contact with EEO counselor to strengthen her claim of discrimination but rather to clarify conclusively whether agency had in fact cancelled position. Evans v. Sebelius, D.D.C.2009, 674 F.Supp.2d 228. Civil Rights 1505(3)

Department of State employee's wage discrimination claim was “reasonably related” to her failure to promote claim for administrative exhaustion purposes; EEO investigation that followed employee's complaint demonstrated connection insofar as it described employee's allegations that she was the only African-American Website Manager, the only female Website Manager under that particular supervisor, and the only GS-12 Website Manager, and in addition,investigator interviewed supervisor about responsibilities of male GS-13 Website Manager under him, presumably for purposes of compari-

son to plaintiff's duties. Perry v. Clinton, D.D.C.2009, 674 F.Supp.2d 110. Civil Rights 1516

Employee adequately exhausted administrative remedies regarding her Title VII claim challenging her non-selection for a management position in information systems development, despite a contention that the non-selection claim was untimely raised, such that she should not have been permitted to amend her administrative complaint and add the non-selection claim; even assuming arguendo that the court could set aside the ALJ's ruling and review the amendment of the administrative complaint anew, the employee, on the facts alleged, had no reasonable suspicion of discrimination prior to her receipt of a report of investigation (ROI), which revealed the involvement of her supervisor in the decision. Hutchinson v. Holder, D.D.C.2009, 668 F.Supp.2d 201. Civil Rights 1505(6); Civil Rights 1514

Office employee and manager of Department of Veterans Affairs (VA) Equal Employment Opportunity (EEO) office were "counselors" under Equal Employment Opportunity Commission (EEOC) regulation regarding pre-complaint processing, and thus VA employee initiated contact with counselor within 45-day period set forth by EEOC, satisfying obligation to exhaust administrative remedies on her Title VII claims; EEO office employee and manager were logically connected to EEO process and held themselves out as EEO counselors. Johnson v. Peake, D.D.C.2009, 634 F.Supp.2d 27. Civil Rights 1514

United States Postal Service (USPS) employee, who suffered from severe persistent asthma, satisfied Title VII exhaustion requirement for her claim of disability discrimination against USPS, although she failed to check "disability" box on Equal Employment Opportunity Commission (EEOC) forms, where she alleged in administrative charge that after seeking pre-complaint counseling she felt harassed, intimidated, and highly scrutinized by her supervisor regarding her disability and physical health condition, and that supervisor insisted that employee provide original medical documentation to justify disability-related absences, when no such requirement was made of other co-workers, and Family Medical Leave Act (FMLA) leave status had been previously approved for employee's job-related medical condition. Gonzalez-Rodriguez v. Potter, D.Puerto Rico 2009, 605 F.Supp.2d 349. Civil Rights 1516

Former federal employees adequately exhausted their administrative remedies before suing for discrimination based on national origin, religion, and age where they requested Final Agency Decision (FAD) and received one, then filed suit in district court within 90 days of receipt of FAD. Abdelkarim v. Tomlinson, D.D.C.2009, 605 F.Supp.2d 116. Civil Rights 1514; Civil Rights 1530

Pro se plaintiff adequately alleged exhaustion of administrative remedies to state a Title VII claim; she quoted the appropriate regulation and then alleged that she was informed

of a desk audit within 45 days of a certain date and that posters, issued by the Equal Employment Opportunity Commission (EEOC), were not displayed notifying her of the 45-day limitation from the date of the personnel action, and she then stated that nothing occurred during the relevant period that would otherwise have created a reasonable discriminatory suspicion of the delay and that it was "an erroneous interpretation of the law" that agency officials "communicated the results of the audit in a timely manner." Slaughter v. Peters, D.D.C.2009, 597 F.Supp.2d 103. Civil Rights 1532

Federal employee who brought action against his employer alleging age discrimination and retaliation in violation of Title VII and Age Discrimination in Employment Act (ADEA) exhausted his administrative remedies; more than 180 days had elapsed since he last amended his formal administrative complaint of discrimination, and final agency decision still had not been issued. Beard v. Preston, D.D.C.2008, 576 F.Supp.2d 93. Civil Rights 1514; United States 36

Federal employee exhausted her administrative remedies regarding specific claims under Title VII and ADEA that she was physically confronted in hostile or threatening manner and that agency questioned her coworkers concerning her whereabouts; by allegedly bringing those issues to attention of individuals in agency and EEO officer, employee put agency on notice of her specific allegations, thereby providing opportunity for investigation at administrative level. Williams v. Dodaro, D.D.C.2008, 576 F.Supp.2d 72. Civil Rights 1516

Employee exhausted administrative remedies as to individual disparate impact claim against Department of Commerce under Title VII, where earlier-filed administrative class complaint, which had been filed with Equal Employment Opportunity Commission (EEOC), asserted racial discrimination against employee and other African-Americans in the department, consisting of low performance ratings and denial of promotions and awards. Howard v. Gutierrez, D.D.C.2008, 571 F.Supp.2d 145. Civil Rights 1516

By timely filing administrative complaint, organization of black Library of Congress (LOC) employees and individual employees exhausted their administrative remedies, as required to bring Title VII action against LOC alleging that LOC engaged in discrimination by refusing to accept their prior administrative complaint challenging LOC's refusal to recognize organization. Cook v. Billington, D.D.C.2008, 541 F.Supp.2d 358. Civil Rights 1514

Federal employee's reporting of alleged sex discrimination and hostile work environment to her supervisor within 45 days after alleged discriminatory treatment was sufficient to exhaust her administrative remedies with respect to her claim under Title VII, even though she did not contact with Equal Employment Opportunity (EEO) counselor for informal counseling. Klugel v. Small, D.D.C.2007, 519 F.Supp.2d 66. Civil Rights 1505(3); Civil Rights 1514

Former employee of the Federal Bureau of Prisons (BOP) exhausted his administrative remedies, as required for judicial review of his retaliation claim under the Rehabilitation Act; while the administrative claim accepted for investigation did not mention retaliation specifically, the investigating officer pointedly asked the employee about his reprisal claims during the officer's official interview of the employee. Kurth v. Gonzales, E.D.Tex.2006, 469 F.Supp.2d 415, subsequent determination 472 F.Supp.2d 874. Civil Rights 1516; United States 36

Terminated Department of Veterans Affairs (DVA) employee's race and disability discrimination action, filed during pendency of her appeal to Office of Federal Operations (OFO) from final agency action, would not be dismissed for failure to exhaust administrative remedies, where OFO issued final decision denying appeal before Secretary of DVA was served in court action; while employee filed action before her administrative remedies had been exhausted, filing did not impede resolution of the administrative action in any way. Saulters v. Nicholson, D.Mass.2006, 463 F.Supp.2d 123. Civil Rights 1518

Federal employee was not required to take any further action to exhaust his administrative remedies, as required prior to filing suit under Title VII against Chairman of Broadcasting Board of Governors, once he had filed his complaint with the Equal Employment Opportunity Commission (EEOC) and had cooperated in the EEOC's investigation for 180 days. Brown v. Tomlinson, D.D.C.2006, 462 F.Supp.2d 16. Civil Rights 1514; Civil Rights 1518

Issues of hiring practices, pre-employment testing, and awards and bonuses could be vicariously exhausted, for purpose of racial discrimination claims brought by black special agents of United States Secret Service in lawsuit under Title VII, since those forms of discrimination were named in administrative class complaint and they were reasonably related to non-promotion class claim. Moore v. Chertoff, D.D.C.2006, 437 F.Supp.2d 156. Civil Rights 1517

Federal employee alleging gender-based employment discrimination under Title VII exhausted her administrative remedies by initiating administrative charge after receipt of paycheck, even if she had not filed administrative charges after previous pay reductions; court could infer from record that she initiated her administrative charge with her employer, the Library of Congress, within 20 days of discriminatory event as required by Library of Congress regulations, where receipt of paycheck was relevant discriminatory event, and employee thus also fulfilled requirement in Title VII that she initiate an administrative charge within 45 days of discriminatory event. Mansfield v. Billington, D.D.C.2006, 432 F.Supp.2d 64, on reconsideration in part 669 F.Supp.2d 11. Civil Rights 1505(3); Civil Rights 1514

Black Secret Service agents' class claims relating to discrimination in performance evaluations, transfers, assignments, and other career enhancing opportunities, assignment to undercover work, hiring practices, testing, disciplinary policies and practices, and awards and bonuses could be deemed vicariously exhausted by their now properly exhausted nonpromotion class claim. Moore v. Chertoff, D.D.C.2006, 424 F.Supp.2d 145, order clarified on reconsideration 437 F.Supp.2d 156. Civil Rights 1517

Although federal employee's Title VII complaint alleged facts going well beyond those underlying her administrative complaint filed with Equal Employment Opportunity Commission (EEOC), her discrimination and retaliation claims were limited to those six exhausted claims, relating to denial of her requests for detail assignments, assignment to tedious work such as photocopying, not being provided with opportunity to serve as acting Branch Chief, denial of special recognition and monetary awards for work accomplishments, coworker being permitted to tamper with office time log to give appearance she was absent, and coworkers' derogatory comments and verbal threats to her. Nichols v. Truscott, D.D.C.2006, 424 F.Supp.2d 124. Civil Rights 1516; United States 36

Federal employee's consultation with equal employment opportunity (EEO) counselor, as required to exhaust administrative remedies before bringing race, sex, and disability discrimination action against employer pursuant to Title VII and Rehabilitation Act, was sufficient to cover both denial of competitive and non-competitive promotions; although employer argued employee did not raise issue of competitive promotion during consultation, employee discussed with counselor what he believed was discriminatory denial of promotion, and employee was not required to specify type of non-promotion. Medlock v. Rumsfeld, D.Md.2002, 336 F.Supp.2d 452, reconsideration denied , affirmed 86 Fed.Appx. 665, 2004 WL 249566, certiorari denied 125 S.Ct. 275, 543 U.S. 874, 160 L.Ed.2d 125. Civil Rights 1516

Department of Labor employee fully exhausted her administrative remedies with respect to her employment discrimination grievances, as required to bring action under Title VII against DOL, where she timely appealed arbitrator's dismissal of her Equal Employment Opportunity (EEO) complaints, and EEO failed to issue a decision on her appeal within 180 days of filing of appeal. Lloyd v. Chao, D.D.C.2002, 240 F.Supp.2d 1. Civil Rights 1519

Although federal employee's administrative complaints failed to expressly allege pattern and practice of discrimination against employee on account of his handicap, administrative complaints arguably provided employer with sufficient notice of this Rehabilitation Act claim, and therefore claim was not subject to dismissal for failure to exhaust administrative remedies. Thorne v. Cavazos, D.D.C.1990, 744 F.Supp. 348. Civil Rights 1516

Failure of federal employee to exhaust administrative remedies precluded Title VII action alleging racially and sexually discriminatory employment practices; although employee had initiated two separate administrative review proceedings, and even obtained final decision letter from one administrative agency, merits of his sex and race discrimination in employment claims had not properly been presented to agencies and had not been reviewed. Hay v. Secretary of Army, S.D.Ga.1990, 739 F.Supp. 609. Civil Rights 1516

Discharged mail carrier did not fail to exhaust administrative remedies prior to suing for alleged sex discrimination under civil rights statute applicable to federal employees by virtue of his requesting a hearing on his discharge before the Equal Employment Opportunity Commission and then failing to attend hearing; exhaustion of remedies doctrine was not applicable. Maher v. U.S. Postal Service, S.D.N.Y.1990, 729 F.Supp. 1444. Administrative Law And Procedure 229; Civil Rights 1518

Dismissal of Title VII action brought against Postal Service was not warranted for failure to exhaust administrative remedies on ground that employee filed action while her third Equal Employment Opportunity Commission (EEOC) charge was still pending, where her third charge arose during pendency of EEOC's investigation of first and second charges of sexual harassment and discrimination, third charge was filed only two months after second charge, and third charge, like first, asserted that Postal Service management had retaliated against employee for asserting her civil rights. Babcock v. Frank, S.D.N.Y.1990, 729 F.Supp. 279. Administrative Law And Procedure 229; Civil Rights 1514

141. ---- Particular cases remedies not exhausted, exhaustion of administrative remedies, civil action

Federal employee's filing of an amended complaint after the mandatory 180-day waiting period for filing a Title VII suit expired did not cure his failure to exhaust by initially filing his suit before the 180-day period had elapsed; allowing employee to cure his failure to exhaust administrative remedies by amending his complaint would contravene Equal Employment Opportunity Commission's (EEOC) investigative duty and undermine Congress' policy of encouraging informal resolution. Murthy v. Vilsack, C.A.D.C.2010, 609 F.3d 460, 391 U.S.App.D.C. 251. Civil Rights 1514; Civil Rights 1530

Transportation Security Administration (TSA) employee who was terminated because his dreadlocks violated TSA's grooming policy had to exhaust his Title VII administrative remedies before bringing claim of religious discrimination, and his failure to timely do so warranted dismissal for failure to state a claim. Francis v. Mineta, C.A.3 (Virgin Islands) 2007, 505 F.3d 266. Civil Rights 1514

Postal employee's retaliation and hostile work environment claims against Postal Ser-

vice were not "reasonably related" to the allegations in his administrative complaint, which alleged a single act of discrimination by supervisor, and thus did not meet Title VII's exhaustion requirements; employee's Equal Employment Opportunity (EEO) complaint did not mention supervisor's previous behavior or his own previous complaints, and employee's EEO complaint contained no factual allegations sufficient to alert the EEO to the possibility that plaintiff's EEO complaint contains no factual allegations sufficient to alert the EEO to the possibility that supervisor's assault was the product of a retaliatory motive. Mathirampuzha v. Potter, C.A.2 (Conn.) 2008, 548 F.3d 70. Civil Rights 1516; Postal Service 5

Former employee of Department of Veterans Affairs failed to comply with Title VII's requirement of exhaustion of administrative remedies, requiring dismissal of claims of gender discrimination and hostile work environment against former employer without prejudice; employee filed complaint before Equal Employment Opportunity Commission (EEOC) had issued a right-to-sue letter. Franceschi v. U.S. Dept. of Veterans Affairs, C.A.1 (Puerto Rico) 2008, 514 F.3d 81. Civil Rights 1514; Civil Rights 1530; Federal Civil Procedure 1837.1

African-American employee failed to exhaust administrative remedies for claim that she was terminated based on race discrimination, in violation of Title VII, since employee offered no evidence that she met with Equal Employment Opportunity (EEO) counselor within 45 days of termination, presented no basis for equitable tolling of 45-day period, and untimely offered post-judgment affidavits averring that she had met with EEO counselor but not identifying counselor by name or providing other specific facts to show that meeting occurred. Greer v. Paulson, C.A.D.C.2007, 505 F.3d 1306, 378 U.S.App.D.C. 295. Civil Rights 1505(3); Civil Rights 1505(6); Civil Rights 1514

Internal Revenue Service (IRS) employee failed to exhaust his administrative remedies in connection with claim his nonselection for promotion was in retaliation for prior protected activity, where he did not raise that issue in his Equal Employment Opportunity Commission (EEOC) complaint. Watson v. O'Neill, C.A.8 (Mo.) 2004, 365 F.3d 609. Civil Rights 1516

Postal employee failed to exhaust administrative remedies regarding claims that disciplinary actions, namely reprimand resulting in letter of warning and fourteen-day suspension and subsequent termination, were in retaliation for previous filing of EEO complaint, where he never filed formal EEO complaints regarding allegedly retaliatory incidents. Martinez v. Potter, C.A.10 (N.M.) 2003, 347 F.3d 1208. Civil Rights 1514; Postal Service 5

Employee's verbal complaints and e-mails to Equal Employment Opportunity (EEO) counselor were insufficient to constitute substantial compliance with Title VII claim presentment requirements, as they did not notify agency that employment discrimination

was claimed. Sommatino v. U.S., C.A.9 (Cal.) 2001, 255 F.3d 704. Civil Rights 1506; Civil Rights 1514

Federal employee who treated Equal Employment Opportunity Commission (EEOC) retaliation claim as separate and distinct from underlying EEOC discrimination claim was not excused from Title VII's requirement that she exhaust administrative remedies as to retaliation claim, under exception which allows employee to be excused from exhausting administrative remedies on related claims of discrimination or retaliation that occur after filing of original EEOC complaint. Mosley v. Pena, C.A.10 (Okla.) 1996, 100 F.3d 1515. Administrative Law And Procedure 229; Civil Rights 1519; United States 36

Former Postal Service employee who brought action under the Rehabilitation Act claiming handicap discrimination, after the Equal Employment Opportunity Commission (EEOC) found that claim was untimely because of failure to bring it to attention of EEO counselor within 30-day period, could not argue before district court that he had in fact sought EEO counseling prior to untimely meeting, where argument was not presented and exhausted in prior administrative proceeding. Roman-Martinez v. Runyon, C.A.1 (Puerto Rico) 1996, 100 F.3d 213. Administrative Law And Procedure 229; Civil Rights 1514

Postal service employee's failure to bring complaints of race and sex discrimination to Equal Employment Opportunity (EEO) counselor within 30 days after denial of his application for position as postal inspector warranted dismissal of Title VII action. Benford v. Frank, C.A.6 (Ohio) 1991, 943 F.2d 609. Civil Rights 1505(4)

Civilian Air Force employee who elected initially to file informal complaint with base Equal Employment Opportunity (EEO) counselor irrevocably elected to adjudicate his employment discrimination claims through statutory EEO procedure, and abandonment of and obstruction of that process by attempting to pursue negotiated grievance procedure resulted in failure to exhaust administrative remedies, which was statutory precondition to Title VII action. Vinieratos v. U.S., Dept. of Air Force Through Aldridge, C.A.9 (Cal.) 1991, 939 F.2d 762. Administrative Law And Procedure 229; Civil Rights 1518

Employment discrimination claimant who chose to pursue administrative review of federal agency's denial of her claim was required to exhaust that remedy before filing civil action in federal court. Tolbert v. U.S., C.A.5 (Tex.) 1990, 916 F.2d 245. Administrative Law And Procedure 229; Civil Rights 1514

Discharged federal employee could not circumvent administrative-exhaustion requirement under Title VII by suing his supervisor individually in tort. Hampton v. I.R.S., C.A.5 (Tex.) 1990, 913 F.2d 180. Administrative Law And Procedure 229; Civil Rights

1514

Postal employee who initially filed complaint against postal service with the EEOC, but within two months withdrew appeal by "cancellation" was not entitled to file action in district court until the EEOC rendered decision, though employee could have initially brought action in district court if he had chosen to do so. Rivera v. U.S. Postal Service, C.A.9 (Cal.) 1987, 830 F.2d 1037, certiorari denied 108 S.Ct. 1737, 486 U.S. 1009, 100 L.Ed.2d 200, rehearing denied 108 S.Ct. 2888, 487 U.S. 1228, 101 L.Ed.2d 922. Civil Rights 1514

Where federal employee did resort to administrative remedies in alleging certain racially discriminatory practices, but his administrative complaint was vacated because he failed to comply with valid administrative requirement that he make his generalized complaints more specific, federal employee's suit under this subchapter was properly dismissed for his failure to pursue and to exhaust his administrative remedies. Johnson v. Bergland, C.A.5 (La.) 1980, 614 F.2d 415. Federal Civil Procedure 1788.6

African-American Internal Revenue Service (IRS) employee who elected initially to pursue her grievance concerning the IRS's denial of promotions through a negotiated grievance procedure and continued to pursue her grievance, despite her knowledge that the candidates hired for the positions which she was denied were white, irrevocably elected to pursue her claims through the negotiated grievance procedure rather than statutory procedure, and abandonment of grievance process by attempting to file Equal Employment Opportunity (EEO) claim resulted in failure to exhaust administrative remedies, precluding Title VII claim. Taylor v. Dam, S.D.Tex.2003, 244 F.Supp.2d 747. Civil Rights 1518; Election Of Remedies 7(1)

Federal employee failed to exhaust administrative remedies for claims raised in Title VII action that were not alleged in employee's administrative charges filed with Equal Employment Opportunity Commission (EEOC); unexhausted charges related to promotion and review decisions that occurred prior to earliest referenced event in administrative complaint, and involved different supervisors. Thorn v. Sebelius, D.Md.2011, 2011 WL 344127. Civil Rights 1516

Federal employee failed to exhaust his administrative remedies with respect to his Title VII claim against employer for retaliation and discrimination based on certain incidents, despite employee's assertion that employer's actions were serial violations, where employee failed to seek Equal Employment Opportunity (EEO) counseling within 45 days of alleged incidents. Drewrey v. Clinton, D.D.C.2011, 2011 WL 229432. United States 36

Even if ALJ for Department of Housing and Urban Development (HUD) filed "mixed case" complaint, he did not exhaust his administrative remedies with regard to Adminis-

trative Procedure Act (APA) claims as he did not raise those claims before agency's Equal Employment Opportunity (EEO) office; all his claims before EEO asserted discrimination on basis of disability, reprisal, and retaliation, ALJ did not raise any claims relating to supervisor's improper political motivations in assigning cases or to any threat to ALJ's political independence as would violate APA, his allegations that supervisor improperly (1) corresponded with parties appearing before ALJs, (2) thwarted communications between ALJs and U.S. Department of Justice, (3) interfered with ALJ docket, and (4) interfered with scheduling of ALJ hearings were not raised at all before EEO, and his allegations that supervisor did not distribute caseload equitably among ALJs and issued notices on his docket could not bring his APA claims within scope of EEO complaint. Fernandez v. Donovan, D.D.C.2011, 2011 WL 118188. Officers And Public Employees 72.41(2)

African-American male formerly employed by Internal Revenue Service (IRS) failed to exhaust administrative remedies with respect to his claim that he was not selected for management detail in violation of Title VII; rather, employee merely mentioned the non-selection in his Equal Employment Opportunity Commission (EEOC) complaint as evidence of pretext in his employer's decision to award specialist position to Caucasian female employee. Hamilton v. Geithner, D.D.C.2010, 2010 WL 4008353. Civil Rights 1516

Federal employee's Title VII race discrimination and Age Discrimination in Employment Act (ADEA) claims were barred, where employee failed to exhaust her administrative remedies by filing timely Equal Employment Opportunity Commission (EEOC) charges with respect to the alleged statements that formed the basis of those claims. Pagan v. Holder, D.N.J.2010, 741 F.Supp.2d 687. Civil Rights 1505(4)

Former United States Department of Agriculture (USDA) employee failed to exhaust his administrative remedies with respect to his hostile work environment claim under Title VII arising out of comments by superiors and colleagues related to his Egyptian national origin, where he did not raise the claim in any of his three Equal Employment Opportunity Commission (EEOC) complaints, the claim could not be deemed reasonably related to his prior EEOC complaints, and he was time-barred from filing another EEOC complaint raising the claim. Ghaly v. U.S. Dept. of Agriculture, E.D.N.Y.2010, 739 F.Supp.2d 185. Civil Rights 1516

Air Force employee failed to administratively exhaust retaliation claims based on her demotion and transfer from office to cubicle five days after EEO began investigating her initial complaint, where she did not cooperate with agency proceedings and then abandoned administrative process with regard to those claims; the only reason claims were included in employee's EEO complaint and thus even potentially eligible for inclusion in her federal lawsuit was because she represented to ALJ that she planned to allow discovery on those claims, consistent with purpose of requiring employees to exhaust ad-

ministrative remedies, to attempt resolution at agency level first, and conditional order made clear that without promise of discovery, motion to amend original EEO complaint to add claims would have been denied and employee required to pursue matter separately and wait 180 days before filing suit on the new claims. Bell v. Donley, D.D.C.2010, 724 F.Supp.2d 1. Armed Services 27(6); Civil Rights 1518

Federal employee failed to exhaust her administrative remedies with regard to discrimination claim arising from denial of performance award including cash bonus; she alleged only retaliation at the administrative level, and discrimination claim was not related simply because it arose out of the same incident. Bell v. Donley, D.D.C.2010, 724 F.Supp.2d 1. Civil Rights 1516

Postal worker failed to exhaust administrative remedies for claim that warning letter she received for leaving work floor without permission from postal service violated Title VII and the Rehabilitation Act by failing to accommodate her diabetes, where worker did not contact an equal employment opportunity counselor within time frame established by postal service regulations. Cherry v. Potter, S.D.N.Y.2010, 709 F.Supp.2d 213. Civil Rights 1505(3); Civil Rights 1514

Federal employee failed to exhaust administrative remedies as required to bring Title VII retaliation claim against Department of Labor (DOL) with regard to performance rating which was allegedly too low, where employee chose not to file informal complaint regarding rating after she received detail assignment which she sought. Uzlyan v. Solis, D.D.C.2010, 706 F.Supp.2d 44. Civil Rights 1514; United States 36

Federal employee failed to exhaust his claim that National Aeronautics and Space Administration (NASA), his employer, discriminated against him based on sex in violation of Title VII by failing to promote him to next federal advancement level, where employee could not identify single promotion he sought during relevant time period and never raised issue of promotion at administrative level. Johnson v. Bolden, D.D.C.2010, 699 F.Supp.2d 295. Civil Rights 1516

Federal employee did not adequately exhaust her administrative remedies prior to bringing Title VII retaliation claim in federal court, where employee elected to proceed with hearing before administrative judge as to that claim, and was currently engaged in discovery in administrative action. Augustus v. Locke, D.D.C.2010, 699 F.Supp.2d 65. Civil Rights 1518; United States 36

Internal Revenue Service (IRS) employee failed to exhaust his administrative remedies prior to filing Title VII suit alleging that his non-selection for vacant position resulted from discriminatory and retaliatory actions taken against him; employee initially appealed Department of Treasury's Final Agency Decision (FAD) denying his discrimination claim but he did not then wait the requisite 180 days after appealing the FAD to file suit, and his withdrawal of his FAD appeal did not obviate the 180-day requirement. Noisette v.

Geithner, D.D.C.2010, 693 F.Supp.2d 60. Civil Rights ⚿1505(3); Civil Rights ⚿1518

Former United States Department of Agriculture (USDA) employee who had been denied two promotions exhausted his administrative remedies, as required to bring claims for discrimination based on his race, national origin, age, and in reprisal for prior protected activity under Title VII against the USDA. Rahman v. Vilsack, D.D.C.2009, 673 F.Supp.2d 15. Civil Rights ⚿1514; United States ⚿36

Environmental Protection Agency (EPA) employee failed to exhaust her administrative remedies relating to disability and sex discrimination and retaliation claims other than those relating to EPA's delay in approval of her Cooperative Research and Development Agreement (CRADA), the only one mentioned in her EEO complaint. Porter v. Jackson, D.D.C.2009, 668 F.Supp.2d 222, affirmed 2010 WL 5341881, rehearing en banc denied. Civil Rights ⚿1516; United States ⚿36

Federal employee failed to administratively exhaust her claims with respect to her nonselections for three positions, where she did not contact EEO counselor until over one year after the first nonselection and over six months after the third one. Chavers v. Shinseki, D.D.C.2009, 667 F.Supp.2d 116, motion denied 2010 WL 2574102, appeal dismissed 2010 WL 4340538. Civil Rights ⚿1505(3); Civil Rights ⚿1514

Government Printing Office (GPO) employee failed to exhaust administrative remedies, as required to bring Title VII retaliation claim; although employee had exhausted discrimination claims, employee made no attempt to contact the GPO's Equal Employment Opportunity (EEO) counselor regarding his claim of retaliation, and his later-filed retaliation claim would not have been within the scope of the investigation of his initial claims of discriminatory non-promotion. Hairston v. Tapella, D.D.C.2009, 664 F.Supp.2d 106. Civil Rights ⚿1516; United States ⚿36

Postal employee did not exhaust necessary administrative procedures as to her allegedly retaliatory reassignment, where she never filed formal complaint and her contact with EEO counselor was beyond 45-day period allowed. Green v. Potter, D.N.J.2009, 687 F.Supp.2d 502. Civil Rights ⚿1514; Postal Service ⚿5

If claimant in mixed case appeal proceeds before Merit Systems Protection Board (MSPB), he must wait until it takes final action before seeking judicial review of his Title VII claims; when claimant abandons his action before MSPB, he has not exhausted his remedies in that forum. Moore v. Potter, S.D.Tex.2008, 716 F.Supp.2d 524. Officers And Public Employees ⚿72.41(2)

Federal employee failed to exhaust her remedies as to any race or retaliation claim concerning her 14-day suspension because she elected to pursue the negotiated grievance procedure concerning it and failed to take the grievance to arbitration, the final

step of such process; furthermore, even if employee sought to take her grievance to arbitration and that the union refused, she still failed to exhaust her administrative remedies because she never argued on her grievance form that the discipline imposed was due to race or retaliation. Sellers v. U.S. Dept. of Defense, D.R.I.2009, 654 F.Supp.2d 61. Labor And Employment 1996

Female employee at National Institutes of Health failed to exhaust administrative remedies with regard to her Title VII sex discrimination claim arising from former employer's investigation of her work computer, and thus court lacked jurisdiction to review claim, since employee failed to include claim in her complaint to Equal Employment Opportunity Commission (EEOC). Bonds v. Leavitt, D.Md.2009, 647 F.Supp.2d 541, affirmed in part , reversed in part 629 F.3d 369. Civil Rights 1516

Unsuccessful applicant for examiner and director of examiners positions at Small Business Administration (SBA) failed to exhaust his administrative remedies by filing complaints with Equal Employment Opportunity Commission (EEOC) alleging discrimination in his non-selection for positions based on age, race and sex in separate complaints, prior to bringing action in District Court alleging discrimination in violation of Title VII and the Age Discrimination in Employment Act (ADEA); if, as applicant suggested, his promotion from examiner to director position was foreseeable result of selection to examiner position, he should have timely included issue in his original complaint with EEOC and not only after selectee's receipt of director position, yet applicant had not shown that promotion was foreseeable result of acquiring examiner position. Pederson v. Mills, D.D.C.2009, 636 F.Supp.2d 78. Civil Rights 1516

Department of Veterans Affairs employee failed to exhaust her administrative remedies with respect to her Title VII claims of race and disability discrimination, where employee did not raise these claims in her formal Equal Employment Opportunity (EEO) complaint with the agency, but instead raised only distinct discrimination claims based on gender and retaliation. Mogenhan v. Shinseki, D.D.C.2009, 630 F.Supp.2d 56. Civil Rights 1516

Assuming that a disparate impact claim under the ADEA against a federal employer was legally cognizable, applicant for federal employment failed to exhaust his administrative remedies, as required under the ADEA or Title VII before filing lawsuit alleging that the Office of Personnel Management's (OPM) selection process had a disparate impact upon people of advanced age and people who shared his national origin, where his administrative discrimination complaint did not raise a disparate impact claim against OPM's employment policies, and there was no discussion of a disparate impact claim in Equal Employment Opportunity (EEO) counselor's report or investigative record. Hopkins v. Whipple, D.D.C.2009, 630 F.Supp.2d 33. Civil Rights 1516

Federal Bureau of Investigation (FBI) employee, a Video Communications Specialist

(VCS), failed to timely exhaust her administrative remedies for her Title VII discrimination claims based on denial of compensatory leave, intensified monitoring of her work after she and coworkers met with section chief to discuss their grievances with management, denial of permission to attend DVD technology training, and requirement she report for weekly file reviews at FBI training facility; employee could not argue that agency's conduct was a continuing violation at the same time she argued the acts were discrete, and she offered nothing more than conclusory statements to establish that alleged acts of discrimination had a cumulative effect. Evans v. Holder, D.D.C.2009, 618 F.Supp.2d 1. Civil Rights 1505(7); Civil Rights 1514

Department of Justice (DOJ) employee failed to contact Equal Employment Opportunity (EEO) counselor within 45 days of his allegedly retaliatory transfer, as required for employee to exhaust his administrative remedies before bringing Title VII and Age Discrimination in Employment Act (ADEA) action against DOJ. Pearsall v. Holder, D.D.C.2009, 610 F.Supp.2d 87. Civil Rights 1505(3); Civil Rights 1514; United States 36

Postal Service employee failed to exhaust his administrative remedies before filing his Title VII hostile work environment claim based on race against Postal Service in district court, where employee's underlying administrative Equal Employment Opportunity complaint contained no references to any racially motivated comments or actions that might constitute racial harassment. Franklin v. Potter, D.D.C.2009, 600 F.Supp.2d 38. Civil Rights 1516

Federal employee knew of or reasonably should have suspected alleged retaliation when her supervisor purportedly indicated during meeting that he would promote employee only if she dropped her Equal Employment Opportunity (EEO) complaint, and therefore employee failed to timely exhaust administrative remedies for her Title VII retaliation claim based upon her non-promotion when she did not contact EEO counselor within 45 days of meeting, given that employee alleged that supervisor retaliated against her by refusing promotion until she dropped her discrimination complaint, and employee believed, as of date of meeting, that she would not be promoted unless she withdrew complaint. Hines v. Bair, D.D.C.2009, 594 F.Supp.2d 17. Civil Rights 1505(3); Civil Rights 1514; United States 36

African-American former employee's claim that he was subjected to race discrimination in violation of Title VII during his employment by Department of Labor (DOL) was precluded for failure to exhaust administrative remedies within 45-day filing period for filing charge with Equal Employment Opportunity Commission (EEOC), since employee failed to contact EEOC counselor within 45 days of developing reasonable suspicion of race discrimination at time when employee initially claimed that he was denied equal pay for equal work due to his race. Hayes v. Chao, D.D.C.2008, 592 F.Supp.2d 51. Civil Rights 1505(3); Civil Rights 1514

Employee failed to exhaust his administrative remedies with respect to his Title VII and Age Discrimination in Employment Act (ADEA) age and gender discrimination claims, as required to bring claims in federal court; employee did not present age or gender claims in his Equal Employment Opportunity (EEO) complaint, and age and gender claims were not like and similarly related to reprisal claim in his original administrative complaint. Miller v. Rosenker, D.D.C.2008, 578 F.Supp.2d 107, reversed 594 F.3d 8, 389 U.S.App.D.C. 193. Civil Rights 1516

African-American male employee failed to exhaust administrative remedies in Title VII race and gender discrimination action against Navy, alleging failure to promote, and thus action was time-barred; employee failed to initiate contact with Equal Employment Opportunity Commission (EEOC) within 45 days of alleged failure to promote, and older non-promotion claims were not continued under continuing violation doctrine. Lipscomb v. Winter, D.D.C.2008, 577 F.Supp.2d 258, affirmed in part , remanded in part 2009 WL 1153442, on remand 699 F.Supp.2d 171. Civil Rights 1505(7); Civil Rights 1514

Federal employee of Department of the Interior failed to exhaust his administrative remedies with regard to count of retaliation based upon performance evaluation, where he waited to contact EEO counselor until 68 days after second meeting at which he learned that coworkers had input into his evaluation. Hill v. Kempthorne, D.D.C.2008, 577 F.Supp.2d 58. Civil Rights 1505(3); Civil Rights 1514; United States 36

United States Postal Service (USPS) employee's filing of union grievance was no substitute for filing EEO complaint, and employee thus failed to exhaust his administrative remedies before filing Title VII suit. Pickett v. Potter, D.D.C.2008, 571 F.Supp.2d 66. Civil Rights 1514

Former United States Department of Agriculture (USDA) employee failed to exhaust his Title VII and ADEA claims that USDA retaliated against him as a result of his Equal Employment Opportunity Commission (EEOC) discrimination complaint, as required to bring claims in federal court; there was no evidence that employee filed EEOC complaint relating to the alleged retaliation. Johnson v. Veneman, D.D.C.2008, 569 F.Supp.2d 148. Civil Rights 1514; United States 36

Agreement indicating that parties began active mediation after 30-day mediation period had expired did not establish that parties actually met as required during mediation period, and thus African-American federal employee did not establish that he had exhausted required administrative remedies under CAA, depriving court of subject-matter jurisdiction to adjudicate his hostile work environment and retaliation claims under Age Discrimination in Employment Act (ADEA), Fair Labor Standards Act (FLSA), and Title VII, where joint request had not been made to extend mediation period and mediation session did not take place during extended mediation period. Adams v. U.S. Capitol Police Bd., D.D.C.2008, 564 F.Supp.2d 37. Civil Rights 1515; Labor And Employment

2194; United States 36

United States Postal Service (USPS) failed to exhaust his administrative remedies regarding gender discrimination claim and was barred from pursuing that claim in federal court; despite amending his affidavit in support of information for pre-complaint counseling to include allegations of sex discrimination, those claims were not included in formal complaint, which alleged disability discrimination and retaliation and was filed five months after employee first raised issue of sex discrimination. Davila v. Potter, D.Puerto Rico 2007, 550 F.Supp.2d 234. Civil Rights 1516

Federal Bureau of Investigation (FBI) employee failed to exhaust her administrative remedies concerning her claim for compensatory damages, as required to bring Title VII claim for such damages, since employee's complaint presented to FBI's Equal Employment Opportunity (EEO) office did not ask for compensatory damages, and the factual recitation contained in the EEO Complaint provided no inference that employee was seeking compensatory damages. Dawson v. U.S., D.S.C.2008, 549 F.Supp.2d 736, affirmed 368 Fed.Appx. 374, 2010 WL 727648. Civil Rights 1516

Failure of employee, a United States citizen of Burmese national origin, to check “race” box on Equal Employment Opportunity (EEO) administrative complaint precluded his Title VII race discrimination claim on grounds that he failed to exhaust his administrative remedies, despite employee's contention that he did check “national origin” box on administrative complaint and that race claims were like or reasonably related to national origin claims; Title VII separately listed “race” and “national origin” as prohibited bases of discrimination, and administrative complaint also indicated they were separate claims. Nyunt v. Tomlinson, D.D.C.2008, 543 F.Supp.2d 25, affirmed 589 F.3d 445, 389 U.S.App.D.C. 13. Civil Rights 1516

Organization of black Library of Congress (LOC) employees and individual employees failed to exhaust their administrative remedies, as required to bring Title VII action against LOC alleging that LOC engaged in discrimination by refusing to recognize organization, since their administrative complaint was filed outside the 20-day and 60-day filing deadlines imposed by the LOC's regulations. Cook v. Billington, D.D.C.2008, 541 F.Supp.2d 358. Civil Rights 1505(3); Civil Rights 1514

Former Federal Bureau of Investigation (FBI) employee failed to timely exhaust his administrative remedies, warranting dismissal of his employment discrimination action against various federal employees, where employee did not file an administrative charge until years after the discriminatory actions allegedly took place. Johnson v. Gonzales, D.D.C.2007, 479 F.Supp.2d 55, motion to amend denied 248 F.R.D. 347, affirmed 2009 WL 3568647, rehearing denied. Civil Rights 1505(3); Civil Rights 1514

Department of Housing and Urban Development (HUD) employee failed to exhaust his administrative remedies regarding his claim for racial discrimination in his non-selection for Community Builder position, where he did not include that claim in complaint he filed with Equal Employment Opportunity Commission (EEOC). Patoski v. Jackson, D.Mass.2007, 477 F.Supp.2d 361. Civil Rights 1516

Federal employees' failure to satisfy administrative exhaustion requirements before suing for race discrimination under Title VII warranted dismissal of suit for lack of subject matter jurisdiction; during their group counseling sessions, employees provided only generalized allegations of "class" discrimination and refused to provide any details regarding specific incidents of alleged discrimination. Artis v. Greenspan, D.D.C.2007, 474 F.Supp.2d 16, motion to amend denied 256 F.R.D. 4, vacated 630 F.3d 1031. Civil Rights 1515

Federal employee's claims that agency failed to provide him with reasonable accommodations for his disability and discriminated against him were not reasonably related to discrimination claims he made in his earlier administrative discrimination complaint, and thus employee could not raise claims in his action brought under Title VII and Rehabilitation Act due to his failure to exhaust administrative remedies, where administrative complaint focused almost exclusively on agency's medical certification requirement for continued inclusion in program for accommodating employees injured because of their exposure to toxic substances in office building, and new claims were based on agency's failure after he filed complaint to grant his specific, discrete accommodation requests. Dage v. Johnson, D.D.C.2008, 537 F.Supp.2d 43. Civil Rights 1516

African-American Department of Veterans' Affairs (DVA) employee's failure to timely exhaust his administrative remedies warranted dismissal of discrimination claims related to two vacancy announcements; employee first sought counseling from Equal Employment Opportunity Commission (EEOC) more than eight months after alleged discriminatory nonselection for first vacancy announcement and almost three months after alleged discriminatory nonselection for second vacancy announcement. Pierce v. Mansfield, D.D.C.2008, 530 F.Supp.2d 146. Civil Rights 1505(3); Civil Rights 1514

African-American federal employee's admitted failure to file any administrative complaint, let alone a timely one, warranted dismissal of his Title VII race discrimination claims for failure to exhaust administrative remedies. Keller v. Embassy of U.S., D.D.C.2007, 522 F.Supp.2d 213. Civil Rights 1514

Former Environmental Protection Agency (EPA) employee failed to exhaust his administrative remedies on claim of constructive discharge, precluding claim under Title VII that he suffered a constructive discharge when his work environment caused him to apply for early retirement, given that employee failed to contact an equal employment opportunity counselor within 45 days of retiring. Chaple v. Johnson, D.D.C.2006, 453

F.Supp.2d 63. Civil Rights 1505(3); Civil Rights 1514

Employee was required to exhaust her administrative remedies with respect to Title VII retaliation claim stemming from her designation as absent without leave (AWOL), and her failure to do so warranted summary judgment for employer on that claim. Prince v. Rice, D.D.C.2006, 453 F.Supp.2d 14. Civil Rights 1514

Environmental Protection Agency (EPA) employee could not use voluntary dismissal of his administrative claim to avoid exhaustion requirement, where employee's counsel wrote to Equal Employment Opportunity Commission (EEOC) explaining his client "no longer wished to proceed with the EEOC," the EEOC granted request for dismissal and never issued right to sue letter, and EPA never took any additional action. Wiley v. Johnson, D.D.C.2006, 436 F.Supp.2d 91. Civil Rights 1518

Agency employee's Equal Employment Opportunity (EEO) complaint involving pretermination claims did not merge into her Merit Systems Protection Board (MSPB) complaint notwithstanding EEO office's statement to the contrary, and employee could not bring pretermination claims in district court more than 90 days after her EEO complaint was dismissed; MSPB had limited jurisdiction that would not cover those complaints, and there was no indication in record that any of those complaints had been directly raised before MSPB. Ikossi v. England, D.D.C.2005, 406 F.Supp.2d 23, affirmed in part , reversed in part 516 F.3d 1037, 380 U.S.App.D.C. 112. Officers And Public Employees 72.41(1)

Employment discrimination plaintiff's hiring and pay claims would be dismissed, due to her failure to have contacted an Equal Employment Opportunity (EEO) counselor, as required by regulation, within 45 days of the alleged discriminatory matter; she was aware of those claims at the time she received her employment offer letter, and fact that the complained-of conditions were in place thereafter did not excuse her failure to timely contact a counselor. Robinson v. Chao, D.D.C.2005, 403 F.Supp.2d 24. Civil Rights 1505(3); Civil Rights 1505(4)

Federal employee's suit under Title VII for race discrimination and retaliation was barred by his failure to exhaust his administrative remedies before filing; although he acted properly in seeking hearing from Equal Employment Opportunity Commission (EEOC) administrative judge, his subsequent failure to comply with EEOC procedures, his incomplete and tardy discovery replies, and his half-hearted efforts at his own discovery indicated he did not seriously attempt EEOC administrative review. Brown v. Tomlinson, D.D.C.2005, 383 F.Supp.2d 26, motion granted 462 F.Supp.2d 16. Civil Rights 1518; United States 36

Former federal employee who filed notice of claim with Equal Employment Opportunity Commission (EEOC) but failed to respond to former employer's discovery requests

abandoned Title VII claims of national origin discrimination and reprisal, thus failing to exhaust her administrative remedies; employee knew time limits for discovery, employee did not ask for change in discovery schedule, and employee never responded to repeated requests to contact attorney for former employer or ALJ. Smith v. Koplan, D.D.C.2005, 362 F.Supp.2d 266. Civil Rights 1518; United States 36

Federal employee failed to exhaust his administrative remedies as to allegation that "management" threatened to restrict his bathroom breaks despite being aware he had kidney problems; that claim was not included in Equal Employment Opportunity (EEO) charge despite having occurred eight months before charge was filed and was not reasonably related to allegations in charge. Newby v. Whitman, M.D.N.C.2004, 340 F.Supp.2d 637. Civil Rights 1516

Title VII claimant failed to exhaust administrative remedies with Equal Employment Opportunity Commission (EEOC) before bringing action in district court, where claimant requested withdrawal of his appeal to the EEOC and proceeded to file this lawsuit before the 180-day period following the filing of his administrative appeal had run, and EEOC had not undertaken and completed its investigation by that time. Jones v. Ashcroft, D.D.C.2004, 321 F.Supp.2d 1. Civil Rights 1518

Harassment/hostile work environment claim by Hispanic special agents of United States Customs Service was not properly before district court because of failure to exhaust; claim was not properly asserted to Equal Employment Opportunity Commission (EEOC) counselor or in administrative charge. Contreras v. Ridge, D.D.C.2004, 305 F.Supp.2d 126. Civil Rights 1516

Federal employee failed to exhaust her administrative remedies regarding particular position where she failed to discuss her discrimination allegations regarding that position during informal counseling session and instead filed formal administrative complaint. Weber v. Hurtgen, D.D.C.2003, 297 F.Supp.2d 58, affirmed in part, reversed in part and remanded 494 F.3d 179, 377 U.S.App.D.C. 347, on remand 604 F.Supp.2d 71. Civil Rights 1515

Federal employee who filed notice of appeal with the Equal Employment Opportunity Commission (EEOC) but failed to take any action to ensure that her appeal was progressing, abandoned her Title VII and age discrimination claims, thus failing to exhaust her administrative remedies; there was no indication that employee informed the EEOC that she would not be filing an appeal brief, checked to confirm that the EEOC had requested the complaint file from employer and was working on the appeal, or inquired about the status of the appeal in any way. Bush v. Engleman, D.D.C.2003, 266 F.Supp.2d 97. Civil Rights 1518

Letter carrier's claim alleging that Postal Service retaliated against him based on his pri-

or EEO conduct by disciplining him, disposing of his grievances without fair or just results, and ultimately by discharging him, did not, for administrative exhaustion purposes, fall within scope of EEO investigations; although employee had twice contacted EEO counselor, the first time complaining of discrimination on basis of physical disability and the second of supervisor threat to terminate him based on his physical disability discrimination and prior EEO activities, first charge was no longer subject of active EEO investigation at time of alleged retaliation and second complaint was not pursued beyond informal stage. Schaefer v. U.S. Postal Service, S.D.Ohio 2002, 254 F.Supp.2d 741. Civil Rights 1516; Postal Service 5

Although employee's previous race and national origin discrimination claims were included in Equal Employment Opportunity Commission (EEOC) charge to demonstrate reason for federal employer's alleged retaliation against employee, claims were outside of scope of EEOC investigation, and, thus, employee did not exhaust her administrative remedies under Title VII with regard to these discrimination claims, where charge mentioned only retaliation and did not give factual guidance to EEOC regarding race or national origin claims, and EEOC clearly indicated that it was investigating only retaliation charge. Morales v. Mineta, D.Puerto Rico 2002, 220 F.Supp.2d 88. Civil Rights 1516

Applicant's failure to contact Equal Employment Opportunity (EEO) counselor until approximately four years after personnel action he alleged to be discriminatory required dismissal of his action for failure to exhaust his administrative remedies, where he did not try to extend, despite being aware of, time limits for initiating contact with EEO counselor; his delay could not be justified on ground that he discovered female applicant who applied for same position three years later was treated differently. Fausto v. Reno, S.D.N.Y.1997, 955 F.Supp. 286. Civil Rights 1505(3)

Federal employee did not exhaust her administrative remedies on allegations that she did not receive two promotions for which she applied after Equal Employment Opportunity investigation was closed, and thus, since she had not exhausted her administrative remedies on those allegations, she could not bring them as part of lawsuit. McClamb v. Rubin, M.D.N.C.1996, 932 F.Supp. 706. Administrative Law And Procedure 229; Civil Rights 1516

Federal district court lacked jurisdiction over federal employee's employment discrimination claim which employee did not exhaust; alleged discriminatory act was still in the informal counseling stage at time her administrative complaint was resolved and employee did not present evidence showing that she had exhausted claim. Foster v. Bentsen, N.D.Ill.1996, 919 F.Supp. 293. Administrative Law And Procedure 229; Civil Rights 1514

