

LEGAL ALERT

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THE STATUTE OF LIMITATIONS FOR VIOLATIONS OF MICHIGAN'S CIVIL RIGHTS ACT: "THREE YEARS" MEANS THREE YEARS

Garg v Macomb County Community Mental Health Services

By Robert C. Stone and Matthew L. Wikander, Attorneys

On May 11, 2005, in the case Garg v Macomb County Community Mental Health Services, Docket No. 121361, the Michigan Supreme Court overruled Sumner v Goodyear Tire & Rubber Co., 427 Mich 505; 398 NW2d 368 (1986) and with it, struck down what had been known as the "continuing violations" doctrine.

The "Continuing Violations" Doctrine

The statute of limitations for a violation of Michigan's Elliot-Larsen Civil Rights Act is three years. A claim accrues at the time the wrong upon which the claim is based was done regardless of the time of when damage results. Thus, a plaintiff is required to commence an action within three years of each adverse employment act by a defendant.

However, in 1986 the Michigan Supreme Court adopted the "continuing violations" doctrine that had then been applied by federal courts in Title VII (federal law) discrimination cases. As stated by the court: "The doctrine is designed to address circumstances where discrimination becomes increasingly apparent as discrete acts build over time to reveal a pattern or practice."

The doctrine maintained that unlawful acts that occur beyond the period of limitations are still actionable, as long as the acts are sufficiently related to constitute a pattern and one of the acts occurs within the period of limitation (the previous three years).

The Decision

In Garg, the plaintiff presented testimony that the defendant employers' retaliatory conduct took place

over an eleven year period, including acts that took place after the action was filed on July 21, 1995. The defendant argued that, pursuant to the three year statute of limitations, any claim based on acts accruing before July 21, 1992 (three years before the complaint was filed) were barred. Both the trial court and the Court of Appeals permitted the plaintiff to recover on the basis of the untimely acts under the "continuing violations" doctrine. The Michigan Supreme Court, in a 4-3 decision, reversed, stating:

"Whatever the merits of the policy crafted by Sumner, it bears little relationship to the actual language of the relevant statute of limitations, MCL 600.5805 and MCL 600.5827 * * *

"Section 5805 does not say that a claim outside this three year period can be revived if it is somehow "sufficiently related" to injuries occurring within the limitations period. Rather, the statute simply states that a plaintiff "shall not" bring a claim for injuries outside the limitations period. Nothing in these provisions permits a plaintiff to recover for injuries outside the limitations period when they are susceptible to being characterized as "continuing violations". To allow recovery for such claims is simply to extend the limitations period beyond that which was expressly established by the legislature. Id. at 21-22."

The Court added its distaste for the reliance the Sumner court placed on federal court decisions in deciding Michigan law. The Court noted that the Sumner

court's reliance on federal precedent was misplaced not only because Title VII's language was distinguishable from the Michigan Civil Rights Act, but also because the "continuing violations" doctrine clearly conflicted with the relevant Michigan statute of limitations and thus, "federal precedent cannot be allowed to rewrite Michigan law." *Id.* at 23.

Notably, the Court also attacked a notion supported by the dissenting justices, that the acts falling outside the period of limitation could be admissible as background evidence to support a timely claim:

"The dissent would enable a plaintiff to claim that an adverse employment action occurring outside the limitations period constituted evidence that the employer is committing current violations. Such an understanding would essentially resurrect the "continuing violations" doctrine of Sumner through the back door. It would bar an employee from *directly* recovering from four untimely acts of discrimination, but allow the employee to *indirectly* recover for the same acts."

The Bottom Line

The bottom line is that the three year statute of limitations for unlawful employment actions under the Michigan Civil Rights Act is just that; three years. No longer will plaintiffs be able to bring claims of alleged violations that took place beyond the limitations period; no longer will plaintiffs even be able to introduce evidence of acts falling outside the limitations period as supportive evidence of current violations. This case will certainly require plaintiffs' attorneys to look with a sharper eye when evaluating potential claims, making sure that actionable violations occurred within three years before commencement of the action.

