

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 08 May 2018

CASE NO.: 2017-OFC-00007

In the Matter of:

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR,
Plaintiff,

v.

JPMORGAN CHASE & CO.,
Defendant.

**ORDER DENYING DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS**

This matter arises under Executive Order 11246 (30 Fed. Reg. 12319), as amended, and the regulations pursuant to 41 C.F.R. Chapter 60. The Court has jurisdiction in this matter under Sections 208 and 209 of the Executive Order and 41 C.F.R. § 60-1.26 and 41 C.F.R. Part 60-30.

On November 20, 2017, JPMorgan Chase & Co. (“Defendant” or “JPMC”) filed a *Motion for Judgment on the Pleadings* along with its *Memorandum of Law in Support of JPMorgan Chase & Co.’s Motion for Judgment on the Pleadings* (“Motion”). In response, on December 28, 2017, the Office of Federal Contract Compliance Programs, United States Department of Labor (“Plaintiff” or “OFCCP”) filed an *Opposition to Defendant’s Motion for Judgment on the Pleadings* (“Opposition”).

In the Motion, Defendant moves for judgment on the pleadings under 41 C.F.R. § 60-30.1 and Rule 12(c) of the Federal Rules of Civil Procedure alleging that OFCCP’s allegations of compensation discrimination for 2012 and earlier periods must be dismissed given the untimely Notice of Violations (“NOV”).¹ Motion at 1-2. JPMC does not allege that the administrative complaint was filed untimely. Instead, the sole question before me is whether judgment on the pleadings is proper given the timing of the NOV.

Defendant argues judgment on the pleadings is warranted because it was “not put on notice of the OFCCP’s allegations of discrimination until more than 1,000 days after the day on

¹ On July 3, 2012, OFCCP sent a scheduling letter notifying JPMC of the compliance review. Opposition at 4 n.3. On March 12, 2015, OFCCP issued a NOV to JPMC describing the purported violations found during the compliance review. *Id.* at 3-4. On January 17, 2017, OFCCP issued its administrative complaint alleging that “since at least May 15, 2012,” Defendant has violated Executive Order 11246 and the regulations promulgated thereunder.

which the alleged discriminated took place.” Motion at 3. More specifically, Plaintiff “first notified JPMC of the Agency’s allegation of compensation discrimination pertaining to pay decisions made prior to May 15, 2012, when it issued its NOV almost three years later on March 12, 2015.” *Id.* (footnote omitted). Defendant contends OFCCP lacks statutory authorization to pursue its untimely action against JPMC. *See id.* at 3-6.

In asserting that OFCCP’s NOV was untimely, Defendant notes that “Congress expressed a clear intent in Title VII that employers be given timely notice of allegations of discrimination.” Motion at 6. Citing to 42 U.S.C. § 2000e-5(e)(1), Defendant states Title VII requires an enforcement action to be based on a charge filed within 180 or 300 days of alleged unlawful employment action, and suggests that timeframe should be applied here. *Id.* In support, Defendant avers: “OFCCP’s position that Congress implicitly gave it vastly broader and unlimited powers that Congress expressly withheld from EEOC based on its expressed concern about timely notice to the employer of allegations of discrimination, is nonsensical as an interpretive doctrine” *Id.*

Plaintiff argues OFCCP’s administrative complaint and NOV are timely as “there is no time limit applicable to an OFCCP NOV in any law, including Executive Order 11246 and its implementing regulations.” Opposition at 3 (citations omitted). In response to JPMC’s arguments, Plaintiff maintains Title VII time limits are not applicable to OFCCP actions arising out of compliance reviews. *Id.* at 6-7. Plaintiff also asserts OFCCP’s purported lack of statutory authorization alleged by Defendant is “[i]ncorrect” and “[i]mmaterial to the [t]iming of an OFCCP NOV.” *Id.* at 7.