Federal employee who filed appeal with EEOC Office of Review and Appeals and who,

28 days later, grew impatient and filed civil action had not exhausted his administrative remedies. Elsberry v. Rice, D.Del.1993, 820 F.Supp. 824. Administrative Law And Procedure 229; Civil Rights 1518

Employee failed to exhaust administrative remedies for her Title VII claim; letter to Bureau of Indian Affairs (BIA) Equal Employment Opportunity (EEO) counselor, stating that she had been unsuccessful in attempting to contact counselor, was not a valid EEO complaint, and employee's claim that she had been told by an official that she could not file discrimination claim because she was a supervisory official was not colorable. Smith v. Lujan, D.Ariz.1991, 780 F.Supp. 1275. Administrative Law And Procedure 229; Civil Rights 1506; Civil Rights 1519

Probationary Postal Service employees who were allegedly discharged due to handicaps in violation of collective bargaining agreement, did not exhaust administrative remedies available under Rehabilitation Act and, thus, could not bring discrimination action directly in federal court. American Postal Workers Union, AFL-CIO v. U.S. Postal Service, D.D.C.1989, 755 F.Supp. 1076. Civil Rights 1514

Principles of sovereign immunity embodied in Title VII's requirement that federal employee exhaust administrative remedies prior to filing court action barred federal employee from raising for first time in court charge directed at dismissal that was not raised during three years of administrative proceedings and that did not reasonably relate to retaliation charges that were subject of earlier proceedings. McGuire v. U.S. Postal Service, S.D.N.Y.1990, 749 F.Supp. 1275. Administrative Law And Procedure 669.1; Civil Rights 1516

Internal Revenue Service (IRS) employee failed to exhaust her administrative remedies as to employment discrimination claims that occurred more than 45 days before she initiated a formal “mixed case” complaint with the agency's Equal Employment Office (EEO), as required to file Title VII action, where she did not file civil action in district court within 30 days of EEO's dismissal of those claims or appeal the decision to the Merit System Protection Board (MSPB). Hendrix v. Snow, C.A.11 (Ga.) 2006, 170 Fed.Appx. 68, 2006 WL 288099, Unreported, certiorari denied 127 S.Ct. 1332, 549 U.S. 1208, 167 L.Ed.2d 79. Civil Rights 1505(3); Civil Rights 1514

Federal African-American employee was not entitled to pursue relief in federal court on his discrimination claim, although more than 180 days elapsed after he filed appeal to Equal Employment Opportunity Commission (EEOC) regarding dismissal of EEO complaint; employee elected negotiated grievance process to resolve matter, and 180-day requirement did not constitute exhaustion of that process, and consideration of EEO complaint could not resume once he settled grievance in that process and withdrew from arbitration. Harrison v. Rumsfeld, N.D.Cal.2003, 2003 WL 22114266, Unreported. Civil Rights 1518

United States Customs Service (USCS) employee failed to timely exhaust administrative remedies before filing Title VII action, where he did not contact EEO counselor within 45 days of alleged events leading to his hostile work environment and retaliation claims and did not seek EEO counseling until nearly eight months after the last allegedly discriminatory or retaliatory act occurred. Lewis v. Snow, S.D.N.Y.2003, 2003 WL 22077457, Unreported. Civil Rights 1505(3)

Black postal employee failed to exhaust administrative remedies with regards to her Title VII claim that she was denied training due to race discrimination and her disability discrimination claim, in that, employee did not contact Equal Employment Opportunity (EEO) counselor within 45 days of denial of training, and offered no justification for her delay. Grey v. Potter, M.D.N.C.2003, 2003 WL 1923733, Unreported. Civil Rights 342; Civil Rights 362.1

Willingness of Equal Employment Opportunity (EEO) office to proceed with complaints filed by Bureau of Prisons (BOP) did not waive requirement that she timely exhaust administrative remedies prior to filing Title VII action, where right to sue letter contained no statement that EEO found complaint timely. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1505(5); Civil Rights 1523

Postal employee did not exhaust her administrative remedies with regards to her Title VII retaliation claim, arising from Postal Service's decision not to reappoint her to position, where employee did not update her original Equal Employment Opportunity Commission (EEOC) discrimination complaint to include charges of retaliation. Fairley v. Potter, N.D.Cal.2003, 2003 WL 403361, Unreported. Postal Service 5

African-American federal employee, having elected to proceed under negotiated grievance procedure concerning alleged racially discriminatory incident, was required to exhaust negotiated remedies, and his failure to do so barred him from including incident in subsequent Title VII action as basis for seeking recovery, even though employee included same incident in his complaint with the Equal Employment Opportunity Commission (EEOC). Upshur v. Dam, S.D.N.Y.2003, 2003 WL 135819, Unreported. Civil Rights 1502

142. Jurisdiction, civil action

Congress' waiver of sovereign immunity under Title VII did not extend to suits to enforce settlement agreements entered into without genuine investigation, reasonable cause determination, and conciliation efforts by Equal Employment Opportunity Commission (EEOC), and thus district court lacked subject matter jurisdiction over federal employee's action to enforce Title VII predetermination settlement agreement with the Navy, his federal employer; employee's claim was essentially one for breach of contract, federal

regulation governing enforcement of settlement agreements with federal agencies outlined specific administrative procedure that employee had to follow if he believed agency had breached agreement and neither regulations nor terms of agreement permitted employee to sue to enforce settlement, and Tucker Act provided exclusive remedy for contract claims against government. Munoz v. Mabus, C.A.9 (Hawai'i) 2010, 630 F.3d 856. United States 125(9)

District court had federal question subject matter jurisdiction over terminated federal employee's religious discrimination claim under Religious Freedom Restoration Act (RFRA), even though claim should have been brought under Title VII instead. Francis v. Mineta, C.A.3 (Virgin Islands) 2007, 505 F.3d 266. Federal Courts 224

Female federal employee's Equal Pay Act (EPA) claim in the Court of Federal Claims was the same claim as her Title VII gender discrimination claim that was pending in district court, barring the Court of Federal Claims from exercising jurisdiction over EPA claim; both claims arose out of the same set of operative facts, which was the federal agency employer's alleged conduct in promoting male candidate for position sought by female employee and paying employee less compensation than it paid to male employees performing the same or substantially similar work, and both claims sought same relief of back pay, retroactive promotion, and attorney fees. Griffin v. U.S., C.A.Fed.2009, 590 F.3d 1291, rehearing and rehearing en banc denied 621 F.3d 1363. Federal Courts 1145

District court did not lose jurisdiction over federal employee's Federal Tort Claims Act (FTCA) emotional distress claim against government because the event that would have divested the court of jurisdiction, a determination by the Secretary of Labor that employee's emotional distress claim was covered by Federal Employees' Compensation Act (FECA), did not occur; proper course was to stay the proceedings, hold the claim in abeyance, or otherwise maintain the case on the court's inactive docket so that the plaintiff could file a FECA claim and await a determination by the Secretary regarding FECA coverage. Mathirampuzha v. Potter, C.A.2 (Conn.) 2008, 548 F.3d 70. Workers' Compensation 2122

District Court lacked subject matter jurisdiction over federal employee's action to enforce settlement agreement with his federal agency employer on his Title VII disability discrimination claim, which was mediated by the Equal Employment Opportunity Commission (EEOC); federal regulation governing enforcement of settlement agreements with federal agencies outlined a specific administrative procedure that employee had to follow if he believed that the agency had breached the agreement, and neither the regulation nor the terms of the settlement agreement permitted employee to sue to enforce the settlement. Lindstrom v. U.S., C.A.10 (Wyo.) 2007, 510 F.3d 1191. Compromise And Settlement 21

Neither negative employment reference supplied to Department of Justice by former employee's supervisor at Department of Education, nor other statements in record, supported an inference of a Title VII retaliation claim such that district court would reasonably have been expected to discern, and thus possess jurisdiction over, a retaliation claim separate from former employee's contract claim against Department of Education, wherein she alleged that in making the reference it breached a settlement agreement provision requiring that Department direct to a specified person all requests for employment references on former employee, given that former employee's complaint made no reference to retaliation, and the negative statements were not self-evidently retaliatory. Greenhill v. Spellings, C.A.D.C.2007, 482 F.3d 569, 375 U.S.App.D.C. 477, rehearing en banc denied. Federal Courts 15

Court of Appeals has jurisdiction over reprisal actions of presidential appointees. Haddon v. Executive Residence at White House, C.A.Fed.2002, 313 F.3d 1352.

Federal district court lacked jurisdiction to review Department of Navy's decision to revoke civilian employee's nuclear weapons personnel reliability program (PRP) certification, which was the equivalent of a security clearance, in the context of seaman's Title VII action, alleging that Navy discriminated against him on the basis of his race by revoking his PRP certification; Title VII analysis necessarily required court to perform some review of merits of the security clearance decision. Brazil v. U.S. Dept. of Navy, C.A.9 (Cal.) 1995, 66 F.3d 193, certiorari denied 116 S.Ct. 1317, 517 U.S. 1103, 134 L.Ed.2d 470. War And National Emergency 1136

District court had subject matter jurisdiction to entertain employee's claim of sex discrimination in violation of consent decree where employee was member of class who settled claim and was thus party to consent order, and district court's dismissal of suit after entry of decree included dismissal with prejudice of all class members' claims that existed prior to decree's approval. England v. Kemp, C.A.11 (Ga.) 1992, 976 F.2d 662. Federal Civil Procedure 2397.6

Court of Appeals of the Federal Circuit had exclusive jurisdiction over public employee's appeal from final decision of Merit Systems Protection Board which affirmed employee's termination for concealing material fact in connection with cashier's fund shortage, even though employee alleged in initial appeal to Board that her discharge was racially motivated, where employee stated after initial hearing before Board hearing officer that racial discrimination was no longer an issue, record of such hearing contained no evidence of racial discrimination, and employee failed to raise issue of racial discrimination upon appeal to full Board or appeal to district court. Blake v. Department of Air Force, C.A.5 (La.) 1986, 794 F.2d 170. Officers And Public Employees 72.44

Where former federal employee failed to seek any administrative relief before filing complaints in federal court alleging that he was denied promotions because he was

Caucasian and of the Jewish faith, where employee did not file suit until 14 months after he had resigned from federal service, and where employee did not comply with provisions of this section, complaints would be dismissed for lack of subject matter jurisdiction, even though issue of exclusivity of procedure dictated by this subchapter was not presented to district court. Gissen v. Tackman, C.A.3 (N.J.) 1976, 537 F.2d 784. Federal Civil Procedure 1742(2)

Title VII claims of Jewish former Central Intelligence Agency (CIA) employee that revocation of his security clearance and his subsequent termination for "lack of candor" were predicated on anti-Semitic profiling in which CIA subjected him to unwanted harassment, discriminatory treatment, retaliation, and intimidation inextricably implicated merits of CIA's decision to revoke employee's security clearance, and thus district court lacked jurisdiction over Title VII claims. Ciralsky v. C.I.A., D.D.C.2010, 689 F.Supp.2d 141. War And National Emergency 1136

Former Transportation Security Administration (TSA) employee's claim that she was terminated due to discrimination and retaliation in violation of Title VII would require court to consider TSA's explanation that employee was terminated because she could not obtain the security clearance required for her position, and thus claim was not subject to judicial review, since court lacked jurisdiction over claims implicating the merits of a decision to deny a security clearance. Cruz-Packer v. Chertoff, D.D.C.2009, 612 F.Supp.2d 67. War And National Emergency 1136

District court lacked jurisdiction over Title VII claim asserted by an employee of the Navy to the extent it sought relief from discriminatory or retaliatory conduct that occurred during a time period not covered by the employee's Equal Employment Opportunity Commission (EEOC) complaint or a resulting investigation. Guion v. England, E.D.N.C.2008, 545 F.Supp.2d 524, affirmed 296 Fed.Appx. 347, 2008 WL 4600646. Armed Services 27(7); Civil Rights 1516

District court had jurisdiction to consider federal employee's claim for injunctive relief in her suit against employing agency alleging retaliation in violation of Title VII, even though she did not exhaust her administrative remedies. Jordan v. Evans, D.D.C.2004, 355 F.Supp.2d 72, subsequent determination 404 F.Supp.2d 28. Civil Rights 1516; United States 36

Section of Civil Service Reform Act governing official review of final decisions of Merit Systems Review Board (MSRB) defines jurisdiction in terms of "cases" which "involve discrimination," and not in terms of "discrimination claims," and therefore, district court jurisdiction extends to all claims in any case involving charge of discrimination. Kelliher v. Glickman, M.D.Ala.2001, 134 F.Supp.2d 1264, affirmed 313 F.3d 1270, rehearing and rehearing en banc denied 57 Fed.Appx. 416, 2003 WL 159295. Officers And Public Employees 72.41(1)

Statutory prerequisites for federal employee to file lawsuit under Title VII or Rehabilitation Act of 1973 are jurisdictional in nature. Coffey v. U.S., E.D.N.Y.1996, 939 F.Supp. 185. Civil Rights 🔑1511

Where employee's original discrimination charge had been dismissed, district court lacked jurisdiction over retaliation claim for which no EEO complaint was ever filed. Machado v. Frank, D.R.I.1991, 767 F.Supp. 416. Civil Rights 🔑1516

Court had jurisdiction over civil rights complaint of federal employee, even though she had also filed complaint with the EEOC, where the EEOC had subsequently dismissed the appeal because of the filing of the federal court action. Lockhart v. Sullivan, N.D.Ill.1989, 720 F.Supp. 699. Civil Rights 🔑1514

Where plaintiff complaining of reverse discrimination at the National Federal Bureau of Investigation Academy failed to meet this section's prerequisites concerning exhaustion of administrative remedies and timely filing of claim, district court lacked subject matter jurisdiction of suit despite contention that equitable powers of the court and the equal protection clause afforded plaintiff an available remedy. Robinson v. Smith, W.D.Mo.1984, 585 F.Supp. 1072. Civil Rights 🔑1505(4); Civil Rights 🔑1514

District court had jurisdiction over federal employee's retaliatory discharge claim where, though employee had filed appeal with the Merit Systems Protection Board, that Board had failed to render decision within 120 days, and, thus, employee exhausted administrative remedies. Sorrells v. Veterans Admin., S.D.Ohio 1983, 576 F.Supp. 1254. Civil Rights 🔑1514

Where “third party complaint” was only vehicle by which federal department allowed employee to bring employment discrimination class action allegations before department, district court had jurisdiction under this section to review “third party complaint”. Keeler v. Hills, N.D.Ga.1975, 408 F.Supp. 386, supplemented 73 F.R.D. 10. Civil Rights 🔑1510

Enlargement of scope of this subchapter to cover the federal government did not, ipso facto, dictate the manner in which federal courts should exercise that jurisdiction. Tomlin v. U. S. Air Force Medical Center, S.D.Ohio 1974, 369 F.Supp. 353. Civil Rights 🔑1510

Court of Federal Claims lacked jurisdiction under the Tucker Act to enforce decision of the Equal Employment Opportunity Commission (EEOC) awarding federal employee back pay and ordering employing agency to promote him to a GS-12 position, as Title VII places exclusive jurisdiction for claims of discrimination in federal employment in the United States district courts. Taylor v. U.S., Fed.Cl.2008, 80 Fed.Cl. 376, affirmed 310

Fed.Appx. 390, 2009 WL 330866. Federal Courts 1135

District court, not Claims Court [now United States Court of Federal Claims], is proper forum for judicial review of federal employee allegations of improper employment actions based on discrimination due to religion or national origin. Mobin v. U.S., Cl.Ct.1991, 22 Cl.Ct. 331. Federal Courts 1139

Former federal employee's Claims Court [now United States Court of Federal Claims] suit "merely" to enforce "clear and unambiguous" decision of Equal Employment Opportunity Commission in connection with employee's discrimination claim fell within jurisdictional scheme outlined by Civil Rights Act as amended by Equal Employment Opportunity Act and was not within Claims Court's jurisdiction; Claims Court would have to explore, interpret, and apply rules and regulations of EEOC as they impacted on employee's discrimination claim. Montalvo v. U.S., Cl.Ct.1989, 17 Cl.Ct. 744. Federal Courts 1079

143. Complaint, civil action--Generally

Federal employee need not present his claim for compensatory damages, under Title VII, in legal or technical manner, but must inform employing agency or Equal Employment Opportunity Commission (EEOC) of particular facts of cases that demonstrate that he has suffered emotional and/or mental injury that requires payment of compensatory damages to make him whole; such facts must demonstrate more than mere fact of forbidden discrimination or harassment. Fitzgerald v. Secretary, U.S. Dept. of Veterans Affairs, C.A.5 (La.) 1997, 121 F.3d 203. Civil Rights 1506

Federal employer's motion to dismiss Title VII claim on ground that employee had failed to exhaust his administrative remedies should have been treated under rule governing motions to dismiss for failure to state claim, rather than under rule governing motions to dismiss for lack of subject matter jurisdiction; once employee pled applicability of equitable tolling doctrine which went beyond face of pleadings, court should have treated issue in manner consistent with summary judgment rule. Robinson v. Dalton, C.A.3 (Pa.) 1997, 107 F.3d 1018. Federal Civil Procedure 1825

Documents filed by letter carrier in federal district court within 30 days [now 90 days] of her receipt of the Equal Employment Opportunity Commission's decision as to her discrimination claim against the United States Postal Service, including affidavit in support of request for attorney and copy of the Postal Service investigation form and accompanying letter, did not meet requirement, under Rule 8(a), for commencement of action that documents containing short and plain statement of claim showing that carrier was entitled to relief, and thus, filing of such documents did not satisfy requirement under the Civil Rights Act of 1964, § 717(c), as amended, 42 U.S.C.A. § 2000e-16(c), that federal sector employment discrimination claim be brought within 30 days [now 90 days] of re-

ceipt of the EEOC decision. Antoine v. U.S. Postal Service, C.A.5 (La.) 1986, 781 F.2d 433. Civil Rights 1530

Filing with the district court a request for counsel coupled with materials from which court could determine relevant facts and nature of employment discrimination claim was sufficient compliance with requirement to timely commence employment discrimination suit by filing complaint in the district court. Mahroom v. Defense Language Institute, C.A.9 (Cal.) 1984, 732 F.2d 1439. Civil Rights 1530

Section 7703(b) of Title 5 providing that cases of discrimination should be filed under judicial review provisions of this subchapter, Age Discrimination in Employment Act of 1967, section 621 et seq. of Title 29, or Equal Pay Act of 1963, section 206 of Title 29, did not authorize suit upon complaint of reassignment without any claim of discrimination. Broadway v. Block, C.A.5 (La.) 1982, 694 F.2d 979. Officers And Public Employees 72.41(1)

Equal Employment Opportunity Office's (EEO) failure to include in its letter of partial acceptance/partial dismissal of African-American United States Postal Service employee's formal EEO complaint incidents arising from employee's not being able to work extra hours as rural carrier associate and supervisor's requiring employee to obtain doctor's note before she could return to work did not bar employee from raising claims arising from those incidents in her Title VII action in district court; letter said that EEO's investigation was “not limited to” listed incidents, and employee reported two incidents at issue in her EEO complaint. Johnson v. Potter, M.D.Fla.2010, 732 F.Supp.2d 1264. Civil Rights 1516

Former temporary casual employee alleging that he was subjected to employment discrimination during his five-day employment with Postal Service was required to indicate frequency, severity, and abusive nature of harassment in order to state hostile work environment claim under Title VII. Eldeeb v. Potter, E.D.Pa.2009, 675 F.Supp.2d 521. Civil Rights 1532

Employee adequately alleged an adverse employment action regarding changes in her responsibilities, including the abrogation of all of her supervisory duties, to state a claim under Title VII and §§ 1981. Hutchinson v. Holder, D.D.C.2009, 668 F.Supp.2d 201. Civil Rights 1395(8); Civil Rights 1532

Federal Housing Finance Agency (FHFA) employee's bald assertion, in her summary judgment opposition papers, that her supervisor, in letter of reprimand, mischaracterized her legitimate work activities as hostile and inappropriate conduct, devoid of factual support, and contradicted by specific factual assertions in co-worker's summary judgment affidavit, was insufficient to raise triable fact issue sufficient to overcome summary judgment on her Title VII retaliation claim based on that letter. Powell v. Lockhart,

D.D.C.2009, 629 F.Supp.2d 23. Federal Civil Procedure ⚿2497.1

Allegations of African-American, male employee of Internal Revenue Service (IRS), that IRS selected white, female employee for permanent safety manager position largely because of detail that she held, or was wrongfully allowed to hold, and that IRS's decision not to select African-American employee impeded his advancement into higher position, were properly included in Title VII non-selection count of amended complaint; allegations related to economic damages purportedly suffered by African-American employee as result of non-selection. Hamilton v. Geithner, D.D.C.2009, 616 F.Supp.2d 49. Civil Rights ⚿1532

Employee stated employment discrimination claim under Title VII by alleging that his employer, the Federal Protective Service, made him undergo unnecessary training, withheld a promotion, reduced his authority, and threatened termination because of his race, color, and national origin. Gong v. Napolitano, D.D.C.2009, 612 F.Supp.2d 58. Civil Rights ⚿1126; Civil Rights ⚿1135

Allegations that individual defendants conspired to terminate Government employee's employment, in retaliation for her agreement to testify before the Equal Employment Opportunity Commission (EEOC), failed to state a claim for civil conspiracy under §§ 1985; only proper remedy was an action under Title VII. Rogler v. Biglow, D.D.C.2009, 610 F.Supp.2d 103, affirmed 2010 WL 4923465. Civil Rights ⚿1502; Conspiracy ⚿15

Government Printing Office (GPO) employee's failure to raise gender discrimination claim in his administrative complaints precluded him from bringing Title VII gender discrimination action in federal court. Daniels v. Tapella, D.D.C.2008, 571 F.Supp.2d 137. Civil Rights ⚿1516

Former federal employee's references to constructive discharge would not be interpreted as pleading independent basis for Title VII liability, i.e., a separate actionable adverse action; rather, court considered compound allegation to be assertion ultimately relating to scope of employee's potential recovery in event she prevailed on her claims of discrimination or retaliation. Kalinoski v. Gutierrez, D.D.C.2006, 435 F.Supp.2d 55. Civil Rights ⚿1532

Allegations by former employee of the United States Postal Service (USPS) that she was subjected to harassment and hostile work environment, that she was blacklisted, that she was denied benefits, that the USPS failed to maintain accurate work records on her, that the USPS provided false information in her employment records to other government agencies causing employee to lose benefits, and that unauthorized individuals accessed her medical information and workers' compensation files without employee's permission, failed to give USPS fair notice of employee's claims, and failed state claim

for relief against the USPS, under the Privacy Act, Title VII, the Federal Employee Compensation Act (FECA), or the Labor Management Relations Act (LMRA), absent allegations of the specific provisions of those Acts that were violated, or factual identification of specific events and conduct that violated the Acts. Williams v. Potter, D.Del.2005, 384 F.Supp.2d 730. Civil Rights 1532; Labor And Employment 2001; Records 31; Workers' Compensation 1319

Former temporary worker who sued African Development Foundation (ADF), a federal agency, for employment discrimination failed to establish that relationship shared attributes commonly found in arrangements with employees, as required to maintain action under Title VII; unlike ADF employees who were civil servants and paid from United States Treasury, worker was paid by purchase orders or employment agency. Mason v. African Development Foundation, D.D.C.2004, 355 F.Supp.2d 85. Civil Rights 1116(1)

Employee's action against United States Postal Service (USPS), purportedly to enforce USPS' Final Agency Decision (FAD) under Rehabilitation Act, would be construed as action for redress of grievances against agency employer, where complaint did not appear to seek enforcement, and employee was seeking back pay and other relief beyond that ordered by Equal Employment Opportunity Commission (EEOC) in employee's appeal challenging USPS' alleged failure to comply with FAD. Tshudy v. Potter, D.N.M.2004, 350 F.Supp.2d 901. Civil Rights 1510; Civil Rights 1511

Although Navy employee's procedural due process claim was not foreclosed by antidiscrimination remedies of Title VII, in order to proceed on that claim employee had to allege facts sufficient to show deprivation of property interest and lack of due process of law. Garrison v. Johnson, D.Me.2003, 286 F.Supp.2d 41. Civil Rights 1502; Constitutional Law 4242

Employment discrimination complaint mistakenly filed by federal employee under § 1983 would not be construed as complaint under Title VII, though defendants had suffered no prejudice from employee's error. Murray v. U.S. Dept. of Justice, E.D.N.Y.1993, 821 F.Supp. 94, affirmed 14 F.3d 591. Civil Rights 1502

Claim by civilian Air Force employee that employer retaliated against employee did not state cause of action under Title VII, where employee did not allege that retaliation was based on discrimination because of race, color, religion, sex, or national origin. Moss v. Arnold, S.D.Ohio 1986, 654 F.Supp. 19. Armed Services 27(4); Civil Rights 1249(1)

Complaint by former federal employee against officials of Department of Agriculture for discrimination in employment and seeking injunctive and promotional relief failed to state claim on which relief could be granted since plaintiff was not a federal employee

and there was no allegation that plaintiff's discharge was discriminatory and there was no request for reinstatement. Allen v. Butz, E.D.Pa.1975, 390 F.Supp. 836. United States 36

It was possible that discharged Defense Department employee could show, under some set of facts, that his discharge was the result of racial discrimination so that his complaint to that effect would not be dismissed for failure to state a claim. Hunt v. Schlesinger, W.D.Tenn.1974, 389 F.Supp. 725. Federal Civil Procedure 1793.1

Federal employee failed to show that Department of Energy, as employer, retaliated against him in violation of Title VII, even though he alleged that fellow employees made harassing phone calls to his home and blacklisted him from other employment opportunities with federal government; employee failed to set forth any specific evidence linking employer to alleged phone calls or blacklisting, and even if employer could have been linked to phone calls, calls did not rise to level of adverse employment action since callers never identified themselves or said anything about employee's activities vis-a-vis employer. Rockefeller v. Abraham, C.A.10 (N.M.) 2003, 58 Fed.Appx. 425, 2003 WL 254879, Unreported, certiorari denied 123 S.Ct. 2589, 539 U.S. 928, 156 L.Ed.2d 606. Civil Rights 1251; United States 36

144. ---- Amendment of complaint, civil action

District court properly refused to construe amended complaint to include a wage-law claim; original complaint alleged discrimination in violation of Title VII based on race and national origin and no wage law was cited, amended complaint was virtually identical in material respects, motion for summary judgment and response made no mention of a claim under any wage law, and wage law claim was first presented by plaintiff in a proposed jury instruction less than two weeks before scheduled trial date. Zokari v. Gates, C.A.10 (Okla.) 2009, 561 F.3d 1076. Federal Civil Procedure 851

Former employee's assertion, in motion for reconsideration, that she was the victim of “intentional discrimination” did nothing to clarify the original contract action, which alleged that Department of Education breached settlement agreement provision requiring that Department direct to a specified person all requests for employment references on former employee when it provided a negative employment reference to Department of Justice, or add to the original action a Title VII retaliation claim reviewable in the district court. Greenhill v. Spellings, C.A.D.C.2007, 482 F.3d 569, 375 U.S.App.D.C. 477, rehearing en banc denied. Federal Courts 15

District court's denial of employee's motion to amend pretrial order to include a retaliation claim was not an abuse of discretion; employee had all of the essential evidence she identified in support of the claim well before entry of the pretrial order, but she did not file her motion until after the close of evidence, and thereby deprived employer of

any opportunity to present additional evidence or examine witnesses on this issue. Galdamez v. Potter, C.A.9 (Or.) 2005, 415 F.3d 1015. Federal Civil Procedure ⚿1935.1

Second amended complaint by federal employee reasserting Title VII claim, after first amended complaint in which plaintiff abandoned original Title VII claim and replaced it with one under § 1981, related back to filing of original complaint because both causes of action were based upon the same facts and allegations of discrimination, notwithstanding that interceding § 1981 action was not within subject matter jurisdiction of district court. Watkins v. Lujan, C.A.5 (La.) 1991, 922 F.2d 261. Limitation Of Actions ⚿127(3)

Proposed amendment to employment discrimination complaint against Postal Service to name Postmaster General as proper defendant did not relate back to date of original complaint, in absence of service within applicable 30-day [now 90-day] limitations period following issuance of right-to-sue letter by the Equal Employment Opportunity Commission (EEOC), though allegations in complaint as amended were unaltered except for correct name of defendant, correct defendant was virtually alter ego of original party, and Postmaster General would not be prejudiced by amendment. Soto v. U.S. Postal Service, C.A.1 (Puerto Rico) 1990, 905 F.2d 537, certiorari denied 111 S.Ct. 679, 498 U.S. 1027, 112 L.Ed.2d 671.

Discharged employee of the Department of the Army, who improperly named Department of the Army as defendant in civil rights action challenging his discharge, could amend complaint to name Secretary of the Army as proper defendant, amendment would relate back to filing date of original complaint, and thus action would not be barred by Civil Rights Act's limitations period; substituting parties would in no manner alter underlying discrimination claim, Army would suffer no prejudice, notice of employee's action against Department could properly be imputed to Secretary, and it was proper to toll running of limitations period. Warren v. Department of Army, C.A.8 (Mo.) 1989, 867 F.2d 1156. Limitation Of Actions ⚿125

Issue of equitable tolling for time to bring Title VII employment discrimination action against statutorily proper parties, based on suit of statutorily improper parties, was irrelevant, where motion of complainant employee to add statutorily proper parties through amendment of complaint had been properly denied based on civil rule requiring that amendment relate back to original complaint once limitations period has run. Bates v. Tennessee Valley Authority, C.A.11 (Ala.) 1988, 851 F.2d 1366, rehearing denied, certiorari denied 109 S.Ct. 3157, 490 U.S. 1106, 104 L.Ed.2d 1020. Civil Rights ⚿1530

Amendment to complaint alleging employment discrimination, which was brought pursuant to Title VII, and which added Secretary of Air Force, who was only proper defendant in case, did not relate back to original filing of complaint so as to make complaint against Secretary timely, where Secretary was not served until more than one year after

30-day [now 90-day] limitations period had expired, and notice to Department of Air Force and United States Attorney was also received after prescribed limitations period; thus, Secretary could not have known that action would have been brought against him but for servicemember's mistake in naming proper defendant, though Air Force and Secretary had been involved in four years of administrative litigation involving claim. Gonzales v. Secretary of Air Force, C.A.5 (Tex.) 1987, 824 F.2d 392, certiorari denied 108 S.Ct. 1245, 485 U.S. 969, 99 L.Ed.2d 443.

Amended complaint, which named postmaster general specifically as defendant in employment discrimination based on handicap met requirement for bringing suit within 30 days [now 90 days] of final agency action, where postal service, in response to district court remand, proceeded to provide administrative review that was prerequisite to suit in district court, and by time administrative proceedings were concluded, employee had amended his original pro se complaint, which had failed to name postmaster, to name postmaster in compliance with statute. Cosgrove v. Bolger, C.A.9 (Cal.) 1985, 775 F.2d 1078. Civil Rights 🔑1530

District court would, on its own, allow African-American United States Postal Service employee to amend her Title VII and Family and Medical Leave Act (FMLA) complaint to include work-related incidents which were not specifically described in complaint; employer was not prejudiced by pleading deficiencies, as both sides explored those incidents extensively in discovery, and it was not case where employee raised entirely new theories or claims in response to summary judgment. Johnson v. Potter, M.D.Fla.2010, 732 F.Supp.2d 1264. Federal Civil Procedure 🔑826

Allowing amendment of unsuccessful job applicant's complaint to add Title VII retaliation claim to applicant's employment discrimination claims would not result in undue prejudice to employer, so as to warrant denial of motion for leave to amend, where motion was filed only 10 days after discovery had ended and any prejudice could be ameliorated by supplemental discovery related to new claim. Ponce v. Billington, D.D.C.2009, 652 F.Supp.2d 71. Federal Civil Procedure 🔑841

Amendment of complaint to add Title VII disparate treatment claim based on sex was not warranted for former employee of United States Department of Agriculture (USDA), alleging race and sex discrimination and retaliation resulted in her termination, where employee was aware of factual basis for disparate treatment claim when she initially filed her judicial complaint almost seven months after her termination, and she provided no explanation for her failure to follow timeline agreed to for amending complaint as agreed to by parties and district court judge. Garcia v. Vilsack, D.N.M.2009, 628 F.Supp.2d 1306. Federal Civil Procedure 🔑839.1

Amendment of complaint of African-American, male employee of Internal Revenue Service (IRS), asserting Title VII non-selection claim, was not futile, since IRS's exhaustion

argument would have been premature at motion to dismiss stage; Title VII did not specifically require employee to plead exhaustion of administrative remedies in complaint, and none of employee's factual assertions established his failure to pursue any applicable remedies. Hamilton v. Geithner, D.D.C.2009, 616 F.Supp.2d 49. Federal Civil Procedure 851

African-American male federal employee would be granted leave to file amended complaint asserting new Title VII nonselection claim, raised for the first time in opposition to agency's motion for summary judgment on prior employment discrimination claim, regarding white female's earlier appointment to management detail. Hamilton v. Paulson, D.D.C.2008, 542 F.Supp.2d 37, reconsideration denied in part 616 F.Supp.2d 49. Federal Civil Procedure 842

Because claim of race-based discrimination could not reasonably be said to have grown out of Equal Employment Opportunity Commission (EEOC) investigation of age and/or gender discrimination allegations, employee's proposed amendment of complaint to add claim for race-based discrimination with regard to Community Builder position would be futile. Patoski v. Jackson, D.Mass.2007, 477 F.Supp.2d 361. Federal Civil Procedure 851

African-American male job applicant's proposed amended complaint to put race and sex discrimination at issue related back to original complaint seeking only additional attorney fees after prevailing on claim of race discrimination in denial of federal employment application, was thus timely filed, and cured any jurisdictional or pleading defect; a factual nexus existed because the claims in both complaints arose out of federal employer's alleged discriminatory actions and the administrative proceedings adjudicating the dispute over those actions, and employer had notice of the discrimination claims and would not be prejudiced by amendment. Harley v. Chao, M.D.N.C.2007, 503 F.Supp.2d 763. Civil Rights 1530

Allowing Department of the Navy employee leave to amend complaint to plead additional retaliation claim would not be futile; Navy's allegedly retaliatory reassignment of work duties and the corresponding threat of reduced compensation were not petty slights, minor annoyances, or simple lack of good manners, but rather constituted a materially adverse action that would support a claim of retaliation under Title VII. Lee v. Winter, D.D.C.2006, 439 F.Supp.2d 82. Armed Services 27(4); Civil Rights 1249(1); Federal Civil Procedure 851

Treasury Secretary was on notice, and thus would not have been unfairly prejudiced by addition of Title VII building blocks of promotion racial discrimination claims, where reasonable investigation of class allegation of non-promotion in black United States Secret Service agent complaint to Equal Employment Opportunity Commission (EEOC) would have involved building blocks of promotion claim. Moore v. Chertoff, D.D.C.2006, 437

F.Supp.2d 156. Limitation Of Actions 127(3)

Federal employee, whose original discrimination claim and amended complaint were filed pro se and dismissed without prejudice and who had filed third amended complaint with assistance of counsel, would not be permitted to file fourth amended complaint; even if request in opposition could be construed as motion for leave to amend, repeated inability to cure complaint's deficiencies was sufficient reason for motion's denial. McCray v. Veneman, D.D.C.2002, 298 F.Supp.2d 13, affirmed 2003 WL 1907990, rehearing en banc denied. Federal Civil Procedure 851; Federal Civil Procedure 1838

Granting pro se former Postal Service employee leave to amend complaint with regard to his claim against United States and Postal Service for review of decision of Merit Systems Protection Board (MSPB) and his employment discrimination claims would not be futile, and therefore such leave would be granted, as correction of employment discrimination claims required only that former Postal Service employee allege facts regarding his exhaustion of administrative remedies prior to filing suit, and correction of his MSPB claims required only that former Postal Service employee allege nature of his claim before MSPB. Coffey v. U.S., E.D.N.Y.1996, 939 F.Supp. 185. Federal Civil Procedure 851

When plaintiff alleges new employment discrimination claims from same basis for discrimination, they can be litigated, notwithstanding failure to raise them at administrative level, if they could reasonably be expected to grow out of charge of discrimination. Klein v. Derwinski, D.D.C.1994, 869 F.Supp. 4. Civil Rights 1516

Federal employee would be allowed to amend employment discrimination complaint mistakenly filed under § 1983, in order to assert claim under Title VII, where allegations contained in complaint's jurisdictional paragraph demonstrated that employee intended to assert claim under Title VII and defendants had suffered no prejudice from employee's error. Murray v. U.S. Dept. of Justice, E.D.N.Y.1993, 821 F.Supp. 94, affirmed 14 F.3d 591. Federal Civil Procedure 842

Federal employee's Title VII suit did not have to be dismissed due to fact that his counsel, retained after employee was granted leave to amend original pro se complaint to name head of national office of employing agency as sole defendant, inadvertently copied caption of initial pro se complaint that did not name proper defendant; body of second amended complaint filed by counsel contained necessary allegations against head of national office, and employing agency was served within period of limitations. McGuire v. U.S. Postal Service, S.D.N.Y.1990, 749 F.Supp. 1275. Federal Civil Procedure 1793.1

Amendment to employment discrimination complaint naming chairman of the Equal

Employment Opportunity Commission (EEOC) as a defendant could not relate back to the date of the original complaint where notice had not been given to EEOC Chairman within the time required, as neither EEOC nor United States Attorney was served until more than five months after the statutory limitation period. McKenzie v. E.E.O.C./Charlotte Dist. Office, W.D.N.C.1990, 749 F.Supp. 115. Limitation Of Actions 124

Statute of limitations barred discharged Postal Service employee from bringing discrimination action, under statute requiring that action must be brought against head of the agency within 30 days [now 90 days] of receipt of notice of final action, where former employee did not serve Postmaster General, who was "head of the agency," within 30-day [now 90-day] period, and thus complaint against Postal Service could not be amended to name Postmaster General as the proper defendant. Bertha v. U.S. Postal Service, E.D.Pa.1990, 729 F.Supp. 31.

Postal employee, proceeding pro se in employment discrimination action, would not be permitted to amend complaint by adding or substituting Postmaster General as proper defendant, even assuming relevant Title VII time limit was not jurisdictional, where employee had been notified by EEOC in right-to-sue letter that he had 30 days [now 90 days] to file his complaint and was cautioned to be sure to name proper defendant, but waited 120 days to serve United States Attorney's Office and even longer to serve other named defendants. Rys v. U.S. Postal Service, D.Mass.1989, 702 F.Supp. 945, affirmed 886 F.2d 443.

Amendment to pro se handicapped discrimination complaint against Veterans Administration [now Department of Veterans Affairs] to name proper defendant related back to filing of complaint even though VA did not receive notice of action within 30 days [now 90 days] of filing where, from time plaintiff deposited her papers with clerk of court, she had no control over the papers or service of the summons and complaint, and thus it would have been unfair to hold that amended complaint did not relate back. Hall v. Veterans Admin., E.D.Mich.1988, 693 F.Supp. 546.

Employee could not amend her Title VII complaint alleging employment discrimination against Veterans Administration in order to substitute head of Veterans Administration as proper party defendant as complaint which named improper parties as defendants was not served within 30-day [now 90-day] statute of limitations period, and thus, as head of Veterans Administration had no notice of action, amendment to pleadings could not "relate back" to time of filing of complaint. Drayton v. Veterans Admin., S.D.N.Y.1987, 654 F.Supp. 558. See, also, Bell v. Veteran's Admin. Hosp., W.D.La.1987, 654 F.Supp. 69, affirmed 826 F.2d 357. Federal Civil Procedure 853

Employee, who had been acting pro se when he brought action alleging violation of Title VII of the Civil Rights Act [42 U.S.C.A. § 2000e et seq.], which proscribes employment

discrimination, would be permitted to file amended complaint substituting Postmaster General rather than the improperly named United States Postal Service as the defendant, in accordance with 42 U.S.C.A. § 2000e-16, which provides that federal employee aggrieved by final disposition of equal employment opportunity complaint could file civil action against head of the agency. Royall v. U.S. Postal Service, E.D.N.Y.1985, 624 F.Supp. 211, affirmed 849 F.2d 1467.

Failure of Marine Corps Supply Activity to investigate new discrimination allegations did not mean that there was no final agency action in light of unequivocal letter rejecting complaint, but since letter rejecting complaint failed to notify plaintiffs of their right to appeal new incidents alleged in rejected complaint, there was no final agency action as to new claim of harassment of one plaintiff by her supervisor, and plaintiffs would therefore be permitted to amend complaint to comply with this section permitting suit after 180 days from filing of initial charge when agency has not taken final action as to such claim. Myles v. Schlesinger, E.D.Pa.1976, 436 F.Supp. 8. Federal Civil Procedure 🔑840

Federal employee, who brought action against the employing agency to enjoin alleged racially discriminatory employment practices, would be ordered to file an amended complaint addressing itself to the question of whether the suit was timely filed within 30 days [now 90 days] after receipt of notice of final action taken by the Civil Service Commission [now taken by the EEOC]. Henderson v. Defense Contract Administration Services Region, New York, S.D.N.Y.1973, 370 F.Supp. 180. Federal Civil Procedure 🔑839.1

Fact that Secretary of the Air Force did not receive actual notice within 30-day [now 90-day] period with respect to employee's claims for injunctive relief and compensatory damages for alleged racial, religious, national origin, and sex discrimination, did not bar employee from amending his complaint to name Secretary, rather than Department of Air Force, as defendant. Gonzales v. Department of Air Force, N.D.Tex.1986, 110 F.R.D. 350.