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SEXUAL HARASSMENT ROLLERCOASTER SUPREME COURT LIMITS ONE TYPE OF CLAIM AND OPENS UP ANOTHER

By Rachel Brochert Roe

On June 1, 2005, the Michigan Supreme Court handed down yet another significant employment law ruling. In the case of Elezovic v Ford Motor Co, the court issued a two-part opinion, one part in favor of employers, and one part that employers probably won't be so happy about.

Lula Elezovic worked for Ford Motor Company as an assembly-line worker. She claimed that in the summer of 1995, during work, her supervisor, Daniel Bennett, exposed himself to her, propositioned her, and made sexually-related comments and gestures to her. Ford has an anti-harassment policy that requires employees to file written complaints of any harassment. Elezovic did not follow this policy, but did tell two first-line supervisors that Bennett had exposed himself to her.

When she shared the information with them, however, she specifically requested that they keep the information in confidence and not report it. The supervisors honored Elezovic's request. She also had her psychologist send two letters to the Wixom plant physician, indicating that she was becoming psychologically ill because of the harassment she perceived from Mr. Bennett, and that she continued to feel uncomfortable with Mr. Bennett. She also had her attorney write a letter to Ford's labor relations department, stating he may need to take legal action to ensure that Elezovic is not subjected to working in a hostile environment.

Elezovic ultimately sued both Ford and Daniel Bennett, claiming that she was sexually harassed as a result of a

hostile work environment, contrary to Michigan's Elliott-Larsen Civil Rights Act. The court dismissed Elezovic's lawsuit against Bennett and Ford. It held that she could not sue Bennett individually for sexual harassment based on a 2002 decision of the Michigan Court of Appeals. It held that, as to Ford, the company was not notified of the harassment, and therefore could not have done anything to stop it. Elezovic appealed to the Michigan Court of Appeals, which upheld the trial court's decision, and then she appealed to the Michigan Supreme Court.

The Need for Notice

The Michigan Supreme Court ruled that, as to Ford Motor Company, there was no cause of action. Under Michigan law, an employer is liable for hostile environment harassment by co-workers and supervisors only where the employee shows some fault on the part of the employer—for instance, that even though the employer had notice of the harassment, the employer failed to investigate adequately and take prompt and remedial action. Here, where the employee specifically requested confidentiality when she discussed the harassment with her supervisors and the supervisors honored the request, that communication is insufficient to constitute notice of sexual harassment to Ford, notwithstanding Ford's policy that required the supervisors to report the information to the human resources department. With regard to the letters sent by Elezovic's psychologist and lawyer, the court noted that the evidence showed that plaintiff filed many complaints over the years against Mr. Bennett, and others, for "harassment" unrelated to sexual harassment. In that context, the reference in the letters to "harassment" and "hostile environment" was insufficient to give the employer notice that *sexual*

harassment was being claimed. Because Ford did not have notice of any claim of sexual harassment, the Court ruled Ford had no duty to take any action. Therefore, the court upheld the dismissal of Elezovic's claims against Ford.

Employers' Agents Subject to Suit

Although the Michigan Court of Appeals ruled in 2002 that individual supervisors cannot be individually sued for sexual harassment, the Supreme Court held that Elezovic's supervisor, Daniel Bennett, was an "agent" of Ford Motor Company, and therefore could be individually sued. The Supreme Court specifically said it was not deciding whether an agent must be a supervisor, or if a co-worker can be an agent, and thus, be potentially named in a harassment lawsuit. These issues were left open for another court to decide.

The Elezovic decision sends two important messages to the business community: First, every company must have a well-drafted, thorough anti-harassment policy and be prepared to act according to that policy whenever a complaint is made. Second, supervisors, managers, and possibly other employees who are considered "agents" of an employer are now subject to individual liability for discrimination under state law. Employers should be sure to train all supervisors and managers, at every level, and during every shift, to ensure that they understand the seriousness of this new development.

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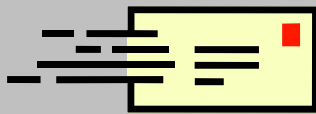
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