

Your Monthly Legal Update – November 2006
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EEOC v. TARGET CORPORATION

I am writing this on Halloween, so Happy Halloween to everyone!!! I truly feel like I've personally been a twilight zone of sorts for the past few months and I apologize for missing my legal update last month.

For this month, I am reviewing a recent case decided by the Seventh Circuit Court of Appeals, our District, which has reinstated a case brought by the EEOC against Target Corporation on the basis of race discrimination. (*EEOC v. Target Corporation*, 7th Cr., 88 EPD sec. 42, 499) This case determined that there were triable issues of fact where Target's hiring process included: (1) prescreening applicant's resumes to determine if they met the minimum requirements for the position; (2) scheduling an initial interview; (3) inviting applicants who performed well during the initial to attend an "ELITE" interview, which included a written test and three rounds of one-on-one personal interviews. There were four applicants involved in this litigation. One made it to the "ELITE" interview group and scored high on his written test but was denied a position. Target attempted to argue that based on the "ELITE" interview he did not meet the requirements for the position, yet offered no documents to support such low interview scores. The other three African American applicants, all female, received emails inviting them to schedule an initial interview but the recruiter never returned their calls to schedule them. Ultimately, one of these applicants smelled a rat and submitted a fictitious application as a white person with lesser qualifications and she received an interview. The underlying court dismissed this case in favor of Target determining that the retailer provided a legitimate nondiscriminatory reason for not hiring the man and as to the women, Target justified itself by arguing that the recruiter had too much of a workload to return these calls.

The Seventh Circuit Court of Appeals took issue with this decision and reversed it. The Court of Appeals determined that Target had not offered sufficient information to support its reasons for failure to hire. Target was required to provide a clear statement as to which requirements each applicant lacked so that the EEOC could then respond with specific evidence. The Court of Appeals also determined that issues existed against Target as to whether pretext existed for not scheduling the three female candidates for an interview. The Court also revived the EEOC's claim which requires employers: (1) to retain applications and other documents for a period of one year; and (2) if a charge of discrimination has been filed, to retain all relevant personnel records until the final disposition of the charge. Target's attempts to prove that it had revised its retention policy by using a nationwide employment recruitment website to store applicant's documents did not controvert the fact that the EEOC could prove that the retailer's individual recruiters were still destroying evidence.

Lesson learned, do not destroy documents that are mandated to be kept and make sure you have documented reasons regarding decisions you make. Have a wonderful month!!!