Former employee failed to prove that she “procedurally amended” her initial complaint filed with the Equal Employment Opportunity Commission (EEOC) to include a claim of gender discrimination by virtue of certain questioning of her by an EEOC investigator, and the answers she gave thereto, and thus, she could not pursue a sex discrimination claim under Title VII before the district court; the cited colloquy was insufficient to defeat the presumption that when she did not check a box marked “sex,” she was not claiming sex discrimination as a cause for her termination of employment. Moraga v. Ashcroft, C.A.10 (Colo.) 2004, 110 Fed.Appx. 55, 2004 WL 1895128, Unreported. Civil Rights 🔑1506; Civil Rights 🔑1516; Civil Rights 🔑1537

145. Joinder of actions, civil action

Women's rights organizations which had not exhausted administrative remedies with respect to their allegations of sexual discrimination would not be allowed to join in sexual discrimination action brought by federal employee who had exhausted her administrative remedies. Marimont v. Mathews, D.C.D.C.1976, 422 F.Supp. 32. Civil Rights 1517

Joinder of federal employees' separate claims under standard grievance regulations did not entitle employee, who did not bring civil action within 30 days [now 90 days] of receipt of Civil Service Commission's final decision, to have court make an independent determination of her sex discrimination claim on theory that the joinder prejudiced her case by obscuring the issues raised in her equal employment opportunity complaint. Bramley v. Hampton, D.C.D.C.1975, 403 F.Supp. 770. Civil Rights 1530

146. Class actions, civil action--Generally

In an employment discrimination class action, the district court, which initially certified the case as a class action on behalf of all black employees in competitive service positions at Fort McClellan, Alabama, who, on or after Nov. 3, 1976, were discriminatorily denied promotions, erred in redefining the class as all employees who, on or after Nov. 3, 1976, failed to be selected for a position for which they were “referred”; limiting the class in such fashion foreclosed plaintiffs from proving whether there was any broad-based policy of racial discrimination, which was the basis of their original complaint. Lawler v. Alexander, C.A.11 (Ala.) 1983, 698 F.2d 439. Federal Civil Procedure 184.10

Excusable neglect did not justify federal employees' failure to timely move for class certification, in Title VII race discrimination action against employing agency, even though agency had had notice of putative class claims since initial complaint; delay prolonged uncertainty as to scope of class employees would actually move to certify, thus prejudicing agency, agency's several motions for extension of time to respond to initial complaint did not supply good cause for delay, and employees had been alerted to untimeliness of class certification motion three months before finally seeking extension. Howard v. Gutierrez, D.D.C.2007, 474 F.Supp.2d 41, reconsideration denied 503 F.Supp.2d 392. Federal Civil Procedure 175

In action brought against National Security Agency by employee who alleged that Agency practiced sex discrimination in its promotion practices, class certification would be granted to authorize named employee to represent class consisting of females employed by Agency's G-6 office on date on which named plaintiff filed her complaint with Agency's director of Equal Employment Opportunity Commission. Predmore v. Allen, D.C.Md.1975, 407 F.Supp. 1053. Federal Civil Procedure 184.25

Proposed class of eight African-American employees of United States Postal Service

(USPS) who had been denied promotions while working in maintenance craft at mail processing facility did not meet numerosity requirement for class certification, in Title VII action alleging racially discriminatory failure to promote. Williams v. Henderson, C.A.4 (S.C.) 2005, 129 Fed.Appx. 806, 2005 WL 977587, Unreported, certiorari denied 126 S.Ct. 387, 546 U.S. 876, 163 L.Ed.2d 172. Federal Civil Procedure 184.10

147. ---- Exhaustion of administrative remedies, class actions, civil action

Discharged black civilian employee's class action discrimination claims against United States Air Force were barred due to his failure to exhaust class administrative remedies; exhaustion of individual administrative remedies was insufficient. Gulley v. Orr, C.A.10 (Okla.) 1990, 905 F.2d 1383. Civil Rights 1516; Federal Civil Procedure 184.10

Employment discrimination case brought by employee of Tennessee Valley Authority was appropriate for class action treatment, and there was no requirement that each member of potential class demonstrate exhaustion of administrative remedies. Williams v. Tennessee Valley Authority, C.A.6 (Tenn.) 1977, 552 F.2d 691. Federal Civil Procedure 184.25

Class discrimination claims by Hispanic special agents of United States Customs Service relating to transfers, assignments and other career-enhancing opportunities, undercover and other undesirable work, discipline, awards and bonuses, and training were appropriate for adjudication; those claims were like or reasonably related to timely exhausted promotions claim because they concerned work opportunities that would credential or position Hispanic agents for promotion. Contreras v. Ridge, D.D.C.2004, 305 F.Supp.2d 126. Civil Rights 1516

Certification of class action on behalf of all past, current, and future female customs inspectors who had been, were being or would be discriminated against by Department of the Navy's denial of employment opportunities to women aboard United States navy ships, where otherwise proper, was not prevented by fact that members of proposed class other than plaintiff had not exhausted their administrative remedies. Beeman v. Middendorf, D.C.D.C.1977, 425 F.Supp. 713. Federal Civil Procedure 184.25

Action by federal employee against the Corps of Engineers alleging racial discrimination would not be certified as a class action where no administrative record had been developed on the alleged classwide discrimination, and where, without the development of such record, district court would be forced to hold a trial de novo, thereby subverting the aim of Congress when it enacted statute prohibiting discriminatory employment practice by the federal government. McLaughlin v. Callaway, S.D.Ala.1974, 382 F.Supp. 885. Federal Civil Procedure 184.25

Even assuming that first three African-American employees, who had failed to exhaust

their administrative remedies with Equal Employment Opportunity Commission (EEOC) before bringing Title VII action alleging racially discriminatory failure to promote, were similarly situated with second three African-American employees who had exhausted their administrative remedies, first three employees could not piggyback their unexhausted claims on the exhausted claims of second three employees; no one made any effort to pursue class complaint before EEOC, and piggybacking through court's adoption of single-filing rule would conflict with EEOC's established procedure for class complaints, which enabled federal employees to preserve claims of others while putting government on notice that it would have to defend itself against wider array of claims. Williams v. Henderson, C.A.4 (S.C.) 2005, 129 Fed.Appx. 806, 2005 WL 977587, Unreported, certiorari denied 126 S.Ct. 387, 546 U.S. 876, 163 L.Ed.2d 172. Civil Rights 1517

148. Intervention, civil action

Where second claimant's claim was similar to that made by first claimant, who had filed Commission charge and with whom second claimant intervened as named plaintiff, court had jurisdiction over second claimant's claim even though she had not filed charge with Equal Employment Opportunity Commission. De Medina v. Reinhardt, C.A.D.C.1982, 686 F.2d 997, 222 U.S.App.D.C. 371, on remand 600 F.Supp. 361. Civil Rights 1517

Motion of third party to intervene in racial discrimination suit filed against the Corps of Engineers by federal employee would be denied where the executive assistant of the Civil Service Commission certified that appeal of third party was currently before the Board of Appeals and Review, and where the court would have to give way to the administrative process in view of the strong emphasis toward administrative resolutions of claims of federal employment discrimination. McLaughlin v. Callaway, S.D.Ala.1974, 382 F.Supp. 885. Federal Civil Procedure 337

149. Summary judgment, civil action

Genuine issue of material fact existed as to whether terminated post office employee's circumstances, regarding knowledge of time limits, whether his telephone call to United States Postal Service Equal Employment Opportunity Office (EEO office) satisfied requirement that matter be brought “to the attention” of EEO counselor, and whether employee was misled by agency as to time limits, warranted application of equitable estoppel and tolling to employee's complaint, precluding summary judgment for United States Postal Service in employee's Title VII sex discrimination action against Postal Service. Richardson v. Frank, C.A.10 (Wyo.) 1991, 975 F.2d 1433. Federal Civil Procedure 2497.1

Genuine issues of material fact existed in regard to date that discharged Veterans Ad-

ministration Hospital employee served employment discrimination complaint on United States Attorney, precluding summary judgment for employee's failure to name and sue proper party defendant, in view of employee's relation-back claim. Chimapan v. V.A. Hosp. at Montrose, C.A.2 (N.Y.) 1990, 894 F.2d 557. Federal Civil Procedure 2497.1

In sex discrimination suit, conflicting testimony given by witnesses at administrative hearing as to whether complainant or male competitor was more qualified for promotion to position of education specialist with the United States Air Force raised a genuine issue of material fact that precluded the entry of summary judgment. Whiteside v. Gill, C.A.5 (La.) 1978, 580 F.2d 134. Federal Civil Procedure 2497.1

Record evidence in employment discrimination action against Veterans Administration was such that trial court erred in entering summary judgment against employee predicated upon findings that she had failed to timely exhaust administrative remedies and had not met provisions of regulation which permitted waiver of general requirement that complaint be made within 30 days of alleged discriminatory incident if certain conditions are met. Ettinger v. Johnson, C.A.3 (Pa.) 1977, 556 F.2d 692. Federal Civil Procedure 2546

In suit brought by four black federal employees under § 1981 of this title and this subchapter, seeking relief both individually and on behalf of a class for alleged discrimination against blacks by the Anniston army depot, summary judgment was properly granted against three of the plaintiffs for failure to exhaust their administrative remedies, since two of them never entered the administrative process and the third filed with a Commission counselor an informal complaint which was resolved to his satisfaction. Swain v. Hoffman, C.A.5 (Ala.) 1977, 547 F.2d 921. Federal Civil Procedure 2491.5

African-American employee of General Accounting Office (GAO) was not entitled to postponement of summary judgment resolution in Title VII action, based on claim that he never received performance evaluations for African-American employees or copies of e-mails he named in his earlier request, and that he wished to secure affidavits from supervisors and to depose another; performance evaluations and affidavits were not requested during discovery, affidavits would not affect resolution of issues regardless, e-mails were sent to employee's counsel several months earlier, and individual whom employee wished to depose had already been deposed by opposing counsel. Rowland v. Walker, D.D.C.2003, 245 F.Supp.2d 136, affirmed 2003 WL 21803321, rehearing denied. Federal Civil Procedure 2553

Discharged employee of Federal Deposit Insurance Corporation (FDIC) abandoned on summary judgment his discrimination claims under Title VII, Rehabilitation Act, and Age Discrimination in Employment Act (ADEA) by failing to address those claims in his opposition papers. Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Federal Civil Pro-

cedure 2554

District Court would, pursuant to local rule governing submission of responses to motions, treat certain arguments in summary judgment motion filed by employer as conceded by federal employee in Title VII discrimination and retaliation action, given employee's failure to respond to arguments in his opposition to employer's motion. Hayes v. Sebelius, D.D.C.2011, 2011 WL 316043. Federal Civil Procedure 2547.1

Before court ruled on Secretary of State's motion for summary judgment on African-American employee's Title VII retaliation claim, employee was entitled to conduct discovery on issues of whether lapse in time between protected activity and alleged retaliation was too long to establish retaliatory motive, whether denial of training, loss of certain job duties, and denial of advance in sick leave were materially adverse actions sufficient to support retaliation claim, and whether retaliation that employee alleged occurred after her most recent Equal Employment Opportunity (EEO) complaint was sufficiently connected to her previous allegations to properly be added to current action. Perry v. Clinton, D.D.C.2009, 674 F.Supp.2d 110. Federal Civil Procedure 2553

It would be inappropriate to dismiss Title VII discrimination suit for failure to state a claim where both parties relied on materials outside the pleadings, and as both parties had adequate opportunity to present all materials pertinent to summary judgment, court would consider those matters outside the pleadings on which the parties relied and would treat defendant's motion as motion for summary judgment. Pickett v. Potter, D.D.C.2008, 571 F.Supp.2d 66. Federal Civil Procedure 2533.1

Genuine issue of material fact, as to whether class retaliation claim by Hispanic special agents for United States Customs Service arose from administrative investigation that could reasonably be expected to follow underlying charge of discrimination, precluded summary judgment dismissing retaliation claim on exhaustion grounds. Contreras v. Ridge, D.D.C.2004, 305 F.Supp.2d 126. Federal Civil Procedure 2497.1

Genuine issue of material fact, as to when “excessed” postal employee's cause of action for violation of his “retreat” rights accrued, precluded summary judgment in employee's Title VII and Rehabilitation Act suit on basis of employee's alleged failure to exhaust administrative remedies. Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.; Rehabilitation Act of 1973, Heins v. Potter, S.D.N.Y.2003, 271 F.Supp.2d 545. Federal Civil Procedure 2497.1

Female Library of Congress employee's proffered testimony from coworkers regarding her demeaning treatment by supervisor compared to that of male coworkers, as well as direct evidence of discriminatory animus from other female employees who had worked under same supervisor, created fact issue as to whether government's proffered non-discriminatory reasons for differing treatment of employee, i.e. her less-than-outstanding

performance evaluations, failure to perform all duties in her position description, and ultimate departure in reduction in force (RIF), were pretextual, precluding summary judgment in employee's Title VII sexual discrimination action against government. Higbee v. Billington, D.D.C.2003, 246 F.Supp.2d 10, reconsideration denied 290 F.Supp.2d 105. Federal Civil Procedure 2497.1

Genuine issue of material fact precluded summary judgment on issue of whether environment of mandatory three-day conference was objectively hostile as would support employee's sexual harassment claim under Title VII. Hartman v. Pena, N.D.Ill.1995, 914 F.Supp. 225. Federal Civil Procedure 2497.1

Material issue of fact as to whether Secretary of Agriculture's articulated reason for selecting white applicant for animal caretaker wage leader position was pretextual precluded summary judgment for Secretary in Title VII action brought by black applicant for said position. Clement v. Madigan, W.D.Mich.1992, 820 F.Supp. 1039. Federal Civil Procedure 2497.1

Fact issue as to whether Navy made sufficient attempt to accommodate employee's "born again" religious beliefs precluded summary judgment in Title VII action arising from employee's discharge; evidence indicated that although employee's beliefs allegedly caused her to attempt to inflict bodily injury on a co-worker and to engage in other disruptive behavior, Navy did not attempt other alternatives, such as change in job assignment or lateral transfer. Joyner v. Garrett, E.D.Va.1990, 751 F.Supp. 555. Federal Civil Procedure 2497.1

Material issue of fact as to whether there was a causal connection between the statistical evidence presented by black nonattorneys employed by Department of Justice's Tax Division which demonstrated a disparity in competitive promotion rates sufficient to state a prima facie case of disparate treatment, and the Division's allegedly discriminatory practices, precluded summary judgment in favor of Division, in action brought by the nonattorneys alleging that Division's competitive promotion system violated Title VII. Mayfield v. Thornburgh, D.D.C.1990, 741 F.Supp. 284. Federal Civil Procedure 2497.1

Whether employee had notice of requirements for timely filing of complaint with Equal Employment Opportunity Commission (EEOC) and whether her supervisors and EEOC counselor actively misled or lulled her into inaction were questions of fact precluding summary judgment in employment discrimination action. Madrid v. Rice, D.Wyo.1990, 730 F.Supp. 1078. Federal Civil Procedure 2497.1

Genuine issue of material fact existed as to whether members of subclass alleging systematic discrimination in Department of Justice Tax Division's competitive promotion decisions were discouraged from applying for promotions, precluding summary judg-

ment on employment discrimination claim asserted by subclass. Mayfield v. Meese, D.D.C.1988, 704 F.Supp. 254. Federal Civil Procedure 2497.1

150. Discovery and inspection, civil action

It is not appropriate to impose limits on discovery in discriminatory employment practices suits brought by federal employees; such employees are entitled to opportunity to fully develop the factual background of the case, subject to limits of relevancy and burdensomeness. Blondo v. Bailar, C.A.10 (Colo.) 1977, 548 F.2d 301. Federal Civil Procedure 1272.1

Although interviewers may have been negligent in destroying their notes relating to their interview with federal employee, who was seeking promotion, interviewers did not destroy notes in bad faith, as would support entry of adverse presumption against employer in employee's Title VII discrimination action. Grosdidier v. Chairman, Broadcasting Bd. of Governors, D.D.C.2011, 2011 WL 1118475. Civil Rights 1535

Federal job applicant's alleged failure to cooperate with discovery in administrative proceedings did not render those proceedings unexhausted, as would preclude applicant from bringing Title VII gender discrimination action in federal court based on his nonselection for position; on date on which employee allegedly ceased cooperating with discovery, 422 days had passed from time he filed his Equal Employment Opportunity (EEO) charge, which was well past 180-day window in which applicant was required to pursue his administrative remedies. Payne v. Locke, D.D.C.2011, 2011 WL 713713. Civil Rights 1523

Dismissal with prejudice was not warranted as a sanction for former United States Department of Agriculture (USDA) employee's failure to comply with discovery orders, in his action, proceeding pro se, under Title VII against the USDA and Secretary of Agriculture, alleging that he was discriminated against and subjected to a hostile work environment based on his race and national origin and retaliated against for complaining about these allegedly wrongful employment practices, where employee heeded magistrate judge's order to appear for his deposition, and, although he did not respond to the discovery requests as ordered, he made an effort to explain that he believed himself incapable of responding, thereby evincing a lack of bad faith. Ghaly v. U.S. Dept. of Agriculture, E.D.N.Y.2010, 739 F.Supp.2d 185. Federal Civil Procedure 1278

Former employee was not entitled to discovery to supplement record on former employer's motion for summary judgment in her Title VII action, where hearing transcripts from the Equal Employment Opportunity Commission (EEOC) and Merit Systems Protection Board (MSPB) were part of the administrative record, and employee did not state why she was unable to present facts to oppose the motion. Townsend v. Mabus, D.D.C.2010, 736 F.Supp.2d 250. Federal Civil Procedure 2553

African-American federal employee was entitled to discovery before court could resolve motion for summary judgment on issue of whether agency's offered nondiscriminatory explanation for its failure to promote her was a pretext for race discrimination; employee's declaration stated that she would request position descriptions for her own positions as well as for positions held by two other Website Managers and would also seek information about Website Manager position and setting of its salary grade and indicated that employee would pose interrogatories designed to identify individuals knowledgeable about positions descriptions as well as setting of the respective salary for them, requests that would produce information pertinent to whether other employees were similarly situated to plaintiff. Perry v. Clinton, D.D.C.2009, 674 F.Supp.2d 110. Federal Civil Procedure 2553

Navy's response to African-American male employee's discovery request in Title VII race and gender discrimination action was adequate, and thus employee was not entitled to further discovery or continuance of summary judgment proceedings for additional discovery; Navy provided responses to interrogatories and document requests, and employee's failure to obtain desired admissions from Navy stemmed from failure to file request for admission. Lipscomb v. Winter, D.D.C.2008, 577 F.Supp.2d 258, affirmed in part , remanded in part 2009 WL 1153442, on remand 699 F.Supp.2d 171. Federal Civil Procedure 2553

Government employee, in action against Department of Homeland Security, under Title VII and ADEA, alleging employment discrimination on basis of his national origin and age, and in retaliation for protected activity, was required to disclose portion of his medical records that had logical connection to his claims of injury, rather than all medical records for nine-year period requested by Department; disclosure of portion of records that had connection to employee's claims of injury was relevant to show how he was allegedly injured, but burden of producing all records for nine-year period and harm to employee's privacy interests from disclosure significantly outweighed any marginal relevance for majority of time period for which defendant sought records. St. John v. Napolitano, D.D.C.2011, 2011 WL 1193009. Federal Civil Procedure 1598

Federal employee was not entitled to compel federal agency employer's production of documents related to cash awards, time-off awards, and performance evaluations for other employees who held plaintiff's job for 10-year period, in employee's pro se action alleging Title VII discrimination and retaliation and violation of the Rehabilitation Act; request was overbroad as plaintiff's claim involved single performance evaluation, and she did not complain about not receiving awards that other employees did. Lurensky v. Wellinghoff, D.D.C.2010, 271 F.R.D. 345. Federal Civil Procedure 1591

151. Interrogatories, civil action

Where plaintiff was suing both under equal opportunity provisions of this subchapter and under Civil Rights Act of 1866, from which § 1981 of this title was devolved court could go outside administrative record and plaintiff was entitled to propound properly framed interrogatories to defendants on the claim under Civil Rights Act of 1866, from which § 1981 of this title was devolved. Fleming v. Simon, N.D.Cal.1975, 397 F.Supp. 1202. Civil Rights 1510

152. Jury trial, civil action

Although jury instruction in Title VII action stating, "changes in duties or working conditions, including reassignments that do not have a tangible effect on the terms, conditions or privileges of employment are not adverse actions," reduced to the improper proposition that changes in duties and working conditions were not adverse actions, this perceived defect was simply the result of faulty punctuation, such that, once properly punctuated to read, "changes in duties or working conditions, including reassignments, that do not have a tangible effect on the terms, conditions or privileges of employment are not adverse actions," instruction fairly presented the applicable legal principles and standards, particularly in light of following paragraph that laid out the adverse employment action standard as articulated in circuit court precedent. Czekalski v. LaHood, C.A.D.C.2009, 589 F.3d 449, 389 U.S.App.D.C. 17, rehearing en banc denied. Civil Rights 1556

Black female former postal employee was not entitled to jury trial on Title VII claims, where termination occurred before effective date of amendments providing for right to trial by jury under Title VII. Mays v. U.S. Postal Service, M.D.Ala.1996, 928 F.Supp. 1552, affirmed 122 F.3d 43. Jury 14(1.5)

Former general manager of House of Representatives restaurant system was entitled to jury trial on her charge that she was discharged in violation of her Fifth Amendment right against discrimination on basis of sex to extent of her legal claims for damages, as opposed to her equitable claims for back pay, notwithstanding fact that present action was essentially patterned after Title VII of the Civil Rights Act, which provided no right to jury trial. Walker v. Jones, D.D.C.1988, 693 F.Supp. 1202. Jury 14(1.4)

Plaintiff was not entitled to trial by jury in causes of action under this section, section 633a of Title 29, or section 794a of Title 29. Giles v. Equal Employment Opportunity Commission, E.D.Mo.1981, 520 F.Supp. 1198. Jury 14(1.5)

152a. Jury instruction, civil action

Missing-evidence instruction, that jury could infer from employer's failure to produce certain evidence in employee's Title VII action that the evidence was unfavorable to employer, was not warranted; employee did not identify any evidence peculiarly available

to employer which it did not produce that would shed light on her claim, nor did employee describe any attempt on her part to obtain said evidence, and it appeared that the "missing evidence" she described was not missing at all but in fact resided in the record. Czekalski v. LaHood, C.A.D.C.2009, 589 F.3d 449, 389 U.S.App.D.C. 17, rehearing en banc denied. Federal Civil Procedure 2173

Instruction to jury in Title VII employment discrimination lawsuit, that "proof of discriminatory intent is critical . . . [d]iscrimination is intentional if it is done voluntarily, deliberately and willfully," was not contrary to law; employee had ultimate burden of persuading trier of fact that employer intentionally discriminated, and even though framework of shifting burdens and permissible inferences was more complex than suggested by instruction, employee did not raise argument that instruction was incomplete. Thomas v. Chao, C.A.D.C.2003, 65 Fed.Appx. 321, 2003 WL 21186036, Unreported, rehearing denied, rehearing en banc denied. Civil Rights 1556

153. Moot questions, civil action

Action claiming sexual harassment and gender discrimination brought by former federal air traffic controller whose employment was terminated by Federal Aviation Administration for alleged participation in illegal strike against Administration was not moot, since plaintiff was appealing her termination through administrative proceedings which were still ongoing, and in event she prevailed on appeal of federal suit, and subsequently was reinstated by Administration, award of injunctive or declaratory relief could be appropriate. Katz v. Dole, C.A.4 (Va.) 1983, 709 F.2d 251. Action 6; Federal Courts 13.10

In employment discrimination action by federal employee against State Department, controversy over restoration of grade GS-12 position to employee was not moot, in view of employee's counter-affidavits denying facts alleged in Secretary's affidavits submitted in support of contention that duties for validly classified civil service grade GS-12 position has been restored to employee and that he was presently performing such duties. President v. Vance, C.A.D.C.1980, 627 F.2d 353, 200 U.S.App.D.C. 300. Action 6; Federal Courts 13.10

Employee's employment discrimination action was not rendered moot as result of employee's promotion subsequent to the filing of employee's complaint, since issues of back pay and retroactive effect were not affected by employee's promotion. Richardson v. Wiley, C.A.D.C.1977, 569 F.2d 140, 186 U.S.App.D.C. 309. Civil Rights 1529

Where female employee of federal agency who brought action against the agency based on sex discrimination and physical handicap discrimination had no pending claim of discrimination against the agency following determination of appeal, appeal from portion of district court order which required agency to follow the same procedures with re-

spect to the handicap discrimination complaint as it did with respect to the sex discrimination complaint case was moot. Smith v. Fletcher, C.A.5 (Tex.) 1977, 559 F.2d 1014. Federal Courts 757

Even if settlement agreement based on former employee's later Equal Employment Opportunity (EEO) complaints against Department of Veteran Affairs was void, former employee's Title VII action, which was based on events that were settled as part of earlier settlement agreement, was moot, where earlier settlement agreement between former employee and department explicitly precluded former employee from initiating further complaints, grievances, or civil lawsuits arising from same facts. Allen v. Nicholson, D.D.C.2008, 573 F.Supp.2d 35. Federal Courts 13.10

Employment discrimination suit did not become moot when the two original plaintiffs settled their individual claims with the government prior to certification of a class, since intervenor-applicant and other putative class members with a live stake in the controversy were present. Berry v. Pierce, E.D.Tex.1983, 98 F.R.D. 237. Action 6; Federal Courts 13.10

153a. Ripeness, civil action

While district court had power to adjudicate validity of collective bargaining agreement (CBA) between union representing Court Security Officers (CSOs) employed at federal courthouse in Ohio and company which provided security services to government and potentially declare invalid as matter of public policy CBA articles excepting from grievance procedure the removal of CSO or revocation of CSO's credentials by United States Marshals Service (USMS) and providing that USMS action or order to remove CSO from working under contract or revocation of CSO's credentials by USMS would be deemed “just cause” for suspension or dismissal, union's claims under Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), Title VII, and Rehabilitation Act were not ripe for review; union had not given specific names of CSOs whom USMS had actually terminated or upon whom an adverse employment action had been imposed. United Government Sec. Officers of America v. Akal Sec., Inc., S.D.Ohio 2006, 475 F.Supp.2d 732. Federal Courts 13.5

154. Res judicata, civil action

Post-judgment order discharging order to show cause why employer should not be held in contempt for violating anti-retaliation injunction by denying a bonus and issuing a negative performance rating rendered employee's subsequent retaliation claims against employer based on the bonus and rating res judicata, even though employee was not afforded discovery and an evidentiary hearing in post-judgment proceedings; discharge order was a final decision on the merits, finding no retaliation because employee was not entitled to bonus or an excellent rating, employee had opportunity to submit docu-

mentary evidence in post-judgment proceedings, and whether to afford him discovery or a hearing was a matter within the court's discretion. Porter v. Shah, C.A.D.C.2010, 606 F.3d 809, 391 U.S.App.D.C. 41. Judgment 550; Judgment 569

Federal district court rendered final judgment in Title VII action, for res judicata purposes, when it dismissed some claims on merits and dismissed other claims without prejudice on ground of failure to exhaust administrative remedies; although resumption of litigation in some form could be anticipated, district court was finished with case since it did not stay unexhausted claims. Hill v. Potter, C.A.7 (Ill.) 2003, 352 F.3d 1142. Judgment 565; Judgment 570(5)

Dismissal of Air Force employee's prior Title VII employment discrimination claim did not bar, on res judicata grounds, his subsequent Title VII claim against Air Force; prior claims were based on earlier, different alleged instances of discrimination, and orders in those cases dismissed only employee's individual claims without reaching merits of class-based allegations. Munoz v. Aldridge, C.A.5 (Tex.) 1990, 894 F.2d 1489. Judgment 570(4); Judgment 714(1); Judgment 731

Civil rights complaint filed by applicant for federal employment was not barred simply because applicant had claimed similar acts of discrimination at an earlier time and had not prevailed. Mahroom v. Hook, C.A.9 (Cal.) 1977, 563 F.2d 1369, certiorari denied 98 S.Ct. 2234, 436 U.S. 904, 56 L.Ed.2d 402. Judgment 600.1

Prior judgment that federal agency did not retaliate against employee when it decided not to enroll him in agency's student loan reimbursement program based on allegedly improper performance appraisals barred, under doctrine of claim preclusion, employee's subsequent claim of retaliation based on same performance appraisals. Koch v. Schapiro, D.D.C.2010, 699 F.Supp.2d 3. Judgment 585(2)

Administrative judge's order did not void or vacate terms of agreement between former employee and Department of Veteran Affairs, which settled former employee's Equal Employment Opportunity (EEO) complaints against department, and thus department was entitled to dismissal of former employee's Title VII civil action, which former employee was required by the agreement to withdraw, where order established a means to contest compliance with agreement, which former employee failed to utilize, and explicitly expressed judge's satisfaction with the agreement. Allen v. Nicholson, D.D.C.2008, 573 F.Supp.2d 35. Civil Rights 1515

Equal Employment Opportunity (EEO) settlement agreement between postal employee and United States Postal Service, which stated that “the complainant agrees to withdraw EEO complaints and any and all outstanding grievances on these issues,” and which unambiguously informed employee of preclusive effect of signing agreement and releasing claims, precluded relitigation of employee's claims brought pursuant to any

grievances or official EEO complaints filed prior to agreement in employee's action against Postmaster General under the Rehabilitation Act and Title VII; employee did not contest preclusive effect of settlement agreement, and did not contend that agreement was invalid or procured through coercive means. Gentile v. Potter, E.D.N.Y.2007, 509 F.Supp.2d 221. Civil Rights 1515

Fact that employee's claims resolved in state proceedings were based exclusively on state law does not deprive the resulting judgment of preclusive effect in the context of a federal Title VII suit; at least where the elements of a successful employment discrimination claim are virtually identical to those under Title VII, the state court's decision must be accorded preclusive effect. Bagenstose v. District of Columbia, D.D.C.2007, 503 F.Supp.2d 247, affirmed 2008 WL 2396183, rehearing en banc denied. Judgment 828.16(1); Judgment 828.17(1)

Res judicata did not bar federal employee from litigating events that occurred after date she filed her first discrimination complaint, but employee was barred from asserting claims based on same nucleus of facts underlying claims in her first complaint. Velikonja v. Ashcroft, D.D.C.2005, 355 F.Supp.2d 197. Judgment 585(.5); Judgment 585(5)

Former air force employee was not barred under doctrine of res judicata from relitigating propriety of his termination under federal discrimination laws after Court of Appeals for Federal Circuit had affirmed decision of Merit Systems Protection Board upholding employee's removal for performance deficiencies; in considering employee's appeal of MSPB decision, the Federal Circuit would have lacked jurisdiction over employee's discrimination claim if he had raised it, and, even if MSPB had considered employee's discrimination claim, he was entitled to de novo trial in district court. Miller v. Department of Air Force, D.Mass.1985, 654 F.Supp. 186. Judgment 642

Causes of action in prior suits involving dispute over whether to enjoin employer's taking of private sector salary survey and whether secretary of a union panel could bind silent panel members to an agreement with employer were not the same as involved in Title VII suit alleging sex discrimination resulting from changes in private sector employers participating in survey, and therefore res judicata did not apply to bar sex discrimination suit. Hutcheson v. Tennessee Valley Authority, M.D.Tenn.1985, 604 F.Supp. 543. Judgment 585(3)

Res judicata barred employee's action under Title VII and Rehabilitation Act, claiming that United States Postal Service (USPS) discriminated against her on basis of her color, gender, and disability when it failed to accommodate her disability, exposed her to sexual harassment, and terminated her employment, since prior action brought by employee against USPS involved employee's termination and circumstances surrounding it, and current claims could have been brought in that suit. Woods v. Potter, C.A.2 (N.Y.)

2003, 63 Fed.Appx. 590, 2003 WL 21182200, Unreported. Judgment 585(2)

154a. Collateral estoppel, civil action

Doctrine of issue preclusion did not foreclose federal employee from pursuing claim based on suspension, even though he had previously challenged suspension under Civil Service Reform Act (CSRA) as retaliation for his whistleblowing activities, where CSRA claim was dismissed for failure to exhaust administrative remedies, and second suit asserted that suspension was part of agency's campaign to create hostile work environment and to retaliate against him for engaging in protected activity, in violation of Rehabilitation Act, Title VII, and ADEA. Koch v. Schapiro, D.D.C.2010, 699 F.Supp.2d 3. Judgment 654; Judgment 715(3)

Employee knowingly and voluntarily waived his Title VII claims against United States Department of Agriculture (USDA) during administrative hearing, where employee agreed through his attorney to a settlement under which he would dismiss his claims, did not personally object to the settlement despite being present, and the administrative judge stated she had determined the parties understood the terms of the agreement. Johnson v. Veneman, D.D.C.2008, 569 F.Supp.2d 148. Civil Rights 1515

African-American employee of the Federal Bureau of Investigation (FBI) waived her Title VII retaliation claim during the administrative proceedings before the FBI's Equal Employment Opportunity (EEO) office; during employee's deposition taken during EEO process, employee's attorney stipulated that employee was not pursuing claim dealing with alleged reprisal following the filing of the formal EEO complaint and her demotion, and employee did not address retaliation in any subsequent part of the administrative process. Dawson v. U.S., D.S.C.2008, 549 F.Supp.2d 736, affirmed 368 Fed.Appx. 374, 2010 WL 727648. Civil Rights 1518; United States 36

Decision by District of Columbia's highest court affirming the Office of Employee Appeals' (OEA) finding that a former teacher had voluntarily retired, and was thus never discharged as part of a reduction-in-force (RIF), presented a collateral estoppel bar precluding any Title VII discrimination or retaliation claims arising from the teacher's loss of his teaching position; because he retired voluntarily, as conclusively determined by the District of Columbia court, he never suffered an adverse employment action, which was an element required to establish a prima facie case of either unlawful discrimination or retaliation under Title VII. Bagenstose v. District of Columbia, D.D.C.2007, 503 F.Supp.2d 247, affirmed 2008 WL 2396183, rehearing en banc denied. Judgment 828.7; Judgment 828.17(3)

155. Equitable estoppel, civil action

Provision of Title VII providing that federal employee “aggrieved” by agency's final dis-

position of her complaint may file civil action did not require employee, who brought multi-claim complaint against her employer, to judicially challenge favorable determination she received on her religious discrimination claim in order to challenge unfavorable determination she received on her retaliation claim, since employee was not "aggrieved" by portion of agency determination on which she prevailed, and complaint filed in federal court was not required to included all claims raised in administrative complaint. Payne v. Salazar, C.A.D.C.2010, 619 F.3d 56, 393 U.S.App.D.C. 112. Civil Rights 1516; United States 36

Older male federal employee failed to establish prima facie case of reverse gender discrimination through argument that his third-level supervisor, who had input into promotion decision, justified decision to promote younger woman instead of him by stating that he was too "old school"; aside from fact that comment was made two years after promotion decision, comment addressed employee's performance and leadership style and had nothing to do with employee's age and was extracted from affidavit where term was used to mean employee "was not a visionary or a motivational type performer." Jones v. Bernanke, D.D.C.2007, 493 F.Supp.2d 18, affirmed on other grounds 557 F.3d 670, 384 U.S.App.D.C. 443. Civil Rights 1179

Federal Reserve Board (FRB) was equitably estopped to seek dismissal, for failure to exhaust administrative remedies, of employee's age and gender discrimination claims based on his failure to be promoted where, based on supervisor's assurances on two occasions that he "would be promoted within the next group of promotions," employee did not pursue matter with Equal Employment Opportunity Commission (EEOC) until it was too late. Jones v. Bernanke, D.D.C.2007, 493 F.Supp.2d 18, affirmed on other grounds 557 F.3d 670, 384 U.S.App.D.C. 443. Civil Rights 1519

Federal agency was not equitably estopped from arguing that former employee failed to exhaust her administrative remedies, and thus was barred from filing claims under Title VII and Rehabilitation Act, despite employee's contention that agency did not provide her with information about Equal Employment Opportunity (EEO) process and that its website did not identify appropriate EEO counselor, absent showing of affirmative acts or misleading statements by agency that prevented her from filing EEO complaint. Klugel v. Small, D.D.C.2007, 519 F.Supp.2d 66. Civil Rights 1519

Secretary of the Treasury was not equitably estopped to argue that black Secret Service agents' new or refiled discrimination claims should be barred as untimely, absent evidence of any affirmative misconduct by Secret Service, relied on by agents, that prevented or discouraged them from timely filing; agents identified no assurances or promises that might have misled them in response to their memoranda to three different directors outlining their concerns. Moore v. Chertoff, D.D.C.2006, 424 F.Supp.2d 145, order clarified on reconsideration 437 F.Supp.2d 156. Civil Rights 1505(5)

Postal Service's failure to include name of individual attorney when mailing notification of right to file Title VII formal complaint, and use of wrong case number on first mailing, which was corrected on subsequent mailing, were insufficient to invoke doctrine of equitable estoppel against assertion of 15-day limitations period against complaint, absent evidence of Service's intent to cause employees to miss deadline. Adams v. Henderson, D.Md.2000, 197 F.R.D. 162. Civil Rights 1530

156. Burden of proof, civil action

United States Postal Service (USPS) provided legitimate, nonretaliatory reason for its four-week delay in approving Family Medical Leave Act (FMLA) pay for employee who had filed equal employment opportunity (EEO) complaint, shifting burden to employee to show that the reason was pretextual in her Title VII retaliation action; employee initially submitted written forms and was paid, she was not paid when she switched from paper to using an electronic system due to bureaucratic confusion, and she was paid again when the confusion was cleared up and ultimately received the full amount. Roman v. Potter, C.A.1 (Puerto Rico) 2010, 604 F.3d 34. Civil Rights 1249(1); Civil Rights 1541; Postal Service 5

The complainant in “disparate impact” litigation under this section has the initial burden of constructing a prima facie case by showing that facially neutral employment standards operate in a proscribed discriminatory fashion; burden then falls upon employer to demonstrate that the standards have a manifest relationship to employment in question, and complainant may then show that other policies or practices would serve employer's legitimate interest in efficient and trustworthy workmanship without a discriminatory impact. Talev v. Reinhardt, C.A.D.C.1981, 662 F.2d 888, 213 U.S.App.D.C. 332.

Conceding reverse discrimination in hiring a black for a federal position, federal employer met its burden of proving, by clear and convincing evidence, that white applicant would not have been hired even in absence of racial discrimination. Marotta v. Usery, C.A.9 (Cal.) 1980, 629 F.2d 615. Civil Rights 1544

Evidence that plaintiff was black, that plaintiff was holding and was qualified for a job with defendant employer, that plaintiff was discharged, that plaintiff's position remained open after discharge, and that defendant employer continued to seek applicants from persons of plaintiff's qualifications was sufficient to establish a prima facie case of discrimination and to shift burden of proof of defendant to articulate some legitimate, nondiscriminatory reason for plaintiff's discharge. Osborne v. Cleland, C.A.8 (Ark.) 1980, 620 F.2d 195. Civil Rights 1545

Plaintiff carries initial burden of presenting prima facie case of employment discrimination; after prima facie case has been made, burden shifts to employer to prove that he based his employment decision on legitimate consideration, and not an illegitimate one

such as race; burden of persuasion then shifts back to plaintiff, who must be given opportunity to introduce evidence that proffered justification is merely a pretext for discrimination. Davis v. Califano, C.A.D.C.1979, 613 F.2d 957, 198 U.S.App.D.C. 224. Civil Rights 1536

African-American female employee had to present facts from which reasonable jury could conclude that employer would not have acted in way that she had claimed "but-for" her race, in order to avoid summary judgment in employer's favor in action under Title VII in "single motive" case, where employee had alleged that employer had discriminated against her by denying her tuition reimbursement for her master's degree courses, denying her specialized computer program training, and denying her opportunity to telecommute "because of her race" and "because of her opposition to actions made unlawful by Title VII." Beckham v. National R.R. Passenger Corp., D.D.C.2010, 736 F.Supp.2d 130. Civil Rights 1137; Federal Civil Procedure 2497.1

Federal agency's proffered reason for older Bangladeshi employee's termination, his unacceptable performance level and his failure to complete subsequent performance improvement plan (PIP) in order to raise his performance to acceptable level, was legitimate and nondiscriminatory and shifted burden to employee to show it was pretext for race or age discrimination or retaliation. Chowdhury v. Schafer, D.D.C.2008, 587 F.Supp.2d 257. Civil Rights 1128; Civil Rights 1207; Civil Rights 1249(2); United States 36

United States Department of Labor's (DOL's) proffered reason for selecting white male applicant instead of African-American female applicant for promotion to position of Senior Manpower Development Specialist, that he was the best candidate therefor, was legitimate and nondiscriminatory and shifted burden back to female applicant to show that reason was pretext for race or sex discrimination under Title VII; beyond the five evaluative factors (KSAs) for position, at time of selection the selecting official was also concerned that female applicant did not work independently and relied heavily on contract employee to do her work, and that entry-level employee had filed complaint accusing her of making derogatory remarks. Hammond v. Chao, D.D.C.2005, 383 F.Supp.2d 47. Civil Rights 1135; Civil Rights 1169; Civil Rights 1536; Civil Rights 1537

African American federal employee did not meet her ultimate burden under Title VII of showing that government, as employer, was motivated by racial discrimination in its selection of Caucasian person for position of supervisory paralegal; employee's job performance appraisals were inferior to performance of selectee, sentiments of co-workers that favored selectee and were critical of employee were not based on race but were based on criteria relevant to selection of supervising paralegal, and each recommending official articulated reasons not related to race to deny employee contested promotion. Waters v. Gonzales, D.D.C.2005, 374 F.Supp.2d 187. Civil Rights 1137

Employee has burden of proving, by preponderance of evidence, prima facie case of Title VII discrimination by showing: she was within protected group; she was performing her duty satisfactorily; she was discharged; and her discharge occurred in circumstances giving rise to inference of discrimination based on membership in that group. Francis v. Runyon, E.D.N.Y.1996, 928 F.Supp. 195. Civil Rights 1122

Plaintiff may carry ultimate burden of proving intentional discrimination in employment discrimination action by presenting either direct or indirect evidence of employer's discriminatory intent. Blong v. Secretary of Army, D.Kan.1995, 877 F.Supp. 1494. Civil Rights 1544

If Title VII plaintiff fails to establish prima facie case of race discrimination, burden never shifts to defendant, and plaintiff's claim must be dismissed. Crumpton v. Philip Morris, USA, D.Colo.1994, 845 F.Supp. 1421. Civil Rights 1536

After prima facie case of religious discrimination is established, burden shifts to employer to prove by preponderance of the evidence it met its obligation under Title VII to accommodate religious beliefs of employee. Mann v. Frank, W.D.Mo.1992, 795 F.Supp. 1438, affirmed 7 F.3d 1365, rehearing denied. Civil Rights 1536

To prove retaliation for employee's decision to pursue sex discrimination claim, employee has burden of proving that he or she engaged in protected activity, which was known by alleged retaliator; that an adverse action was taken by employer against employee; and that there was causal connection between protected activity and retaliation. Gemmell v. Meese, E.D.Pa.1986, 655 F.Supp. 577. Civil Rights 1243; Civil Rights 1541

Plaintiff in employment discrimination case brought pursuant to this section always has burden of persuasion. Beckler v. Kreps, E.D.Pa.1982, 541 F.Supp. 1311. Civil Rights 1535

Plaintiff bringing action for religious discrimination in employment has the initial burden of showing a bona fide religious belief and that the conduct required by the defendant is contrary to such belief; thereafter, the burden shifts to the defendant to demonstrate that it made good-faith efforts to accommodate plaintiff's religious belief and, if unsuccessful in those efforts, that defendant was unable reasonably to accommodate plaintiff's belief without undue hardship. McGinnis v. U.S. Postal Service, N.D.Cal.1980, 512 F.Supp. 517. Civil Rights 1536

Employee of federal agency made out a prima facie case of employment retaliation by proving that he participated in protected activity by filing discrimination complaint, that employer knew of such participation and that following that participation, he was denied a promotion within such a period of time and in such a manner that retaliatory motive

could be inferred and employer failed to carry its burden of showing that no retaliatory motive ever existed or that it was insignificant; thus, employee would be awarded retroactive promotions and back pay. Guilday v. Department of Justice, D.C.Del.1980, 485 F.Supp. 324. Civil Rights 1553; Civil Rights 1579; Civil Rights 1583(2)

Burden was on secretary to establish that her employment discrimination complaint, alleging that Army's failure to promote her was impermissibly based on sex, was timely filed. McKenzie v. Calloway, E.D.Mich.1978, 456 F.Supp. 590, affirmed 625 F.2d 754. Civil Rights 1537

In private nonclass action under this subchapter challenging employment discrimination in an alleged retaliatory discharge, it is burden of plaintiff to establish a prima facie case of retaliation by showing that employee engaged in activity protected by this subchapter, that employer knew that employee participated in protected activity, and that employee was discharged following participation in protected activities within such period of time and in such a manner that court could infer retaliatory motivation. Brown v. Biglin, E.D.Pa.1978, 454 F.Supp. 394. Civil Rights 1541

After federal employee established prima facie case of retaliation under Title VII, employer had to proffer legitimate, non-retaliatory reason for complained of action to satisfy its burden on summary judgment. Upshur v. Dam, S.D.N.Y.2003, 2003 WL 135819, Unreported. Federal Civil Procedure 2497.1

157. Prima facie case, civil action--Generally

African-American federal employee established prima facie case of race discrimination with respect to her nonpromotion to position for which she applied and was qualified and that was given to white applicant. Holcomb v. Powell, C.A.D.C.2006, 433 F.3d 889, 369 U.S.App.D.C. 122. Civil Rights 1135

Alleged incidents in which employee received letter of reprimand from her direct supervisor, and when another manager denied her access to his office because of potential conflict of interest, if proven, were not “adverse employment actions” within meaning of Title VII. Burkett v. Glickman, C.A.8 (Ark.) 2003, 327 F.3d 658. Civil Rights 1120

Female employee of federal agency may have been able to demonstrate that she received unfavorable treatment in the promotion process because of her sex, in violation of Title VII, even though both men and women may have been promoted to the positions for which she unsuccessfully applied. Stella v. Mineta, C.A.D.C.2002, 284 F.3d 135, 350 U.S.App.D.C. 300. Civil Rights 1169

Black Veterans Administration employee established prima facie case of race discrimination in connection with his failure to be promoted to assistant hospital housekeeping

officer position, and that evidence also raised inference that agency's articulated nondiscriminatory reason for not promoting employee was pretextual. Hughes v. Derwinski, C.A.7 (Ill.) 1992, 967 F.2d 1168. Civil Rights 1535; Civil Rights 1548

Library of Congress employee, who alleged that library denied him promotion to sergeant of special police because of his race, sex, and age in violation of this subchapter and Age Discrimination in Employment Act, sections 621 et seq. of Title 29, was not required to prove that position remained open in order to establish prima facie case of disparate treatment but, instead, it was sufficient that he show that available positions were filled by individuals with comparable qualifications who were not members of classes protected by relevant statutes. Garner v. Boorstin, C.A.D.C.1982, 690 F.2d 1034, 223 U.S.App.D.C. 297. Civil Rights 1548; Civil Rights 1549; Civil Rights 1551

Evidence that before panel met to consider applicants for two warehouse positions the individual charged with final selection had posted a chart listing black applicant in lower paying position and white applicant in higher paying position and that such individual had a reputation for being prejudiced toward blacks was sufficient to establish a prima facie case of discrimination in employment promotion; however, the adversely affected employee was not automatically entitled to relief since basis for panel selection of the white applicant for the higher paying position was his high test score and more extensive supervisory experience and background. Haire v. Calloway, C.A.8 (Mo.) 1978, 572 F.2d 632. Civil Rights 1548; Civil Rights 1560

Evidence, that black federal employee was denied promotion despite having highest rating in “merit promotion plan” while employee with lower rating was promoted, and that black employee had been denied same promotion some two years previously after preselection of another white employee with a lower rating and less experience, established prima facie case of racial discrimination under Equal Employment Opportunity Act of 1972, shifting burden of proof to government to show that its decision to deny black employee promotion was nondiscriminatory decision based on sound business reasons. Abrams v. Johnson, C.A.6 (Ohio) 1976, 534 F.2d 1226. Civil Rights 1536; Civil Rights 1548

There was no evidence that Federal Deposit Insurance Corporation's (FDIC) alleged discriminatory actions with regard to FDIC employee, a 59-year-old white male of Italian origin, were based on protected characteristic, as would support employee's prima facie case of discrimination under Title VII, Rehabilitation Act, or Age Discrimination in Employment Act (ADEA). Monachino v. Bair, S.D.N.Y.2011, 2011 WL 349392. Civil Rights 1220

Because federal employee conceded that his alleged adverse employment action of increased workload was due, in large part if not entirely, to his legal expertise, he could

not establish a causal nexus between being in a protected class and employer's alleged adverse employment action, and therefore, he failed to establish a prima facie case of employment discrimination based on his ethnicity, his age, or his disability. Koch v. Schapiro, D.D.C.2011, 2011 WL 38980. Civil Rights 1220

Employee presented sufficient summary judgment evidence that her reassignment from a paralegal specialist to a human resources specialist gave rise to an inference of discrimination to establish a prima facie case of race discrimination under Title VII; she claimed that the employer forced her from her paralegal position by claiming that there was insufficient work for her, then replaced her with a higher paid white employee. Sharpe v. Bair, D.D.C.2008, 580 F.Supp.2d 123, appeal dismissed 2010 WL 288558. Federal Civil Procedure 2497.1

Navy employee, a 56-year-old African-American male, established prima facie case of discrimination in connection with his failure to be promoted to Supervisory Contract Specialist (SCS) position; he was member of protected class, applied and was qualified for promotion sought, and position was filled by younger Caucasian female. Jackson v. Winter, E.D.Va.2007, 497 F.Supp.2d 759. Civil Rights 1135; Civil Rights 1179; Civil Rights 1207

Where employer regarded an employee as having met the minimum requirements for a promotional position, despite the fact that he may not have, the employee was able to create an inference of discrimination, and thus establish a prima facie case under the *McDonnell Douglas* framework on his Title VII and ADEA claims; the employee was placed on the list of certified eligible candidates and the decision maker, in explaining his decision, did not base it on the employee's failure to meet the time in grade requirement. Harris v. Chao, D.D.C.2007, 480 F.Supp.2d 104. Civil Rights 1536; Civil Rights 1539

Black male Department of the Navy employee with claimed disability who sought promotion from GS-11 to GS-12 level failed to satisfy element of prima facie case of discriminatory failure to promote that another employee of similar qualifications was promoted at time his request for promotion was denied; he had to show that his employment situation was similar in all relevant regards to those with whom he sought comparison. Bolden v. Winter, D.D.C.2009, 602 F.Supp.2d 130. Civil Rights 1138; Civil Rights 1179; Civil Rights 1222

Terminated African-American letter carrier failed to present prima facie case of discriminatory discharge because she could not establish that she was performing her job duties at level that met her employer's legitimate expectations; all incidents of discipline of her were fully documented in the record and she brought union grievances and some EEO charges over them as well, and although she was successful in getting some of her punishments reduced, she still remained within relevant progressive disciplinary

steps. Mahomes v. Potter, D.S.C.2008, 590 F.Supp.2d 775. Civil Rights 1128

Federal employee failed to establish prima facie case of disparate impact under Title VII, where she had not sufficiently described any facially-neutral employment practice that allegedly impacted her in a disparate manner based on her membership in protected class; employee did not identify any specific employment practice that was generally applicable and facially-neutral, but had functioned disproportionately with respect to her or members of her protected class, nor did she mention existence of any statistical or empirical data that might support causation. Prince v. Rice, D.D.C.2006, 453 F.Supp.2d 14. Civil Rights 1545

African-American GS-13 Department of Health and Human Services (HHS) employee established prima facie case of race discrimination in connection with her nonselection for GS-14 position; despite being selected for best qualified list she was rejected, and position was filled by white candidate. Simpson v. Leavitt, D.D.C.2006, 437 F.Supp.2d 95. Civil Rights 1135

Older African-American female applicant for positions in United States Department of Veterans Affairs established prima facie case of discrimination in her nonselection for four out of five vacancies sought; she belonged to three protected groups, applied for and was rejected for all four of the positions, for which she was concededly minimally qualified, and person selected for each position was outside of her protected class for at least one basis of her discrimination claim, i.e., age, sex, or race. Oliver-Simon v. Nicholson, D.D.C.2005, 384 F.Supp.2d 298. Civil Rights 1135; Civil Rights 1169; Civil Rights 1207

African-American female Senior Manpower Development Specialist Department of Labor (DOL) established prima facie case of racial and sex discrimination, creating presumption of discrimination, in connection with her nonselection for promotion to Lead Manpower Development Specialist position; in addition to her membership in two protected classes and fact position was filled by white male applicant; she undisputedly applied, and was qualified, for that position. Hammond v. Chao, D.D.C.2005, 383 F.Supp.2d 47. Civil Rights 1135; Civil Rights 1169; Civil Rights 1535; Civil Rights 1537

African American federal employee met her initial burden of stating prima facie case of racial discrimination under Title VII, with respect to her claim that her non-selection for position of supervisory paralegal was discriminatory, on evidence that as African American, she was member of protected class, she applied for and was qualified for supervisory paralegal position, she was not selected for promotion, and Caucasian person filled the position. Waters v. Gonzales, D.D.C.2005, 374 F.Supp.2d 187. Civil Rights 1135

Department of Navy's “special restriction” on employee's flexible arrival time that she

check in by e-mail, and its seven-week delay in answering employee's request for flexible work schedule, were not "adverse employment actions," for purposes of establishing prima facie case of race or disability discrimination; neither resulted in objectively tangible harm. Rehabilitation Act of 1973, Carroll v. England, D.D.C.2004, 321 F.Supp.2d 58. Civil Rights 1126; Civil Rights 1220

Allegations by white male Immigration and Naturalization Service (INS) employee of Greek descent, that commendation letter written by director was ripped up and placed in trash can rather than in his file as directed, that written letter was placed in his file for asking coworker for assistance with office paperwork whereas Hispanic female in department did not receive written reprimand for car accident, and that he was not allowed to continue assisting city police department in project to halt gang and drug activity, did not demonstrate "adverse employment actions" required to establish prima facie case of discrimination. Letares v. Ashcroft, D.Neb.2004, 302 F.Supp.2d 1092. Civil Rights 1126

Performance evaluation in which African-American civilian employee with the United States Air Force (USAF) received an "excellent" ranking did not constitute adverse employment action, as would support employee's prima facie case of race discrimination under Title VII, even though evaluation was allegedly used as basis for subsequent adverse employment action; upon receipt of evaluation, employee did not suffer a demotion, termination, or a loss in benefits. McGinnis v. U.S. Air Force, S.D.Ohio 2003, 266 F.Supp.2d 748. Civil Rights 1126