Executive Order 11246 and its implementing regulations are completely silent as to an applicable statute of limitations period for issuing a NOV arising out of an OFCCP compliance review.² However, I find it improper to import the applicable statute of limitations under Title VII in this proceeding. The particular case before me is unique in that it is an enforcement action brought by OFCCP against JPMC arising out of purported violations discovered during a compliance review. Plaintiff distinguishes the time limits applicable to OFCCP compliance reviews and resulting enforcement actions from the statute of limitation periods outlined under

² Prior to my assignment to this case, Defendant filed several motions when the matter was initially before Chief Judge Henley. In Defendant’s February 24, 2017 *Motion to Dismiss* and April 12, 2017 *Motion for Reconsideration of the Court’s Order Denying its Motion to Dismiss*, it originally argued OFCCP’s NOV was untimely. Judge Henley did not address this argument specifically in his April 5, 2017 Order Denying Motion to Dismiss, but found Plaintiff’s administrative complaint satisfied the pleading requirements of 41 C.F.R. § 60-30.5(b) “by adequately putting Defendant on notice of the allegations.” Order at 6.

Again in his May 26, 2017 Order Denying Motion for Reconsideration and Denying Stay, Judge Henley noted Plaintiff satisfied the pleading requirements. In this Order, Judge Henley stated in a footnote that “no time limitation exists in the Executive Order or regulations as applied to issuance of a Notice of Violation.” Order Denying Reconsideration at 3 n.4. In his July 17, 2017 Order Denying Motion to Certify Order for Interlocutory Review and Order Denying Motion to Stay Proceedings, Judge Henley clarified: “[M]y rulings in the April 5, 2017 and May 26, 2017 orders were limited to the question of whether the pleading requirements . . . had been met, and whether the complaint should be dismissed for failure to state a claim upon which relief can be granted.” Order Denying Stay at 6. As a result, Judge Henley stated: “I will leave to the presiding judge to be appointed in this matter the question of whether Title VII limitations periods have a bearing on proceedings under Executive Order 11246.” *Id.*

Title VII.³ Opposition at 2-6. Defendant does not refer to any court which has borrowed Title VII's limitation periods and applied those to an OFCCP administrative complaint or NOV following a compliance review.

Relying upon a Decision and Remand Order issued by the Assistant Secretary for Employment Standards ("Secretary"), Plaintiff highlights the importance of "affording agencies temporal enforcement flexibility where their mandate includes performance of compliance investigations on behalf of the public." See Opposition at 4. In that Decision and Remand Order, the Secretary approved the authority of OFCCP under Section 503 of the Rehabilitation Act of 1973 to conduct compliance reviews, and found no time limits applied for notifying a contractor of those violations found. *OFCCP v. Am. Airlines*, 1994-OFC-9, 1996 WL 33170032, at *2-13 (Ass't Sec'y Decision & Remand Order Apr. 26, 1996). In finding OFCCP's Predetermination Notice was served timely, the Secretary refused to adopt the time limitations under Title VII or other civil rights and labor laws. See *Am. Airlines*, 1996 WL 33170032, at *11-13.

Without any basis for applying Title VII's statute of limitations period to the issuance of OFCCP's NOV in this proceeding, and in light of the pertinent case law cited by Plaintiff, Defendant's motion for judgment on the pleadings is **DENIED**.

SO ORDERED.

TIMOTHY J. McGRATH
Administrative Law Judge

Boston, Massachusetts

³ The regulation at 41 C.F.R. § 60-1.21 governs the filing of complaints with OFCCP when an individual is aggrieved by discriminatory practices of a government contractor. See also *Lawrence Aviation Indus. v. Reich*, 28 F.Supp.2d 728, 737 (E.D.N.Y. 1998), *aff'd in part, vacated on other grounds*, No. 98-6219, 1999 U.S. App. LEXIS 15568 (2d Cir. July 6, 1999). That provision provides: "Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended by the Deputy Assistant Secretary for good cause shown." § 60-1.21.