

Business Groups Join In Request For EEOC To Pay For Title VII Case

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In *Equal Employment Opportunity Commission v. Peoplemark, Inc.*, Case No. 11-2582, the U.S. Chamber of Commerce, the Equal Employment Advisory Council and the National Federation of Independent Business Small Business Legal Center recently joined Peoplemark, Inc., in its request that Sixth Circuit Court of Appeals uphold the lower court's award of \$752,000 in attorney's fees and costs awarded to the temporary employment agency after a voluntarily dismissed discrimination action by the U.S. Equal Employment Commission.

The lower court's award of fees and costs to Peoplemark followed a disparate impact lawsuit filed by the EEOC, alleging that the company had a blanket policy against hiring applicants with criminal records and, as a result, unfairly singling out African-Americans. As many employers know, the EEOC has taken the position that an employer's policy or practice of excluding individuals from employment based on an applicant's criminal history has an adverse impact on African American and Hispanic applicants, and any such policy is unlawful unless it is job related and justified by business necessity.

According to Peoplemark and the three business groups, the EEOC had no evidence to support these allegations. In fact, during the course of the proceedings, the temp agency provided statistical evidence showing that the company had hired several individuals with criminal records. Peoplemark also demonstrated that it had referred for employment 22 percent of the 286 of those individuals who supposedly were not hired because of their prior felony convictions. Ultimately, the parties filed a joint, voluntary dismissal of the case. Peoplemark then requested attorney's fees and costs for this litigation, which the district court awarded.

In issuing this award, the lower court stated, "This is one of those cases where the complaint turned out to be without foundation from the beginning." The lower court also noted that the it was "left with the impression that plaintiff's counsel were content to simply place the matter in the hands of their experts and let them run with it."

In joining Peoplemark in its request to the Sixth Circuit to affirm the award, the business groups stated, "The EEOC's conduct in filing, and prosecuting for far too long, a public enforcement action for unlawful discrimination despite having no evidence to support its theory of liability was plainly unreasonable...The unreasonably aggressive enforcement tactics pursued by the EEOC in this case are at odds with the purposes and objectives of Title VII and disadvantage employers and employees alike." Rae Vann, counsel for the Equal Employment Advisory Council, recently stated that her group joined Peoplemark in its request with the hope that the fee award would signal the EEOC to re-evaluate its approach in similar cases.

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