Former letter carrier showed that he was qualified for continued employment, as required to establish prima facie showing of race discrimination in action under Title VII against Postmaster General, where employer did not dispute that he was actually capable of performing tasks assigned to him. Banks v. Potter, D.Conn.2003, 253 F.Supp.2d 335. Civil Rights 1126

To show "qualification" sufficiently to shift the burden of providing some explanation of the discharge to the employer, the plaintiff in an employment discrimination action under Title VII need not show perfect performance; instead, she need only make the minimal showing that she possesses the basic skills necessary for performance of the job. Banks v. Potter, D.Conn.2003, 253 F.Supp.2d 335. Civil Rights 1122; Civil Rights 1536

Black letter carrier terminated for excessive absences after an off-duty injury presented evidence of a white co-worker who was sufficiently similar to him to support at least a minimal inference that disparate treatment could be attributable to race discrimination, as would support prima facie showing of race discrimination in action under Title VII against Postmaster General; co-worker had attendance problems similar to letter carrier but he was given reasonable accommodations following an injury, and co-worker was

subject to same rules regarding absenteeism pursuant to which letter carrier was terminated. Banks v. Potter, D.Conn.2003, 253 F.Supp.2d 335. Civil Rights 1535

Plaintiff failed to establish prima facie case of discriminatory termination in violation of Title VII, absent direct evidence of discriminatory motive or intent on part of defendant in decision to terminate her or evidence that she was terminated for refusing to submit to sexual demands. Jones v. Secretary, Dept. of Army, D.Kan.1995, 912 F.Supp. 1397. Civil Rights 1549

To establish prima facie case of discriminatory refusal to hire, applicant must show that: she is member of protected class; she applied and was qualified for job for which employer was seeking applicants; despite her qualifications she was rejected; and her rejection position remained open and employer continued to seek applicants from persons of her qualifications. Blong v. Secretary of Army, D.Kan.1995, 877 F.Supp. 1494. Civil Rights 1545

Absent direct evidence of discrimination, plaintiff in Title VII action must establish, by preponderance of evidence, prima facie case of racial discrimination, and, defendant will then be presumed to have discriminated against plaintiff unless he can articulate legitimate, nondiscriminatory reasons for employment decision. Brown v. West, D.Kan.1994, 856 F.Supp. 591. Civil Rights 1536; Civil Rights 1545

Unsuccessful black applicant for promotion failed to establish prima facie case of race discrimination under disparate treatment analysis; promotion review board included black member, one of recommended employees was black, and none of board members knew applicant or his race prior to review process. Gibson v. Frank, S.D.Ohio 1990, 785 F.Supp. 677, affirmed 946 F.2d 1229. Civil Rights 1548

Black secretary/stenographer in Funds Control Division of government agency established prima facie case of racial discrimination under Title VII, based on supervisor's denial of secretary's request for formal on-the-job training necessary for her advancement, where secretary had consistently received superior ratings, white employees in other division had received such training, and supervisor had made inappropriate remarks of racial nature. Lofton v. Roskens, D.D.C.1990, 743 F.Supp. 6, affirmed 950 F.2d 797, 292 U.S.App.D.C. 388. Civil Rights 1548

Mere fact that black deputies were denied certain promotions, special assignments, and education and training opportunities was not sufficient to state a prima facie case of race discrimination against United States Marshal's Service. Miller v. U.S., D.C.D.C.1985, 603 F.Supp. 1244. Civil Rights 1548

In sex discrimination employment action where individual disparate treatment is alleged, it is incumbent upon plaintiff, in order to establish prima facie case, to offer proof that

she is a woman, that defendant had employment vacancy which it sought to fill, that plaintiff possessed qualifications to fill the vacancy and applied, that plaintiff was rejected, and that defendant continued to seek other applicants or filled the vacancy with a male applicant; it is not necessary to show that plaintiff was as qualified as successful applicant. Reilly v. Califano, N.D.Ill.1981, 537 F.Supp. 349. Civil Rights 1549

Black female federal employee failed to establish prima facie case that her nonselection for supervisory position which she sought was result of proscribed employment discrimination, even though parties stipulated that plaintiff was rated as qualified by reviewing panel, where stipulation did not disclose that plaintiff was better or as well qualified as individual selected, and where individual selected was clearly qualified and possessed credentials in most respects superior to plaintiff's; in absence of any evidence of preselection or higher numerical rating of plaintiff, plaintiff did not establish prima facie case. Canty v. Olivarez, N.D.Ga.1978, 452 F.Supp. 762. Civil Rights 1549

Testimony of African-American employee of United States Postal Service (USPS) that supervisor told him that no level-5 maintenance positions would be open in the near future did not excuse his failure to apply for level-5 maintenance position when it was posted, as element for prima facie case under *McDonnell Douglas* framework of racially discriminatory failure to promote in violation of Title VII; there was no evidence supervisor's statement was untrue when it was made nor any evidence that supervisor intentionally misled African-American employee because of his race. Williams v. Henderson, C.A.4 (S.C.) 2005, 129 Fed.Appx. 806, 2005 WL 977587, Unreported, certiorari denied 126 S.Ct. 387, 546 U.S. 876, 163 L.Ed.2d 172. Civil Rights 1135

Male, African-American postal employee failed to establish primafacie case of race and gender discrimination under Title VII, on allegations that he was suspended and his employment was terminated by female African-American supervisor even though he did not strike her intentionally, and supervisor's male supervisors, one of whom was African-American, “took the position that my being a man and beating up on a woman, they had to come to the defense of her helplessness.” Randall v. Potter, S.D.N.Y.2004, 2004 WL 439491, Unreported. Civil Rights 1126; Civil Rights 1128; Civil Rights 1179

Civilian employee of the Navy failed to show that adverse employment actions taken against her by Navy officials were motivated by hostility toward her national origin, as required to establish prima facie case of national origin discrimination under Title VII; official who allegedly said he hesitated to hire employee because her education and experience were from India ultimately did hire her, and officials' alleged discriminatory attitude about employee's accent was not sufficiently connected to adverse actions taken against her. Bhella v. England, C.A.4 (S.C.) 2004, 91 Fed.Appx. 835, 2004 WL 253412, Unreported. Civil Rights 1126

African-American former employee of federal government agency failed to show that similarly situated non-African American employees were treated more favorably, as required to establish prima facie case of discriminatory termination based on race under Title VII; white employee, with whom plaintiff sought comparison, functioned at different level as immigration inspector than plaintiff, and there was no evidence that white employee was probationary, like plaintiff, or that white employee had same supervisor, for purpose of showing he was similarly situated, nor was there evidence that white employee was retained following his absence, unlike plaintiff, for purpose of showing he was treated more favorably. Steik v. Garcia, N.D.Cal.2003, 2003 WL 22992223, Unreported. Civil Rights 1138

Bureau of Prisons (BOP) employee failed to show that evaluation was conducted under circumstances giving rise to inference of discrimination, and thus failed to establish prima facie Title VII case; warden's statement that African American employees were over-represented with respect to awards and that white males were under-represented did not reflect effort to penalize any class of people, and employee's performance was not sufficiently similar to that of co-workers that she should have received same rating. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1535; Civil Rights 1545

Federal agency's termination of probationary employee did not violate Title VII, despite employee's speculation as to reasons her co-workers did not want to work with her, absence evidence that agency's actions were motivated by discriminatory animus. Brazill v. Department of Veteran Affairs, C.A.10 (Kan.) 2003, 60 Fed.Appx. 200, 2003 WL 713310, Unreported. Civil Rights 1137

African-American former Postal Service (USPS) letter carrier failed to state Title VII race discrimination claim against USPS by failing to draw connection between disciplinary suspension, which had followed employee's motor vehicle accident, and his race. Marshall v. National Assoc. of Letter Carriers Br. 36, S.D.N.Y.2003, 2003 WL 223563, Unreported. Civil Rights 1126

158. ---- Rebuttal, prima facie case, civil action

African-American employee failed to show that employer's legitimate, nondiscriminatory reason for transferring him to night shift, separating him from white employee with whom he had conflict because it was more economical to transfer him than white employee, was pretext for Title VII race discrimination, where employee's language showed relationship had deteriorated to level of physical threats, no similarly situated employees were cited, and superior's statement that he hoped to transfer and preferred to transfer African-American to employee's position was unchallenged and not circumstantially rebutted. Thomas v. Runyon, C.A.8 (Mo.) 1997, 108 F.3d 957. Civil Rights 1137

Employer's legitimate, non-discriminatory explanation for the reassignment of an employee from a paralegal specialist to a human resources specialist was not a pretext for race discrimination violating Title VII, despite the employee's extensive list of assertions concerning the reassignment; the employer explained that there was insufficient paralegal work to justify a full-time paralegal position, that the employee's work load could be absorbed by an attorney, and that the employer had been trying unsuccessfully to find an acceptable candidate for the human resources position. Sharpe v. Bair, D.D.C.2008, 580 F.Supp.2d 123, appeal dismissed 2010 WL 288558. Civil Rights 1137

Navy's articulated reason for selecting younger Caucasian female for promotion instead of 56-year-old African-American male candidate, because she had the highest combined resume and interview rating, was legitimate and nondiscriminatory and shifted burden to employee to show that reason was pretext for discrimination. Jackson v. Winter, E.D.Va.2007, 497 F.Supp.2d 759. Civil Rights 1135; Civil Rights 1179; Civil Rights 1207

Internal Revenue Service (IRS), which alleged that a hiring freeze prevented director at IRS from hiring for a position in a certain series, met its burden in Title VII racial discrimination action of articulating a legitimate, non-discriminatory reason for not selecting African-American employee for a promotion. Robinson v. Paulson, D.D.C.2008, 591 F.Supp.2d 78. Civil Rights 1135

Reasons proffered by Department of Homeland Security (DHS) for Transportation Security Administration (TSA) employee's reassignment and ultimate termination, related to his failure to meet normal and expected requirements of his position, were legitimate and nondiscriminatory and were not shown by employee to be pretext for intentional gender discrimination. Bankston v. Chertoff, D.N.D.2006, 460 F.Supp.2d 1074. Civil Rights 1179

Agency's proffered reason for nonselection of African-American candidate for GS=14 position, recommending and selecting officials' belief that white candidate was better qualified for the position, was legitimate and nondiscriminatory. Simpson v. Leavitt, D.D.C.2006, 437 F.Supp.2d 95. Civil Rights 1135

Even assuming that employment discrimination plaintiff had made prima facie showing regarding termination from employment with federal agency, agency established legitimate, nondiscriminatory reasons for the actions, namely, negative leave balances and a failure by plaintiff to adhere to requirements for checking in with supervisor regarding sick leave, particularly with respect to entire pay period without attendance at work or contact with supervisor. Robinson v. Chao, D.D.C.2005, 403 F.Supp.2d 24. Civil Rights 1128

Agency's proffered reason for Federal Bureau of Investigation (FBI) Office of Professional Responsibility (OPR's) imposition of three-day suspension without pay followed by one year of probation on African-American female FBI employee, her disruptive and unprofessional behavior during confrontation with her supervisor, was legitimate and nondiscriminatory and was not shown to be pretext for race or gender discrimination; employee's punishment was in line with several precedents provided by OPR during adjudication process, fit within FBI's punishment schedule issued more than one year later, had not been proven to be a statistical outlier, and was not impugned by report issued three years later criticizing aspects of OPR. Moore v. Ashcroft, D.D.C.2005, 401 F.Supp.2d 1. Civil Rights 1137; Civil Rights 1171

Federal government, as employer, articulated non-discriminatory reason for choosing someone other than African American employee for position of supervisory paralegal, in lawsuit under Title VII alleging failure to promote on basis of race, on evidence that Caucasian selectee had job performance appraisals superior to employee and employee was less successful at her work and less respected and esteemed by her colleagues as compared to selectee. Waters v. Gonzales, D.D.C.2005, 374 F.Supp.2d 187. Civil Rights 1135

Black letter carrier terminated after an off-duty injury presented evidence by which a reasonable fact-finder could conclude that Postmaster General's proffered, nondiscriminatory reason for termination, i.e., his excessive absences, was pretext for race discrimination in violation of Title VII, where he provided medical documentation for bulk of his absences, and majority of his absences were excused by employer. Banks v. Potter, D.Conn.2003, 253 F.Supp.2d 335. Civil Rights 1137

Selection of another female applicant for position did not defeat rejected female applicant's ability to establish prima facie case of employment discrimination, where second female applicant was hired only after rejected applicant filed formal complaint of discrimination. Blong v. Secretary of Army, D.Kan.1995, 877 F.Supp. 1494. Civil Rights 1549

Assuming arguendo that unsuccessful black applicant for promotion made out prima facie case of disparate treatment discrimination under Title VII, employer articulated legitimate, nondiscriminatory reasons for recommending promotion of five other employees; employees recommended by promotion review board, one of whom was black, were more qualified than applicant. Gibson v. Frank, S.D.Ohio 1990, 785 F.Supp. 677, affirmed 946 F.2d 1229. Civil Rights 1135

Assuming that federal employee of Asian race and Taiwanese national origin met his burden of establishing prima facie case of employment discrimination due to his demotion from research scientist to chemist, employer articulated legitimate, nondiscriminatory reasons for demoting employee; research scientists were expected to senior author

at least one paper a year or coauthor at least two papers, and evidence showed that employee had serious difficulty successfully preparing written manuscripts in that employee did not clearly articulate his hypotheses and did not adequately support his conclusions with data. Shieh v. Lyng, E.D.Pa.1989, 710 F.Supp. 1024, affirmed 897 F.2d 523. Civil Rights 1126

Even assuming that plaintiff black employee made out a prima facie case of unlawful discrimination on basis of race, the defendant government agency possessed and articulated a sufficient legitimate nondiscriminatory reason why the employee, who brought Title VII suit, was not promoted or recommended for a promotion in subject years in that employee's position was not in a career ladder and only means for noncompetitive promotion was through accretion of duties and neither white nor black supervisors added duties to employee's position to enable her to increase grade level and white supervisor's failure to discuss performance appraisals prior to submission to personnel office did not adversely affect promotion rights. Scott v. Baldridge, D.C.D.C.1984, 609 F.Supp. 330. Civil Rights 1548

If federal employee in suit brought pursuant to this subchapter sets forth prima facie case of discrimination or retaliation, defendant must articulate some legitimate, nondiscriminatory reason for its decisions adverse to employee. Beckler v. Kreps, E.D.Pa.1982, 541 F.Supp. 1311. Civil Rights 1536; Civil Rights 1541

African-American former employee of federal government agency failed to establish that government's proffered legitimate nondiscriminatory reason for his termination, which was employee's poor attendance record, was pretext for race discrimination in violation of Title VII; there was no evidence that scheduling changes, which employee contended were discriminatory and led to his absences, did not affect other non-African-American employees, nor was there evidence linking individual whom employee contended was racially motivated with decision that employee be terminated. Steik v. Garcia, N.D.Cal.2003, 2003 WL 22992223, Unreported. Civil Rights 1137

Bureau of Prisons (BOP) employee's conclusory assertions of discrimination, and her allegation that white male employees maintained telephonic “buddy system” by which friendly calls were placed to management on behalf of white men being considered for promotions, were insufficient to rebut BOP's proffered legitimate, nondiscriminatory reasons for result of its evaluation of employee, i.e., her one-day suspension and lack of compliments about her work. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1137; Civil Rights 1544

159. Admissibility of evidence, civil action

Statements by the boss of a decisionmaker on an employee's application for a promotional position were admissible, on a summary judgment motion in the employee's Title

VII suit, under the hearsay exception for admissions by a party opponent; the boss was involved generally in the promotion process, his alleged statements to the employee, including that the decisionmaker was not "culturally sensitive" and had "many issues" with women, were direct warnings about the attitude of a management official he supervised, and were directly relevant to the question of whether impermissible gender discrimination may have played a part in the promotion decision. Talavera v. Shah, C.A.D.C.2011, 638 F.3d 303. Federal Civil Procedure 2545

During trial on government employee's Title VII claim against employer alleging discrimination based on race and national origin, district court did not abuse its discretion by excluding proposed testimony of African-American coworker, regarding alleged atmosphere of discrimination, for lack of personal knowledge; coworker did not have personal knowledge of alleged discriminatory violations by employer, coworker only knew evaluation scores for workers two to three years after employee's termination, and coworker could not know if evaluations were discriminatory since he knew nothing regarding work performance of anyone other than himself. Zokari v. Gates, C.A.10 (Okla.) 2009, 561 F.3d 1076. Witnesses 37(2)

Federal employee's affidavit stating generally that she had been discriminated against was insufficient to rebut employer's proffered reason for failing to promote her, i.e., that employee had stated that lowest grade level she would accept was nine, and that because of forecasted reduction in force, employer was hiring only at grade level seven. Burkett v. Glickman, C.A.8 (Ark.) 2003, 327 F.3d 658. Civil Rights 1548

Where black employee in employment discrimination action did not allege any procedural irregularities in connection with his termination, portion of federal personnel manual setting forth manner in which a probationary employee is to be notified that he or she will be terminated was inadmissible as irrelevant. Wolfolk v. Rivera, C.A.7 (Ill.) 1984, 729 F.2d 1114. Civil Rights 1542

In a trial de novo of a federal employee's action against the government for racial discrimination in employment, the administrative record should be admissible, subject to the Federal Rules of Evidence, Title 28, for whatever weight the trial judge wishes to accord it; most de novo testimony would be in nature of supplementation to that record. Hackley v. Roudebush, C.A.D.C.1975, 520 F.2d 108, 171 U.S.App.D.C. 376. Civil Rights 1542

Evidence relating to discrete discriminatory acts against federal employee that occurred more than 45 days before she filed charge with Equal Employment Opportunity Commission (EEOC), to extent otherwise admissible, could only come in as background evidence in support of employee's exhausted discrimination claims in her Title VII action alleging discrimination and hostile work environment because of sex and religion. Story v. Napolitano, E.D.Wash.2011, 2011 WL 611818. Civil Rights 1542

Witness's proffered testimony about materials a male United-States Export-Import Bank employee received and transmitted on his office computer was unduly prejudicial and, thus, was not admissible in a female Bank employee's suit alleging gender discrimination and retaliation by her supervisor in violation of Title VII, since it did not implicate the person alleged to be the primary discriminating official in the employee's case. Nuskey v. Hochberg, D.D.C.2010, 723 F.Supp.2d 229. Evidence 129(5)

Proffered testimony of special assistant to senior vice-president at United States Export-Import Bank concerning a male supervisor's treatment of her and other women was relevant to whether the supervisor discriminated against another female Bank employee on the basis of gender in violation of Title VII, since the testimony involved the same decisionmaker and events close in time to the events in employee's case. Nuskey v. Hochberg, D.D.C.2010, 723 F.Supp.2d 229. Civil Rights 1542

Proffered testimony of vice president in charge of personnel at United States Export-Import Bank concerning a female Bank employee's gender discrimination complaints against her supervisor was not relevant and, thus, not admissible in employee's Title VII gender discrimination and retaliation suit, since the vice-president had no involvement in the employee's termination, he did not work for employee's supervisor, he could not speak to employee's travel plans, which related to Bank's purported reason for terminating employee, and, as a male vice-president, he was not similarly-situated to employee. Nuskey v. Hochberg, D.D.C.2010, 723 F.Supp.2d 229. Civil Rights 1542

It was permissible for district court to consider the administrative record before the Merit Systems Protection Board (MSPB) when ruling on Secretary of Labor's motion for summary judgment on employee's Title VII and ADEA claims; district court gave no deference to agency conclusions but merely considered all the record evidence before it in order to made a fresh determination of the facts and issues. Brookens v. Solis, D.D.C.2009, 635 F.Supp.2d 1. Federal Civil Procedure 2545

If unsworn witness statements submitted by postal worker in opposition to motion for summary judgment on her Title VII claim were from files of United States Postal Service (USPS) and were produced in discovery, to lay proper foundation, worker needed to submit affidavit or other evidence to that effect. Setterlund v. Potter, D.Mass.2008, 597 F.Supp.2d 167. Federal Civil Procedure 2545

Although statistical evidence allegedly showing pattern or practice of discrimination in employment may be admitted in an individual complaint, it is not determinative of employer's reason for action taken against the individual grievant. Buffington v. Defense Mapping Agency, E.D.Mo.1977, 435 F.Supp. 816. Civil Rights 1544

State administrative decision granting federal employee's unemployment compensation

claim was admissible in employee's subsequent suit against federal government alleging employment discrimination; administrative findings were highly relevant on issue of whether employee had been discharged for misconduct, which was government's defense in discrimination action. Baldwin v. Rice, E.D.Cal.1992, 144 F.R.D. 102, as amended. Civil Rights 1542

District court did not abuse its discretion in Title VII employment discrimination lawsuit by excluding list of employees identified by race and sex, and witness' observations about race and sex of employees, in absence of expert who could have testified that alleged underrepresentation was statistically significant. Thomas v. Chao, C.A.D.C.2003, 65 Fed.Appx. 321, 2003 WL 21186036, Unreported, rehearing denied, rehearing en banc denied. Civil Rights 381

159a. Judicial notice, civil action

Employee's prior lawsuits were matters of public record of which district court was permitted to take judicial notice in granting summary judgment to employer on employee's Title VII and ADEA claims. Brookens v. Solis, D.D.C.2009, 635 F.Supp.2d 1. Evidence 43(3)

160. Statistical evidence, civil action

Evidence supported district court's finding that statistical evidence concerning civilian women employed by Department of the Air Force at research center did not constitute prima facie showing of employment discrimination based on sex, in view of fact that numbers concerning research center were drawn from pool too small to produce highly valuable evidence and in view of fact that statistical evidence, in itself, was not controlling. Adams v. Reed, C.A.5 (Ala.) 1978, 567 F.2d 1283, rehearing denied 572 F.2d 320. Civil Rights 1549

Evidence that on a given date at the Nevada Operation Office of the Atomic Energy Commission approximately 98% of employees at grades GS-11 and above were males and that 95% of the lower-grade employees were females did not establish a prima facie case of sex discrimination in employment, in absence of evidence that lower grade professional women were qualified to occupy the higher positions or that there elsewhere existed a pool of qualified women applicants. Pack v. Energy Research and Development Admin., C.A.9 (Nev.) 1977, 566 F.2d 1111. Civil Rights 1549

Statistical analysis, based on single statistic derived from one year of employment figures, revealing statistically significant difference between percentage of black employees at different grade levels did not establish prima facie case of disparity in promotion in black employees' Title VII action; instead, proper comparison was between black employees eligible for promotion and eligible white employees actually selected for promo-

tion. Moore v. Summers, D.D.C.2000, 113 F.Supp.2d 5. Civil Rights 1135; Civil Rights 1548

Black probationary employee employed in mail room of Social Security Office who was engaged in processing of checks and who was given choice of resigning or being terminated when it was discovered that she had recently been convicted of possessing a stolen government check failed to prove race discrimination where there were no statistical studies presented upon which to base a conclusion of disparate impact and where employer credibly explained disparate treatment of a white employee who was retained after being convicted of possession of marijuana. Craig v. Department of Health, Ed. and Welfare, W.D.Mo.1981, 508 F.Supp. 1055. Civil Rights 1544

Showing of lopsided ratio of blacks to whites employed by Commission in its Philadelphia region, as revealed by plaintiff's statistical evidence, established a prima facie case of discrimination; however, such statistics could not in and of themselves establish proof of past or present discrimination. Mellick v. Equal Employment Opportunity Commission, W.D.Pa.1976, 410 F.Supp. 736. Civil Rights 1545

161. Record, civil action

Agency charged with discrimination under this subchapter should play the major role in developing the record at the administrative level. Mangiapane v. Adams, C.A.D.C.1981, 661 F.2d 1388, 213 U.S.App.D.C. 152. Civil Rights 1504

162. Review of administrative action, civil action--Generally

In Internal Revenue Service (IRS) employee's discrimination case, absent proper offer of proof with respect to district court's categorical exclusion of evidence of employee's prior promotion attempts and IRS's pattern of changing promotion process, Court of Appeals would review under plain error standard and would reverse only if there had been miscarriage of justice. Watson v. O'Neill, C.A.8 (Mo.) 2004, 365 F.3d 609. Federal Courts 628

In action against federal agency on ground of racial discrimination in treatment of federal civilian employee, who had exhausted her remedy under Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, court must consider agency determination in light of procedural fairness and adequacy of record bearing upon discrimination issue and, if record were found wanting, court could disregard administrative determination, but if court found that agency reached sound conclusion in proceedings which provided claimant fair opportunity to present grievances, court should accord it deference appropriate and both employee and employer should have right to adduce additional evidence. Bowers v. Campbell, C.A.9 (Cal.) 1974, 505 F.2d 1155. Civil Rights 1510

Postal employee's retaliation claim was not within scope of her initial discrimination claim, which was administratively exhausted; Equal Employment Opportunity Commission (EEOC) investigation had already concluded and final agency decision had been issued almost five months before allegedly discriminatory and retaliatory involuntary reassignment. Green v. Potter, D.N.J.2009, 687 F.Supp.2d 502. Civil Rights 1516; Postal Service 5

Federal employee who obtains a final administrative disposition that finds discrimination in the employee's favor, but only as to a portion of the allegations in the employee's Equal Employment Opportunity Commission (EEOC) 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; trial de novo is generally understood to mean a de novo judicial examination of the entire case, and permitting an employee to obtain partial de novo review on only some issues is inconsistent with this definition. Payne v. Salazar, D.D.C.2009, 628 F.Supp.2d 42, affirmed in part , reversed in part 619 F.3d 56, 393 U.S.App.D.C. 112. Civil Rights 1510

Employee was not entitled to judicial review of final judgment by Merit Systems Protection Board (MSPB) in Title VII action, where MSPB's dismissal of employee's case for lack of jurisdiction precluded case from qualifying as mixed-case appeal over which district court could exercise jurisdiction. DiPaulo v. Potter, M.D.N.C.2008, 570 F.Supp.2d 802. Officers And Public Employees 72.41(1)

District court could not conduct mixed-motive analysis of federal employee's Title VII claim when the nondiscriminatory reason proffered by agency was that employee was not qualified for position because he could not maintain required security clearance, as national security determinations were not reviewable by court. Makky v. Chertoff, D.N.J.2007, 489 F.Supp.2d 421, affirmed 541 F.3d 205. Civil Rights 1137; War And National Emergency 1136

Claims brought by government employee against Department of Health and Human Services (DHHS), alleging that agency had failed to comply with order of Equal Employment Opportunity Commission (EEOC) after finding of employment discrimination, were in nature of enforcement action, and thus were not properly before court; EEOC had expressly found that agency was in compliance with order, and there was no evidence that agency had failed to submit required compliance report. Malek v. Leavitt, D.Md.2006, 437 F.Supp.2d 517. Civil Rights 1510

In suit under this section by postal employees charging sexual discrimination in employment federal district court limited its review to a consideration of the administrative determinations and any other supplemental documents filed by the parties. Raether v. Phillips, W.D.Va.1975, 401 F.Supp. 1393. Civil Rights 1510

In employment discrimination action brought by federal employee, court's consideration is not limited to issues raised in complaint before the Civil Service Commission [now before the EEOC] but extends to issues within the scope of the equal employment opportunity investigation which could reasonably be expected to grow out of the charge of discrimination filed by the employee. Sylvester v. U.S. Postal Service, S.D.Tex.1975, 393 F.Supp. 1334, affirmed 595 F.2d 1219. Civil Rights 1554

Judicial review of federal personnel action on a federal employee's complaint of discrimination based on race or creed is not governed by the substantial evidence standard; rather, the absence of discrimination must be established by the preponderance of evidence in the administrative record. Guilday v. U. S. Dept. of Justice, D.C.Del.1974, 385 F.Supp. 1096. Civil Rights 1510

Commission's expertise in investigating and remedying employment discrimination is to be given due consideration on district court review of Commission's decisions. Fisher v. Brennan, E.D.Tenn.1974, 384 F.Supp. 174, affirmed 517 F.2d 1404, certiorari denied 96 S.Ct. 1428, 424 U.S. 954, 47 L.Ed.2d 359. Civil Rights 1510

A court acting pursuant to this section should have the option, after a careful study of the administrative record, to affirm the administrative record, to take additional testimony to supplement the administrative record, to remand for the taking of additional testimony, to grant a trial de novo, or to grant relief to the aggrieved employee on basis of the administrative record. Warren v. Veterans Hospital, E.D.Pa.1974, 382 F.Supp. 303. Officers And Public Employees 72.50

Judicial review of a claim charging discrimination in government employment may lie, upon proper exhaustion, when there is a question as to whether procedural requirements of statutes and regulations were complied with and whether action of department officials was arbitrary or capricious or not supported by substantial evidence. Willingham v. Lynn, E.D.Mich.1974, 381 F.Supp. 1119. Civil Rights 1510

163. ---- De novo hearing or trial, review of administrative action, civil action

Federal employees have same right to trial de novo as is enjoyed by private sector or state government employees under this subchapter. Chandler v. Roudebush, U.S.Cal.1976, 96 S.Ct. 1949, 425 U.S. 840, 48 L.Ed.2d 416. Civil Rights 1525

After proceeding administratively, claimant is entitled to trial de novo in federal court, meaning a trial on the merits, not de novo review of an administrative record. Greenlaw v. Garrett, C.A.9 (Cal.) 1995, 59 F.3d 994, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 110, 519 U.S. 836, 136 L.Ed.2d 63. Administrative Law And Procedure 744.1; Civil Rights 1510

Federal employee or applicant may limit request for de novo judicial review of final agency determination in discrimination claim by raising questions about remedy without requesting de novo review of finding of discrimination. Morris v. Rice, C.A.4 (Md.) 1993, 985 F.2d 143. Administrative Law And Procedure 744.1; Civil Rights 1510

An agency might properly dismiss complaint under this subchapter for failure to prosecute if an employee fails to cooperate in agency proceedings during 180-day period following filing of his complaint with the agency; however, employee could then file an action in district court, which should commence a trial de novo on issue of failure to prosecute. Clark v. Chasen, C.A.9 (Cal.) 1980, 619 F.2d 1330. Civil Rights 1510; Civil Rights 1530

Administrative complaint procedures must be complied with before federal employee may bring suit under this subchapter; if they are and an adverse decision is rendered on merits of complaint, complainant is entitled to de novo hearing in federal court; however, if agency does not reach merits of complaint because complainant fails to comply with administrative procedures, the court should not reach the merits either. Johnson v. Bergland, C.A.5 (La.) 1980, 614 F.2d 415. Civil Rights 1513; Civil Rights 1518

In an action for federal employment discrimination, plaintiff is entitled to a trial de novo of his claim. Vetter v. Frosch, C.A.5 (Tex.) 1979, 599 F.2d 630. Civil Rights 1511

Plaintiff, an employee with the Commission was entitled to a de novo proceeding in district court upon a complaint of racial discrimination in employment, where the administrative process had not found that plaintiff had been victim of employment discrimination inasmuch as, notwithstanding clear implication of investigator's report that plaintiff had been treated adversely because of his race, such report was not a final agency decision, and thus court erred in applying a substantial evidence standard of review to the administrative record. Weahkee v. Perry, C.A.D.C.1978, 587 F.2d 1256, 190 U.S.App.D.C. 359, on remand. Civil Rights 1511

Purpose of trial de novo in employment discrimination suit is to aid employee in discovering and presenting evidence in aid of his claim of discrimination; law thus recognizes that administrative record may not have developed all of the relevant facts. Carreathers v. Alexander, C.A.10 (Colo.) 1978, 587 F.2d 1046. Civil Rights 1511

Where federal employee who alleged that the Air Force had discriminated against her on the basis of sex in connection with a promotion was dissatisfied with the relief that she received at administrative hearing, employee was entitled to trial de novo in district court on her Title VII claim. Whiteside v. Gill, C.A.5 (La.) 1978, 580 F.2d 134. Civil Rights 1511

Federal employees bringing job discrimination suit under this subchapter had same right

to trial de novo in district court as was enjoyed by private sector employees. Eastland v. Tennessee Valley Authority, C.A.5 (Ala.) 1977, 553 F.2d 364, certiorari denied 98 S.Ct. 611, 434 U.S. 985, 54 L.Ed.2d 479, on remand , on remand 528 F.Supp. 862. See, also, Swain v. Hoffman, C.A. 5 (Ala.) 1977, 547 F.2d 921. Civil Rights 1525

Probationary postal employee, who allegedly was discharged because of his ancestry and who fully exhausted his administrative remedies under this section, was entitled to trial de novo in federal court of his employment discrimination claims. Blondo v. Bailar, C.A.10 (Colo.) 1977, 548 F.2d 301. Civil Rights 1511

1972 amendments to this subchapter gave federal employee same right to district court trial de novo of employment discrimination claims that private sector employees possess under Title VII. Laurel v. U. S., C.A.5 (Tex.) 1977, 547 F.2d 917. Civil Rights 1525

Federal employee was entitled to de novo hearing before federal district court of his civil rights action alleging racial discrimination in his failure to obtain job promotions to higher ranking. Oringel v. Mathews, C.A.5 (La.) 1976, 534 F.2d 1182. Civil Rights 1511

Employee was not entitled to a trial de novo on her discrimination claims, where Merit Systems Protection Board's (MSPB's) determination that employee was not eligible to appeal final agency decision to the MSPB limited her remedies to review in Court of Appeals for the Federal Circuit, even though the court might never reach her claims. DiPaulo v. Potter, M.D.N.C.2008, 570 F.Supp.2d 802. Officers And Public Employees 72.51

Exception, in provision of Civil Service Reform Act governing official review of final decisions of Merit Systems Review Board (MSRB), granting district court jurisdiction of all claims in case involving discrimination, allowed de novo review of discrimination claims and non-discrimination claims contained in same case. Kelliher v. Glickman, M.D.Ala.2001, 134 F.Supp.2d 1264, affirmed 313 F.3d 1270, rehearing and rehearing en banc denied 57 Fed.Appx. 416, 2003 WL 159295. Officers And Public Employees 72.51

Federal employee could limit her request for de novo judicial review of final Equal Employment Opportunity Commission (EEOC) determination in discrimination claim by raising questions about remedy without subjecting finding of discrimination to de novo review, where agency did not appeal EEOC's discrimination determination. Williams v. Herman, E.D.Cal.2001, 129 F.Supp.2d 1281. Civil Rights 1510

Public employee who prevailed on disability discrimination claim before Merit Systems Protection Board (MSPB) was entitled to order of enforcement, if agency was unwilling to comply with award, or to de novo plenary trial on merits, but was not entitled to limit

de novo review to issue of damages only. Simpkins v. Runyon, N.D.Ga.1998, 5 F.Supp.2d 1347. Officers And Public Employees 72.51

Title VII allows federal employee to file suit in federal court against agency that employs him and to receive de novo review of the claim in that court. Adams v. U.S. E.E.O.C., E.D.Pa.1996, 932 F.Supp. 660. Civil Rights 1511

Despite right to de novo presentation of claims in district court, in relation to issue of discrimination in employment discrimination action by federal employee, administrative findings are entitled to weight and due consideration, and if no discrimination or bias is found in the administrative decision-making process, that decision is entitled to more nearly its usual weight. Johnson v. Hampton, E.D.Va.1977, 452 F.Supp. 1, affirmed 577 F.2d 734. Civil Rights 1511

Employee charging discrimination in federal employment was entitled to trial de novo in district court, precluding entry of summary judgment on basis of administrative record. Morrow v. Crosby, E.D.Pa.1976, 418 F.Supp. 933. Federal Civil Procedure 2491.5

If record in employment discrimination action does not contain sufficient facts to decide exhaustion issue, district court must hold hearing de novo on such issue. Henry v. Schlesinger, E.D.Pa.1976, 407 F.Supp. 1179. Civil Rights 1554

If the administrative record does not provide a sound basis for dealing with the merits of an employment discrimination claim on a motion for summary judgment, then a federal employee bringing a discrimination suit pursuant to this subchapter is entitled to a hearing de novo in federal court. Ellis v. Naval Air Rework Facility, Alameda, Cal., N.D.Cal.1975, 404 F.Supp. 377. Civil Rights 1511

Whenever a federal employee raises a claim of discrimination and brings a civil action in district court, the court must undertake its consideration through the procedure of trial de novo and the preponderance of the evidence test, rather than by review of the administrative record, adhering to the substantial evidence standard. Bramley v. Hampton, D.C.D.C.1975, 403 F.Supp. 770. Civil Rights 1511

164. Review by court of appeals, civil action

Failure of plaintiffs in employment discrimination action to challenge either their ranking for certain job vacancy or validity of two-stage selection procedure for vacancy precluded them from claiming on appeal that they did not need to rank in top of group in order to be selected for promotion to vacancy. Milton v. Weinberger, C.A.D.C.1981, 645 F.2d 1070, 207 U.S.App.D.C. 145. Federal Courts 1064

Although district court employed primarily the disparate treatment analysis of proof while

its oral opinion could fairly be read as having also considered proof under disparate impact analysis and, on appeal, the parties to employment discrimination suit had joined issue under both modes of analysis, it was on such basis that court of appeals would review the district court's judgment. Wright v. National Archives and Records Service, C.A.4 (Md.) 1979, 609 F.2d 702. Federal Courts 759.1

Refusing to consider on appeal an issue or argument not raised below normally promotes the finality of judgments and conserves judicial resources; however, such interests can be outweighed in particular cases, especially in the employment discrimination area where lay persons initiate the complaint processed and procedural requirements are flexibly administered. Richerson v. Jones, C.A.3 (Pa.) 1978, 572 F.2d 89. Federal Courts 611; Federal Courts 612.1

Although in his individual capacity, federal employee, seeking relief for alleged racial discrimination in employment, had received a limited trial de novo in district court and was awarded backpay, attorney fees, expenses and injunctive relief, appeal challenging refusal to certify suit as class action had not become moot, on ground that viable controversy no longer existed between the plaintiff and his employer, since the employee stood to benefit directly from the injunctive relief he requested on behalf of the class. McLaughlin v. Hoffman, C.A.5 (Ala.) 1977, 547 F.2d 918. Federal Courts 727

In action by federal employee for retroactive promotion and back pay, alleging that he had been denied promotion because of racial discrimination, question whether employee would have received promotion had he not been victim of discrimination was for district court to resolve and would not be decided by court of appeals, which had concluded that district court erred in failing to consider that question. Day v. Mathews, C.A.D.C.1976, 530 F.2d 1083, 174 U.S.App.D.C. 231. Federal Courts 939

Postal employee who prevailed on her administrative employment discrimination charge could not seek judicial review of amount of damages awarded without also submitting issue of liability for review. St. John v. Potter, E.D.N.Y.2004, 299 F.Supp.2d 125. Civil Rights 1510

165. Remand, civil action

Title VII complaint would be remanded to district court for determination as to whether plaintiff's amended complaint substituting Secretary of Air Force for Department of Air Force as defendant should relate back to filing of original complaint, in light of evidence that, but for clerk of court's delay in stamping original complaint “filed” while plaintiff's in forma pauperis motion was pending, Secretary would have received notice of suit within applicable statutory period. Ynclan v. Department of Air Force, C.A.5 (Tex.) 1991, 943 F.2d 1388. Federal Courts 939

Record in civil rights action by black employee who was denied promotion required remand for determination of whether racial motivation was involved in agency's decision which was made after in-house white employee turned down promotion and which involved filling three of four positions by hiring new employees rather than following original plan of hiring two new employees and promoting two existing employees. Danner v. U. S. Civil Service Commission, C.A.5 (La.) 1981, 635 F.2d 427. Federal Courts 939

Though Air Force employee was required to exhaust administrative remedies before filing suit in federal district court alleging racial discrimination in connection with a promotion, if the administrative agency and the district court had refused to consider the merits of the employee's claim because they misconstrued their legal duty, the court of appeals, reviewing a final and appealable order of dismissal, could correct that error of interpretation and remand case to require application of appropriate standards. Bragg v. Reed, C.A.10 (Okla.) 1979, 592 F.2d 1136. Federal Courts 937.1

Where district court did not grant a de novo hearing to employee of Internal Revenue Service on merits of his claim that selection process by which Service selected its employees for promotion was tainted by sex discrimination, and instead used "substantial evidence" standard applicable to a review of agency determinations, judgment against employee on claim would be reversed and case would be remanded for further proceedings in connection therewith. Weitzel v. Portney, C.A.4 (Md.) 1977, 548 F.2d 489. Federal Courts 937.1

District court should not on remand have reduced fire department employee's recovery for race discrimination to nine days' back pay, inasmuch as decision on issue was made at earlier stage of litigation and was not raised on appeal and, thus, could not be reconsidered on remand; only issue open for consideration on remand was whether employee proved that any discriminatory act against him occurred within 300-day period preceding filing of charge with Equal Employment Opportunity Commission. Palmer v. Barry, D.D.C.1991, 794 F.Supp. 5, supplemented , affirmed 17 F.3d 1490, 305 U.S.App.D.C. 137. Federal Courts 951.1

166. Mandamus, civil action

Where part of petitioner's claim was racial discrimination and it appeared that he could bring suit in federal district court for failure of government to exercise or take action on complaint within 180 days pursuant to this subchapter, petitioner thereby had an adequate remedy at law, so that it was inappropriate for court of appeals to issue writ of mandamus to compel decision in petitioner's administrative appeal from action whereby he had been fired. In re Christian, C.A.8 1979, 606 F.2d 822. Federal Courts 527

167. Vacation of judgments, civil action

Where district court, in review of administrative determination in proceedings on claim of former employee of Department of Justice of gender-based discrimination in violation of this subchapter, did not conduct a de novo trial on claim, or remand to Department for clarification, or conduct fully proper review of administrative decision, but rather, based its decision in favor of employee on finding that substantial evidence was lacking to support conclusion of hearing examiner, which had not been adopted as final agency decision, court's decision would be reversed. Williams v. Bell, C.A.D.C.1978, 587 F.2d 1240, 190 U.S.App.D.C. 343, on remand 487 F.Supp. 1387. Federal Courts 932.1

168. Service of process, civil action

Employee was entitled to extension of service, making service to employer in Title VII action timely, where delay in service, though explained in terms of counsel's concern for employee's well-being, was occasioned by no effort at service, but rather by intentional suspension of activity, and court treated counsel's brief and affidavit as application for extension. DiPaulo v. Potter, M.D.N.C.2008, 570 F.Supp.2d 802. Federal Civil Procedure 417

169. Weight and sufficiency of evidence, civil action

Employee of Department of Navy failed to present any credible evidence, in action against Navy for discriminatory or retaliatory failure to promote under Title VII and Age Discrimination in Employment Act (ADEA), to support conspiracy theory that Navy and several individual defendants denied him opportunity to submit his application for promotion to position as supervisory naval architect; employee relied on conjecture, accusation, conspiratorial theories and his own assessment, but vacancy announcement was posted on official website and was available to employee, who was well aware of website and had used it regularly. Stoyanov v. Winter, D.D.C.2009, 643 F.Supp.2d 4, affirmed 2010 WL 605083, rehearing en banc denied. Armed Services 27(4); Civil Rights 1548; Civil Rights 1551; Civil Rights 1553; Conspiracy 19

170. Venue, civil action--Generally

Title VII plaintiff, a former Army employee, failed to establish that any of Army's alleged unlawful acts occurred in District of Columbia, that any employment records relevant to her claim were maintained or administered in District of Columbia, or that she would have been employed in District of Columbia but for Army's actions, and thus District of Columbia was improper venue for employee's Title VII employment discrimination action, even if Army had offices in District of Columbia, since Army's principal office was located in Virginia, alleged unlawful employment practice occurred in Virginia, and employee's employment records were located in either Missouri or Virginia. Ebron v. Department of Army, D.D.C.2011, 2011 WL 635297. Federal Courts 1041

Venue was proper in the District of Columbia on Internal Revenue Service (IRS) employee's Title VII claims involving senior management officials in the District of Columbia who allegedly revoked employee's selection for a vacant position in Florida. Noisette v. Geithner, D.D.C.2010, 693 F.Supp.2d 60. Federal Courts 1041

171. ---- Pendent venue, venue, civil action

Pendent venue extended to Internal Revenue Service (IRS) employee's Title VII claims challenging non-selection for position by officials in Florida office, since venue was proper in the District of Columbia for employee's Title VII claims alleging senior management officials in the District of Columbia improperly revoked employee's initial selection for the vacant Florida position, and all the claims reflected essentially one wrong, namely the discriminatorily denying of the Florida position. Noisette v. Geithner, D.D.C.2010, 693 F.Supp.2d 60. Federal Courts 1041

171a. ---- Transfer of actions, venue

Interests of justice warranted transfer of former Army employee's Title VII employment discrimination action to Eastern District of Virginia, even if employee had failed to exhaust administrative remedies, since factual dispute regarding exhaustion and merits of Army's motion to dismiss were not properly before court, dismissal would require employee to re-file, and re-filed suit would be barred by applicable 90-day statute of limitations period. Ebron v. Department of Army, D.D.C.2011, 2011 WL 635297. Federal Courts 1041

172. Military personnel, defenses, civil action

Former Air Reserve Technician's (ART's) Title VII and Rehabilitation Act claims against Secretary of the Air Force, alleging gender and disability discrimination as well as retaliatory discharge, were barred under doctrine of *Feres v. United States*, which held that military personnel could not pursue claims against the government under the Federal Tort Claims Act for injuries that arose out of activity incident to service, though ARTs had civilian duties and were not required to wear uniforms while performing them; ART position was military in nature because ARTs were encompassed in military organization and performed work directly related to national defense, and ART's claims challenged conduct of supervisory military officers, thereby threatening intrusion into officer-subordinate relationships. Bowers v. Wynne, C.A.6 (Ohio) 2010, 615 F.3d 455. United States 78(16)

V. PERSONS ENTITLED TO MAINTAIN ACTION

<Subdivision Index>

191. Persons entitled to maintain action generally

Federal employee was authorized to file a civil action against the head of his department where his complaint of discrimination based on race was brought pursuant to Executive Order 11478, he waited 180 days from the filing of the initial charge with the department agency, or unit before filing suit, and he was aggrieved by the failure to take final action on its complaint. Koger v. Ball, C.A.4 (Md.) 1974, 497 F.2d 702. Civil Rights 1511

Relief against the federal government under Title VII provision applicable to federal employees is limited to employees or applicants for employment in the federal system and does not extend to employees' spouses. Diaz-Romero v. Ashcroft, D.Puerto Rico 2007, 472 F.Supp.2d 156, affirmed 514 F.3d 115. Civil Rights 1116(1); Civil Rights 1522

Threshold requirement for imposing Title VII liability against the federal government is that plaintiff be an employee, or applicant for employment, of the defendant federal agency. King v. Dalton, E.D.Va.1995, 895 F.Supp. 831. Civil Rights 1116(1)

Action by federal employee against federal government charging employment discrimination could be maintained under this section. Taylor v. Gillis, E.D.Pa.1975, 405 F.Supp. 542. United States 125(9)

192. Injury or discrimination, persons entitled to maintain action

Federal employees who failed to submit affidavits asserting that they were injured by agency's allegedly discriminatory promotion scheme did not have standing to assert disparate impact claims against agency under Title VII. Phillips v. Cohen, C.A.6 (Ohio) 2005, 400 F.3d 388. Civil Rights 1522

Plaintiffs were without standing to complain of alleged unlawful racial and sexual discrimination in United States Army Tank Automotive Command where their complaint was completely devoid of any specific allegations that any plaintiff had suffered from racial or sexual employment discrimination. James v. Rumsfeld, C.A.6 (Mich.) 1978, 580 F.2d 224. Federal Civil Procedure 633.1

Even if female applicant for legal position with federal agency had established that agency's preference for recent legal experience had disproportionate impact on female applicants, applicant was not person whose lack of recent legal experience was due to child-rearing activities and who would therefore have standing to complain that agency's job requirements discriminated against her on basis of her sex where applicant, after completing her child-rearing duties, had resumed full-time employment in nonlegal position some ten years prior to filing her application with agency. Coopersmith v. Roudebush, C.A.D.C.1975, 517 F.2d 818, 170 U.S.App.D.C. 374. Civil Rights 1173; Civil Rights 1197

Organizations composed of Latin-American or Mexican-American individuals lacked standing to assert claim that certain federal employment examinations discriminated against Spanish surnamed individuals, in absence of any allegation that any of their members had taken the examinations or that as result of such examinations they had been denied employment. League of United Latin Am. Citizens v. Hampton, C.A.D.C.1974, 501 F.2d 843, 163 U.S.App.D.C. 283. Civil Rights 1522

