

## **Disparate impact claims against the Chicago Fire Department may proceed**

On May 24, a unanimous United States Supreme Court held that those alleging an employment practice has had a disparate impact on them, in violation of Title VII, may raise a claim with the EEOC within 300 days of the adoption of that practice, as well as the application of that practice.

This ruling is important because it expands the timeframe within which a claim may be raised with the EEOC, a prerequisite to Federal suit. As a result, employers' procedural defenses with regard to the 300-day statute of limitations are limited. *Lewis v. City of Chicago*, \_\_\_ US \_\_\_, No. 08-974 (2010).

This case arose out of the Chicago Fire Department's division of written exam scores of 26,000 applicants into three categories: well qualified (89% or greater); qualified (65-88%); and disqualified (under 65%.) In January 1996, the City announced these categories and stated it would randomly draw applicants from the pool of well-qualified applicants for further screening. The following spring, the City selected its first class of applicants. The process was repeated ten times over the next six years.

In March 1997, several African-American applicants who were considered qualified and were not hired, filed charges with the EEOC. Suits against the City followed. A class of more than 6,000 was certified. The City sought to have the claims dismissed because the applicants had failed to file their EEOC charges within 300 days after the applicants were sorted into categories.

The Federal District Court allowed the claims to continue and after trial, the City was ordered to hire 132 randomly selected members of the class and to provide back pay to be divided among the remaining class members. The Seventh Circuit reversed, holding the EEOC charges were filed more than 300 days after the only discriminatory act of sorting occurred.

Writing for the Court, Justice Scalia stated a plaintiff may establish a disparate-impact claim by showing that the employer uses a particular employment practice that causes a disparate impact on one of the prohibited bases.

Here, the City used the sorting practice to exclude those who scored below 88% each time it filled a new class of firefighters, even though the eligibility list was initially adopted some months, and even years prior. The claims have now been remanded to the lower courts for further proceeding.