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Municipal Technical Advisory Service
*In cooperation with the Tennessee Municipal League*

#104
HOT topic

**May 17, 2004**

# COURT RULES FOUR-YEAR STATUTE OF LIMITATIONS APPLIES IN CERTAIN CIVIL RIGHTS CASES

*Ruling Affects Records Retention Schedules for Personnel*

**Dennis Huffer, Legal Consultant**

The U.S. Supreme Court ruled that a federal four-year statute of limitations applies to civil rights actions brought under 42 U.S.C. § 1981 as amended by the Civil Rights Act of 1991, *Jones v. R. R. Donnelley & Sons Company* (May 3, 2004). Prior to this ruling, federal courts generally applied the applicable state statute of limitations in these civil rights actions (claims of job discrimination based upon race). The Tennessee statute of limitations for civil rights actions is one year (*Tennessee Code Annotated* § 28-3-104), but this statute will not now apply to actions brought under § 1981 and the Civil Rights Act of 1991. The Court's ruling thus makes the time for bringing these suits four years from the date the cause of action accrues. City officials should consider the effects of this time period on personnel records retention policies of the city and act accordingly.

## Facts

The plaintiffs are black former employees of a Chicago manufacturer. In 1994 they brought a class action under § 1981 claiming they were subjected to a racially hostile work environment, given inferior employment status, and wrongfully terminated or denied transfers. The defendant sought summary judgment because the complaint was filed more than two years (the applicable Illinois limitation) after the alleged discriminatory acts were done. Plaintiffs responded that the federal statute, adopted in 1990 to provide a uniform statute of limitations for these federal claims, applied. The federal statute (28 U.S.C. § 1658) reads:

> Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of enactment of this section may not be commenced later than four years after the cause of action accrues.

The district court agreed with the plaintiffs, but the Court of Appeals reversed, holding that this statute of limitations did not apply because the Civil Rights Act of 1991 did not create a wholly new cause of action but depended on previous enactments adopted before 1990. For example, § 1981 was first enacted in 1866. It provided in pertinent part that "all persons shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens." The Supreme Court ruled in 1989 that the right "to make and enforce contracts" did not protect against discriminatory conduct occurring after the formation of the contract. Congress responded in 1991 by amending § 1981 to define "make and enforce contracts" to include the "termination of contracts and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship."

## Issue

The issue was whether the plaintiffs' case was barred by the two-year Illinois statute of limitations or

whether the four-year federal statute of limitations applied to keep the suit alive.

## Holding and Reasoning

The Supreme Court held that the federal four-year statute of limitations applied rather than the Illinois two-year statute. Plaintiffs' case was therefore not barred. The Court noted that the plaintiffs' cause of action was made possible by the 1991 amendment to § 1981. If the federal statute applied only to a new cause of action created without reference to existing law, "§ 1658 would apply to only a small fraction of post-1990 enactments." (Slip opinion, p. 11). The Court reasoned:

> An amendment to an existing statute is no less an "Act of Congress" than a new, stand-alone statute. What matters is the substantive effect of an enactment – the creation of new rights of action and corresponding liabilities – not the format in which it appears in the Code (Slip opinion, p. 12).

## Significance

The Supreme Court's ruling is consistent with a Sixth Circuit case decided last year (*Anthony v. BTR Automotive Sealing System, Inc.*, 339 F.3d 506). Most city officials are unaware of that ruling, however, and that the federal statute and the courts' rulings have in effect lengthened the statute of limitations for discrimination claims under § 1981 and the Civil Rights Act of 1991 from one to four years. Since this case involved both § 1981, which prohibits racial bias, and the Civil Rights Act of 1991, which also creates rights to damages for sex, disability, and religious discrimination, it is unclear how the federal statute will apply to claims made under other discrimination laws such as Title VII and the Civil Rights Act of 1991.

In addition to creating more exposure to liability from job discrimination claims, the federal statute and the court rulings mean that cities will have to keep personnel records longer than otherwise required by federal law or previously recommended. Some federal laws require certain personnel records to be kept for one or two years. To respond to the Court's ruling, city officials should retain personnel records relative to hiring, firing, promotions, demotions, suspensions, and other actions that could become the subject of a discrimination suit for five years to make sure the city has appropriate documentation in a suit.


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