Employee's non-membership in Indian tribe did not preclude her from bringing Title VII action alleging discrimination due to her American Indian race. Smith-Barrett v. Potter, W.D.N.Y.2008, 541 F.Supp.2d 535. Civil Rights 1107

Black special agent of United States Secret Service had standing under Title VII to chal-

lenge merit promotion plan (MPP) scoring process, which was multi-tiered evaluation process that involved scoring of candidates by supervisors and peers on candidates' past performance and experience, since MPP was part and parcel of promotion policy that governed promotion decision that led to agent's discrimination complaint; although challenge was limited to only single phase of alleged discriminatory policy, claimed injury was fairly traceable to that process. Moore v. Chertoff, D.D.C.2006, 437 F.Supp.2d 156. Civil Rights 1522

193. Applicants for employment, persons entitled to maintain action--Generally

In order to be treated as constructive applicant for a position so as to entitle individual to bring employment discrimination suit, plaintiff must show that he was potential victim of unlawful discrimination and he carries difficult burden of proving that he would have applied for job had it not been for employer's alleged discriminatory practices. Milton v. Weinberger, C.A.D.C.1981, 645 F.2d 1070, 207 U.S.App.D.C. 145. Civil Rights 1535

Applicant for special agent position with Federal Bureau of Investigation (FBI), whose offer of employment was rescinded, had standing to sue FBI under Title VII, alleging disparate impact based on race, where applicant produced sufficient evidence to support his claim that he was as qualified as other white applicants who were hired notwithstanding issues as to their suitability. Jones v. Mukasey, D.D.C.2008, 565 F.Supp.2d 68. Civil Rights 1522

Discharged veteran who made oral inquiry concerning position at veterans hospital but who did not make written application for position had no standing to sue under this subchapter based on claim that United States Civil Service Commission veterans readjustment appointment regulations racially discriminated against plaintiff who was not an "applicant for employment" and could not show that she was prejudiced since she was told very early in grievance proceeding that a written application was necessary. Hockett v. Administrator of Veterans Affairs, N.D.Ohio 1974, 385 F.Supp. 1106. Civil Rights 1522

193a. ---- Independent contractors, applicants for employment, persons entitled to maintain action

Workers hired to perform computer support services to United States Department of State were independent contractors of State Department and were therefore ineligible to sue Department under Title VII; State Department did not have right control means and manner of workers' performance, and additional "*Redd* factors" supported conclusion they were not "employees" under Title VII. Bryant v. The Orkand Corp., D.D.C.2005, 407 F.Supp.2d 29. Civil Rights 1116(1)

194. Military departments, persons entitled to maintain action

Feres justiciability doctrine, which bars suits against government to recover damages arising out of or in course of activities incident to military service, did not apply to Title VII claim of civilian employee of state military department; although employee happened to be non-commissioned officer of national guard, she was not required to be national guard officer to hold her civilian jobs, was not subject to military discipline or hierarchy and could quit whenever she wanted. Meister v. Texas Adjutant General's Dept., C.A.5 (Tex.) 2000, 233 F.3d 332, rehearing denied 247 F.3d 243, certiorari denied 121 S.Ct. 2194, 532 U.S. 1052, 149 L.Ed.2d 1025. Civil Rights 1126; United States 78(16)

Uniformed service member's off-duty employment at enlisted club amounted to military employment integrally related to military's unique structure, and thus member's claim that he was discriminated against during that employment was not actionable under Title VII, where member was on active-duty status and his work was governed by military chain of command. Hodge v. Dalton, C.A.9 (Hawai'i) 1997, 107 F.3d 705, certiorari denied 118 S.Ct. 62, 522 U.S. 815, 139 L.Ed.2d 25. Civil Rights 1116(3)

Title VII subsection prohibiting discrimination in personnel actions affecting employees or applicants for employment in military departments does not apply to uniformed service members but, rather, only includes civilian employees of military departments. Randall v. U.S., C.A.4 (N.C.) 1996, 95 F.3d 339, certiorari denied 117 S.Ct. 1085, 519 U.S. 1150, 137 L.Ed.2d 219, rehearing denied 117 S.Ct. 1463, 520 U.S. 1182, 137 L.Ed.2d 566. Civil Rights 1116(3)

Title VII did not apply to an application for a commission in the United States Navy. Spain v. Ball, C.A.2 (N.Y.) 1991, 928 F.2d 61. Civil Rights 1116(3)

Title VII of the Civil Rights Act of 1964 does not apply to uniformed members of the armed forces; term “military departments” within section proscribing discrimination against employees of such departments includes only civilian employees. Roper v. Department of Army, C.A.2 (N.Y.) 1987, 832 F.2d 247. Civil Rights 1116(3)

Grocery bagger at main commissary of army post was not an employee of the army for Title VII purposes, considering that no army representative had any role in hiring, firing, or supervision of baggers except that Army had a right to veto head bagger in his hiring and to issue regulations affecting dress and conduct within immediate commissary area; moreover, baggers' work arrangements were subject to exclusive authority of head bagger, and baggers received no wages, but only tips, and they did not receive medical leave, insurance or retirement benefits from the Army. Mares v. Marsh, C.A.5 (Tex.) 1985, 777 F.2d 1066. Civil Rights 1116(1)

Term “military departments” in subsec. (a) of this section extending protection against

employment discrimination to "[a]ll personnel actions affecting employees or applicants for employment * * * in military departments * * *" includes only civilian employees of Army, Navy and Air Force. Gonzalez v. Department of Army, C.A.9 (Cal.) 1983, 718 F.2d 926. Civil Rights 1116(3)

Applicant for enlistment as uniformed member of armed services is not entitled to have application judged by standards of this subchapter; although this subchapter was intended to afford protection against discrimination to civilian employees and applicants for civilian employment in departments of Army, Navy and Air Force, neither this subchapter nor its standards are applicable to persons who enlist or apply for enlistment in any of armed forces of United States. Johnson v. Alexander, C.A.8 (Mo.) 1978, 572 F.2d 1219, certiorari denied 99 S.Ct. 579, 439 U.S. 986, 58 L.Ed.2d 658, rehearing denied 99 S.Ct. 1061, 439 U.S. 1135, 59 L.Ed.2d 98. Civil Rights 1127

Active service commissioned officer in the Public Health Service (PHS), who was assigned to federal Bureau of Prisons (BOP) detention center, was deemed, by statute, to be in active military service in the Armed Forces, and thus, officer was excluded from Title VII provision extending Title VII protections against discrimination to federal employees. Diaz-Romero v. Ashcroft, D.Puerto Rico 2007, 472 F.Supp.2d 156, affirmed 514 F.3d 115. Civil Rights 1116(3)

Feres doctrine, prohibiting United States military personnel from bringing actions based on injuries suffered incident to their service in armed forces, barred Title VII claims by dual status military technician in South Dakota National Guard alleging discrimination based on gender, race, and national origin in connection with revocation of her Mandatory Removal Date (MRD) waiver; decisions of National Guard and its employees with regard to her MRD were undeniably military in nature, while her removal from active status compromised her civilian employment at that time action taken by defendants was military personnel management decision because it only involved her military status and was not solely related to her civilian employment, and Guard's actions regarding her retirement from active military service after 30 years of active service were integrally related to military's unique structure and therefore nonjusticiable under *Feres*. Wetherill v. Geren, D.S.D.2009, 644 F.Supp.2d 1135, affirmed 616 F.3d 789, petition for certiorari filed 2010 WL 4626328. Militia 19

Title VII, which otherwise outlaws discrimination in employment based on race and other factors, provides no remedy for uniformed service members. Middlebrooks v. Thompson, D.Md.2005, 379 F.Supp.2d 774, affirmed in part , vacated in part 525 F.3d 341, certiorari denied 129 S.Ct. 581, 172 L.Ed.2d 432, on remand 2009 WL 2514111. Civil Rights 1116(3)

District court did not have subject matter jurisdiction over action in which former Navy lieutenant alleged that he received marginal grades on reports of officer fitness as result

of racial discrimination; Title VII does not apply to uniformed members of military. Collins v. Secretary of Navy, D.D.C.1993, 814 F.Supp. 130. Civil Rights 1126

Uniformed military are not exception to "members of military departments" expressly covered under Title VII, so that Title VII is exclusive judicial remedy for claims of sex discrimination brought by member of uniformed military; disagreeing with *Gonzalez v. Department of the Army*, 718 F.2d 926 (9th Cir.); *Taylor v. Jones*, 653 F.2d 1193 (8th Cir.); *Johnson v. Hoffman*, 424 F.Supp. 490 (E.D.Mo.), *aff'd sub nom*. *Johnson v. Alexander*, 572 F.2d 1219 (8th Cir.); *Cobb v. United States Merchant Marine Academy*, 592 F.Supp. 640 (E.D.N.Y.); and *Hunter v. Stetson*, 444 F.Supp. 238 (E.D.N.Y.). Hill v. Berkman, E.D.N.Y.1986, 635 F.Supp. 1228.

Female who sought to join the Naval Reserve in a purely military capacity could not maintain an action under this subchapter as it does not apply to uniformed members of the armed services. Cobb v. U.S. Merchant Marine Academy, E.D.N.Y.1984, 592 F.Supp. 640. Civil Rights 1126

195. National Guard, persons entitled to maintain action

Title VII applies to National Guard technicians, whose jobs are hybrid military civilian positions, except when they challenge personnel actions integrally related to military's unique structure. Mier v. Owens, C.A.9 (Ariz.) 1995, 57 F.3d 747, certiorari denied 116 S.Ct. 1317, 517 U.S. 1103, 134 L.Ed.2d 470. Civil Rights 1116(3)

Title VII claim by former member of Air National Guard regarding discharge from military duty was nonjusticiable; rule that neither Title VII nor its standards apply to persons who enlist in armed forces applies to reserve components of those forces. Becker v. Rice, W.D.Ark.1993, 827 F.Supp. 589. Civil Rights 1116(3); Federal Courts 13.10

Civilian employees working for Louisiana National Guard as technicians are "federal employees" for purposes of statute providing sole and exclusive remedy to federal employee for claims of job discrimination. Lopez v. Louisiana Nat. Guard, E.D.La.1990, 733 F.Supp. 1059, affirmed 917 F.2d 561. Civil Rights 1502

Even if the military was not "employer" within this subchapter, federal civilian employee who was required as condition to his employment, to be member of National Guard stated cause of action for discrimination in employment on basis that his military rank had been reduced in reprisal for his aiding civilian employee of Guard in presenting and prosecuting discrimination complaint on theory that the plaintiff's civilian employers had exploited their dual status as plaintiff's military and civilian superiors to pervert military decision-making process with intent of furthering goals in realm of civilian employment by discouraging processing of discrimination complaints. Hunter v. Stetson, E.D.N.Y.1977, 444 F.Supp. 238. Civil Rights 1532

196. Civilian employees of military, persons entitled to maintain action

Employment discrimination claim brought by an individual who had dual status as both a civilian technician and a National Guard technician was military and thus non-justiciable in a United States District Court under Title VII, where employee's claims would require review of her military service and qualifications. Fisher v. Peters, C.A.6 (Tenn.) 2001, 249 F.3d 433. Civil Rights 1116(3)

Title VII allows civilian employees in federal military departments to bring suit against government employer. Meister v. Texas Adjutant General's Dept., C.A.5 (Tex.) 2000, 233 F.3d 332, rehearing denied 247 F.3d 243, certiorari denied 121 S.Ct. 2194, 532 U.S. 1052, 149 L.Ed.2d 1025. Civil Rights 1125

Claim by former Air Reserve Technician (ART), that his discharge from Air Force Reserve, which resulted in termination of his civilian employment, was discriminatory, did not arise from his civilian position but was claim by member of uniformed services, and thus was not cognizable under Title VII; while actions leading to discharge had civilian component, in that discharge made him ineligible for civilian position, they nonetheless were actions taken within military sphere. Brown v. U.S., C.A.5 (La.) 2000, 227 F.3d 295, certiorari denied 121 S.Ct. 1098, 531 U.S. 1152, 148 L.Ed.2d 970. Civil Rights 1116(3)

Applicant for Commissioned Officer position in United States Public Health Service's Commissioned Corps (CCPHS) was covered by “military exception” and barred from proceeding with Title VII claim; while there might be civilian aspects to dual application procedure in CCPHS hirings, under which applicant had to make parallel civilian-type application in conjunction with her application for admission to Corps, personnel action was integrally related to military's unique structure. Middlebrooks v. Thompson, D.Md.2005, 379 F.Supp.2d 774, affirmed in part , vacated in part 525 F.3d 341, certiorari denied 129 S.Ct. 581, 172 L.Ed.2d 432, on remand 2009 WL 2514111. Civil Rights 1116(3)

197. Executive agencies, persons entitled to maintain action--Generally

Policy of encouraging private individuals injured by racial discrimination to seek relief made available under this subchapter becomes more compelling when defendant is federal agency, since this subchapter does not authorize Attorney General or Commission to bring suits on behalf of federal employees, who could not rely on public enforcement mechanism to protect their rights to freedom from employment discrimination in court. Davis v. Bolger, D.C.D.C.1981, 512 F.Supp. 61. Civil Rights 1522

198. ---- Bureau of Prisons, executive agencies, persons entitled to maintain action

Female employee of Bureau of Prisons had right to maintain private action against warden of correctional institution at which she was employed, head of Bureau of Prisons and Attorney General of the United States for injunctive and compensatory relief from alleged sex discrimination, where employee had filed complaint with Equal Employment Opportunity officer designated by Civil Service Commission and 180 days had passed from date of filing of complaint without final decision having been rendered. Reynolds v. Wise, N.D.Tex.1973, 375 F.Supp. 145. Civil Rights 1523

199. ---- Federal Deposit Insurance Corporation, executive agencies, persons entitled to maintain action

Status of former Federal Deposit Insurance Corporation employees as former federal excepted service employees did not preclude them from invoking provisions of Title VII. Castro v. U.S., C.A.1 (Puerto Rico) 1985, 775 F.2d 399. Civil Rights 1116(1)

200. ---- Federal Reserve banks, executive agencies, persons entitled to maintain action

Federal Reserve bank was "executive agency," within this section requiring that administrative remedies within Civil Service Commission be exhausted before employee of executive agency may maintain action under this subchapter on ground of discrimination in employment; thus employee of bank could not maintain such action since he had not complained to Commission. Dorsey v. Federal Reserve Bank of St. Louis, E.D.Mo.1978, 451 F.Supp. 683. Civil Rights 1514

201. ---- General Accounting Office, executive agencies, persons entitled to maintain action

In light of 1980 amendment of this section which deleted parenthetical clause "(other than the General Accounting Office)" from subsec. (a) of this section General Accounting Office is treated under this subchapter as executive agency, and all employees of Office, including excepted service employees are entitled to invoke its protection. Lawrence v. Staats, C.A.D.C.1981, 665 F.2d 1256, 214 U.S.App.D.C. 438. Civil Rights 1504

202. ---- Executive Residence employees, executive agencies, persons entitled to maintain action

Former White House chef failed to state claim against White House chief usher under Title VII arising out of denial of promotion; White House is not "executive agency" within meaning of statute extending Title VII to such agencies. Haddon v. Walters, C.A.D.C.1995, 43 F.3d 1488, 310 U.S.App.D.C. 63. Civil Rights 1116(1)

Employees of Executive Residence are not covered by section of Title VII prohibiting employment discrimination in executive agencies; accordingly, the district court lacked jurisdiction to hear the "disparate treatment" and "retaliation" claims asserted against Chief Usher at Executive Residence by White House chef. Haddon v. Walters, D.D.C.1993, 836 F.Supp. 1, affirmed 43 F.3d 1488, 310 U.S.App.D.C. 63. Civil Rights 1116(1)

203. Postal Service, persons entitled to maintain action

United States Postal Service employee lacked standing to bring a Title VII discrimination claim against Postmaster General based on his failure to grant a higher employment grade to a worker under her supervision. de Jesus v. Potter, D.Puerto Rico 2005, 397 F.Supp.2d 319, affirmed in part, vacated in part and remanded 211 Fed.Appx. 5, 2006 WL 3782922. Civil Rights 1522

Federal agency or United States Postal Service may not discriminate in their employment practices against qualified handicapped persons, and such persons are protected by procedures available under this section when they have reason to believe that discriminatory action has occurred. Smith v. U.S. Postal Service, E.D.Mich.1983, 570 F.Supp. 1415, affirmed 766 F.2d 205. Civil Rights 1218(4)

This section covers employees in the United States Postal Service. Raether v. Phillips, W.D.Va.1975, 401 F.Supp. 1393. Civil Rights 1125

204. District of Columbia, persons entitled to maintain action

Members of the District of Columbia fire department are the counterparts of employees of state and local government units, rather than federal employees, under this subchapter, so that they retained an independent right of action for unlawful discrimination under section 1981 of this title which was not dependent on initial resort to administrative procedures of this subchapter, thus, district court erred in dismissing fire fighter's suit under section 1981 of this title against the District of Columbia, its mayor, and its city administrator for alleged racial discrimination in employment on ground that this subchapter provided the exclusive judicial remedy. Torre v. Barry, C.A.D.C.1981, 661 F.2d 1371, 213 U.S.App.D.C. 147. Federal Civil Procedure 1788.6

Equal employment provision places same restrictions on federal and District of Columbia agencies as it does on private employers. Bundy v. Jackson, C.A.D.C.1981, 641 F.2d 934, 205 U.S.App.D.C. 444. Civil Rights 1116(1)

205. Legislative and judicial branch positions in competitive service, persons entitled to maintain action

Where discharged congressional staff member was not in the competitive service, the remedial provisions of Title VII of the Civil Rights Act of 1964 were not available to her. Davis v. Passman, U.S.La.1979, 99 S.Ct. 2264, 442 U.S. 228, 60 L.Ed.2d 846. Civil Rights 1522

Position of district court probation officer was not specifically included in competitive service by statute and, therefore, Title VII did not apply to probation officer's discharge. Bryant v. O'Connor, D.Kan.1986, 671 F.Supp. 1279, affirmed 848 F.2d 1064. Civil Rights 1128

206. Prisoners, persons entitled to maintain action

Prison inmate was not "employee" of Federal Bureau of Prisons in connection with job assignments, and thus could not pursue a claim for discrimination in connection therewith under either Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act. Williams v. Meese, C.A.10 (Kan.) 1991, 926 F.2d 994, on remand. Civil Rights 1116(1); Labor And Employment 2458

207. Public Health Service, persons entitled to maintain action

The 1972 Amendments to the Civil Rights Act of 1964, [Civil Rights Act of 1964, § 717, as amended, 42 U.S.C.A. § 2000e-16], extending protections to federal employees did not extend the protections of Title VII to commissioned officers or applicants for commissioned officer positions in the Public Health Service. Salazar v. Heckler, C.A.10 (Colo.) 1986, 787 F.2d 527. Civil Rights 1116(3)

Commissioned officers of United States Public Health Service (PHS) are not excluded from Title VII coverage under "military exception," but rather PHS officers are "employees" under Title VII, despite similarities between commissioned PHS officers and uniformed military personnel; PHS is not one of "armed forces," but is unit of Department of Health and Human Services (HHS), with purpose to aid and improve public health, PHS officers may quit on their own unless PHS has been declared military service during national emergency or war, and PHS officers are not subject to Code of Military Justice unless the President so declares. Carlson v. U.S. Dept. of Health and Human Services, D.Md.1995, 879 F.Supp. 545. Civil Rights 1116(3)

208. Former employees, persons entitled to maintain action

Former United States Department of Agriculture (USDA) employee who had been denied two promotions lacked standing to challenge Equal Employment Opportunity Commission's (EEOC) approval of administrative class action settlement agreement resolving race discrimination claims brought by a group of Asian/Pacific-American em-

ployees against the USDA under Title VII, where he was not a member of the class, which was limited to current USDA employees, and he was not prejudiced by the settlement. Rahman v. Vilsack, D.D.C.2009, 673 F.Supp.2d 15. Civil Rights 1522

Former employee of Department of Labor (DOL) lacked standing, under Article III, to object to DOL's alleged violation of Title VII by pattern or practice of race discrimination that postdated employee's departure from DOL. Hayes v. Chao, D.D.C.2008, 592 F.Supp.2d 51. Civil Rights 1522

Former civilian employee of Navy was neither employee nor applicant for employment with Department of Labor, and thus could not state claim for reprisal under Title VII or its regulations against Department concerning Department's delay in investigating and resolving his complaint about how the Office of Workers' Compensation Programs (OWCP) had handled and rejected his recurrence claim for workers' compensation benefits arising out of his Navy employment. Coates v. Herman, E.D.Pa.2002, 186 F.Supp.2d 546. Armed Services 27(4); Civil Rights 1116(1)

VI. PROPER PERSON AS DEFENDANT

<Subdivision Index>

231. Proper person as defendant generally

Manager's comments indicating that she was happy with hiring of women, she would favor a minority candidate over a nonminority candidate, and it was good for white men to experience a little discrimination did not show discriminatory intent to deny promotions to male federal employees based on gender; the manager was not a decisionmaker for the employment decisions at issue. Mlynczak v. Bodman, C.A.7 (Ill.) 2006, 442 F.3d 1050. Civil Rights 1179

Title VII requires that federal employee who files civil action alleging employment discrimination must name head of department, agency, or unit as defendant. Vinieratos v. U.S., Dept. of Air Force Through Aldridge, C.A.9 (Cal.) 1991, 939 F.2d 762. Civil Rights 1531

The only proper defendant in a racial discrimination suit under this subchapter against the United States is the head of the department, agency, or unit in which the allegedly discriminatory acts transpired. Hackley v. Roudebush, C.A.D.C.1975, 520 F.2d 108, 171 U.S.App.D.C. 376. See, also, Carver v. Veterans Administration, D.C.Tenn.1978, 455 F.Supp. 544; Rozier v. Roudebush, D.C.Ga.1977, 444 F.Supp. 861; Brooks v. Brinegar, D.C.Okl.1974, 391 F.Supp. 710; Jones v. U.S., D.C.D.C.1974, 376 F.Supp. 13. Civil Rights 1531

Title VII and the ADEA do not impose individual liability; the only proper defendant in suits brought under these statutes is the head of the department or agency being sued. Wilson, Jr. v. U.S. Dept. of Transp., D.D.C.2010, 2010 WL 5483368. Civil Rights 1531

Under Title VII, only the “head” of a federal department or agency may be sued, and only in his official capacity. Williams v. Chu, D.D.C.2009, 641 F.Supp.2d 31. Civil Rights 1527

Only permissible defendant against federal employee's claims of gender and age discrimination and retaliation under Title VII and ADEA was head of federal agency in which alleged discriminatory actions occurred. Mitchell v. Chao, N.D.N.Y.2005, 358 F.Supp.2d 106. Civil Rights 1531; United States 135

Only proper defendant in Title VII suit is head of department, agency, or unit in which allegedly discriminatory acts transpired. Mason v. African Development Foundation, D.D.C.2004, 355 F.Supp.2d 85. Civil Rights 1531

The only proper defendant in a Title VII suit or a claim of discrimination under the Rehabilitation Act is the head of the agency accused of having discriminated against the plaintiff. Farrell v. U.S. Dept. of Justice, M.D.Fla.1995, 910 F.Supp. 615. Civil Rights 1531

Deputy marshal who was terminated by United States Marshal Service (USMS) could bring Rehabilitation Act suit against Attorney General, who had overall supervisory authority over USMS, but not against USMS, its director, or United States Attorney as well, since deputy could not sue more than one department or agency head in his or her official capacity. Lassiter v. Reno, E.D.Va.1995, 885 F.Supp. 869, affirmed 86 F.3d 1151, certiorari denied 117 S.Ct. 766, 519 U.S. 1091, 136 L.Ed.2d 712. Civil Rights 1531

Postal Service employee could not name, on appeal of Merit Systems Protection Board (MSPB) decision finding his racial discrimination claim without merit, specific Postal Service employees as defendants; under provision of Title VII governing claims against federal government, proper named defendant is "head of the department, agency, or unit" allegedly discriminating against plaintiff. Kirkland v. Runyon, S.D.Ohio 1995, 876 F.Supp. 941. Officers And Public Employees 72.43

Head of employing agency is only proper defendant in Title VII employment discrimination action against federal government as employer. Pierce v. Runyon, D.Mass.1994, 857 F.Supp. 129. Civil Rights 1531

In civil action based on allegedly discriminatory employment practices by federal agency, only proper party defendant is head of agency involved. Beth v. Espy, D.Kan.1994, 854 F.Supp. 735. Civil Rights 1531

Employee of Commission district office was not precluded from bringing assault claim against supervisors other than the head of the office by subsec. (c) of this section requiring federal employment discrimination claims to be brought only against the head of the department, since the assault claim was not a claim for employment discrimination but was distinct wrong. Lage v. Thomas, N.D.Tex.1984, 585 F.Supp. 403. United States 50.10(4)

Head of allegedly discriminatory agency is proper defendant with respect to a federal employee's employment discrimination claim. Grier v. Headquarters, U.S. Army Forces Command, Ft. McPherson, Ga., N.D.Ga.1983, 574 F.Supp. 183. Civil Rights 1531

In civil actions based on discriminatory employment practices by federal agency, only proper party defendant is head of the involved agency, and, thus, claims against other individual agency officials would be impermissible. Langster v. Schweiker, N.D.Ill.1983, 565 F.Supp. 407. Civil Rights 1531

232. Administrator of Small Business Administration, proper person as defendant

In any employment discrimination action against federal government, head of department, agency, or unit, as appropriate, shall be defendant; therefore, only administrator, as head of Small Business Administration, was proper defendant in sex discrimination

suit brought against Small Business Administration, consequently, Small Business Administration, its regional director, and its district director were improperly joined. Hall v. Small Business Admin., C.A.5 (Miss.) 1983, 695 F.2d 175. Civil Rights 1531

233. Attorney General of United States, proper person as defendant

In sex discrimination action under this subchapter brought by Deputy United States Marshal, the Attorney General of the United States was the head of the department, agency or unit against which plaintiff brought her complaint and, thus, all other named defendants, including the United States Marshal, District of North Dakota, would be dismissed. Dean v. U.S., D.C.N.D.1980, 484 F.Supp. 888. Federal Civil Procedure 1750

As federal employee, employee of Drug Enforcement Administration (DEA) was limited to bringing Title VII action to sue for employment discrimination and to bringing such claims against Attorney General of the United States, as head of federal agency of which DEA was part, necessitating dismissal of employee's Title VII claims against other federal and state officials and agencies and of employee's claims against all defendants, including Attorney General, alleging employment discrimination in violation of state and local laws. Morrongiello v. Ashcroft, S.D.N.Y.2004, 2004 WL 112944, Unreported. Civil Rights 1502; Civil Rights 1527; Civil Rights 1704

234. Commander of Naval Postgraduate School, proper person as defendant

In action under this section brought by a white security guard at naval postgraduate school on claim of racial discrimination in procedure whereby a black security guard was promoted to position of guard supervisor over plaintiff and four other applicants for promotion, only proper defendant in case was commander of naval postgraduate school. Mosley v. U.S., N.D.Cal.1977, 425 F.Supp. 50. Civil Rights 1531

235. Director of Defense Logistics Agency, proper person as defendant

Director of Defense Logistics Agency (DLA) was only proper defendant to DLA employee's Title VII claims. Williams v. McCausland, S.D.N.Y.1992, 791 F.Supp. 992. Civil Rights 1531

236. Office of Personnel Management, proper person as defendant

Applicant denied employment by federal agencies could not maintain Title VII Action against Merit Systems Protection Board and its chairman; Board was not head of employing agency but rather Office of Personnel Management provided hiring guidelines for applicant's disqualification and thus could be considered head of employing agency for hiring purpose and as such would be proper defendant. Lewis v. Newman,

N.D.Cal.1991, 788 F.Supp. 1086. Civil Rights 1531

237. Postmaster General, proper person as defendant

Postmaster General was only properly named defendant in Title VII employment discrimination action against Postal Service by former postal worker. Soto v. U.S. Postal Service, C.A.1 (Puerto Rico) 1990, 905 F.2d 537, certiorari denied 111 S.Ct. 679, 498 U.S. 1027, 112 L.Ed.2d 671. Civil Rights 1531

Postmaster General is deemed the only appropriate defendant for a civil rights action against the United States Postal Service. Mahoney v. U.S. Postal Service, C.A.9 (Cal.) 1989, 884 F.2d 1194. Civil Rights 1531

Postmaster General was the only proper defendant for employee's sex discrimination action against the United States Postal Service. Cooper v. U.S. Postal Service, C.A.9 (Cal.) 1984, 740 F.2d 714, certiorari denied 105 S.Ct. 2034, 471 U.S. 1022, 85 L.Ed.2d 316. See, also, Marshburn v. Postmaster General of U.S., D.Md.1988, 678 F.Supp. 1182, affirmed 861 F.2d 265; Johnson v. U.S. Postal Service, D.Colo.1986, 113 F.R.D. 73, affirmed 861 F.2d 1475, rehearing denied, certiorari denied 110 S.Ct. 54, 493 U.S. 811, 107 L.Ed.2d 23. Civil Rights 1531

Postmaster General is the only properly named defendant in an employment discrimination suit against the Postal Service, under Title VII. Bunda v. Potter, N.D.Iowa 2005, 369 F.Supp.2d 1039. Civil Rights 1531

Former Postmaster was not proper defendant in former employee's action, asserting breach of Equal Employment Opportunity Commission (EEOC) agreement under Title VII, and, therefore, action against former Postmaster would be dismissed. Montalvo v. U.S. Postal Service, E.D.N.Y.1995, 887 F.Supp. 63, affirmed 1996 WL 935448. Federal Civil Procedure 1750

Only proper defendant in a Title VII case brought by government employee is the head of the employing agency. Meyer v. Runyon, D.Mass.1994, 869 F.Supp. 70. Civil Rights 1531

Discharged mail carrier's claims against supervisor and Postal Service, under civil rights law applicable to federal employees, were required to be dismissed, as statute authorized suits only against postmaster general. Maher v. U.S. Postal Service, S.D.N.Y.1990, 729 F.Supp. 1444. Civil Rights 1531

Postal employee seeking to commence employment discrimination suit against Postal Service was required to name Postmaster General as defendant. Rys v. U.S. Postal Service, D.Mass.1989, 702 F.Supp. 945, affirmed 886 F.2d 443. Civil Rights 1531

In actions against the Postal Service by an aggrieved employee claiming discrimination under Title VII, a motion to dismiss will be proper where the plaintiff has failed to name the head of the United States Postal Service, that is, the Postmaster General of the United States. Healy v. U.S. Postal Service, E.D.N.Y.1987, 677 F.Supp. 1284. Civil Rights 1531

Former Postal Service employee's complaint alleging employment discrimination could be brought only against Postmaster General, and thus claim against Postal Service itself and against employee's supervisor would be dismissed. Quillen v. U.S. Postal Service, E.D.Mich.1983, 564 F.Supp. 314. Civil Rights 1531

In employment discrimination action based on allegations of discrimination against Hispanics and women in the "San Francisco District" of the Postal Service, it would be premature to dismiss as defendants certain local postal officials, despite contention that the Postmaster General of the United States was the only proper defendant under this subchapter and because of ability to grant the relief sought, where responsibility for acts complained of had not been determined and defendants alleged decentralization of decisions affecting employment, and where none of the named defendants had been sued in their individual capacities. I.M.A.G.E. v. Bailar, N.D.Cal.1978, 78 F.R.D. 549. Civil Rights 1531

District court lacked jurisdiction over Title VII race discrimination complaint filed by former Postal Service (USPS) employee that failed to name Postmaster General in his official capacity as defendant; complaint instead named USPS and different official. Marshall v. National Assoc. of Letter Carriers Br. 36, S.D.N.Y.2003, 2003 WL 223563, Unreported. Civil Rights 1531

238. Secretary of Agriculture, proper person as defendant

Secretary of Agriculture, not the United States Department of Agriculture (USDA) itself, was only proper defendant in former USDA employee's action under Title VII alleging that he was discriminated against and subjected to a hostile work environment based on his race and national origin and retaliated against for complaining about these allegedly wrongful employment practices. Ghaly v. U.S. Dept. of Agriculture, E.D.N.Y.2010, 739 F.Supp.2d 185. Civil Rights 1531; United States 135

Secretary of United States Department of Agriculture (USDA) was only proper defendant in federal employee's Title VII suit. Clement v. Motta, W.D.Mich.1991, 820 F.Supp. 1035. Civil Rights 1531

Complaint alleging discrimination in federal employment would be dismissed as to all defendants except Secretary of Agriculture who was head of agency involved. Royal v.

Bergland, D.C.D.C.1977, 428 F.Supp. 75, certiorari denied 98 S.Ct. 253, 434 U.S. 883, 54 L.Ed.2d 169, rehearing denied 98 S.Ct. 541, 434 U.S. 977, 54 L.Ed.2d 471. Federal Civil Procedure 1788.6

239. Secretary of Commerce, proper person as defendant

Secretary of Commerce was proper defendant in employment discrimination action brought by former federal employee of National Oceanic and Atmosphere Administration and since employee failed to file complaint naming Secretary as defendant within 30 days of a receipt of EEOC's final decision on her administrative complaint of discrimination, employment discrimination action was time barred. De La Perriere v. U.S. Dept. of Commerce, E.D.Mich.1989, 711 F.Supp. 350. Civil Rights 1530; Civil Rights 1531

240. Secretary of Defense, proper person as defendant

Proper defendant in employment discrimination action brought by Army & Air Force Exchange Service employee would be head of Department of Defense, the Secretary of Defense, as AAFES was part of Department of Defense by statutory definition, or Secretary of Air Force and Secretary of Army jointly, as AAFES is run jointly by Department of Air Force and Department of the Army, for purposes of action under the Age Discrimination in Employment Act, Title VII, and the Rehabilitation Act. Honeycutt v. Long, C.A.5 (Tex.) 1988, 861 F.2d 1346. Civil Rights 1531

241. Secretary of Army, proper person as defendant

Proper defendant in age discrimination action by civilian employee of the Army was the Secretary of the Army, and not the Secretary of Defense. Barhorst v. Marsh, E.D.Mo.1991, 765 F.Supp. 995. Civil Rights 1531

242. Secretary of Health and Human Services, proper person as defendant

Regardless of whether administrative law judge's (ALJ's) action was construed as mixed case under Civil Service Reform Act (CSRA) or as straight discrimination case, only proper defendant was Secretary of agency for which ALJ was employed; thus, counts against individual agency employees in their professional capacities would be dismissed. Fernandez v. Donovan, D.D.C.2011, 2011 WL 118188. Officers And Public Employees 72.43

In civil rights action against former Secretary of Health, Education and Welfare [now Secretary of Health and Human Services] and United States, for back pay, new Secretary was only proper party defendant, and thus she would be substituted as defendant, where she was head of department which allegedly discriminated in its employment

practices; moreover, because Secretary was sued in official capacity as federal official, it was appropriate to substitute new holder of office as party defendant. Morton v. Harris, N.D.Ga.1980, 86 F.R.D. 437, affirmed 628 F.2d 438, certiorari denied 101 S.Ct. 1766, 450 U.S. 1044, 68 L.Ed.2d 243. Federal Civil Procedure 361

243. Secretary of Interior, proper person as defendant

Department of Interior employee's unlawful termination complaint was not subject to dismissal, though Department, rather than Secretary, was improperly named as defendant in caption, in that allegations made in body of complaint made it plain that Secretary was intended as defendant. Barsten v. Department of Interior, C.A.9 (Cal.) 1990, 896 F.2d 422. Federal Civil Procedure 1748

244. Secretary of Labor, proper person as defendant

Regional manpower administrator for Department of Labor could not be liable to Department of Labor employee who was allegedly discriminated against in promotion as such action could be maintained only against the head of the department which employed the employee, in this case, the Secretary of Labor. Jones v. Brennan, N.D.Ga.1975, 401 F.Supp. 622. Civil Rights 1527

245. Secretary of Navy, proper person as defendant

Employee of the Department of the Navy was required to name the Secretary of the Navy as defendant in her Title VII action for sex discrimination in employment. Gardner v. Gartman, C.A.4 (N.C.) 1989, 880 F.2d 797. Civil Rights 1531

Secretary of Navy was only proper defendant in Navy employee's employment discrimination action under Title VII and Age Discrimination in Employment Act (ADEA). Stoyanov v. Winter, D.D.C.2009, 643 F.Supp.2d 4, affirmed 2010 WL 605083, rehearing en banc denied. Civil Rights 1531

Secretary of Navy, rather than Secretary of Defense, was proper party defendant in Title VII action arising out of employment applicant's nonselection for position at United States Naval Station. Cannon-Atkinson v. Cohen, D.Puerto Rico 2000, 95 F.Supp.2d 70, affirmed 6 Fed.Appx. 44, 2001 WL 391501. Civil Rights 1531

Secretary of the Navy, in his official capacity, was the only proper defendant in Title VII sexual harassment suit brought against the federal government. King v. Dalton, E.D.Va.1995, 895 F.Supp. 831. Civil Rights 1531

246. Secretary of Transportation, proper person as defendant

Fact that Title VII plaintiff named Department of Transportation in original complaint was insufficient to place proper party defendant, Secretary of Transportation, on notice of suit for purposes of determining whether subsequent amendment to name secretary related back to time of filing of original complaint. Johnson v. Burnley, C.A.4 (N.C.) 1989, 887 F.2d 471, rehearing granted , opinion vacated , appeal dismissed. Limitation Of Actions 124

247. Secretary of Treasury, proper person as defendant

Internal Revenue Service was not a "department," "agency" or "unit" under statute requiring that employment discrimination actions be brought against head of employing department, agency or unit, and thus, Commissioner of IRS was not a proper defendant in employment discrimination action; rather, Secretary of Treasury was the proper defendant. Hancock v. Egger, C.A.6 (Mich.) 1988, 848 F.2d 87. Civil Rights 1531

Secretary of Treasury in his official capacity was the only appropriate defendant in Title VII suit brought by former criminal investigator for the Internal Revenue Service. Holloway v. Bentsen, N.D.Ind.1994, 870 F.Supp. 898. Civil Rights 1531

Only Secretary of Treasury, not Customs Inspector, was proper party defendant to United States Customs Service (USCS) employee's Title VII action. Lewis v. Snow, S.D.N.Y.2003, 2003 WL 22077457, Unreported. Civil Rights 1531

248. Secretary of Veterans Affairs, proper person as defendant

Where both right-to-sue letter given to Veterans Administration employee and the EEOC investigative report adequately identified the proper defendant in employment discrimination action as the administrator of the Veterans Administration [now Secretary of Veterans Affairs] fact that the caption identified the Administration, rather than the administrator, as the defendant did not bar pro se suit by employee. Cupp v. Veterans Admin. Hosp., N.D.Cal.1987, 677 F.Supp. 1018. Civil Rights 1523

249. Miscellaneous defendants, proper person as defendant

Naval shipyard was not an "agency" for purpose of Title VII, and therefore commander of shipyard could not be head of agency nor proper defendant to suit. Johnston v. Horne, C.A.9 (Wash.) 1989, 875 F.2d 1415. Civil Rights 1527; Civil Rights 1531

Employment discrimination action was not subject to dismissal, although improper defendant was named at top of plaintiff's timely filing, where proper defendant was sufficiently identified in plaintiff's request for counsel, plaintiff attached proper defendant's own disposition of plaintiff's claim to request for appointed counsel and the Commission right-to-sue letter, naming the proper defendant, was properly attached to the request.

Rice v. Hamilton Air Force Base Commissary, C.A.9 (Cal.) 1983, 720 F.2d 1082. Federal Civil Procedure 1748

Deputy Librarian was not proper defendant in Library of Congress employee's Title VII action. Baker v. Library of Congress, D.D.C.2003, 260 F.Supp.2d 59. Civil Rights 1531

General Accounting Office (GAO) human resource manager and supervisor, as non-department, agency, or unit heads, could not be sued under Title VII. Rowland v. Walker, D.D.C.2003, 245 F.Supp.2d 136, affirmed 2003 WL 21803321, rehearing denied. Civil Rights 1116(2)

Employee could not sustain employment discrimination claim against the Department of Homeland Security (DHS) based on acts committed by the United States Marshals Service (USMS) while he worked for USMS, since USMS was a Department of Justice (DOJ) agency, not a DHS agency. Gong v. Napolitano, D.D.C.2009, 612 F.Supp.2d 58. Civil Rights 1116(1)

Director of the United States Patent and Trademark Office (USPTO), rather than the Secretary of the Department of Commerce (DOC), was the proper defendant in former patent examiner's employment discrimination suit; although the USPTO is a part of the DOC, the Secretary was not responsible for personnel action, omissions, and practices within the USPTO. Varma v. Gutierrez, D.D.C.2006, 421 F.Supp.2d 110. Civil Rights 1531

Former federal employee could not bring employment discrimination action against subordinates of agency, only against head of agency in which she was employed. Arizmendi v. Lawson, E.D.Pa.1996, 914 F.Supp. 1157. Civil Rights 1116(1)

United States Attorney General was the only proper defendant in action under Title VII and Rehabilitation Act brought by Deputy United States Marshal. Farrell v. U.S. Dept. of Justice, M.D.Fla.1995, 910 F.Supp. 615. Civil Rights 1531

Adjutant General of Maine Army National Guard was not proper party defendant to black enlistee's action for violation of statute which prohibits employment discrimination in military departments and which states that head of department is defendant; declining to follow *Fischer v. U.S. Department ofTransportation*, 430 F.Supp. 1349 (D.Mass.); *Beasley v. Griffin*, 427 F.Supp. 801 (D.Mass.); *I.M.A.G.E. v. Bailar*, 78 F.R.D. 549 (N.D.Cal.); *Guilday v. Department of Justice*, 451 F.Supp. 717 (D.Del.); *Hunt v.Schlesinger*, 389 F.Supp. 725 (W.D.Tenn.). James v. Day, D.Me.1986, 646 F.Supp. 239. Civil Rights 1531

Although federal employee failed to name a proper party defendant in action seeking

interest on back pay awarded under this subchapter and an award of attorney fees the district court would reach merits of motion to dismiss and motion for summary judgment, on assumption that the employee would amend her pleadings to conform to requirements of this section. Fischer v. U. S. Dept. of Transp., D.C.Mass.1977, 430 F.Supp. 1349. Federal Civil Procedure 392

In action brought by black employee of United States Customs Service to recover retroactive promotion and back pay, chairman of Customs Service was not a proper party defendant. Beckwith v. Hampton, D.C.D.C.1977, 430 F.Supp. 183. Civil Rights 1531

Federal officials who were in chain of authority over region of customs service in which employment discrimination claimant worked were proper defendants in employee's employment discrimination suit. Beasley v. Griffin, D.C.Mass.1977, 427 F.Supp. 801. Civil Rights 1531

Neither the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury nor its subdivisions were a “department, agency, or unit” within meaning of this section, and defendants who were heads of the Bureau and its subdivisions were not proper defendants in employment discrimination suit by the Bureau, and Secretary of Treasury was the only proper defendant. Stephenson v. Simon, D.C.D.C.1976, 427 F.Supp. 467. Civil Rights 1531

Proper defendant in Title VII action by employee at federal government agency was successor of federal agency head, to whom position had been transferred pursuant to statute, not officials who held position when cause of action arose. Steik v. Garcia, N.D.Cal.2003, 2003 WL 22992223, Unreported. Civil Rights 1531

Male co-worker of female postal employee, who allegedly subjected employee to sexual harassment but was not alleged to be a supervisor, could not be sued under Title VII. Fairley v. Potter, N.D.Cal.2003, 2003 WL 403361, Unreported. Civil Rights 1116(2)

VII. TIME FOR BRINGING ACTION

<Subdivision Index>

271. Time for bringing action generally

Initially, a complainant alleging discrimination must seek relief in the agency that has allegedly discriminated against him; he then may seek further administrative review with the Civil Service Commission [now with EEOC] or, alternatively, he may, within 30 days [now 90 days] of receipt of notice of the agency's final decision, file suit in federal district court without appealing to the Civil Service Commission [now to EEOC], and, if he does appeal to the Commission, he may file suit within 30 days [now 90 days] of the Commission's final decision; in any event, the complainant may file a civil action if, after 180 days from the filing of the charge or the appeal, the agency or Civil Service Commission [now or the EEOC] has not taken final action. Brown v. General Services Administration, U.S.N.Y.1976, 96 S.Ct. 1961, 425 U.S. 820, 48 L.Ed.2d 402.

When Congress increased from 30 to 90 days the time allotted for judicial review under statute prohibiting discriminatory practices in employment by federal government, it assumed new time limits would apply to all federal employees with Title VII claims against federal government. Nunnally v. MacCausland, C.A.1 (Mass.) 1993, 996 F.2d 1. Civil Rights 1530

Claim by Library of Congress police officers that merger of Library of Congress Police

Force and United States Capitol Police subjected them to race and age discrimination, in violation of Title VII and Age Discrimination in Employment Act (ADEA), was ripe for adjudication, even though no discriminatory acts had yet been implemented, where United States Capitol Police and Library of Congress Police Merger Implementation Act mandated that Library Police officers above certain age and without requisite years of service would not become Capitol Police officers. Fraternal Order of Police Library of Congress Labor Committee v. Library of Congress, D.D.C.2010, 692 F.Supp.2d 9. Federal Courts 13.10

Ninety-day time limit for filing Title VII action is not jurisdictional, but is akin to an affirmative statute of limitations defense. Nuskey v. Hochberg, D.D.C.2009, 657 F.Supp.2d 47. Civil Rights 1530

Allegations that African-American program manager at Federal Aviation Administration (FAA) was unaware of alleged discriminatory pay differences between herself and similarly situated white co-workers until immediately before she filed her Equal Employment Opportunity (EEO) complaint, and relied on assurances from FAA management that agency's pay conversion had been conducted fairly and in accordance with policy, made it unclear whether manager's claims under Title VII of Civil Rights Act, Age Discrimination in Employment Act (ADEA), and the Equal Pay Act (EPA) were time-barred for failure to timely exhaust administrative remedies, and thus, dismissal of action was improper. Williams-Jones v. LaHood, D.D.C.2009, 656 F.Supp.2d 63. Civil Rights 1505(4); Civil Rights 1514; Labor And Employment 2194

Unlike Title VII, which clearly specifies that federal employees must bring suit, if at all, within 90 days of final administrative decision, Age Discrimination in Employment Act (ADEA) provision protecting federal employees makes no mention of limitations period. Price v. Greenspan, D.D.C.2005, 374 F.Supp.2d 177, affirmed 470 F.3d 384, 373 U.S.App.D.C. 445. Civil Rights 1530

The hostile work environment theory and the continuing violation doctrine are not the same; not every hostile work environment claim presents a plausible continuing violation under Title VII. Randall v. Potter, D.Me.2005, 366 F.Supp.2d 104. Civil Rights 1147; Civil Rights 1505(7)

Title VII plaintiff who has filed a civil suit after the expiration of the 180-day period for seeking administrative relief does not have an affirmative burden to show that the Equal Employment Opportunity Commission (EEOC) actually carried out its legislative mandate to investigate charges of discrimination during that period. Hill v. Washington Metropolitan Area Transit Authority, D.D.C.2002, 231 F.Supp.2d 286.

