



## EEOC's Attempt to Maintain Sexual Harassment Class Action Thwarted: After Five Years of Litigation and \$4.5 Million in Legal Fees for the Employer

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The Eighth Circuit Court of Appeals recently upheld the dismissal of a sexual harassment class action asserted by the Equal Employment Opportunity Commission (EEOC) due to the EEOC's failure to comply with certain procedural prerequisites under Title VII. *EEOC v. CRST Van Expedited, Inc.* (Feb. 22, 2012). Although this decision represents a legal victory for employers, the cost of that victory — five years of litigation and approximately \$4.5 million in legal fees — must not be overlooked.

### Background

This case was not a traditional Civil Rule 23 class action lawsuit. Rather, this class action lawsuit was asserted by the EEOC (the federal agency charged with enforcement of certain federal non-discrimination laws) pursuant to its authority under Section 706 of Title VII to bring suit in its own name on behalf of a "person or persons aggrieved" by an employer's alleged unlawful employment practice. [\[T\]he EEOC may not use discovery in the resulting lawsuit as a fishing expedition to uncover more violations.](#) (citations omitted). However, because it reversed the District Court's dismissal of a couple of other allegedly aggrieved individuals, the Eighth Circuit held that CRST was no longer a "prevailing party" and, therefore, it vacated the award of attorneys' fees and expenses.

### Conclusions

Certainly, this decision represents a legal victory for employers defending class action suits filed by the EEOC. This decision, however, is also a cautionary tale of the significant burden and expense associated with such suits, regardless of their outcome. This decision exemplifies why it is critical for employers to maintain proper anti-harassment policies, regularly train management and staff regarding

harassment, and respond promptly and appropriately to allegations of workplace harassment.

Further, employers must take seriously administrative charges by the EEOC (which is how this lawsuit began) or a state civil rights agency. Providing a thorough, meaningful and well-documented response to such a charge in the first instance may help to prevent subsequent litigation such as this.

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#### Footnote

1. 42 U.S.C. §2000e-5(f)(1).