Procedure for challenging racial discrimination by the federal government or its agencies requires the employee to first complain to the agency employing him and within 30

days [now 90 days] of final agency action on his complaint, the employee may elect to either file a civil action in a federal district court or to appeal that final agency decision to the Civil Service Commission [now to EEOC], and if an appeal is taken to the Commission, the employee may file a civil action within 30 days [now 90 days] of receipt of notice of the Commission's final action. Tomlin v. U. S. Air Force Medical Center, S.D.Ohio 1974, 369 F.Supp. 353. Civil Rights 1513; Civil Rights 1530

272. Construction, time for bringing action

Time limit of 30 days [now 90 days] for filing employment discrimination suit against the federal government after receipt of notice of final action from the Equal Employment Opportunity Commission is strictly enforced and failure to name the proper defendant within the limitations period deprives the district court of jurisdiction over the matter. Mahoney v. U.S. Postal Service, C.A.9 (Cal.) 1989, 884 F.2d 1194. Civil Rights 1530

Requirement of this section that federal employee file his action within 30 days [now 90 days] after receipt of notice of final agency action must ordinarily be strictly construed. Coles v. Penny, C.A.D.C.1976, 531 F.2d 609, 174 U.S.App.D.C. 277. Civil Rights 1530

Although procedural requirements of this subchapter are to be liberally construed in order to effectuate its purposes, court lacks power to extend, even by few days, statutory time limit for filing. Copeland v. Brennan, D.C.D.C.1975, 414 F.Supp. 644. Civil Rights 1530

273. Construction with Federal Rules of Civil Procedure, time for bringing action

A Postal Service employee who failed initially to name the proper defendant in her employment discrimination action, when she named the Postal Service rather than the Postmaster General, could not thereafter amend her complaint to name the correct party, even though she had timely filed her complaint and had effected service within the 120-day requirement for service of process under the Federal Rules of Civil Procedure, where she had failed to serve the complaint within the 30-day [now 90-day] limitations period after receipt of the right-to-sue letter. Hughes v. U.S. Postal Service, S.D.N.Y.1988, 700 F.Supp. 779. Federal Civil Procedure 392

Title VII claimant was not entitled to three extra days, under Rule 6(e), providing for additional three days after service by mail, in which to file his civil action in federal district court after receiving notice of decision by Equal Employment Opportunity Commission that Department of Army had not removed him from federal employment due to religious and ethnic discrimination, in that 30-day [now 90 day] time period in which to file civil action commenced upon receipt by claimant of right-to-sue notice from Commission.

Dimetry v. Department of U.S. Army, E.D.N.C.1985, 637 F.Supp. 269.

274. Jurisdictional nature of provision, time for bringing action

Compliance with filing requirements of Title VII is not jurisdictional prerequisite; rather it is condition precedent to suit that functions like statute of limitations and is subject to waiver, estoppel, and equitable tolling. Million v. Frank, C.A.10 (Okla.) 1995, 47 F.3d 385. Civil Rights 1519

District court lacked subject matter jurisdiction to hear federal employee's complaint for preliminary injunction prohibiting Bureau of Alcohol, Tobacco, and Firearms from transferring employee pending final disposition of his employment discrimination claim; employee filed his action in district court before 180 days expired from his filing with Equal Employment Opportunity Commission (EEOC). Knopp v. Magaw, C.A.10 (Okla.) 1993, 9 F.3d 1478. Civil Rights 1530

A Title VII suit alleging federal employment discrimination must be filed within 30 days [now 90 days] of receipt of right-to-sue notice from the Equal Employment Opportunity Commission (EEOC); 30-day [now 90-day] limitations period is jurisdictional and not subject to equitable tolling. Watkins v. Lujan, C.A.5 (La.) 1991, 922 F.2d 261. Civil Rights 1530

Subject matter jurisdiction to consider Title VII complaint against federal agency was lacking due to pro se complainant's failure to name agency head as proper defendant within 30 days [now 90 days] of receiving notice of agency's final action, notwithstanding contention that 30-day [now 90-day] period was statute of limitations that was subject to tolling because complainant was misled about proper defendant and that proper defendant was ascertainable both from complaint and from right-to-sue letter attached to it; naming of proper defendant within 30 days [now 90 days] was jurisdictional requirement that was not subject to tolling, and, while agency disposition would have been from agency head himself and would have provided clue that he was proper defendant, both complaint and letter merely listed agency. Lubniewski v. Lehman, C.A.9 (Cal.) 1989, 891 F.2d 216. Civil Rights 1530

Federal employee's compliance with requirement that actions against United States for alleged violations of Title VII be commenced within 30 days [now 90 days] of employee's receipt of notice of final agency action is not a prerequisite to district court's jurisdiction; 30-day [now 90-day] limitation is similar to statute of limitation and is subject to equitable tolling. Washington v. Ball, C.A.11 (Ga.) 1989, 890 F.2d 413. Civil Rights 1530

Thirty-day [now 90 day] period after final agency decision, within which federal employee bringing discrimination claim must name appropriate head of department, agency or

unit, is jurisdictional. Johnston v. Horne, C.A.9 (Wash.) 1989, 875 F.2d 1415. Civil Rights 1530

Thirty-day [now 90-day] period established by Civil Rights Act for filing civil action after Equal Employment Opportunity Commission issues final decision that there has been no discrimination is not jurisdictional, but instead is subject to equitable tolling, even in suits against United States Government. Warren v. Department of Army, C.A.8 (Mo.) 1989, 867 F.2d 1156.

Government employee's amended complaint in Title VII employment discrimination suit that properly named Secretary of the Interior as defendant did relate back to initial complaint, and district court accordingly had jurisdiction over action on theory action was timely brought against head of agency; civil rule providing for relation back of claim amendment provides that delivery or mailing of process to United States attorney or Attorney General of the United States satisfies rule requirements as to federal agency or officer, and employee served United States attorney and mailed process to United States Attorney General before her time for bringing action had expired. Jordan v. Clark, C.A.9 (Alaska) 1988, 847 F.2d 1368, certiorari denied 109 S.Ct. 786, 488 U.S. 1006, 102 L.Ed.2d 778. Limitation Of Actions 121(2)

Thirty-day [now 90-day] limitation for federal employees' filing employment discrimination actions is a jurisdictional requirement that is not subject to equitable tolling. Bell v. Veterans Admin. Hosp., C.A.5 (La.) 1987, 826 F.2d 357. Limitation Of Actions 104.5

There was no subject-matter jurisdiction of employment discrimination claim against the Postal Service under this section where plaintiff did not timely file suit after receiving denial of his claim by the Commission. Newbold v. U.S. Postal Service, C.A.5 (Fla.) 1980, 614 F.2d 46, rehearing denied 616 F.2d 568, certiorari denied 101 S.Ct. 225, 449 U.S. 878, 66 L.Ed.2d 101, rehearing denied 101 S.Ct. 600, 449 U.S. 1027, 66 L.Ed.2d 490. Civil Rights 1529

Limitation in this section requiring federal employee to file civil action within 30 days [now 90 days] after receipt of notice of final administrative action is jurisdictional. Hofer v. Campbell, C.A.D.C.1978, 581 F.2d 975, 189 U.S.App.D.C. 197, certiorari denied 99 S.Ct. 1218, 440 U.S. 909, 59 L.Ed.2d 457. Civil Rights 1530

Requirement that complainant must file civil action to recover for employment discrimination within 30 days [now 90 days] of his receipt of notice of final action taken by agency is jurisdictional. Richardson v. Wiley, C.A.D.C.1977, 569 F.2d 140, 186 U.S.App.D.C. 309. Civil Rights 1530

Because 90-day time period for filing suit under Title VII following receipt of notice of final administrative action is non-jurisdictional, it functions like statute of limitations and is

subject to waiver, estoppel, and equitable tolling, but only in extraordinary and carefully circumscribed instances. House v. Salazar, D.D.C.2009, 598 F.Supp.2d 89. Civil Rights 1530

Administrative time limits contained in Title VII are not jurisdictional bars to bringing suit, but function like statutes of limitations, and these time limits are therefore subject to equitable tolling, estoppel, and waiver. Hill v. Washington Metropolitan Area Transit Authority, D.D.C.2002, 231 F.Supp.2d 286.

Federal employee's failure to comply with 30-day time limit for filing Title VII lawsuit following decision of Merit Systems Protection Board (MSPB) is not jurisdictional barrier to Title VII action; as result, court has option of extending 30-day limitation period by either applying equitable tolling doctrine or procedural rule governing computation of time periods. Becton v. Pena, D.D.C.1996, 946 F.Supp. 84. Civil Rights 1530

Compliance with regulation forbidding federal employee from filing Title VII lawsuit until expiration of requisite 180-day waiting period is prerequisite to federal court jurisdiction and is not in nature of statute of limitations; accordingly, in determining whether jurisdictional requirement has been satisfied, district court is entitled to look beyond allegations of complaint. Patel v. Derwinski, N.D.Ill.1991, 778 F.Supp. 1450. Civil Rights 1530

Thirty-day [now 90-day] period for federal employee to file employment discrimination action after receiving right-to-sue letter was restriction on subject-matter jurisdiction and could not be equitably tolled. Belton v. U.S. Postal Service (Northeast Region Agency), S.D.N.Y.1990, 740 F.Supp. 269. Civil Rights 1530

District court had subject matter jurisdiction over federal employee's claims of racial and sexual job discrimination where employee filed suit within 30 days [now 90 days] after Equal Employment Opportunity Commission (EEOC) decision denying her request to reopen EEOC's final disposition. Ganheart v. Lujan, E.D.La.1990, 733 F.Supp. 1053. Civil Rights 1530

Although, in respect to plaintiff's claim that his first termination as a machinist in Philadelphia naval shipyard was racially motivated, plaintiff did not file his complaint under this subchapter until more than five years after board of appeals and review had issued its final decision, subject matter jurisdiction was not lacking, since the complaint alleged that the action was commenced within 30 days [now 90 days] of plaintiff's receipt of notice of final action on his complaint of discrimination in connection with the first termination, and the Navy had not traversed that allegation by affidavit or otherwise; similarly, in respect to plaintiff's third termination, the Navy did not traverse plaintiff's allegation that he commenced suit within 30 days [now 90 days], of his receipt of notice of the shipyard's final action on his complaint. Williams v. Department of Navy, E.D.Pa.1979, 472 F.Supp. 747. Civil Rights 1530

Since federal court had jurisdiction over federal employee's claim of discrimination under this section, failure of the employee to file the complaint in district court within 30 days [now 90 days] after receiving notice of final agency decision denied court subject matter jurisdiction over the action even though the employee claimed that court had jurisdiction under the Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, the due process clause of U.S.C.A.Const. Amend. 5, and the Declaratory Judgment Act, § 2201 et seq. of Title 28, as to which the 30-day requirement did not apply. Carter v. Lynn, D.C.D.C.1975, 401 F.Supp. 1383. Civil Rights 1530

Provision of this section that within 30 days [now 90 days] of receipt of notice of final agency action on a complaint of discrimination a federal employee may file a civil action is jurisdictional in nature; untimely filing requires dismissal. Fuqua v. Robinson, D.C.N.J.1975, 398 F.Supp. 681. Civil Rights 1530

Compliance with requirements that allegations of race discrimination by federal employee had to be brought to an Equal Employment Opportunity (EEO) counselor's attention within 45 days of discriminatory action, and that charge of discrimination had to be timely filed with Equal Employment Opportunity Commission (EEOC) are not jurisdictional prerequisites to filing Title VII action, rather they are requirements, like statutes of limitations, subject to equitable tolling, waiver, and estoppel. Grey v. Potter, M.D.N.C.2003, 2003 WL 1923733, Unreported. Civil Rights 342

275. Mandatory nature of provision, time for bringing action

Employee must file Title VII suit against federal government within 30 days [now 90 days] of receipt of notice of final action taken by employing agency or by Equal Employment Opportunity Commission. Rowe v. Sullivan, C.A.5 (Tex.) 1992, 967 F.2d 186, rehearing denied. Civil Rights 1530

Timeliness requirement for filing charge of discrimination with Equal Employment Opportunity Commission (EEOC) operates like a statute of limitations for employees alleging discrimination in federal employment and applies equally to the seeking of informal counseling, which is a prerequisite to bringing a formal charge, and the actual bringing of formal charges upon the completion of counseling. Vines v. Gates, D.D.C.2008, 577 F.Supp.2d 242. Civil Rights 1505(3); Civil Rights 1505(4)

Title VII enforcement provision specifically provided that if Equal Employment Opportunity Commission (EEOC) did not take action on a federal employee's Title VII discrimination claim within 180 days, the employee was not required to wait for final determination and could file suit in district court, and thus federal employee who filed discrimination claim with EEOC was not required to continue with administrative process after expiration of 180-day period. Hernandez v. Potter, D.Puerto Rico 2007, 552 F.Supp.2d

209. Civil Rights 1518; Civil Rights 1530

Provision of this section providing means of remedying discriminatory employment practices in federal government mandates that person file action in district court within 30 days [now 90 days] of receipt of notice of final action taken by department or agency; failure to comply with such provision will result in dismissal of action. Adams v. Bailar, E.D.Va.1976, 426 F.Supp. 263. Civil Rights 1530

276. Commencement of time generally, time for bringing action

If federal employee has filed appeal with Equal Employment Opportunity Commission (EEOC) from final agency action by employing agency, Title VII's 180-day period that must elapse before employee may seek de novo review in district court runs from date of initial appeal to EEOC, not from date of initial complaint filed with employing agency or from date of latest appeal to EEOC. Charles v. Garrett, C.A.9 (Cal.) 1993, 12 F.3d 870. Civil Rights 1530

Postal Service's placement in mailbox of former Postal Service employee a form notifying him that certified letter addressed to him could be picked up at the post office did not, without more, commence running of 30-day [now 90-day] period of 42 U.S.C.A. § 2000e-16(c), which provides that within 30 days [now 90 days] of receipt of notice of final action taken by the EEOC, an employee aggrieved by final disposition of his complaint may file a civil action. Hornsby v. U.S. Postal Service, C.A.3 (Pa.) 1986, 787 F.2d 87. Civil Rights 1530

Forty-five day limitations period on federal employee's filing of charge of discrimination and retaliation with United States Department of Agriculture's (USDA) equal employment opportunity counselor began to run on date that employee was reassigned, allegedly based upon his race or national origin, to a less desirable facility. Molina v. Vilsack, S.D.Tex.2010, 2010 WL 4284928. Civil Rights 1505(3); United States 36

Under Title VII, 45-day time limit for federal employee to contact EEO counselor starts running from the effective date of discriminatory act or adverse personnel action. Thomas v. Vilsack, D.D.C.2010, 718 F.Supp.2d 106. Civil Rights 1505(3)

The plaintiff's time for contacting an Equal Employment Opportunity (EEO) counselor under Title VII starts to run when the plaintiff has a reasonable suspicion that he has been the victim of discrimination. Noisette v. Geithner, D.D.C.2010, 693 F.Supp.2d 60. Civil Rights 1505(3)

Title VII's 90-day time period for a federal employee to file suit in federal court began to run when employee received her first right to sue letter from the Equal Employment Opportunity Commission (EEOC), although EEOC sent her attorney a copy of the right to

sue letter on a later date. Strong-Fischer v. Peters, D.D.C.2008, 554 F.Supp.2d 19. Civil Rights 1530

For purposes of Title VII's requirement that administrative remedies be timely exhausted, the time period to initiate contact with an Equal Employment Opportunity (EEO) counselor begins to run when an employee has a reasonable suspicion of a discriminatory action. Adesalu v. Copps, D.D.C.2009, 606 F.Supp.2d 97. Civil Rights 1505(3)

Ninety-day limitations period for filing Title VII action began to accrue three days after mailing of right-to-sue letter by Equal Employment Opportunity Commission (EEOC), since actual date of letter's receipt was unknown, and thus action brought by former employee against United States Postal Service (USPS) officials, alleging gender discrimination, was time-barred; employee filed complaint nine days after expiration of limitations period. Taylor v. Potter, M.D.N.C.2005, 355 F.Supp.2d 817. Civil Rights 1530

Federal employees were not required to exhaust administrative remedies as to their individual Equal Employment Opportunity (EEO) claims prior to bringing Title VII action challenging ALJ's dismissal of their class complaint, and, thus, 90-day period for challenging dismissal began to run when employees received dismissal order, not when they received final agency decision on their individual claims. James v. England, D.D.C.2004, 332 F.Supp.2d 239, clarified on denial of reconsideration 226 F.R.D. 2. Civil Rights 1530

Time period for contacting Equal Employment Opportunity (EEO) counselor begins to run from date of discrete employment action by federal government alleged to be discriminatory, not from date of discovery of improper motivation. Fausto v. Reno, S.D.N.Y.1997, 955 F.Supp. 286. Civil Rights 1505(3)

Applicable limitations period for former postal employee's ADEA claim against Postal Service was 90-day limitations period from Title VII, under which aggrieved federal employee must file civil action within 90 days of receiving notice of agency or Equal Employment Opportunity Commission's (EEOC) final administrative disposition of employee's complaint. Metsopulos v. Runyon, D.N.J.1996, 918 F.Supp. 851. Civil Rights 1530

Former federal employee's claim of race discrimination in elimination of her custodial worker position and retaliation for engaging in previously protected activity was barred by her failure to wait requisite 180 days after filing charge before filing suit in federal court. Thompson v. West, M.D.Ala.1995, 883 F.Supp. 1502. Civil Rights 1530

Federal employee's letter to Department of Veterans' Affairs (VA) equal opportunity office, not earlier letter to Equal Employment Opportunity Commission (EEOC) counselor

complaining of discrimination was formal complaint which commenced running of 180-day waiting period before employee could file Title VII suit and since federal employee filed suit less than 180 days after formal complaint was filed with agency, he failed to exhaust his administrative remedies and suit was premature. Patel v. Derwinski, N.D.Ill.1991, 778 F.Supp. 1450. Civil Rights 1530

For purposes of determining whether Title VII complaint filed pro se and in forma pauperis was filed within 30 days [now 90 days] after plaintiff received final agency decision, court would use date stamped on back of original complaint when complaint first arrived at courthouse rather than date upon which case was filed as new case and entered into court's computerized case tracking system, inasmuch as elapsed time between date complaint arrived at courthouse and date case was entered into tracking system was attributable to court's procedures and as of date complaint arrived at courthouse, plaintiff had done all she could do. Brooks v. Derwinski, D.D.C.1990, 741 F.Supp. 963. Administrative Law And Procedure 722.1; Civil Rights 1505(3)

Thirty-day [now 90-day] period within which federal government employment discrimination complainant was required to bring suit after final agency decision on her complaint began to run from date she received notice of decision, not its mailing date. Ward v. Califano, D.C.D.C.1977, 443 F.Supp. 89. Civil Rights 1530

Bureau of Prisons (BOP) employee became aware of alleged discriminatory evaluation policies, for purposes of determining whether she timely exhausted administrative remedies prior to bringing Title VII claim, no later than when she wrote letter, ostensibly to her coworkers, asserting that Caucasians were getting pay raises and outstanding evaluations with no real justification, and comparing her evaluation to that of two Caucasian supervisors. Richetts v. Ashcroft, S.D.N.Y.2003, 2003 WL 1212618, Unreported. Civil Rights 1505(3)

277. Agreements constituting final action, time for bringing action

Period of limitations begins to run on the filing of a suit under this section only in event that there is final agency action, which can take the form of a right-to-sue letter, in which agency states that it sees no reason to take action, or can consist of an agreement reached between the employing agency and the Commission. Waiters v. Parsons, C.A.3 (Pa.) 1984, 729 F.2d 233.

278. Final action by department, agency, or unit, time for bringing action--Generally

Plaintiff was required to commence her civil suit within 90 days of agency's dismissal of her administrative complaint, on ground that plaintiff had filed civil action in district court based on the same matters. Robbins v. Bentsen, C.A.7 (Ill.) 1994, 41 F.3d 1195. Civil Rights 1530

Department of Health, Education and Welfare's [now Department of Health and Human Services'] ruling that employee had been given bona fide priority consideration for promotion due to past discrimination was final action triggering 30-day [now 90-day] period, under Civil Rights Act of 1964, § 717(c), as amended, 42 U.S.C.A. § 2000e-16(c), in which employee could bring suit contesting ruling, rather than HEW's action on employee's initial charge in agreeing to extend period for priority consideration, since the latter action, on its face, was favorable to employee and prolonged period for HEW's performance. Loe v. Heckler, C.A.D.C.1985, 768 F.2d 409, 247 U.S.App.D.C. 292. Civil Rights 1530

When federal employee files motion to reopen or to reconsider within 30 days [now 90-days] of receipt of decision by Equal Employment Opportunity Commission, Commission's final decision on that motion is “final action” on employee's complaint for purposes of statute requiring that federal employee's civil complaint under Title VII must be filed in district court within 30 days [now 90-days] of receipt of notice of final action by commission. Donaldson v. Tennessee Valley Authority, C.A.6 (Tenn.) 1985, 759 F.2d 535.

“Final action” for purposes of 30-day [now 90-day] limitation period for bringing employment discrimination action against federal agent occurred when Equal Employment Opportunity Commission rendered its final action on job applicant's complaint, not when Commission denied job applicant's request for reconsideration. Martinez v. Orr, C.A.10 (N.M.) 1984, 738 F.2d 1107. Civil Rights 1530

Since Commission has been given the responsibility for ensuring that all personnel actions affecting employment in the federal Government are free from any discrimination, Commission has the power to define, by regulation, contents of its “final action” from which review could be sought in the courts. Allen v. U.S., C.A.3 (Pa.) 1976, 542 F.2d 176. Civil Rights 1504

Administrative law judge's (ALJ's) order denying federal employer's motion for summary judgment and returning employment discrimination case to jurisdiction of United States Department of Agriculture (USDA) for final decision, was not “final action” by USDA, as would start 90-day limitation period for Title VII action; decision expressly required further substantive action by USDA. Laudadio v. Johanns, E.D.N.Y.2010, 677 F.Supp.2d 590. Civil Rights 1530

Under the Equal Employment Opportunity Commission (EEOC) regulation implementing Title VII's 90-day statute of limitations for filing action in court after final action of EEOC denying a discrimination claim filed by a federal employee, which regulation states that an EEOC decision is a final action unless the EEOC “reconsiders the case,” a federal employee's request for reconsideration deprives EEOC's ruling of finality even if the

EEOC ultimately denies the request for reconsideration, and thus, the limitations period does not commence until the federal employee receives notice of EEOC's denial of reconsideration. Williams v. Chu, D.D.C.2009, 641 F.Supp.2d 31. Civil Rights 1530

The 90-day clock on federal employee's discrimination suit began to tick on day Final Agency Decision (FAD) was delivered to employee's home even though he allegedly did not personally receive it until the next day, and complaint filed on the 91st day after delivery to his home was thus untimely. House v. Salazar, D.D.C.2009, 598 F.Supp.2d 89. Civil Rights 1530

In Title VII and ADEA cases alleging discrimination in federal employment, for purposes of determining when applicable limitations period begins to run, where reargument is timely requested, finality of agency or Equal Employment Opportunity Commission (EEOC) decision occurs when request for reconsideration is granted or denied. Metsopulos v. Runyon, D.N.J.1996, 918 F.Supp. 851. Civil Rights 1530

A “final disposition” of formal employment discrimination complaint by administrative agency, which is required before federal employee can proceed to seek review in federal court, results when following has occurred: adoption by relevant government agency of Equal Employment Opportunity (EEO) counselor's final report, final decision by Equal Employment Opportunity Commission (EEOC), or passage of 180 days without receipt of final decision by relevant agency or EEOC and 180-day time limit under third option runs from time formal complaint is filed with agency. Patel v. Derwinski, N.D.Ill.1991, 778 F.Supp. 1450. Civil Rights 1530

Plaintiff's complaint alleging that he was rejected for a position as a postal inspector because of his race was time barred because it was not filed in federal court within 30 days [now 90 days] of plaintiff's receipt of Equal Employment Opportunity Commission's Office of Review and Appeals' denial of his appeal; the “final action” taken by the agency which triggered running of limitations period was the agency's denial of plaintiff's appeal, rather than denial of his request to reopen his complaint. Dorsey v. Bolger, E.D.Pa.1984, 581 F.Supp. 43. Civil Rights 1530

Where final decision issued by Department of Navy on employee's discrimination complaint stated that employee would be given “priority consideration” for next promotion, employee's failure to bring action under this subchapter within 30 days [now 90 days] of such final decision was not excused on ground that certain unnamed sources at employing activity had given employee's attorney an ambiguous or inaccurate explanation of the term “priority consideration,” since further inquiry by employee's attorney would have led to civil service regulation defining such term, and therefore, district court was without subject matter jurisdiction over employee's action. Roth v. Naval Aviation Supply Office, E.D.Pa.1978, 443 F.Supp. 413. Civil Rights 1530

While federal employee, who alleged job discrimination in civil rights suit filed on Jan. 9, 1975, asserted that, despite being notified by Civil Service Commission that his complaint was denied on June 25, 1974 and that he could appeal to district court within 30 days [now 90 days], there was no final agency action which started the 30-day [now 90-day] period because he was "continuously engaged in litigating at the administrative level related aspects of his claim," the government's motion to dismiss for lack of subject matter jurisdiction would be granted, since, inter alia, finality to any commission decision would be frustrated if a mere request for reevaluation could revive a claim. Chickillo v. Commanding Officer, Naval Air Engineering Center (NAEC), E.D.Pa.1976, 406 F.Supp. 807, affirmed 547 F.2d 1159. Civil Rights 1530

279. ---- Arbitrators, final action by department, agency, or unit, time for bringing action

"Units," for purpose of subsec. (c) of this section authorizing civil action in district court only after either appeal to Equal Employment Opportunity Commission (EEOC) or final action taken by department, agency, or unit referred to in subsection (a) of this section, are units of judicial and legislative branches, Library of Congress, and District of Columbia government having positions in competitive service, and did not include arbitrator. Johnson v. Peterson, C.A.D.C.1993, 996 F.2d 397, 302 U.S.App.D.C. 131. Civil Rights 1514

280. Notice of final action, time for bringing action--Generally

Receipt of notification letter from the Equal Employment Opportunity Commission (EEOC) by attorney's office is receipt by the attorney, thus begins the running of the 30-day [now 90 day] period for bringing suit against federal government. Irwin v. Department of Veterans Affairs, U.S.Tex.1990, 111 S.Ct. 453, 498 U.S. 89, 112 L.Ed.2d 435, rehearing denied 111 S.Ct. 805, 498 U.S. 1075, 112 L.Ed.2d 865. Civil Rights 1530

For purposes of Title VII's 90-day limitations period for federal employee to bring suit after receiving right-to-sue letter, if agency includes in letter date when employee will be presumed to have received it, presumption governs so long as it is reasonable. Morgan v. Potter, C.A.5 (La.) 2007, 489 F.3d 195. Civil Rights 1530

Receipt of notice of decision by Equal Employment Opportunity Commission in Title VII employment discrimination suit against federal government, by employee's wife, triggered time for employee to file suit against federal government. Rowe v. Sullivan, C.A.5 (Tex.) 1992, 967 F.2d 186, rehearing denied. Civil Rights 1530

An aggrieved employee alleging employment discrimination can bring an action in court after the department or agency has finally acted on his or her complaint, subject to the department or agency's power to cut that right off after 30 days [now 90 days] by issuing proper notice; when an agency or department has taken final action but has failed to is-

sue a proper notice, an employee can bring an action in district court within a reasonable time. Williams v. Hidalgo, C.A.D.C.1980, 663 F.2d 183, 214 U.S.App.D.C. 6. Civil Rights 1530

Failure of Commission to notify federal employees, whose claims of discrimination had been denied by the Commission, of their right to file a civil action and of the 30-day [now 90-day] time limit for filing the action rendered the Commission's opinion a nonfinal action of the Commission so that suit filed more than 30 [now 90 days] days after denial of the claim was not time barred as the 30-day [now 90-day] period had not begun to run. Allen v. U.S., C.A.3 (Pa.) 1976, 542 F.2d 176. Civil Rights 1530

Absent evidence of actual date that federal employee received Final Agency Decision (FAD) from Equal Employment Opportunity Commission (EEOC), it would be assumed that employee received FAD, and 90-day limitations period for filing Title VII action began to run, three days after issuance of FAD. Nuskey v. Hochberg, D.D.C.2009, 657 F.Supp.2d 47. Civil Rights 1535

Employee's attachment of a complaint to his in forma pauperis (IFP) application, which was filed within 90-day time period for employee to file Title VII action against employer, was insufficient to commence action and provide notice to employer for purposes of 90-day filing requirement. Okereh v. Winter, D.D.C.2009, 600 F.Supp.2d 139, reversed 625 F.3d 21. Civil Rights 1530

Beginning of 90-day limitations period for filing Title VII suit begins to run on date that Equal Employment Opportunity Commission (EEOC) right to sue letter is delivered to claimant, but where there is ambiguity as to when notice is given, 90-day limitations period begins to run when aggrieved party knows that EEOC has completed its efforts. Lee v. U.S. Postal Service, E.D.Tex.1995, 882 F.Supp. 589. Civil Rights 1530

Black Federal Bureau of Investigation agent's claim that he was subjected to conspiracy to harass him because of his race was untimely; present suit was filed well after 30 days [now 90 days] of agent's receipt of notice of final agency action with respect to administrative complaint, agent did not assert that applicable time limits were subject to equitable tolling, and there was no reason apparent that such equitable tolling should take place. Rochon v. Attorney General of the U.S., D.D.C.1989, 710 F.Supp. 377. Conspiracy 16

Letter specifically setting forth how reinstated postal employee's remedial back pay would be computed constituted “notice of final action” for purposes of 30-day [now 90-day] limitation period for filing of civil suit attacking that computation after receipt thereof. Faulkner v. Bolger, E.D.Ark.1987, 655 F.Supp. 712. Civil Rights 1530

Employee's receipt of right-to-sue notice from the Commission while her case was

pending before district court cured defect caused by failure to receive the notice before filing the claim under this subchapter in federal court. Perry v. Beggs, D.C.D.C.1983, 581 F.Supp. 815. Civil Rights 1523

Fact that government gave government employee right-to-sue letter did not estop government from claiming that government employee failed to meet timeliness requirements. Edwards v. Crosby, E.D.Pa.1982, 540 F.Supp. 60. Civil Rights 1530

Federal employee's appeal from denial of her administrative claim of employment discrimination in connection with her discharge from probationary position would be dismissed where employee did not file civil action until over 400 days after receipt of letter indicating that "final" administrative action had been taken, even though plaintiff was not afforded formal notification of her right to institute civil action within 30 days [now 90 days]. Spencer v. Roudebush, D.C.Del.1977, 443 F.Supp. 149. Civil Rights 1510

Where notice of final action by Civil Service Commission [now by EEOC] sent to employment discrimination complainant did not include notice of right to file civil action, complainant was not barred from bringing civil action by his failure to bring such action within 30 [now 90 days] days of receipt of notice of final action. Beasley v. Griffin, D.C.Mass.1977, 427 F.Supp. 801. Civil Rights 1530

281. ---- Persons receiving notice, notice of final action, time for bringing action

Requirement that federal employee bring employment discrimination action within 30 days [now 90 days] after receipt of notification letter from Equal Employment Opportunity Commission (EEOC) applies to receipt by the government employee or his designated representative; suit must be brought within 30 days after receipt by employee's attorney if that receipt occurs before employee's receipt of notice. Irwin v. Department of Veterans Affairs, U.S.Tex.1990, 111 S.Ct. 453, 498 U.S. 89, 112 L.Ed.2d 435, rehearing denied 111 S.Ct. 805, 498 U.S. 1075, 112 L.Ed.2d 865. Civil Rights 1530

Receipt of notice of right to sue letter by former federal employee's wife triggered start of 30-day period for filing suit; doctrine of equitable tolling did not apply based upon fact that former employee chose to examine his mail on weekly basis rather than as it arrived, and had former employee acted diligently he could have filed action in timely manner. Million v. Frank, C.A.10 (Okla.) 1995, 47 F.3d 385. Civil Rights 1530

Civil rights action, based on claims of religious discrimination, which was filed more than 30 days [now 90 days] after the government employee received personal notice of the adverse determination of his claim by the administrative agency was not timely, even though it was filed within 30 days [now 90 days] after the employee's attorney received notice. Rea v. Middendorf, C.A.6 (Ky.) 1978, 587 F.2d 4. Civil Rights 1530

Federal agency's failure to timely respond to unsuccessful job applicant's request for information under the Freedom of Information Act (FOIA) did not prevent applicant from satisfying Title VII's 45-day deadline for contacting Equal Employment Opportunity (EEO) counselor regarding her race, gender, and national origin discrimination claims, and thus applicant was not entitled to waiver of the 45-day limit; applicant never appealed agency's FOIA determinations, and, before applicant received any documents as a result of her FOIA request, she demonstrated knowledge of the facts that she alleged in her EEO complaint. Cooley v. Goss, E.D.Va.2005, 430 F.Supp.2d 544, affirmed 141 Fed.Appx. 129, 2005 WL 1870007. Civil Rights 1505(5)

282. ---- Sufficiency of notice, notice of final action, time for bringing action

Federal agency's stated presumption, in its right-to-sue letter to employee regarding her Title VII employment discrimination claim, that letter would be received within five calendar days after mailing, was reasonable, and thus governed in determining timeliness, under 90-day statutory limitations period, of employee's legal complaint. Morgan v. Potter, C.A.5 (La.) 2007, 489 F.3d 195. Civil Rights 1530

In absence of equitable considerations demanding different result, receipt at employment discrimination plaintiff's address of right to sue letter constitutes receipt sufficient to start running of time period for filing discrimination action. Million v. Frank, C.A.10 (Okla.) 1995, 47 F.3d 385. Civil Rights 1530

Where employee did not receive letter sent by her employer, the former Department of Health, Education, and Welfare, [now the Department of Health and Human Services] where other letter notifying employee of her right to sue under this subchapter was neither addressed to employee's designated representative nor was its receipt personally acknowledged by him, Department's attempts to notify employee of her right to sue were insufficient to trigger running of statutory 30-day [now 90-day] limitation period. Craig v. Department of Health, Ed. and Welfare, C.A.8 (Mo.) 1978, 581 F.2d 189. Civil Rights 1530

Notice to employee of Defense Mapping Agency that his charge of employment discrimination had been dismissed and that the Agency decision was final was insufficient to start the running of the 30-day [now 90-day] period in which a civil rights action may be brought, where notice failed to inform employee of his right under this subchapter to file such an action, and thus 30-day period in which civil rights action could be filed did not begin to run until employee, in connection with a subsequent complaint containing a substantially identical allegation, was notified that he had a right to bring a civil action within 30 days. Coles v. Penny, C.A.D.C.1976, 531 F.2d 609, 174 U.S.App.D.C. 277. Civil Rights 1530

Black female applicant, who received conditional offer of employment that was subse-

quently rescinded by federal employer, had at least constructive notice of 45-day deadline under Title VII for contacting Equal Employment Opportunity (EEO) counselor regarding her race, gender, and national origin discrimination claims, and thus applicant was not entitled to waiver of the deadline on ground of lack of notice; applicant had long and successful history as a human resources professional, applicant had successfully pursued a prior employment discrimination appeal, and applicant had consulted with an attorney within the 45-day period. Cooley v. Goss, E.D.Va.2005, 430 F.Supp.2d 544, affirmed 141 Fed.Appx. 129, 2005 WL 1870007. Civil Rights 1505(5)

Certified mail to former federal employee's attorney stating that certain of her Title VII complaints were rejected and that this was final agency action constituted sufficient notice to employee of the rejection of her claims and of her appeal rights, so that those claims were barred in subsequent suit which was untimely as to them, even if employee was never personally aware of any such limitations and her attorney never conveyed any such limitations to her, where she had signed a Designation and Limited Power of Attorney appointing attorney as her representative. Carter v. Rubin, D.D.C.1998, 14 F.Supp.2d 22. Civil Rights 1530

283. ---- Time for notice, notice of final action, time for bringing action

This section providing that individual federal employee complaining of job-related discrimination may file civil action in federal court within 30 [now 90 days] days of notice of final action by Civil Service Commission [now by Equal Employment Opportunity Commission] upon appeal contains no obligation that employee be given notice of right to sue within 30 days. Spencer v. Roudebush, D.C.Del.1977, 443 F.Supp. 149. Civil Rights 1530

284. Final action not taken, time for bringing action

Federal employee asserting discrimination claim may appeal to the district court if there has not been final agency action on his claim after six months from the filing of a claim with the agency; employee does not have to file in federal court at that time but, rather, can chose to wait for final determination; if agency renders a final decision after the 180 days but before the claim it has filed in district court, then a 30-day [now 90-day] filing limitation is triggered. Gomez v. Department of the Air Force, C.A.5 (Tex.) 1989, 869 F.2d 852. Civil Rights 1530

Complainant may sue in federal court after fulfilling all the requirements to suit specified by this subchapter and, most importantly, after 180 days have elapsed without final administrative action. President v. Vance, C.A.D.C.1980, 627 F.2d 353, 200 U.S.App.D.C. 300. Civil Rights 1530

If federal agency involved in a personnel dispute with an employee does not make a fi-

nal decision within 180 days, resort to district court as provided by this section would require a trial on merits of case, since there would be no administrative record to review. Smith v. Snyder, E.D.Pa.1974, 381 F.Supp. 1083. Civil Rights 1510

285. Weekends or holidays, time for bringing action

Intent of Congress in passing subsec. (c) of this section requiring civil rights plaintiffs to file suit within 30 [now 90 days] days of receipt of Commission notification letter was to adopt provisions of rule 6(a), Federal Rules of Civil Procedure, Title 28, allowing party to file suit on day following weekend or holiday if time period for filing ends on weekend or holiday. Milam v. U.S. Postal Service, C.A.11 (Ga.) 1982, 674 F.2d 860. Civil Rights 1530

286. Extension of time, time for bringing action

Allegations by former federal employee that personnel officer told him that a white male could not file a discrimination charge and that his failure to file discrimination charge within filing period resulted from reliance on such advice stated the claim for extension of filing period on equitable ground that government was estopped from raising former employee's failure to file timely charge. Cooper v. Bell, C.A.9 (Cal.) 1980, 628 F.2d 1208. Estoppel 62.2(4)

287. Tolling of period, time for bringing action--Generally

No basis existed for equitable tolling of 30-day [now 90-day] period for bringing employment discrimination action against United States following receipt of right-to-sue letter from Equal Employment Opportunity Commission (EEOC), even though attorney was out of the country when letter was received by his office and did not return until some 17 days later. Irwin v. Department of Veterans Affairs, U.S.Tex.1990, 111 S.Ct. 453, 498 U.S. 89, 112 L.Ed.2d 435, rehearing denied 111 S.Ct. 805, 498 U.S. 1075, 112 L.Ed.2d 865. Civil Rights 1530

Employee's untimely petition to reopen Equal Employment Opportunity Commission's final decision in his Title VII action did not toll deadline for filing district court action challenging same decision. Belhomme v. Widnall, C.A.10 (N.M.) 1997, 127 F.3d 1214, certiorari denied 118 S.Ct. 1569, 523 U.S. 1100, 140 L.Ed.2d 803, rehearing denied 119 S.Ct. 9, 524 U.S. 969, 141 L.Ed.2d 770. Civil Rights 1530

Even if Naval employee's filing of formal administrative complaint three years after she was denied promotion was untimely, that untimeliness was excused under equitable tolling principles; employee initiated administrative complaint process by timely contacting equal employment opportunity (EEO) counselor, actively sought out selecting officer and deputy EEO officer as part of informal complaint process, and did not confront them

with bald accusations of discrimination, but, rather, asked them specific questions, officers gave her what appeared to be detailed and honest answers which convinced her that matter had been resolved, her reliance was reasonable, particularly in light of EEO officer's status, and employee discovered years later that their statements were false. Weick v. O'Keefe, C.A.4 (Va.) 1994, 26 F.3d 467. Civil Rights 1505(6)

Filing of timely request to reopen Title VII employment discrimination suit against the federal government tolls statutory time limit during which employee must file suit. Rowe v. Sullivan, C.A.5 (Tex.) 1992, 967 F.2d 186, rehearing denied. Civil Rights 1530

Equal Employment Opportunity Commission notice sent to postal employee was sufficiently misleading to justify tolling 30-day [now 90-day] limitations period, for purpose of determining whether government received notice of summons and complaint in time to permit employee to amend his Rehabilitation Act complaint to name Postmaster General as defendant; letter could reasonably have been read as requiring employee to name official agency or head of department of defendant, or as requiring employee to name agency head or department head as defendant. Brezovski v. U.S. Postal Service, C.A.10 (N.M.) 1990, 905 F.2d 334.

Statute requiring that actions brought by federal employees against United States for alleged violations of Title VII be commenced within 30 days [now 90 days] of employee's receipt of notice of final agency action may be equitably tolled when state court action is pending, when defendant has concealed act supporting Title VII cause of action, and when defendant has misled employee regarding nature of his rights under Title VII. Washington v. Ball, C.A.11 (Ga.) 1989, 890 F.2d 413. Civil Rights 1530

Postal Service employee aggrieved by administrative decision denying discrimination claim was not entitled to equitable tolling of 30-day [now 90-day] period in which to appeal administrative decision to court after his first complaint was dismissed for failure to name Postmaster General as defendant; government notice to employee of decision and appeal rights was not misleading and employee had waited until last day to file suit thereby not showing sufficient diligence to warrant application of equitable principles on his behalf. Rys v. U.S. Postal Service, C.A.1 (Mass.) 1989, 886 F.2d 443. Administrative Law And Procedure 722.1; Civil Rights 1510

Even if federal employee was counseled not to file employment discrimination charge by army personnel officer and local office of EEOC, such equitable considerations were relevant to whether timeliness requirement for filing charge would be subject to equitable tolling and not whether employee should have been excused from requirement that charge of racial discrimination first be filed with agency before action in federal court is brought. Grier v. Secretary of Army, C.A.11 (Ga.) 1986, 799 F.2d 721. Administrative Law And Procedure 229; Civil Rights 1505(6); Civil Rights 1519

Federal employee's filing of Equal Employment Office (EEO) class complaint alleging race discrimination tolled 90-day limitations period for class members' Title VII cause of action arising from same agency actions; limitations period resumed upon employee's receipt of individual final agency decision. Howard v. Gutierrez, D.D.C.2007, 474 F.Supp.2d 41, reconsideration denied 503 F.Supp.2d 392. Civil Rights 1530

Former employee's untimely filed Title VII complaint against United States Department of Agriculture (USDA), for allegedly terminating her on basis of race and sex discrimination and retaliation, was not excused on grounds of avoidance of piecemeal litigation due to her allegedly pending discrimination claims before Equal Employment Opportunity (EEO) office, since employee waived right to have EEO office address her discrimination claims by electing to initially pursue mixed case appeal before Merit Systems Protection Board (MSPB), thereby voiding her subsequent formal EEO complaint which was subject to dismissal. Garcia v. Vilsack, D.N.M.2009, 628 F.Supp.2d 1306. Civil Rights 1518; Civil Rights 1530; Officers And Public Employees 72.23

Equitable tolling extended 90-day period for employee to file Title VII action against employer, based on 19-day delay between time employee filed his in forma pauperis (IFP) application and his receipt of court's denial, where IFP application was filed prior to expiration of initial 90-day period. Okereh v. Winter, D.D.C.2009, 600 F.Supp.2d 139, reversed 625 F.3d 21. Civil Rights 1530

Date of filing is established by official docket for purposes of statutes requiring federal employee to file civil action in district court under Title VII and ADEA with 90 days of receipt of notice of final agency action. Smith v. Dalton, D.D.C.1997, 971 F.Supp. 1. Civil Rights 1530

No basis existed for equitable tolling of 90-day period for filing Title VII race discrimination action against government in district court following receipt of final Equal Employment Opportunity Commission (EEOC) decision dismissing complaint as untimely, where employee did not file timely through defective pleading and could point to no trickery by government that caused him to delay filing appeal or lawsuit after receiving final EEOC decision. Pauling v. Secretary of Dept. of Interior, S.D.N.Y.1997, 960 F.Supp. 793. Civil Rights 1530

Equitable tolling did not apply to 90-day period for government employee's filing Title VII action after receipt of notice of final agency action; plaintiff was a government attorney and, by his own admission, aware of 90-day limitations period so that his late filing could not be excused by a lack of sophistication with procedural requirement, nor did plaintiff file a defective pleading during limitations period or allege that he was induced by employer's misconduct into allowing filing deadline to pass. Middleton v. Gould, S.D.Tex.1996, 952 F.Supp. 435. Civil Rights 1530

Postal employee, alleging sex discrimination against United States Postmaster General, failed to show that doctrine of equitable tolling was applicable to excuse his failure to comply with Title VII administrative filing deadlines where record disclosed three independent instances where employee failed to file timely with administrative agency or court and disclosed no attempt on part of postal service to deliberately lull employee into inactive pursuit of his claim or evidence supporting it. Higgins v. Runyon, E.D.Mich.1996, 921 F.Supp. 465. Civil Rights 1505(6)

Ninety-day statute of limitations for federal employee to file Title VII complaint was tolled by filing of motion to proceed in forma pauperis until date court set for payment of filing fee in order which denied motion, where she filed complaint and motion to proceed in forma pauperis within 90 days of receiving notice that Equal Employment Opportunity Commission (EEOC) had rendered its final decision, and paid filing fee within time period allowed by court after denial of motion. Woods v. Bentsen, E.D.Pa.1995, 889 F.Supp. 179. Civil Rights 1530

Former postal worker's age discrimination claims under ADEA and race discrimination claims under Title VII were barred by 30-day [now 90-day] limitations period for bringing claims under Title VII for discrimination in federal employment and claims were not saved by equitable tolling by virtue of timely filing of worker's earlier complaint; worker had knowledge of Equal Employment Opportunity Commission (EEOC) procedures, earlier complaint was dismissed for failure to timely serve defendant Postmaster General, instant complaint was filed more than one year after EEOC promulgated its final decision in worker's case, and worker's lack of diligence caused dismissal of his first action. Jones v. Frank, D.Colo.1993, 819 F.Supp. 923, affirmed 32 F.3d 1454. Limitation Of Actions 130(9)

The 30-day [now 90-day] limitations period was tolled under the doctrine of equitable modification once a Department of Transportation (DOT) employee proceeding pro se filed complaint and entrusted it with pro se clerk and, thereafter, to United States Marshal Service, and, thus, the employee would be entitled to amend his complaint to substitute the Secretary of Transportation as the proper defendant; Merit Systems Protection Board's right-to-sue letter apprised employee of 30-day [now 90-day] limitations period but did not tell him that Secretary had to be named. Mills v. Department of Transp., F.A.A., E.D.N.Y.1991, 787 F.Supp. 306. Limitation Of Actions 125

The 30-day [now 90-day] limitations period for filing federal court claim after receiving agency decision would be equitably tolled where complaint was filed one minute after time limit expired, in light of evidence that failure to file within 30-day [now 90-day] limit was result of temporary absence of security guard or marshall at courthouse entrance; one-minute delay did not cause employers to receive notice of employee's claim any later than they would have if complaint had been filed within time limit, and delay was clearly not caused by employee's sleeping on her rights. Janczewski v. Secretary,

Smithsonian Inst., D.D.C.1991, 767 F.Supp. 1. Civil Rights 1530

Period within which federal employee could appeal decision of Equal Employment Opportunity Commission (EEOC) regarding his claim that he was discharged as reprisal for his whistleblowing activities was not equitably tolled by employee's psychological handicap or by any conduct of federal agencies, and thus request for review was untimely, even assuming that employee could seek review from the EEOC rather than from the Federal Circuit because he claimed both reprisal and discrimination. Kien v. U.S., D.D.C.1990, 749 F.Supp. 286, affirmed. Civil Rights 1530

Court would not dismiss Title VII action brought by plaintiff who was proceeding pro se and in forma pauperis merely because complaint was filed one day late, inasmuch as no prejudice resulted from one-day delay and dismissal would be inequitable and contrary to remedial principles underlying Title VII. Brooks v. Derwinski, D.D.C.1990, 741 F.Supp. 963. Civil Rights 1505(4)

Where federal employee gave notice when he received decision of the Office of Review and Appeals (ORA) affirming denial of Title VII claim but did not present any arguments or evidence within 30 days [now 90 days], he had not filed a timely request to reopen, and his appeal thus did not suspend the finality of the agency's decision so as to prevent the running of the 30 days [now 90 days] for filing suit in federal court. Chapman v. Frank, M.D.La.1989, 727 F.Supp. 1033. Civil Rights 1530

Grounds for equitable tolling of Title VII filing period did not exist in light of evidence establishing that, at time complainant's promotion was rejected, complainant should have had at least reasonable suspicion of discrimination and should have realized that facts would support charge of discrimination. Jones v. Hodel, D.Utah 1989, 711 F.Supp. 1048. Limitation Of Actions 95(15)

Former Postal Service employee's difficulty in finding lawyer did not provide legal justification for tolling limitations period, which began when he received notice from Postal Service dismissing his claims, with respect to charge of race discrimination. James v. U.S. Postal Service, E.D.Mo.1987, 663 F.Supp. 801. Civil Rights 1505(6)

Where plaintiff's civil rights suit was voluntarily dismissed without prejudice at his request, to avoid proceeding to trial after motion for continuance and extension of time for discovery was denied, no equitable consideration justified tolling of limitations period of Civil Rights Act to permit subsequent refiling of suit outside limitations period. Hewlett v. Russo, E.D.Va.1986, 649 F.Supp. 457. Civil Rights 1530

Grounds existed for equitable tolling of statutory 30-day [now 90-day] time in which aggrieved federal employee must file civil action in district court after receiving notice from the Equal Employment Opportunity Commission of right to file [42 U.S.C.A. § 2000e-

16(c)], where employment discrimination claimant filed her application to proceed in forma pauperis on date leaving her 12 days in which to file suit after receipt of final administrative decision, civil action was filed within 12 days after claimant received court's denial of in forma pauperis application, and there was no indication that claimant sat on her rights nor was there any indication that federal employer would be prejudiced by allowing claimant to proceed with her claim. Grier v. Carlin, W.D.N.C.1985, 620 F.Supp. 1364. Civil Rights 1530

Pro se plaintiff's explanation that she was overcome by "the sheer weight of these proceedings" was insufficient to equitably toll requirement that Title VII complaint be brought within 30 [now 90 days] days of receipt of final decision of Equal Employment Opportunity Commission (EEOC). Houser v. Rice, W.D.La.1993, 151 F.R.D. 291. Civil Rights 1530

288. ---- Equitable tolling, tolling of period, time for bringing action

Equitable tolling of Title VII limitations period for former federal employee to exhaust her administrative remedies with Equal Employment Opportunity Commission (EEOC) was unwarranted on her claims against Department of Veterans Affairs (VA) for disability discrimination; regardless of employee's filings with other agencies, she did not comply with EEOC procedures, and she made no claim of inadequate notice, no motion for appointment of counsel was pending, no defective pleading was filed during allowable period, and there was no claim that VA engaged in affirmative misconduct that tricked employee into inaction and no allegation that court led employee to believe that she had done everything required of her. Farris v. Shinseki, D.Me.2011, 2011 WL 95333. Civil Rights 1505(6)

Federal employee's contact with second-line supervisor concerning allegations of discrimination and retaliation was insufficient to toll 45-day time limit on filing a charge of Title VII discrimination and retaliation with equal employment opportunity counselor; supervisor was not an official counselor, and even if he were, the contact did not address employee's transfer to a less desirable facility, which was the alleged adverse employment action that formed basis of discrimination and retaliation claims. Molina v. Vilsack, S.D.Tex.2010, 2010 WL 4284928. Civil Rights 1505(6); United States 36

Employee's allegations that she had been "beleaguered" by the actions of employer's employees who had failed to provide her with the "positive and productive work environment she [was] entitled to," and that she suffered from health problems as a result of employer's conduct, were insufficient to invoke the doctrine of equitable tolling on her untimely Title VII discrimination claims against employer. Baird v. Snowbarger, D.D.C.2010, 2010 WL 3999000. Civil Rights 1505(6)

Equitable considerations did not warrant excusing Internal Revenue Service (IRS) em-

ployee's failure to exhaust his administrative remedies prior to filing Title VII suit by not waiting the requisite 180 days after appealing Department of Treasury's Final Agency Decision (FAD) denying his discrimination claim; although the parties had not filed briefs in the FAD appeal, there was no evidence regarding what efforts and resources the Equal Employment Opportunity Commission (EEOC) had expended on the appeal and whether employee's withdrawal of his FAD appeal 23 days after filing it prejudiced EEOC, and there was also no evidence that employee was misled by any federal agency. Noisette v. Geithner, D.D.C.2010, 693 F.Supp.2d 60. Civil Rights 1505(4); Civil Rights 1518

Even if administrative law judge's (ALJ's) order denying federal employer's motion for summary judgment and returning case to jurisdiction of United States Department of Agriculture (USDA) for final decision became final agency action, equitable tolling of 90-day limit for bringing civil action under Title VII was warranted; it was undisputed that employee several times requested final agency action so he could bring federal civil action, but, until he commenced action, USDA did not issue final decision with respect to employee's first complaint, ALJ order returned case to USDA for final decision and failed to notify employee that order would become final agency action in absence of USDA's further action within forty days. Laudadio v. Johanns, E.D.N.Y.2010, 677 F.Supp.2d 590. Civil Rights 1530

Time period for federal employee to contact Equal Employment Opportunity Commission (EEOC) counselor following her nonselection for each of three different positions would not be equitably tolled, where there was no evidence that plaintiff was unaware of exhaustion time limit or that agency prevented her from contacting EEO counselor and record showed that even before any deadline had passed for non-selections at issue, employee was familiar with process of filing administrative grievances. Chavers v. Shinseki, D.D.C.2009, 667 F.Supp.2d 116, motion denied 2010 WL 2574102, appeal dismissed 2010 WL 4340538. Civil Rights 1505(6)

Likely lack of prejudice to the Secretary of Transportation did not warrant equitable tolling of Title VII's 90-day time period for former employee of the Federal Aviation Administration to file employment discrimination action in federal court. Strong-Fischer v. Peters, D.D.C.2008, 554 F.Supp.2d 19. Civil Rights 1530

Former employee's untimely filed Title VII complaint against United States Department of Agriculture (USDA), for allegedly terminating her on basis of race and sex discrimination and retaliation, did not qualify for equitable tolling of 30-day filing deadline after final decision from Merit Systems Protection Board (MSPB) affirming her termination, where employee failed to provide any explanation for filing complaint 29 days after deadline and 59 days after MSPB had provided straightforward and accurate instructions regarding her options for appealing adverse decision. Garcia v. Vilsack, D.N.M.2009, 628 F.Supp.2d 1306. Officers And Public Employees 72.45(3)

District court would not exercise its equitable power to toll statute of limitations on federal employee's Title VII claim, absent evidence she was misled by agency official about running of statute of limitations; agency's EEO representative told employee only that pursuing mediation did not foreclose later EEO action, and agency explicitly informed employee of the 45-day deadline in two separate documents. White v. Geithner, D.D.C.2009, 602 F.Supp.2d 35. Civil Rights 1505(6)

Employee failed to rebut presumption that he received court's denial of his in forma pauperis (IFP) application within three to five days of mailing, for purposes of determining whether 90-day period was equitably tolled; employee did not submit sworn testimony or other admissible evidence to support his claim that he received denial several weeks later, but instead relied on allegations or denials in his own pleading. Okereh v. Winter, D.D.C.2009, 600 F.Supp.2d 139, reversed 625 F.3d 21. Civil Rights 1535

Federal employee was not entitled to equitable tolling of 90-day period for filing discrimination complaint because of his lawyer's death, which he learned of before Final Agency Decision (FAD) issued; employee had well over four months to ascertain whether his deceased lawyer's firm would continue with his case but waited until last possible day before discovering it would not represent him. House v. Salazar, D.D.C.2009, 598 F.Supp.2d 89. Civil Rights 1530

African-American former employee's 45-day period to file with Equal Employment Opportunity Commission (EEOC) his Title VII race discrimination charge against Department of Labor (DOL) was not equitably tolled, where employee did not suggest that he was unaware of time limit or that he was prevented from contacting EEOC counselor, but rather, employee had considerable experience with employment claims after filing at least four union grievances and one EEOC complaint. Hayes v. Chao, D.D.C.2008, 592 F.Supp.2d 51. Civil Rights 1505(6)

Equitable tolling of time limits for employee to bring gender and age discrimination claims under Title VII and the Age Discrimination in Employment Act (ADEA) was not warranted; employee provided no facts that substantiated his assertions that equitable tolling was warranted. Miller v. Rosenker, D.D.C.2008, 578 F.Supp.2d 107, reversed 594 F.3d 8, 389 U.S.App.D.C. 193. Civil Rights 1505(6)

No extraordinary circumstances justified equitable tolling of 45-day period in which United States Postal Service (USPS) employee, whose facility was closed for anthrax decontamination and who claimed discrimination from not being compensated for additional travel time during cleanup to temporary work locations at other facilities, was to initiate contact with EEO counselor; not only did employee's statement that complaint process failed because of a “conflict of interest” not meet burden of proof required to support equitable tolling, but it also implied that employee was fully aware of complaint

procedures and intentionally chose not to follow them. Pickett v. Potter, D.D.C.2008, 571 F.Supp.2d 66. Civil Rights 1505(6)

Equitable tolling of limitations period for National Transportation Safety Board (NTSB) employee to appeal final agency decision denying his discrimination complaint was not justified, absent evidence that his delay in filing of administrative appeal was anything more than the result of neglect and lack of due diligence. Miller v. Rosenker, D.D.C.2008, 567 F.Supp.2d 158. Civil Rights 1510

Federal Bureau of Investigation (FBI) employee's internal appeal of the FBI's termination decision was wholly separate from his Title VII claim, and given that employee could have pursued his legally and factually distinct discrimination claims concurrently with his internal appeal, employee's filing of an internal FBI appeal neither renewed nor equitably tolled the statutory 45-day limitations period for initiating Equal Employment Opportunity (EEO) counseling. Foster v. Gonzales, D.D.C.2007, 516 F.Supp.2d 17. Civil Rights 1505(3); Civil Rights 1505(6)

Title VII plaintiff, an employee of the Federal Deposit Insurance Corporation (FDIC), was not entitled to equitable tolling of the limitations statute requiring her to file suit within 90 days of receipt of notice of a final administrative action, despite her claim that she was mislead by the FDIC into believing that the 90-day period ran from the time she personally, as opposed to her counsel, received notice of the FDIC's final agency decision; the employee was represented by competent, experienced counsel, who provided no explanation for why he was unable to timely file the case. Bass v. Bair, D.D.C.2007, 514 F.Supp.2d 96. Civil Rights 1530

Equitable tolling of administrative filing requirements under Title VII and the ADEA was not warranted, despite plaintiff's claim that he was suffering from emotional problems and marital difficulties that caused him to be too exhausted to perform daily activities, including participating in an Equal Employment Opportunity Commission (EEOC) action; there were no medical records, doctor reports, prescription receipts or statements from independent individuals cognizant of plaintiff's claimed problems. Patnaude v. Gonzales, D.Del.2007, 478 F.Supp.2d 643. Civil Rights 1505(6)

The 90-day deadline for federal employee to file Title VII suit following receipt of notice of final administrative action would not be equitably tolled on grounds that employee's counsel was finishing preparation of complaint during afternoon of day it was due when his computer froze, that employee had been diligent in pursuing his case, or that doing so would not prejudice agency. DePippo v. Chertoff, D.D.C.2006, 453 F.Supp.2d 30. Civil Rights 1530

Because federal employee did not meet his burden of pleading and proving equitable tolling of 90-day time period for filing discrimination complaint or provide any excuse for

filing suit more than four months late, complaint had to be dismissed as untimely. Wiley v. Johnson, D.D.C.2006, 436 F.Supp.2d 91. Civil Rights 1530

No basis existed to equitably toll the applicable deadlines for filing Title VII claim against Postal Service, and therefore district court lacked subject matter jurisdiction based on failure to exhaust administrative remedies prior to seeking relief in federal court; employee was cognizant of the filing deadlines and of the lateness of her filings, as evidenced by her prior timely appeal to the Equal Employment Opportunity Commission's (EEOC) Office of Field Operations (OFO) and her timely petition for attorney fees in response to prior OFO decision, employee could not in good faith claim ignorance of EEOC procedural requirements when she had counsel representing her, and she did not show that Postal Service thwarted her attempts to pursue her Title VII claim by failing to provide her with a copy of the complaint file, comply with the OFO orders, and to inform her of her rights. Harrison v. Potter, S.D.N.Y.2004, 323 F.Supp.2d 593. Civil Rights 1505(6); Civil Rights 1530

Court would invoke equitable principles to waive exhaustion requirements for African-American public employee's Title VII race-based discrimination and retaliation action against her employer, where employee withdrew her second Equal Employment Opportunity (EEO) complaint based on bad advice from an EEO counselor that allegations in her second complaint would become part of her first complaint and that consolidation would expedite processing. Smith v. O'Neill, D.D.C.2003, 277 F.Supp.2d 12. Civil Rights 1519

Equitable tolling is applicable to civil rights suits against private defendants as well as suits against the United States brought by federal employees, and may be appropriate where the defendant has actively misled the plaintiff or where the plaintiff has in some extraordinary way been prevented from asserting his rights. Carter v. Rubin, D.D.C.1998, 14 F.Supp.2d 22. Civil Rights 1530

Courts generally apply equitable tolling for mental disability only when plaintiff has severe disability that precludes his ability to reason and function in society. Steele v. Brown, M.D.N.C.1998, 993 F.Supp. 918, affirmed 155 F.3d 561. Limitation Of Actions 104.5

Former employee who sued United States Postal Service (USPS), alleging employment discrimination, failed to timely exhaust his administrative remedies, as required to maintain action under Title VII; administrative timing requirements were not equitably tolled by employee's purported reliance on verbal trust agreement with supervisor, since such agreement did not implicate any mistaken assertion of rights or other viable grounds for tolling. Word v. Potter, C.A.3 (N.J.) 2005, 149 Fed.Appx. 97, 2005 WL 2277382, Unreported. Civil Rights 1505(6)

Limitations period governing former Department of Defense employee's administrative remedies for alleged Rehabilitation Act violations was not equitably tolled, where employee received in his termination letter notice of his Equal Employment Opportunity (EEO) rights and time line applicable for filing EEO complaint, but provided no grounds to excuse his untimely filings in administrative process. Smith v. Brownlee, C.A.10 (N.M.) 2005, 130 Fed.Appx. 257, 2005 WL 958436, Unreported. Civil Rights 1505(6)

Postal Service's mere investigation of black employee's claim that she was harassed by management due to race and/or disability discrimination because management restricted her communication and consultation with co-workers did not rise to level of affirmative misconduct, which would support applying equitable estoppel to 45-day limitations period in which employee had to bring allegation to attention of Equal Employment Opportunity (EEO) counselor. Grey v. Potter, M.D.N.C.2003, 2003 WL 1923733, Unreported. Civil Rights 342

The 90-day limitations period for federal employee's filing of Title VII action following receipt of final agency decision denying his EEO claim would not be equitably tolled during pendency of employee's state court action seeking enforcement of Connecticut Human Rights and Opportunities Commission (CHRO) hearing officer's administrative default award against agency; law was clear that Title VII claims by federal employees had to be brought in federal court, and employee had notice even before the limitations period began to run that CHRO default order had been issued by agency that lacked jurisdiction. Colon v. Potter, C.A.2 (Conn.) 2002, 51 Fed.Appx. 43, 2002 WL 31558049, Unreported. Civil Rights 1530

289. Continuing violations, time for bringing action

A hostile work environment can be a continuing violation, under Title VII, even though the employee is not working, where the employee claims her employer drove her out of the workplace due to harassment and she has received no indication that the environment of harassment has changed. Greer v. Paulson, C.A.D.C.2007, 505 F.3d 1306, 378 U.S.App.D.C. 295. Civil Rights 1505(7)

Continuing violation of this subchapter does not excuse aggrieved employee from complying with applicable statutes of limitations; rather, it simply allows employee to include in his initial complaint with Commission or employing agency allegedly discriminatory acts that occurred before limitations period, provided that at least one of the acts complained of falls within limitations. Scott v. St. Paul Postal Service, C.A.8 (Minn.) 1983, 720 F.2d 524, certiorari denied 104 S.Ct. 1453, 465 U.S. 1083, 79 L.Ed.2d 770. Civil Rights 1530

Plaintiffs were time barred with respect to their discriminatory employment claims as to four vacancies at GS-14 level in Defense Logistics Agency where administrative pro-

ceedings were never initiated, either informally or formally, on any of claims until more than 30 days after earlier vacancies were filled and plaintiffs neither alleged in their complaint nor argued at trial that defendants' acts constituted continuing discrimination, pervasive bias, or unlawful employment policies which would have entitled them to relief from filing time limits. Milton v. Weinberger, C.A.D.C.1981, 645 F.2d 1070, 207 U.S.App.D.C. 145. Civil Rights 1530

Female wildlife biologist with National Forest Service (NFS) could recover on hostile work environment theory under Title VII for acts occurring more than 45 days before her charge was filed with Equal Employment Opportunity Commission (EEOC), under theory of continuing violation, where actions of her supervisors and co-workers were part of same hostile work environment as acts occurring within 45-day statutory time period; acts all related to biologist's office space and harassment regarding breastfeeding of her child, and were made by same supervisor and co-workers. White v. Schafer, D.Colo.2010, 738 F.Supp.2d 1121. Civil Rights 1505(7)

Alleged demeaning remarks made by Hispanic female federal employee's former supervisor in front of employee's team members, including remarks, “Do you understand me, read by lips,” and “Oh, are you sleeping, go to sleep,” were not part of single practice of discrimination for continuing violation of Title VII, as would equitably toll 45-day limitations period for contacting Equal Employment Opportunity (EEO) counselor; on their face, remarks were not related to employee's gender, race, national origin, or alleged disability, remarks did not constitute adverse employment action, supervisor, like employee, was Hispanic, and supervisor was not employee's supervisor during later charges. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1505(7)

Federal employee could not use continuing violation theory to revive her time-barred Title VII claim for retaliation arising from meeting in which supervisor allegedly indicated that employee would not be promoted unless she dropped her pending discrimination complaint by relying upon subsequent memorandum in which supervisor withdrew his settlement proposal, given that meeting was discrete retaliatory act. Hines v. Bair, D.D.C.2009, 594 F.Supp.2d 17. Civil Rights 1505(7); United States 36

Continuing violations doctrine did not apply to toll or extend limitations period in postal employee's action against Postmaster General alleging violations of the Rehabilitation Act and Title VII, where each alleged discriminatory and retaliatory act, including denial of overtime and denial of holiday choice, was a discrete act. Gentile v. Potter, E.D.N.Y.2007, 509 F.Supp.2d 221. Civil Rights 1505(7); Postal Service 5

Knowledge by black Secret Service agents, of allegedly discriminatory nature of promotion policy, was irrelevant, for purpose of pleading continuing violation in racial discrimination lawsuit under Title VII, since agents challenged alleged system of discrimination.

Moore v. Chertoff, D.D.C.2006, 437 F.Supp.2d 156. Limitation Of Actions ⚿58(1); Limitation Of Actions ⚿95(15)

Postal employee was not subjected to single ongoing discriminatory policy or mechanism during her entire term of employment, and thus continuing violation doctrine did not apply to extend limitations period for her to bring Title VII action based on alleged sexual harassment by her previous supervisors, despite employee's contention that her supervisors had all spoken to another supervisor who had been transferred because of sexual harassment charges brought by employee and co-worker, where other supervisor did not speak with any other supervisor until after they had left employee's building and ceased contact with her. Lucenti v. Potter, S.D.N.Y.2006, 432 F.Supp.2d 347. Civil Rights ⚿1505(7)

Postal Service was not liable for any sexual harassment by coemployees that occurred outside statutory time period for Title VII hostile environment claims, where Postal Service took intervening remedial action, such that causal link for continuing violation was not present. Randall v. Potter, D.Me.2005, 366 F.Supp.2d 104. Civil Rights ⚿1505(7)

Continuing violation theory did not revive otherwise stale Title VII gender discrimination claims of federal employee who alleged that employer had committed series of discriminatory acts, including denying her equal pay given to male coworker over series of pay periods; employee's claim essentially alleged she was denied promotion and commensurate pay at higher grade level, and her claim that she was paid less than one male coworker did not establish continuing pattern of discrimination against women. Schrader v. Tomlinson, D.D.C.2004, 311 F.Supp.2d 21, motion to vacate denied 2005 WL 327130. Civil Rights ⚿1505(7)

Continuing violation doctrine was not applicable so as to toll Title VII's limitations periods; federal employee understood Equal Employment Opportunity Commission (EEOC) procedure and was aware of his rights and he filed complaints, 19 in all, and one appeal after each incident he considered to be discriminatory or retaliatory and, as such, any claim for which he failed to follow proper procedure was time barred. Bullock v. Widnall, M.D.Ala.1996, 953 F.Supp. 1461, affirmed 149 F.3d 1196. Civil Rights ⚿1505(7); Civil Rights ⚿1530

Incidents, which formed basis of female postal employee's second Equal Employment Opportunity Commission (EEOC) complaint, did not constitute part of single continuing violation, so as to allow incidents to be considered with respect to employee's previously-filed sexually hostile work environment claim under Title VII; incidents were not part of ongoing unlawful employment practice, in that, employee was at different facility when incidents allegedly occurred, with entirely new supervisors and co-workers. Fairley v. Potter, N.D.Cal.2003, 2003 WL 403361, Unreported. Civil Rights ⚿1505(7)

290. Waiver, time for bringing action

Docketing and acting on federal employee's untimely request for reconsideration of determination in employment discrimination suit by Equal Employment Opportunity Commission does not constitute waiver of 30-day [now 90-day] limit for employee to commence Title VII suit against federal government. Rowe v. Sullivan, C.A.5 (Tex.) 1992, 967 F.2d 186, rehearing denied. Civil Rights 1530

Air Force waived its right to claim that employee's Title VII employment discrimination action was time barred by proceeding with administrative phase of the employee's complaint for four years without objection; Air Force initially found complaint to be timely, argued on administrative appeal that it was timely and engaged in extensive discovery premised on the complaint's timeliness. Munoz v. Aldridge, C.A.5 (Tex.) 1990, 894 F.2d 1489. Civil Rights 1530

Veterans Administration made specific, unmodified finding that former employee's EEOC race discrimination claim was timely, and thus, waived 30-day [now 90-day] time limit for notification to appropriate administrative authority that is precondition to Title VII action, where Office of General Counsel of Veterans Administration, on remand from EEOC decision reversing Veterans Administration's rejection of the complaint as not within purview of EEOC regulations and remanding for determination of timeliness of the complaint, found that since the former employee contacted EEOC counselor during same month she became aware of alleged discrimination, there was no 30-day timeliness problem in the case. Henderson v. U.S. Veterans Admin., C.A.5 (Tex.) 1986, 790 F.2d 436.

Failure of federal employee either to notify Equal Employment Opportunity (EEO) counselor or file claim in timely fashion bars employment discrimination complaint filed in federal court, absent adequate showing by employee of waiver, estoppel or equitable tolling. Ross v. Runyon, S.D.Tex.1994, 858 F.Supp. 630. Civil Rights 1505(4)

291. Particular actions timely, time for bringing action

Bargaining unit's premature filing of employment discrimination suit against federal agency was cured by its receipt of right-to-sue notice from Equal Employment Opportunity Commission (EEOC) during pendency of its Title VII action. Fraternal Order of Police Library of Congress Labor Committee v. Library of Congress, D.D.C.2010, 692 F.Supp.2d 9. Civil Rights 1523

United States Department of Agriculture (USDA) employee's Title VII claims in second Equal Employment Opportunity (EEO) complaint were “reasonably related” to his prior complaint, and thus claims were administratively exhausted; employee's first EEO complaint asserted claim of retaliation for his prior EEO counseling and reiterated discrimi-

nation claim, and claims in second EEO complaint alleged reprisal for prior EEO activity. Laudadio v. Johanns, E.D.N.Y.2010, 677 F.Supp.2d 590. Civil Rights 1516; United States 36

Federal Bureau of Investigation (FBI) employee contacted FBI's Equal Employment Opportunity (EEO) Office within 45 days of her demotion, as required to bring disparate treatment claim under Title VII relating to the demotion. Dawson v. U.S., D.S.C.2008, 549 F.Supp.2d 736, affirmed 368 Fed.Appx. 374, 2010 WL 727648. Civil Rights 1505(3)

Federal employee filed civil action for employment discrimination within 90 days of final decision of Equal Employment Opportunity Commission (EEOC), so that her civil complaint did not appear to be untimely or otherwise unsalvageable. Arizmendi v. Lawson, E.D.Pa.1996, 914 F.Supp. 1157. Civil Rights 1530

Postal employee's Title VII lawsuit, filed within 30 days [now 90 days] of receiving right to sue letter on her first Equal Employee Opportunity Commission (EEOC) charge of harassment was timely, notwithstanding earlier receipt of right to sue letter on second charge. Babcock v. Frank, S.D.N.Y.1990, 729 F.Supp. 279. Civil Rights 1530

292. Particular actions not timely, time for bringing action

United States Postal Service (USPS) employee's Title VII complaint was not timely filed in district court, where filing was at least 92 days following receipt of USPS Final Decision. Colbert v. Potter, C.A.D.C.2006, 471 F.3d 158, 374 U.S.App.D.C. 35. Civil Rights 1530

United States Postal Service (USPS) employee was required to file her Title VII claims of sex discrimination and retaliation 90 days after she received notice of Equal Employment Opportunity Commission's (EEOC) decision finding no discrimination, presuming she received the notice five days after the EEOC issued its decision; employee did not plead a different date of receipt nor did she rebut this presumption through a sworn statement or evidence demonstrating a date of receipt beyond five days from the issuance of the decision. McAlister v. Potter, D.D.C.2010, 733 F.Supp.2d 134. Civil Rights 1530; Civil Rights 1537; Civil Rights 1541; Postal Service 5

Federal employee failed to timely exhaust her administrative remedies regarding claim of retaliation based on removal of her Chief Information Officer (CIO) duties; while she alleged in her complaint that failure to promote her to Senior Executive Service (SES) level was of an ongoing and continuous nature, removal of her CIO duties was not “of a like kind” to allegations in her EEO complaint that she was repeatedly denied promotions. Thomas v. Vilsack, D.D.C.2010, 718 F.Supp.2d 106. Civil Rights 1516; United States 36

Federal employer's denial of Hispanic female employee's request to telecommute, modifications of employee's engagement letter drafts, substantial delay in granting employee's request for award at time of accomplishment, and providing employee with limited work assignments were discrete acts, and thus employee was required under Title VII to contact Equal Employment Opportunity (EEO) counselor within 45 days of each incident. Lopez v. Kempthorne, S.D.Tex.2010, 684 F.Supp.2d 827. Civil Rights 1505(3)

United States Postal Service (USPS) employee did not timely file her retaliation claims in district court following exhaustion of her administrative remedies, where she did not file civil suit until more than 10 months after presumed date of receipt of final agency decision three days after it was mailed to employee and her counsel. Armery v. Potter, D.Mass.2007, 497 F.Supp.2d 134. Civil Rights 1530; Postal Service 5

Failure to file Title VII action within 90 days after receiving a right-to-sue letter from the Equal Employment Opportunity Commission (EEOC) precluded court from considering the merits of the claim where pro se plaintiff alleged no factual basis for equitable tolling. Ugbo v. Knowles, E.D.Va.2007, 480 F.Supp.2d 850. Civil Rights 1530

Other prior instances in which federal employee was not selected for positions were not properly included in charge with Equal Employment Opportunity Commission (EEOC) where period for employee to seek EEOC counseling and timely file EEOC charge regarding those instances had lapsed prior to filing of her EEOC charge concerning her non-selection for program analyst position. Vines v. Gates, D.D.C.2008, 577 F.Supp.2d 242. Civil Rights 1505(3)

National Transportation Safety Board (NTSB) employee's appeal of final agency decision denying his discrimination complaint was untimely; more than 90 days had elapsed between his receipt of that decision and his filing of complaint in district court, and his administrative appeal to Equal Employment Opportunity Commission (EEOC) was postmarked 31 days after he claimed to have received final agency decision. Miller v. Rosenker, D.D.C.2008, 567 F.Supp.2d 158. Civil Rights 1510

Federal employee's claim that agency retaliated against him when it took away his professional work and denied him the ability to compete for promotion was not reasonably related to discrimination claims he made in his earlier administrative discrimination complaint, and thus employee could not raise claims in his action brought under Title VII and Rehabilitation Act due to his failure to exhaust administrative remedies, where administrative complaint focused almost exclusively on agency's new medical certification requirement for continued inclusion in program for accommodating employees injured because of their exposure to toxic substances in office building, and new claim involved new actors and new discrete acts that were never raised at administrative level. Dage v.

Johnson, D.D.C.2008, 537 F.Supp.2d 43. Civil Rights 1516; United States 36

Postal employee's claims for denial of overtime, absence without leave, and denial of vacation choice were time-barred in action against Postmaster General alleging violations of the Rehabilitation Act and Title VII, where claims accrued more than 45 days prior to employee's initiation of Equal Employment Opportunity (EEO) counseling. Gentile v. Potter, E.D.N.Y.2007, 509 F.Supp.2d 221. Civil Rights 1505(3)

Federal Bureau of Investigation (FBI) Saudi Arabian legal attache's failure to timely exhaust his administrative remedies with regard to five discrete acts of discrimination and four discrete acts of retaliation warranted dismissal of those claims; these included claims based on alleged failure to include him in meetings, refusal to permit him to continue studying Arabic, “channeling” of communications between him and his supervisors through Deputy Assistant Director, and “unauthorized travel” of personnel to Arabian peninsula. Rattigan v. Gonzales, D.D.C.2007, 503 F.Supp.2d 56. Civil Rights 1514; United States 36

Postal Service employee's claims of disparate treatment based on race asserted in her first and second equal employment opportunity (EEO) complaints, including that she was not permitted to work in a limited duty capacity whereas white Postal Service employees were, and was given a 14-day suspension for deviating from her mail delivery route to take breaks at her home, as did white Postal Service employees, were time-barred because employee did not commence the instant action within 90 days of receipt of final agency decision (FAD) notices with respect to such claims. Hudson v. Potter, W.D.N.Y.2007, 497 F.Supp.2d 491. Civil Rights 1530

While federal employee exhausted his claims before Equal Employment Opportunity Commission (EEOC) that he was subjected to discrimination or retaliation when he was not allowed to take medication, not selected for training, issued letter of warning, and suspended for seven and then fourteen days, and his claim for discrimination in issuance of notice of removal, because he did not file civil action with regard to those claims within 90-day period, they were time-barred. Slate v. Potter, M.D.N.C.2006, 459 F.Supp.2d 423, affirmed 365 Fed.Appx. 470, 2010 WL 547410. Civil Rights 1530

Civil service employee was precluded from bringing Title VII claims for hostile work environment and discrimination on the basis of his age, gender, race, religion, place of birth, disability, and whistle-blowing, where lawsuit alleging such claims was not filed until 165 days after the final determination of the Equal Employment Opportunity Commission (EEOC). Shields v. Department of Navy, E.D.Va.2006, 428 F.Supp.2d 453. Civil Rights 1530

Ninety-day limitations period for filing of Title VII employment discrimination action, which ran from federal employee's “receipt” of notice of administrative decision on her

Equal Employment Opportunity (EEO) complaint, began to run some time prior to employee's actual receipt of decision; employee had, on several occasions prior to actual receipt, received both actual and constructive notice that final agency decision was available, and had delayed for total of two and one-half months following first of those notices before retrieving decision. Christmas v. Spellings, D.D.C.2005, 404 F.Supp.2d 239. Civil Rights 1530

Because African-American Library of Congress employee failed to exhaust her administrative remedies with respect to four alleged instances of race discrimination involving failure to promote her from GS-5 to GS-6 status while promoting similarly situated Caucasian employees and presented no equitable arguments against enforcement of exhaustion requirement, her Title VII claim in that regard was untimely; employee did not file allegation of discrimination as to any selections within 20 workdays of the discriminatory event, as required by agency rule, or argue for waiver, estoppel, or equitable tolling. Nichols v. Billington, D.D.C.2005, 402 F.Supp.2d 48, affirmed 2006 WL 3018044, reconsideration denied. Civil Rights 1505(4)

Failure of federal employees to report alleged race discrimination by supervisor within 45 days after learning of supervisor's purportedly race-motivated request that state nursing board investigate employees' alteration of medical records precluded district court's subject matter jurisdiction over employees' Title VII claims, due to employees' failure to exhaust administrative remedies; although employees contended that investigation which followed supervisor's request constituted ongoing harassment extending period in which employees could report their claims, employees' claims rested on supervisor's sole allegedly discrimination act. Martell v. Thompson, D.N.D.2005, 377 F.Supp.2d 760. Civil Rights 1505(7); Civil Rights 1514

Alleged discrete acts of discrimination which occurred more than 45 days before Bureau of Land Management (BLM) employee sought Equal Employment Opportunity (EEO) counseling were barred for failure to properly exhaust administrative remedies. West v. Norton, D.N.M.2004, 376 F.Supp.2d 1105. Civil Rights 1514

Federal employee's proffered reasons for failing to meet 90-day time limit for filing action in district court under Title VII and ADEA after receipt of notice of final agency action were not sufficient to invoke equitable tolling; employee alleged that time limitations established by law were “effective tool for the system” that created “pitfalls throughout the process” and that, as pro se litigant, he was no “match” for defense counsel. Smith v. Dalton, D.D.C.1997, 971 F.Supp. 1. Civil Rights 1530

Employee's argument that he did not file appeal or timely Title VII action after receipt of final Equal Employment Opportunity Commission (EEOC) decision dismissing complaint as untimely because to do so would have been futile did not excuse his failure to timely appeal or file action, where there was no reason to believe that either EEOC or court

would be less sympathetic to timely appeal, challenging dismissal as unfair in light of employee's reliance on EEOC counselor's alleged promise to file complaint for him, than when made in court two years later. Pauling v. Secretary of Dept. of Interior, S.D.N.Y.1997, 960 F.Supp. 793. Civil Rights 🔑1530

Federal employee failed to demonstrate that any alleged discriminatory act by government occurred within 45-day period prior to when she initiated contact with equal employment opportunity (EEO) counselor, and therefore her Title VII sex discrimination and retaliation claims were time-barred. Facha v. Cisneros, E.D.Pa.1996, 914 F.Supp. 1142, amended on reconsideration, affirmed 106 F.3d 384. Civil Rights 🔑1505(3)

Claim of Air Force employee that termination of her employment violated Title VII was barred by statute of limitations; following dismissal of earlier complaint for failure to obtain service of process on appropriate defendants, present complaint was filed three years after 90-day limitations period expired and employee presented no argument that limitation period should be equitably tolled. Becker v. Rice, W.D.Ark.1993, 827 F.Supp. 589. Civil Rights 🔑1530

Sex discrimination claim filed by former government employee after her first claim was dismissed without prejudice was untimely because first claim itself had been untimely when filed more than 30 days [now 90 days] after employee received right to sue letter. Cooper v. Chairman of Bd. of Directors of Federal Deposit Ins. Corp., D.Puerto Rico 1989, 715 F.Supp. 14. Civil Rights 🔑1530

Federal agency employee's claims of being passed over for promotion were allegations of discrete discriminatory acts, and paychecks he received after not getting promoted were not continuing violations, and thus 45-day charging period was triggered at time employee did not receive promotions, for purpose of employee's Age Discrimination in Employment Act (ADEA) and Title VII claims of discrimination and retaliation. Smithers v. Wynne, C.A.11 (Ga.) 2008, 319 Fed.Appx. 755, 2008 WL 53245, Unreported. Armed Services 🔑27(6); Civil Rights 🔑1505(7)

District court is not required to consider federal employee's discrimination complaint, where allegations are not raised with Equal Employment Opportunity (EEO) counselor within 45 days of alleged discriminatory action, even if agency investigates claim; fact that agency commenced investigation is not sufficient to equitably estop plaintiff's failure to bring timely the allegation to EEO counselor's attention. Grey v. Potter, M.D.N.C.2003, 2003 WL 1923733, Unreported. Civil Rights 🔑342

Incidents, which formed basis of female postal employee's second Equal Employment Opportunity Commission (EEOC) complaint, could not be considered with respect to employee's previously filed Title VII sexually hostile work environment claim; employee failed to file suit within relevant time period following EEOC final decision on second

complaint, and employee did not amend her Title VII complaint on timely basis to include allegations concerning incidents. Fairley v. Potter, N.D.Cal.2003, 2003 WL 403361, Unreported. Civil Rights 1530

VIII. REMEDIES OR RELIEF

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321. Remedies or relief generally

Federal Bureau of Investigation (FBI) was entitled to taxation of costs for service of deposition subpoenas on three witnesses as prevailing party in Title VII action by FBI employee, despite employee's contention that subpoenas were not necessary as two witnesses did not testify at trial and the third was called by employee, where local court rule permitted taxation of costs for service on any witness who testified at deposition and did not require the that subpoena be necessary. Youssef v. F.B.I., D.D.C.2011, 2011 WL 313289. Civil Rights 1584

Court could not give further consideration to former employee's age and gender discrim-

ination claims under Title VII and ADEA to extent that employee received full relief on his claims after administrative hearing. Mitchell v. Chao, N.D.N.Y.2005, 358 F.Supp.2d 106. Civil Rights 1560

United States Postal Service (USPS) employee suing for race and gender discrimination under Title VII was not entitled to order prohibiting Postmaster General from further withholding and tampering with her mail, absent evidence that he or his employees intentionally damaged package containing copies of supplemental disclosures comprised of copies of her payroll records, claim that contents of package were damaged or missing, or identification of any deadline missed by employee because of delay in package's delivery. Williams v. Potter, D.Kan.2004, 331 F.Supp.2d 1331, affirmed 149 Fed.Appx. 824, 2005 WL 2387828, certiorari denied 127 S.Ct. 83, 549 U.S. 818, 166 L.Ed.2d 30. Civil Rights 1560; Postal Service 23

The subchapter is not a remedy for denial of due process in federal employment not based on race or any of the other classes proscribed by this subchapter. Grier v. Headquarters, U.S. Army Forces Command, Ft. McPherson, Ga., N.D.Ga.1983, 574 F.Supp. 183. Civil Rights 1125

Federal employees are accorded the full rights available in courts as are granted to individuals in the private sector under this subchapter. Brown v. ASD Computing Center, S.D.Ohio 1981, 519 F.Supp. 1096. Civil Rights 1116(1)

Judicial remedies available to federal employees under Title VII of Civil Rights Act to redress employment discrimination are encompassing. Neely v. Blumenthal, D.C.D.C.1978, 458 F.Supp. 945. Civil Rights 1511

322. Power of Commission, remedies or relief

Subsecs. (b) and (c) of this section establish complementary administrative and judicial enforcement mechanisms designed to eradicate federal employment discrimination; subsec. (b) delegates to the Civil Service Commission [now to EEOC] full authority to enforce the provisions of subsec. (a) of this section "through appropriate remedies, including reinstatement or hiring of employees with or without back pay," to issue "rules, regulations, orders and instructions as it deems necessary and appropriate" to carry out its responsibilities under the Act, and to review equal employment opportunity plans that are annually submitted to it by each agency and department. Brown v. General Services Administration, U.S.N.Y.1976, 96 S.Ct. 1961, 425 U.S. 820, 48 L.Ed.2d 402.

Social Security Administration (SSA) employee who was seeking to enforce Equal Employment Opportunity Commission (EEOC) Office of Federal Operations (OFO) order that she be returned to her original position failed to satisfy regulatory prerequisites for civil enforcement action; EEOC never determined that SSA failed to comply with OFO

order, and EEOC accepted e-mail from SSA as adequate compliance report. Murchison v. Astrue, D.Md.2010, 689 F.Supp.2d 781. Civil Rights 1510

323. Power of Librarian of Congress, remedies or relief

Civil Rights Act of 1964 creates in Library of Congress legal authority to award retroactive promotion with back pay to employee who in good faith claims that he has suffered discrimination in employment, without formally deciding merits of the discrimination charge, and Library may not deprive itself of such authority by unilateral regulation. Shaw v. Library of Congress, D.C.D.C.1979, 479 F.Supp. 945. Civil Rights 1237

324. Exclusive nature of remedies, remedies or relief

This section provides exclusive judicial remedy for claims of discrimination in federal employment. Brown v. General Services Administration, U.S.N.Y.1976, 96 S.Ct. 1961, 425 U.S. 820, 48 L.Ed.2d 402. Civil Rights 1502

Title VII provided exclusive judicial remedy for civilian Air Force employee's claims of discrimination on basis of handicap; Rehabilitation Act did not provide basis for federal court to assert jurisdiction over claims that had not been administratively exhausted. Vinieratos v. U.S., Dept. of Air Force Through Aldridge, C.A.9 (Cal.) 1991, 939 F.2d 762. Administrative Law And Procedure 229; Civil Rights 1502

Terminated government employee failed to plead claims under §§ 1985 and 1986 which were sufficiently distinct from employment discrimination claims to avoid bar against such actions on basis that Title VII provided exclusive remedy for claims of employment discrimination filed against federal government. Irwin v. Veterans Admin., C.A.5 (Tex.) 1989, 874 F.2d 1092, certiorari granted 110 S.Ct. 1109, 493 U.S. 1069, 107 L.Ed.2d 1017, affirmed 111 S.Ct. 453, 498 U.S. 89, 112 L.Ed.2d 435, rehearing denied 111 S.Ct. 805, 498 U.S. 1075, 112 L.Ed.2d 865. Civil Rights 1502

For those federal employees it covers, this subchapter provides the exclusive remedy for employment discrimination. Thompson v. Sawyer, C.A.D.C.1982, 678 F.2d 257, 219 U.S.App.D.C. 393. Civil Rights 1502

Action under this section against federal government is exclusive judicial remedy for federal employment discrimination and for retaliation for filing charge of discrimination. White v. General Services Administration, C.A.9 (Wash.) 1981, 652 F.2d 913. Civil Rights 1502

This section outlaws reprisals against federal employees, who file complaints and a direct action under U.S.C.A.Const. Amend. 5., if it ever existed, is no longer available. Porter v. Adams, C.A.5 (La.) 1981, 639 F.2d 273. Civil Rights 1322; Civil Rights

1502

Title VII was exclusive judicial remedy for federal employment discrimination and preempted black female former postal employee's civil rights conspiracy claim. Mays v. U.S. Postal Service, M.D.Ala.1996, 928 F.Supp. 1552, affirmed 122 F.3d 43. Civil Rights 1502

Section of Civil Rights Act of 1964 governing employment by federal government provides exclusive judicial remedy for claims of discrimination in federal employment. Rodgers v. Scott, N.D.Tex.1995, 901 F.Supp. 224. Civil Rights 1502

Title VII provides exclusive, preemptive administrative and judicial scheme for redress of federal employment discrimination. Murray v. U.S. Dept. of Justice, E.D.N.Y.1993, 821 F.Supp. 94, affirmed 14 F.3d 591. Civil Rights 1502

Title VII provision for federal employees was exclusive remedy for federal employee's race discrimination and retaliation claims and preempted claims under civil rights conspiracy statute, Michigan's Elliott Larsen Civil Rights Act, and state and federal equal protection clauses. Clement v. Motta, W.D.Mich.1991, 820 F.Supp. 1035. Civil Rights 1502

As federal employee, employee's exclusive and preemptive judicial remedy for claims of racial discrimination in employment was supplied by Title VII remedy for federal employees. Elsberry v. Rice, D.Del.1993, 820 F.Supp. 824. Civil Rights 1502

Title VII and Civil Service Reform Act provided comprehensive and exclusive remedy for federal employee who charged discrimination or retaliation in employment and precluded federal employee from bringing First Amendment claim. Patel v. Derwinski, N.D.Ill.1991, 778 F.Supp. 1450. Civil Rights 1502

Former federal employee did not have viable Fifth Amendment due process claim based on supervisors' alleged failure to consider merit system principle requiring equal treatment in all aspects of personnel management without regard to race, sex, or age; both Title VII and Age Discrimination in Employment Act established administrative and judicial enforcement scheme, and recognition of nonstatutory claim based on Fifth Amendment would be inappropriate. Attwell v. Granger, N.D.Ga.1990, 748 F.Supp. 866, affirmed 940 F.2d 673, rehearing denied. Constitutional Law 4166(2)

ADEA and Rehabilitation Act provided federal employee with remedy for employer's alleged acts of retaliation in response to employee's discrimination complaints, and thus preempted employee's constitutional claims. Thorne v. Cavazos, D.D.C.1990, 744 F.Supp. 348. Civil Rights 1312; Civil Rights 1502

Federal employee's Fifth Amendment claim was barred where it raised same racially discriminatory conduct that was basis of Title VII claim. Richards v. U.S. Merit Systems Protection Bd., D.D.C.1990, 739 F.Supp. 657. Civil Rights 1502

Exclusive remedy for alleged racial discrimination in federal employment lies in Title VII of the Civil Rights Act of 1964, and claim cannot be asserted under § 1981. Simmons v. Tisch, E.D.Va.1988, 731 F.Supp. 1286. Civil Rights 1502

Title VII preempted former nurse's claim against chief of Veterans Administration's nursing service and nursing supervisor to recover for intentional infliction of emotional distress in their individual capacities; nurse's allegations concerned treatment of nurse during discharge and arose from employment discrimination. Baird v. Haith, D.Md.1988, 724 F.Supp. 367. Civil Rights 1703; States 18.23

Former federal employee alleging employment discrimination was limited to action under Title VII. Chavez Colon v. Chairman of Bd. of Directors of Federal Deposit Ins. Corp., D.Puerto Rico 1989, 723 F.Supp. 842. Civil Rights 1511

Title VII provided exclusive remedy for Air Force employee's claims of racial discrimination and barred federal claims arising out of same alleged discriminatory behavior. Garrison v. U.S., D.Nev.1988, 688 F.Supp. 1469. Civil Rights 1502

Title VII was former postal service employee's exclusive remedy for employment discrimination by agency and precluded his claim under § 1983. Carver v. Casey, S.D.Fla.1987, 669 F.Supp. 412. See, also, Gates v. U.S. Postal Service, D.C.Mo.1985, 622 F.Supp. 563, affirmed 808 F.2d 839. Civil Rights 1312; Civil Rights 1502

Former Department of Education employee, who exhausted his administrative remedies, was entitled to bring independent Administrative Procedure Act challenge to procedures employed by Merit Systems Protection Board, by Equal Employment Opportunity Commission, and by special administrative tribunal created to decide cases in which those two agencies make conflicting decisions; employee was not limited to bringing Title VII discrimination action against Secretary of Education. Lynch v. Bennett, D.D.C.1987, 665 F.Supp. 62, on remand 37 M.S.P.R. 12. Administrative Law And Procedure 651; Civil Rights 1502; Officers And Public Employees 72.45(1)

Federal employee could not bring claim directly under the Constitution for race and age discrimination in employment, but was required to utilize statutory remedies. Dodson v. U.S. Army Finance and Accounting Center, S.D.Ind.1986, 636 F.Supp. 894. Civil Rights 1322

Absent factual predicate upon which to base federal employee's claims that employers violated her constitutional and contractual rights, distinct from those acts upon which

employee based Title VII [Civil Rights Act of 1964 § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.] claims, non-Title VII claims were preempted by Title VII. Rottman v. U.S. Coast Guard Academy, D.Conn.1986, 630 F.Supp. 1123. Civil Rights 1502

Insofar as federal employee's First Amendment claim against supervisory official asserted that official acted in retaliation for employee's pursuit of reverse discrimination complaint, it was precluded by existence of exclusive remedy for claims of discrimination in federal employment provided by Title VII. Bartel v. F.A.A., D.C.D.C.1985, 617 F.Supp. 190. Civil Rights 1322; Civil Rights 1502

Congress' incorporation of remedies under this subchapter into the Rehabilitation Act, section 701 et seq. of Title 29, shows that Congress intended statutory remedies to be the exclusive means for redressing handicap discrimination in federal employment. Connolly v. U.S. Postal Service, D.C.Mass.1984, 579 F.Supp. 305.

Where dismissed female assistant United States Attorney had full access to and utilization of mechanisms of this subchapter in seeking redress for her claims of sexual discrimination in her employment, she could not maintain separate employment discrimination claim against United States Attorney and Attorney General in their individual capacities for alleged conspiracy resulting in her dismissal. Cazalas v. U.S. Dept. of Justice, E.D.La.1983, 569 F.Supp. 213, affirmed 731 F.2d 280, certiorari denied 105 S.Ct. 1169, 469 U.S. 1207, 84 L.Ed.2d 320. Conspiracy 7.5(1)

325. Alternative remedies, remedies or relief

By enacting the amendment to this subchapter which protects federal employees from discrimination, Congress did not intend to foreclose alternative remedies available to those expressly unprotected by the statute. Davis v. Passman, U.S.La.1979, 99 S.Ct. 2264, 442 U.S. 228, 60 L.Ed.2d 846. Civil Rights 1502

Where employees of Federal Bureau of Investigation who challenged new special agent's selection system which provided for affirmative hiring program for women and minorities on grounds of equal protection violation were covered under this section, employees could not pursue, either additionally or alternatively, claim directly under U.S.C.A. Const.Amend. 5. Kizas v. Webster, C.A.D.C.1983, 707 F.2d 524, 227 U.S.App.D.C. 327, certiorari denied 104 S.Ct. 709, 464 U.S. 1042, 79 L.Ed.2d 173. Civil Rights 1502

This section did not preempt causes of action for which it did not provide a remedy, for example, actions based on conduct beyond the scope of this subchapter. Langster v. Schweiker, N.D.Ill.1983, 565 F.Supp. 407. Civil Rights 1502

325a. Equitable remedies, remedies or relief

After his temporary relocation elsewhere, Assistant Chief Deputy in U.S. Marshals Service in Puerto Rico was entitled to reinstatement to GS-15 Chief Deputy position, in light of evidence that was strong enough to support three different types of Title VII claims, fact he had not found comparable work, absence of evidence he was hired in violation of local law, and uncontradicted testimony that he qualified for that position. Orr v. Mukasey, D.Puerto Rico 2009, 631 F.Supp.2d 138. Civil Rights 1563

Equitable relief ordering defendant employer to cease and desist communication about the verdict in a Title VII case and communications allegedly defaming the plaintiff was not warranted, as no continuing violation of Title VII existed and the requests constituted impermissible restraints on speech; the alleged actions did not affect the plaintiff's ability to seek new employment or constitute continued discrimination under Title VII, and the court had no authority to restrict unnamed employees from interpreting a split verdict in a way that was less than favorable to the plaintiff. Hare v. Potter, E.D.Pa.2007, 549 F.Supp.2d 688. Civil Rights 1561; Constitutional Law 1905; Constitutional Law 2174

326. Election of remedies, remedies or relief--Generally

Federal employee who pursues Equal Employment Opportunity (EEO) proceedings may not simultaneously seek remedy from Merit Systems Protection Board (MSPB); thus, civilian Air Force employee who pursued EEO proceedings could not maintain MSPB appeal. Vinieratos v. U.S., Dept. of Air Force Through Aldridge, C.A.9 (Cal.) 1991, 939 F.2d 762. Election Of Remedies 15

327. ---- Arbitration, election of remedies, remedies or relief

Federal employees' with pure discrimination complaint were required by Civil Service Reform Act to choose between statutory or negotiated grievance procedures; by choosing negotiated procedure, federal employees were required first to appeal arbitrator's decision to Equal Employment Opportunity Commission (EEOC) before seeking relief in district court. Johnson v. Peterson, C.A.D.C.1993, 996 F.2d 397, 302 U.S.App.D.C. 131. Labor And Employment 1535; Labor And Employment 1549(17)

328. Attorney fees, remedies or relief

Female civilian Navy employees' unsuccessful claim for prejudgment interest was distinct from its successful sex discrimination claim under Title VII, and, thus, employees were not entitled to award of attorney fees from the Navy for litigating the prejudgment interest issue, although employees were prevailing party on primary issue of sex discrimination, where litigation of prejudgment interest issue was not inextricably inter-

twined with sex discrimination litigation, it was not necessary to obtain or protect any relief awarded, and it was not necessary to preserve integrity of consent decree entered in the action as a whole. Trout v. Secretary of Navy, C.A.D.C.2008, 540 F.3d 442, 383 U.S.App.D.C. 188, certiorari denied 129 S.Ct. 2791, 174 L.Ed.2d 291. Civil Rights 1593

In determining reasonable award of attorney fees, district court did not abuse its discretion in finding that employee's unsuccessful claims that Phoenix Area Office of Indian Health Service (IHS) violated Indian Preference Act, antinepotism laws, and Title VII prohibition of race discrimination were unrelated to successful claim that Portland Area Office of IHS had erected "glass ceiling" in violation of Title VII prohibition of sex discrimination and had delayed reclassifying her position in retaliation for complaint; course of conduct about which employee complained and relief sought were entirely distinct and separate, in that Phoenix claims focused exclusively on appointing process in Phoenix, the only relief sought was retroactive appointment to IHS Phoenix Area Financial Manager, and factual issues raised concerned knowledge and actions of Phoenix Area Personnel Manager, while claim on which employee ultimately prevailed focused on Portland and relief sought was appointment to IHS Portland Area Financial Manager, and, therefore, unsuccessful claims did not involve same course of conduct as successful claim and efforts expended on unsuccessful claims did not contribute to employee's prevailing on successful claim. Schwarz v. Secretary of Health & Human Services, C.A.9 (Or.) 1995, 73 F.3d 895, 140 A.L.R. Fed. 753. Civil Rights 1593

Reasonable lodestar fee awarded under federal fee-shifting statutes cannot be enhanced to compensate prevailing party for initial risk of loss; overruling *McKenzie v. Kennickell*, 875 F.2d 330; *Weisberg v. U.S. Dept. of Justice*, 848 F.2d 1265; *Thompson v. Kennickell*, 836 F.2d 616; and *Save Our Cumberland Mountains, Inc. v. Hodel*, 826 F.2d 43. King v. Palmer, C.A.D.C.1991, 950 F.2d 771, 292 U.S.App.D.C. 362, certiorari denied 112 S.Ct. 3054, 505 U.S. 1229, 120 L.Ed.2d 920. Federal Civil Procedure 2737.4

Sovereign immunity does not bar claim by Title VII plaintiff for interim attorney fees against government. Trout v. Garrett, C.A.D.C.1989, 891 F.2d 332, 282 U.S.App.D.C. 33. Civil Rights 1588; Civil Rights 1598

Nonprofit legal organizations that successfully litigated Title VII claim were eligible for fee enhancement to reflect contingent nature of claim. McKenzie v. Kennickell, C.A.D.C.1989, 875 F.2d 330, 277 U.S.App.D.C. 297, rehearing denied 884 F.2d 1405, 280 U.S.App.D.C. 195. Civil Rights 1596

Government employee who obtained writ of mandamus directing employing agency to pursue its investigation of his civil rights claim had not prevailed on any Title VII claim and thus was not entitled to an award of attorney fees under Title VII, although he might

be entitled to award of attorney fees under the Equal Access to Justice Act. Anthony v. Bowen, C.A.D.C.1988, 848 F.2d 1278, 270 U.S.App.D.C. 246, certiorari denied 109 S.Ct. 1119, 489 U.S. 1011, 103 L.Ed.2d 182. Civil Rights 1590; United States 147(14)

Attorney fees may not be awarded in favor of the government under provisions of Title VII. Butler v. U.S. Dept. of Agriculture, C.A.5 (La.) 1987, 826 F.2d 409. Civil Rights 1588

Civil rights claimant was not entitled to attorney fees on appeal because, though successful, claimant won only right to trial, and did not otherwise advance enforcement of civil rights laws. Arnold v. U.S., C.A.9 (Cal.) 1987, 816 F.2d 1306. Civil Rights 1599

Civilian equal employment opportunity manager at army base was not entitled to attorney fee under Title VII for legal services performed for him relating to his grievance asserting employment discrimination where grievance was settled without his filing a formal complaint. Mertz v. Marsh, C.A.11 (Ga.) 1986, 786 F.2d 1578, certiorari denied 107 S.Ct. 649, 479 U.S. 1008, 93 L.Ed.2d 705. Civil Rights 1588

Federal government employee who prevailed in civil action brought under this subchapter was entitled to an award of attorney fees for administrative proceeding before the Civil Service Commission [now Office of Personnel Management] which denied award, for action in the district court seeking recovery of such fees, and for services on appeal from the district court's denial of such fees. Booker v. Brown, C.A.10 (Colo.) 1980, 619 F.2d 57. Civil Rights 1587

District court may award attorneys' fees to United States in a case where it has been sued vexatiously and in bad faith under this subchapter; provision of this section permitting prevailing party, other than the Commission or the United States, a reasonable attorneys' fee as part of costs was meant to exclude United States only from statutory allowance of fees, governed by the expansive “prevailing party” standard, and to leave undisturbed the narrow equitable exception in cases of bad faith. Copeland v. Martinez, C.A.D.C.1979, 603 F.2d 981, 195 U.S.App.D.C. 399, certiorari denied 100 S.Ct. 730, 444 U.S. 1044, 62 L.Ed.2d 729. Civil Rights 1592

In determining attorney fee allowance in action brought against federal agency under this subchapter, conditions previously judicially enumerated are applicable, but special caution must be shown because of incentives which federal government's “deep pocket” offers to attorneys to inflate their billing charges and to claim far more as reimbursement than would be sought or could reasonably be recovered from most private parties. Copeland v. Marshall, C.A.D.C.1978, 594 F.2d 244, 193 U.S.App.D.C. 219. Civil Rights 1594

While refusal to award attorney fees to prevailing plaintiff in employment discrimination suit might be an abuse of discretion, failure to give amount demanded or an amount substantially in accordance with demand does not necessarily constitute an abuse or discretion. Carreathers v. Alexander, C.A.10 (Colo.) 1978, 587 F.2d 1046. Civil Rights 1594

Library of Congress employee who, after filing court action pursuant to this subchapter but prior to judgment therein, was granted requested promotion after deputy librarian of Congress, after commencement of court action, rescinded prior decision of coordinator of library's equal opportunity office cancelling employee's racial discrimination complaint, was "prevailing party" within language of provision of § 2000e-5 of this title entitling him to award of attorneys' fees. Foster v. Boorstin, C.A.D.C.1977, 561 F.2d 340, 182 U.S.App.D.C. 342. Civil Rights 1590

The term "proceeding" as used in § 2000e-5 of this title providing that in any action or proceeding the court may allow the prevailing party a reasonable attorney fee is broad enough to refer to either judicial or administrative proceedings, and district court has discretion, in an action under this section where the federal employee is the prevailing party, to award attorney fees that include compensation for legal service performed prior to filing of the judicial complaint. Parker v. Califano, C.A.D.C.1977, 561 F.2d 320, 182 U.S.App.D.C. 322. Civil Rights 1593

Since issues of sex discrimination and physical handicap discrimination against employee of NASA were intertwined, trial court did not err in failing to apportion attorney fees between the sex discrimination claim and the physical handicap discrimination claim and did not err in awarding full attorney fees to plaintiff even though § 7153 of Title 5 which provided basis of handicap discrimination charges did not provide for attorney fees. Smith v. Fletcher, C.A.5 (Tex.) 1977, 559 F.2d 1014. Civil Rights 1587

In civil rights action, under this subchapter, brought by naval engineer employed at naval shipyard who alleged that his supervisors had denied him advancement because of his race, in view of district court's failure to make findings required for award of attorney fees and in view of fact that remand was required in any event, district court would be directed on remand to comply with requirements in awarding attorney fees by making necessary findings to support any such award. Richerson v. Jones, C.A.3 (Pa.) 1977, 551 F.2d 918. Federal Courts 945

Trial court should address claim for attorney fees, as allowed by this subchapter in racial discrimination case. Huntley v. Department of Health, Ed. and Welfare, C.A.5 (La.) 1977, 550 F.2d 290. Civil Rights 1586

Assuming that federal employee who brought action under this section alleging that she had been victim of sex discrimination had "prevailed" on interlocutory appeal, in view of

decision that no further exhaustion of administrative remedies should have been required, since employee had yet to demonstrate discrimination, it would be inappropriate to award her counsel fees under § 2000e-5 of this title authorizing award of attorney fees to prevailing party in employment discrimination actions against federal government. Grubbs v. Butz, C.A.D.C.1976, 548 F.2d 973, 179 U.S.App.D.C. 18. Civil Rights 1599

Demand for attorney fees by federal employee in discriminatory employment practices suit could not be asserted for first time on appeal. Blondo v. Bailar, C.A.10 (Colo.) 1977, 548 F.2d 301. Federal Courts 479

Federal employee who, after Civil Service Commission rejected his claim of discrimination, brought action against Civil Service Commission and his employing agency in federal court could be awarded attorney's fees only if he prevailed on the merits. Sperling v. U. S., C.A.3 (N.J.) 1975, 515 F.2d 465, certiorari denied 96 S.Ct. 2623, 426 U.S. 919, 49 L.Ed.2d 372. Civil Rights 1588

In its discretion, district court would not award attorneys' fees to former Export-Import Bank of the United States employee for time spent litigating her motion to strike former employer's summary judgment argument that employee's filing of Title VII complaint was untimely, which was based on employer's failure to disclose evidence during discovery, since employer acted in good faith by raising issue on summary judgment. Nuskey v. Hochberg, D.D.C.2009, 657 F.Supp.2d 47. Federal Civil Procedure 1278

Title VII plaintiff's motion for attorney fees and costs as prevailing party was premature; motion could not be decided while defendant still had opportunity to file his appeal. Orr v. Mukasey, D.Puerto Rico 2009, 631 F.Supp.2d 138. Civil Rights 1584; Civil Rights 1597

Title VII plaintiff found to have been the victim of a retaliatory hostile work environment by her employer, the United States Postal Service, was a “prevailing party” entitled to reasonable attorney's fees consistent with her degree of success, even though the jury awarded no compensatory damages and her back pay request was denied; equitable relief was granted requiring the Postal Service to perform supplemental training and post notice of the verdict, and although the employee was no longer a direct beneficiary of the equitable relief because her employment had ended, she was required to help implement the training and had an obligation to enforce the judgment. Hare v. Potter, E.D.Pa.2008, 549 F.Supp.2d 698. Civil Rights 1590; Civil Rights 1594; Postal Service 5

Plaintiffs' unsuccessful claim for prejudgment interest for period before amendment of Title VII permitting prejudgment interest was distinct from their successful Title VII litigation against United States, and thus plaintiffs could not recover attorney fees, costs, or

expert fees incurred in litigation of claim, where claim was neither alternative ground for successful outcome nor integral to larger Title VII litigation. Trout v. Winter, D.D.C.2006, 464 F.Supp.2d 25, affirmed 540 F.3d 442, 383 U.S.App.D.C. 188, certiorari denied 129 S.Ct. 2791, 174 L.Ed.2d 291. Civil Rights 1584; Civil Rights 1593

Mootness precluded Title VII claim by retired black postal worker, that Postal Service be enjoined from continuing alleged racially discriminatory practices he claimed resulted in his being denied numerous promotions, and that he be awarded attorney fees; as worker expressly declared he was not seeking any injunctive relief on his own behalf, such as reinstatement, court could not provide him with any relief, as required in order for court to have jurisdiction to grant desired injunction, and worker lacked prevailing party status required before any attorney fees could be awarded. Arline v. Potter, S.D.N.Y.2005, 404 F.Supp.2d 521. Civil Rights 1561; Federal Courts 13.10

Postal worker who prevailed in action for discriminatory denial of promotion was entitled to attorney fees for number of hours claimed by his counsel, with one attorney's hourly billing rate of $135 to be used, while second attorney's requested rate of $200 would be reduced to $160 per hour. Odom v. Frank, N.D.Tex.1991, 782 F.Supp. 50. Civil Rights 1595

An award of interim attorney fees and costs in an employment discrimination action brought against Army for discrimination in its promotion practices based on race did not violate sovereign immunity of federal government. Brown v. Marsh, D.D.C.1989, 707 F.Supp. 21. United States 147(5)

Attorneys representing black employees at Government Printing Office in employment discrimination action were entitled to enhancement of lodestar award of attorney fees and costs; it was shown that Title VII plaintiffs in the District of Columbia routinely faced significant problems securing counsel to represent them on a contingent fee basis and that attorneys received remarkable injunctive and monetary relief for their clients and exhibited exceptional quality of representation. McKenzie v. Kennickell, D.D.C.1988, 684 F.Supp. 1097, affirmed 875 F.2d 330, 277 U.S.App.D.C. 297, rehearing denied 884 F.2d 1405, 280 U.S.App.D.C. 195. Civil Rights 1594

Interim award of attorney fees against government was immediately payable in employment discrimination class action under Title VII of the Civil Rights Act, even though final judgment had not yet been entered. Jurgens v. E.E.O.C., N.D.Tex.1987, 660 F.Supp. 1097. Civil Rights 1598

In suit under the Equal Pay Act and equal employment opportunity provisions of the Civil Rights Act of 1964, plaintiffs, being prevailing party, were entitled to award of reasonable fees and costs under both of such statutes. Thompson v. Barrett, D.C.D.C.1984, 599 F.Supp. 806. Civil Rights 1482; Labor And Employment 2485(1); Labor And

Employment 2485(2)

Plaintiff who has pursued employment discrimination claim only administratively and has not filed action under this subchapter in federal court may recover attorney fees if she is a prevailing party. Skinner v. E.E.O.C., W.D.Mo.1982, 551 F.Supp. 333. Civil Rights 1587

Where it was clear that federal employee, who had been suspended by prior regional director, would not have obtained rescission of suspension if she had not secured legal counsel and undertaken administrative appeal, request for $3,750 in attorney's fees, which was not controverted as to amount, would be approved. Canty v. Olivarez, N.D.Ga.1978, 452 F.Supp. 762. Civil Rights 1594

To avoid unjust result that legal fees would be denied to party who was successful at administrative level and hence had no need for recourse to courts for discrimination in violation of this section, this section would be construed as authorizing district court to award attorney fees to party who has prevailed on his discrimination complaint at agency level, and provisions also provide jurisdictional basis for such party to bring suit in district court solely for attorney fees. Noble v. Claytor, D.C.D.C.1978, 448 F.Supp. 1242. Civil Rights 1587

This subchapter providing that agency is to enforce this subchapter through appropriate remedies as will effectuate policies of the statute can be read to permit agency to award attorney fees, thereby making whole one who prevails before it, and in view also of legislative history, the mandate to agency to use any remedy needed to fully recompense employee for his loss provides authority for it to make attorney fee awards. Smith v. Califano, D.C.D.C.1978, 446 F.Supp. 530. Civil Rights 1504

Although plaintiff, after filing suit alleging racial discrimination in employment at Veterans Administration hospital had received promotion she had sought through her filed grievances, plaintiff, who no longer wished to pursue her remedy for back pay, was not entitled to award of attorney's fees as the prevailing party, in absence of either procuring stipulation from defendant as to payment of counsel fees or affirmatively establishing, either by uncontroverted affidavits or introduction of evidence at trial, that she had prevailed on the merits. Goodall v. Mason, E.D.Va.1976, 419 F.Supp. 980. Civil Rights 1590

In view of this section providing that United States may be liable for attorneys' fees, in discretion of court, as part of costs awarded prevailing party to the action, § 2412 of Title 28, providing that United States shall be liable for fees and costs only when such liability is expressly provided for by Act of Congress did not prohibit awarding of fees in civil rights case in which defendant sued by government prevailed. U.S. by Mitchell v. Jacksonville Terminal Co., M.D.Fla.1970, 316 F.Supp. 567, affirmed in part , reversed in

part 451 F.2d 418, certiorari denied 92 S.Ct. 1607, 406 U.S. 906, 31 L.Ed.2d 815, on remand 351 F.Supp. 452, on remand 356 F.Supp. 177. Civil Rights 1480

This subchapter contains no explicit congressional determination to alter the traditional power to award attorney fees to government where it prevails, and the customary fee rules of Alyeska apply. Burgess v. Hampton, D.C.D.C.1976, 73 F.R.D. 540. Civil Rights 1588

329. Administrative expenses, remedies or relief

Title VII does not entitle a federal employee to administrative leave and per diem travel expenses related to judicial hearing on Title VII claims. Jones v. Babbitt, C.A.10 (Utah) 1995, 52 F.3d 279. United States 39(7); United States 39(9)

330. Back pay, remedies or relief

Back pay period did not have to end when former federal employee said in court filing in racial discrimination lawsuit under Title VII that he was unable to return to work, since employee had not retired voluntarily or became disabled as of that time. Fogg v. Gonzales, C.A.D.C.2007, 492 F.3d 447, 377 U.S.App.D.C. 148. Civil Rights 1574

Postal employee, who proved quid pro quo sexual harassment, was entitled to recover payments for discriminatory harm to the full extent allowed by Title VII, including the difference between employee's disability benefits under Federal Employees Compensation Act (FECA) and 100% of the salary she would have received during her disability period. Nichols v. Frank, C.A.9 (Or.) 1994, 42 F.3d 503. Civil Rights 1571

Federal employee who was denied promotion to government service grade level GS-10 position as result of race discrimination and retaliation was entitled to backpay at GS-11 salary level from date she would have become eligible for elevation to level, and backpay at GS-10 level for period from when she was denied promotion until time she was eligible for elevation to GS-11 level, as well as front pay at GS-11 level from date of decision until such time as she was reinstated in position she was denied or substantially equivalent position, where position was reclassified from GS-10 to GS-11 after employee was denied promotion and after she filed her equal employment opportunity complaint. Pecker v. Heckler, C.A.4 (Va.) 1986, 801 F.2d 709.

Provision of consent judgment, entered in settlement of class action against Air Force under Title VII of Civil Rights Act for alleged racial discrimination against civilian black employees and applicants for employment, that in event that special master determined that violation of the judgment had occurred, he would be authorized to order all appropriate relief therefor, fully authorized special master's award of promotion and back pay to member of plaintiff class upon finding that Air Force, in filling supervisory position,

had violated provision of consent judgment that required every good-faith effort to fill supervisory positions with blacks in proportion to percentage of blacks in occupational category in which the vacancy arose. Turner v. Orr, C.A.11 (Fla.) 1985, 759 F.2d 817, certiorari denied 106 S.Ct. 3332, 478 U.S. 1020, 92 L.Ed.2d 738. Federal Courts 600

Although United States provided about 75 percent of funds for Mississippi state welfare department, the federal government was immune by statute from liability for back pay awarded black job applicants who successfully challenged use of unvalidated written examinations as selection criteria and the subjective manner in which individuals who met education and test requirements were selected from certificates of eligibles and federal government was not shown to have been liable for negligent breach of supervisory duty or on theory of breach of implied contract of which the applicants were third-party beneficiaries. Walls v. Mississippi State Dept. of Public Welfare, C.A.5 (Miss.) 1984, 730 F.2d 306.

In employment discrimination suit brought by women bindery workers against the Government Printing Office, trial court properly awarded back pay for a period antedating the date that the federal government came within the scope of this subchapter. Thompson v. Sawyer, C.A.D.C.1982, 678 F.2d 257, 219 U.S.App.D.C. 393. Civil Rights 1574

Presumption that Assistant Chief Deputy in U.S. Marshals Service in Puerto Rico was entitled to back pay in Title VII action was not overcome, in light of evidence he in fact sought out and accepted other employment and absent showing that substantially equivalent jobs were available in Puerto Rico with U.S. Marshals Service, or even anywhere else in the United States. Orr v. Mukasey, D.Puerto Rico 2009, 631 F.Supp.2d 138. Civil Rights 1571

Back pay was not an available remedy for a Title VII plaintiff who claimed a hostile work environment, but who was not constructively discharged, despite her claim that she suffered economic damages as a result of a retaliatory hostile work environment before her voluntary resignation, specifically a salary differential she would have earned if she had received higher paying temporary assignments. Hare v. Potter, E.D.Pa.2007, 549 F.Supp.2d 688. Civil Rights 1571; Civil Rights 1583(2)

Evidence supported finding that Immigration and Naturalization Service (INS) complied with judgment enforcing “make whole” remedy ordered by the Equal Employment Opportunity Commission with respect to back pay award, notwithstanding plaintiff's contention that amount of award for overtime pay was significantly less than amount she would have earned as overtime due to mandatory nature of overtime for immigration inspectors, and that she would have earned night differential pay; plaintiff failed to adduce evidence regarding night differential or overtime pay at trial, and to add such elements to

back pay award would alter judgment. Kahmann v. Reno, N.D.N.Y.1997, 967 F.Supp. 731. Civil Rights 1571

Federal employee's back pay award in Title VII case should have included amounts to compensate her for losses due to not having life and health insurance plans and for benefits she would have received through participation in Federal Employees Retirement System (FERS) and Thrift Savings Plan (TSP). Kahmann v. Reno, N.D.N.Y.1996, 928 F.Supp. 1209. Civil Rights 1571

Special master appropriately declined to use date on which Title VII became applicable to federal employees as benchmark date to be used in performing multiple regression analysis to compute back pay awarded to female civilian employees in employment discrimination action against Navy; use of benchmark date would have protected Navy from ever eliminating salary differences that existed as of benchmark date. Trout v. Garrett, D.D.C.1991, 780 F.Supp. 1396. Civil Rights 1574

Black female Puerto Rican air traffic controller was entitled to reinstatement with back pay upon showing that nondiscriminatory reasons articulated by Federal Aviation Administration for demoting employee were pretextual; subjective requirements imposed on employee were tailored specifically to inflict emotional distress, so as to justify her demotion. Cardona v. Skinner, D.Puerto Rico 1990, 729 F.Supp. 193. Civil Rights 1563; Civil Rights 1571

Class members discriminated against by the Atomic Energy Commission were entitled to back pay to remedy any discrimination they might have suffered before Mar. 24, 1972, the date on which Congress gave employees of the federal government the right to sue under this subchapter, and hence in determining each class member's rightful place, the master may take into account the effect of continuing discrimination extending back as far as 1965, promulgation date of the first of the antidiscrimination executive orders codified therein. Chewning v. Schlesinger, D.C.D.C.1979, 471 F.Supp. 767. Civil Rights 1571

Black employee of the Department of Navy established prima facie case of racial discrimination on basis of statistical evidence concerning black employees and promotions at GS-11 level and above, and further established that standards selected for promotion of person to GS-12 were arbitrary and not based on business necessity and were used as a mere “pretext” for discrimination because of plaintiff's equal employment opportunity activities; nevertheless, plaintiff was not entitled to back pay or retroactive promotion where it was established that, even if there had been no discrimination against plaintiff, plaintiff would not have been selected for the position. Mallard v. Claytor, D.C.D.C.1978, 471 F.Supp. 16. Civil Rights 1548; Civil Rights 1571

Where it appeared from evidence that, had selection of hospital superintendent under

former Department of Health, Education and Welfare [now Department of Health and Human Services] not been made on account of race, plaintiff nonetheless would not have been selected, plaintiff was not entitled under equal employment opportunity provisions of this subchapter either to retroactive appointment to the superintendency or commensurate back pay and benefits. Peele v. Califano, D.C.D.C.1978, 447 F.Supp. 160. Civil Rights 1571

Where employee of the Commission was a victim of discrimination in failure to secure promotion to grade GS-14 in 1971, court would not speculate as to further promotions employee might have earned if he had been promoted in 1971, but on basis of evidence that he would have received regular within-grade step raises, would award lost wages based on difference between salary actually earned and salary he would have earned with such increases, as well as awarding reasonable attorney fees and costs, and employee was entitled to promotion to GS-1 4/6. Hernandez v. Powell, N.D.Tex.1977, 424 F.Supp. 479. Civil Rights 1574

Where court found that employee of National Security Agency had been successful in demonstrating that Agency was guity of sex discrimination in promotion practices which resulted in her wrongfully being deprived of promotion, employee was entitled to award of back pay under this subchapter. Predmore v. Allen, D.C.Md.1976, 407 F.Supp. 1067. Civil Rights 1571; United States 39(6)

One option available to agency or to Commission, in affording relief to federal employee individually discriminated against in promotion denial, is that of awarding back pay and retroactive promotion. Fisher v. Brennan, E.D.Tenn.1974, 384 F.Supp. 174, affirmed 517 F.2d 1404, certiorari denied 96 S.Ct. 1428, 424 U.S. 954, 47 L.Ed.2d 359. Civil Rights 1509

Federal court's award of back pay in Title VII action, for period extending beyond former employee's probation period, was not de facto reinstatement with de facto discharge at end of back pay period; thus, former employee, who was initially terminated during probation period, was not “employee” with adverse action appeal rights; court specifically found that after-acquired evidence of former employee's wrongdoing precluded reinstatement. Castle v. Department of Treasury, M.S.P.B.1995, 68 M.S.P.R. 417. Merit Systems Protection 37

Since this section provides authority for agencies to award backpay to employees in discrimination cases independent from section 5596 of Title 5, backpay is authorized under this section without finding of “unjustified or unwarranted personnel action.” 1983, 62 Op.Comp.Gen. 239.

331. Damages, remedies or relief--Generally

Equal Employment Opportunity Commission (EEOC) has authority, under Title VII, to require federal agencies to pay compensatory damages when they discriminate in employment, given that Title VII, as amended, explicitly provides EEOC with authority to enforce its provisions "through appropriate remedies," and provides that "complaining party may recover compensatory damages," that purpose of remedial scheme under Title VII, to provide quicker, less formal, less expensive, and less burdensome means to resolve disputes, would be undermined without EEOC's authority to award compensatory damages, and that legislative history of Title VII shows that such remedy was required to deter discrimination and to help make victims whole. West v. Gibson, U.S.Ill.1999, 119 S.Ct. 1906, 527 U.S. 212, 144 L.Ed.2d 196, on remand 201 F.3d 990, rehearing and rehearing en banc denied. Civil Rights 1509

Former United States Deputy Marshal could be denied front pay on basis of unclean hands, after prevailing on his Title VII racial discrimination claim, where he had misrepresented himself in testimony before Congressional Black Caucus and on his Internet website as deputy United States Marshal after he had been discharged. Fogg v. Gonzales, C.A.D.C.2007, 492 F.3d 447, 377 U.S.App.D.C. 148. Equity 65(2)

Federal employee could not recover either compensatory or punitive damages in a Title VII employment discrimination action. Boddy v. Dean, C.A.6 (Tenn.) 1987, 821 F.2d 346. Civil Rights 1570; Civil Rights 1575(1)

Where both selection officer of Commission and district court found that plaintiff, a black male, was not best qualified applicant for position of district director of Commission, plaintiff was not entitled to damages, even if race was one factor in selection officer's choice not to appoint plaintiff as district director of Commission. Rogers v. Equal Employment Opportunity Commission, C.A.D.C.1977, 551 F.2d 456, 179 U.S.App.D.C. 270. Civil Rights 1570

Evidence was sufficient to support jury verdict in favor of postal employee in his Title VII action against postmaster general, and therefore, remittitur of jury's award of $200,000 in compensatory damages was not warranted; employee had worked for Postal Service for 10 years without any complaints by managers, coworker's testified that employee's new supervisor did not like employee and targeted him with particularly negative treatment, supervisor moved employee's desk to a back office away from the workroom floor where it was convenient for him to perform his duties and would stand in his door staring at him, supervisor frequently changed employee's work schedule and responsibilities, supervisor placed a computer employee needed in a locked area, supervisor would cut employee off and walk away whenever he tried to speak with her, supervisor threw wadded up paper at employee when he questioned a decision, and little changed as a result of employee's internal discrimination complaints. Jackson v. Potter, D.Colo.2008, 741 F.Supp.2d 1207. Civil Rights 1574; Federal Civil Procedure 2377

Further reduction of $1.5 million jury award below statutory cap of $300,000 for compensatory damages through remittitur was not warranted for emotional pain and mental anguish that federal employee suffered as a result of the violations of Title VII and the Rehabilitation Act; employee testified that he was unable to sleep or return to work after reassignment, that he felt destroyed and nauseous, that his ultimate termination strained his relationships with his family and led to his bankruptcy, and his claims regarding his anxiety, depression, despair, and sleeplessness were supported by medical testimony. Hudson v. Chertoff, S.D.Fla.2007, 473 F.Supp.2d 1286. Civil Rights 1574

Under provision of Title VII allowing federal employees to challenge unfavorable final agency determinations of their employment discrimination claims by bringing civil action, federal employee is not entitled to limited or fragmented trial de novo on challenge to administrative damages award, without having to relitigate favorable findings on liability. Herron v. Veneman, D.D.C.2004, 305 F.Supp.2d 64. Civil Rights 1510

Employment discrimination plaintiffs were not required to mitigate damages by accepting employment beneath their skills; what plaintiffs had to show, and what would be imputed to each plaintiff, was reasonable effort to find position substantially equivalent to one denied her by United States Information Agency, and reasonableness of that effort would depend upon individual characteristics of plaintiff, type of job, and job market. Hartman v. Wick, D.D.C.1988, 678 F.Supp. 312, reconsideration denied. Civil Rights 1573

In Commission district office employee's action for employment discrimination, district court would not exercise pendent jurisdiction over state claim for assault where, because employee sought punitive damages and requested jury trial on assault claim, to do so would circumvent limited scope of relief available under this section and where the pendent claim would cause jury confusion and involved different legal theories and factual issues from those in the discrimination claim. Lage v. Thomas, N.D.Tex.1984, 585 F.Supp. 403. Federal Courts 15

Federal employee's claim for punitive damages for emotional and mental anguish that he and his family were allegedly caused to suffer because of his wrongful discharge by the United States Government failed to state cause of action under this subchapter. Wilson v. Califano, D.C.Colo.1979, 473 F.Supp. 1350. Civil Rights 1532

Federal employee who brought suit under this section to redress alleged acts of race discrimination in federal employment could not recover punitive damages. Davis v. Reed, W.D.Okla.1977, 462 F.Supp. 410. Civil Rights 1575(1)

Employees of United States Department of Labor could not, in their action against Secretary of Labor pursuant to this subchapter, recover compensatory, punitive, or actual damages for their claims of discrimination. Carter v. Marshall, D.C.D.C.1978, 457

F.Supp. 38. Civil Rights 1570

331a. ---- Cap, damages, remedies or relief

In a lawsuit under Title VII, absent an arrangement by voluntary settlement of the parties, the general rule that victims of discrimination should be made whole does not support "gross-ups" of backpay to cover tax liability. Fogg v. Gonzales, C.A.D.C.2007, 492 F.3d 447, 377 U.S.App.D.C. 148. Civil Rights 1574

Jury award of $1.5 million compensatory damages for emotional pain and anguish on federal retaliation and disability discrimination claims of federal employee was subject to single $300,000 statutory cap. Hudson v. Chertoff, S.D.Fla.2007, 473 F.Supp.2d 1286. Civil Rights 1574; Civil Rights 1583(5); United States 36

332. Interest, remedies or relief

Postal Service could be subjected to prejudgment interest award in employment discrimination action under Title VII of the Civil Rights Act. Loeffler v. Frank, U.S.Mo.1988, 108 S.Ct. 1965, 486 U.S. 549, 100 L.Ed.2d 549, on remand 854 F.2d 1109. See, also, Nagy v. U.S. Postal Service, C.A.11 (Fla.) 1985, 773 F.2d 1190. Interest 39(2.45)

Prejudgment interest awardable to prevailing Title VII plaintiff should not have been calculated on entire back pay award from date of his termination as federal air traffic controller; rather, interest should have been calculated in accordance with when plaintiff's monetary injuries were actually incurred, i.e., incrementally as his wages would presumably have been earned but unpaid from date of his termination through entry of judgment. Reed v. Mineta, C.A.10 (Colo.) 2006, 438 F.3d 1063. Interest 39(2.45)

Section of Civil Rights Act, which entitles prevailing party in Title VII action to award of interest on sums previously awarded, could not be applied retroactively in Title VII action against federal government that was based on alleged discriminatory conduct occurring before statute's effective date, regardless of whether litigation on merits had been completed before statute went into effect. Trout v. Secretary of Navy, C.A.D.C.2003, 317 F.3d 286, 354 U.S.App.D.C. 384, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 463, 540 U.S. 981, 157 L.Ed.2d 371, rehearing denied 125 S.Ct. 459, 543 U.S. 976, 160 L.Ed.2d 354, on remand 464 F.Supp.2d 25. United States 110

Civil Rights Act of 1991 applied to Rehabilitation Act employment discrimination case that was pending at time of enactment of Civil Rights Act; thus, under Civil Rights Act, government employee who brought action under Rehabilitation Act was entitled to both pre and post judgment interest. Estate of Reynolds v. Martin, C.A.9 (Cal.) 1993, 985 F.2d 470, rehearing denied 994 F.2d 690. Civil Rights 1106; Interest 39(2.45);

Interest 39(3)

Former postal employee who was successful on her Title VII retaliation claim against the United States Postal Service (USPS) was not entitled to compound prejudgment interest on her backpay award, since rate of 10%, rather than 2.9% permitted as post-judgment rate, was sufficiently high that no compounding was warranted. Hillman v. U.S. Postal Service, D.Kan.2003, 257 F.Supp.2d 1330. Interest 60

Awards of prejudgment and post-judgment interest may be granted against the United States under Title VII. Orr v. Mukasey, D.Puerto Rico 2009, 631 F.Supp.2d 138. Interest 39(2.45); Interest 39(3); United States 110

Successful Title VII plaintiff is only entitled to prejudgment interest accruing after effective date of Civil Rights Act of 1991, on November 21, 1991. Arneson v. Sullivan, E.D.Mo.1996, 958 F.Supp. 443, affirmed in part , reversed in part 128 F.3d 1243, certiorari denied 118 S.Ct. 2319, 524 U.S. 926, 141 L.Ed.2d 694. Interest 39(2.20)

Kansas' statutory 10% interest rate was proper and reasonable amount to apply in determining prejudgment interest on award of back pay in Title VII reverse gender discrimination action. Barvick v. Cisneros, D.Kan.1997, 953 F.Supp. 341. Interest 31

Summary denial of terminated employee's request for prejudgment interest was abuse of district court's discretion, where employee's request for prejudgment interest in his amended complaint under Title VII was sufficient to raise issue in district court. Reed v. Mineta, C.A.10 (Colo.) 2004, 93 Fed.Appx. 195, 2004 WL 474003, Unreported. Interest 66

333. Promotion, remedies or relief

Government employee, who was subjected to reverse gender discrimination in violation of Title VII, was entitled to requested promotion to position of GS-13, where promotion would accord him position he would have received had employer not discriminated against him. Barvick v. Cisneros, D.Kan.1997, 953 F.Supp. 341. Civil Rights 1564

333a. Retaliation, remedies or relief

To accomplish complete relief in a Title VII case in which the defendant employer, the United States Post Office, was found to have retaliated against one of its postmasters by creating a retaliatory hostile work environment, it was appropriate to award equitable relief requiring the employer to publish notices of the verdict and implement a sexual harassment/retaliation training program in the contested region; jury's verdict identified a serious deficiency at some levels of the employer's management. Hare v. Potter, E.D.Pa.2007, 549 F.Supp.2d 688. Civil Rights 1579; Postal Service 5

334. Seniority, remedies or relief

Where Postal Service employee is the victim of illegal discrimination under Title VII, court can award competitive seniority even if such an award violates a collective bargaining agreement. Nichols v. Frank, D.Or.1990, 732 F.Supp. 1085, reconsideration denied. Civil Rights 1565

335. Injunction, remedies or relief

Even if showing of possible serious irreparable harm beyond economic loss were required for injunction in Title VII cases against government, Drug Enforcement Administration employee satisfied standard by claiming that DEA's threatened transfer of employee from Los Angeles to Detroit, allegedly in retaliation for exercising Title VII rights, would have deleterious effect on exercise of such rights by others. Garcia v. Lawn, C.A.9 (Cal.) 1986, 805 F.2d 1400. Civil Rights 1580

In class action brought by black employees of Postal Service under this section alleging racial discrimination in promotions on the part of Postal Service, district court did not abuse its discretion in granting injunctive relief by ordering Postal Service to make affirmative efforts to recruit, appoint, and promote qualified black persons, using as its goal the percentage of black persons in the work force of the defendant Post Office, in that the goals imposed were necessary to insure that Postal Service's prior and present practices of discrimination would be eliminated. Chisholm v. U.S. Postal Service, C.A.4 (N.C.) 1981, 665 F.2d 482. Civil Rights 1562

Federal courts may grant preliminary injunction sought by federal employees who have not yet fully exhausted their administrative remedies with respect to their civil rights claims. Porter v. Adams, C.A.5 (La.) 1981, 639 F.2d 273. Civil Rights 1568

District court abused its discretion in granting and in refusing to dissolve preliminary injunction prohibiting Secretary of Labor from making a permanent appointment to position which was desired by a federal employee who claimed that he had been denied the position because he was Caucasian and the Department of Labor had directed that position sought be filled by member of a minority group; federal employee would not suffer irreparable damage as, if his charges were sustained, court could order him appointed even if a permanent appointment to the position had been made and he could recover damages based on pay differential on the job which he sought and the one which he concurrently held. Parks v. Dunlop, C.A.5 (Ga.) 1975, 517 F.2d 785. Civil Rights 1568

In his employment discrimination and retaliation suit, federal employee was not entitled to preliminary injunction to prevent employing agency from soliciting personnel infor-

mation about him from Department of Labor (DOL) Office of Workers' Compensation Programs (OWCP); employee could demonstrate neither substantial likelihood of success on the merits nor irreparable harm. Nurriddin v. Bolden, D.D.C.2009, 674 F.Supp.2d 64. Civil Rights 1568; Civil Rights 1582

Prevailing federal employee in Rehabilitation Act/Title VII discrimination/retaliation suit was entitled to injunctive relief, under Title VII equitable relief clause, in form of expungement of specific documents harmful to employee's reputation and ability to find equivalent employment, order against provision of documents in employee's personnel file to anyone outside federal government, order against provision to any prospective employer of information regarding reason for employee's separation from service, and order against supervisors' provision of any negative employment information to anyone outside agency. Hudson v. Chertoff, S.D.Fla.2007, 484 F.Supp.2d 1268. Civil Rights 1561; Civil Rights 1580

Unsuccessful applicant for research position with Library of Congress failed to state claim for equitable relief under Library of Congress Act, based on doctrine of nonstatutory review; injury alleged by applicant could be fully remedied under Title VII. Schroer v. Billington, D.D.C.2007, 525 F.Supp.2d 58. Civil Rights 1502; United States 36

Federal employee was not entitled to preliminary injunctive relief in suit alleging that lateral transfer constituted retaliation in violation of Title VII; limited, but plausible irreparable injury evidence of a “chilling effect” on third parties was not sufficient to overcome her failure to demonstrate likelihood of success on the merits of her claim that transfer constituted an adverse action. Jordan v. Evans, D.D.C.2004, 355 F.Supp.2d 72, subsequent determination 404 F.Supp.2d 28. Civil Rights 1582; United States 36

African American Secret Service agents alleging discrimination in promotion were entitled under Title VII to preliminarily enjoin Secret Service from taking action to discourage other African American agents from joining proposed class action, even though evidence in support of their claim that Secret Service retaliated against them in violation of Title VII for filing discrimination action against agency was in equipoise and agents had not shown irreparable harm from any specific retaliatory action; director had sent e-mail to entire agency declaring that it was “offensive” for anyone to question agency's employment practices, agency supervisors expressed disappointment in named plaintiffs' links to discrimination allegations, and eight junior black agents resigned from organization that sponsored suit and refused to speak with plaintiffs' counsel. Moore v. Summers, D.D.C.2000, 113 F.Supp.2d 5. Civil Rights 1568; Civil Rights 1582

Federal employees who sought injunction against United States Defense Logistics Agency (DLA) ordering agency to rescind its final decision and to remand employees' complaints to Equal Employment Opportunity Commission (EEOC) for full adjudicatory hearing on the merits of their complaints did not state claim under Title VII because this

relief was not available under Title VII. Adams v. U.S. E.E.O.C., E.D.Pa.1996, 932 F.Supp. 660. Civil Rights 1560

Where postal window clerk sufficiently demonstrated a likelihood of success on the merits of her claim that her imminent dismissal by the United States Postal Service for refusing to distribute draft registration materials would violate her right under Title VII to freedom from religious discrimination in employment and a threat of irreparable injury, an award of preliminary injunctive relief enjoining her dismissal was appropriate. McGinnis v. U.S. Postal Service, N.D.Cal.1980, 512 F.Supp. 517. Civil Rights 1568

In view of fact that an injunction would interfere with the public administration, suit wherein black male federal employee sought to redress alleged acts of race discrimination in employment was a suit against the United States insofar as injunctive relief was sought. Davis v. Reed, W.D.Okla.1977, 462 F.Supp. 410. United States 125(25.1); United States 125(26)

In absence of factual foundation for generalized allegation of irreparable injury to federally employed female American Indian who brought action alleging that administrative processing of her employment discrimination claim was not being undertaken with due diligence, temporary injunction restraining defendants from filling any vacancies or creating any position in the federal agency would be denied. Cozad v. Johnson, W.D.Okla.1975, 397 F.Supp. 1235. Civil Rights 1568

336. Settlement agreements, remedies or relief

Agency's settlement offer to federal employee affords federal employee full relief under Title VII if it adequately resolves particular claims that aggrieved employee asserts; and employee bears initial burden of notifying his employing agency of specific relief sought. Fitzgerald v. Secretary, U.S. Dept. of Veterans Affairs, C.A.5 (La.) 1997, 121 F.3d 203. Civil Rights 1515

Offer of temporary clerk-typist appointment to employment discrimination claimant was full relief in administrative proceedings, even though newspaper advertisement to which claimant had responded did not describe positions as temporary; for purposes of regulation permitting cancellation of complaint where complainant has refused settlement offer of full relief, failure of ad to state that jobs were temporary was of no consequence, since jobs were in fact temporary and misleading aspect of advertisement affected all readers, without regard to race or age. Wrenn v. Secretary, Dept. of Veterans Affairs, C.A.2 (N.Y.) 1990, 918 F.2d 1073, certiorari denied 111 S.Ct. 1625, 499 U.S. 977, 113 L.Ed.2d 721. Civil Rights 1515

Employees may waive their Title VII and ADEA rights in private settlements with their employers, provided that their consent to release is both knowing and voluntary. Lock-

hart v. U.S., N.D.Ind.1997, 961 F.Supp. 1260, affirmed 129 F.3d 1267. Release 2; Release 15

Twenty-four-year-old race and gender discrimination class action against city would be dismissed, pursuant to proposal by parties, following modification of provision in consent decree regarding certain positions within police and fire departments, and upon demonstration that certain orders in lawsuit not addressed by parties were no longer necessary; retention of judicial control was not necessary to achieve compliance with outstanding orders, and city had demonstrated good-faith commitment to orders. U.S. v. City of Montgomery, Ala., M.D.Ala.1996, 948 F.Supp. 1553, motion granted 951 F.Supp. 1571, dismissed 957 F.Supp. 1241. Civil Rights 1558

Aggrieved employee who voluntarily settles Title VII claim waives his right to bring subsequent employment discrimination suit based on the same fact situation. Johnson v. Frank, S.D.N.Y.1993, 828 F.Supp. 1143. Compromise And Settlement 16(1)

Even though agreement in settlement of employee's grievance compensated her for only six out of the eight weeks during which she was unemployed, agreement barred any subsequent Title VII claim for additional wages and/or compensation on the same claim. Anderson v. Frank, E.D.Mich.1991, 755 F.Supp. 187. Compromise And Settlement 16(1)

Even though Postal Service employee claimed that his agreement to terms of settlement was not voluntary because he was suffering economic difficulties at time of negotiations, where employee received benefits from agreement, had knowledge of its terms before he agreed to it, and considered it for several days before agreeing, employee's assent to agreement was voluntary and knowing; therefore, employee was barred from objecting to its terms in civil rights suit alleging employment discrimination by reinstatement without back pay after discharge for mail fraud. Garvin v. Postmaster, U.S. Postal Service, E.D.Mo.1982, 553 F.Supp. 684, affirmed 718 F.2d 1108. Civil Rights 1529

Black employee of Library of Congress had right to require the Library to recognize and exercise conciliation and settlement authority with which Congress endowed it in this subchapter, and thus the employee was entitled to have provision of discrimination settlement agreement making award of retroactive promotion and back pay enforced even though there had been no determination on merits. Shaw v. Library of Congress, D.C.D.C.1979, 479 F.Supp. 945. Civil Rights 1511

Interest on settlement fund obtained in civil rights class action brought by African-American firefighters against District of Columbia would be distributed to class members on pro rata basis according to amount class members received from settlement fund, such that class members who received most money under settlement would also receive most interest. Hammon v. Kelly, D.D.C.1994, 154 F.R.D. 11, adhered to 156

F.R.D. 1, appeal dismissed 1994 WL 549611, affirmed 70 F.3d 638, 315 U.S.App.D.C. 77, certiorari denied 116 S.Ct. 923, 516 U.S. 1118, 133 L.Ed.2d 852. Compromise And Settlement 15(1)

In informal settlements, agencies may authorize backpay awards, attorney fees, or costs, without corresponding personnel action, such as retroactive promotion; however, agencies are not authorized to make awards unrelated to backpay, or to make awards exceeding maximum amount recoverable under this section, if specific finding of discrimination were made. 1983, 62 Op.Comp. Gen. 239.

42 U.S.C.A. § 2000e-16, 42 USCA § 2000e-16

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