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VIII. EMPLOYMENT & LABOR LAW

When Does the Ninety Day Complaint Filing Period Begin for 42 U.S.C. § 2000e-5(f)(1)? Harvey v. City of New Bern Police Department

Title VII of the Civil Rights Act of 1964 protects the rights of employees against discrimination in hiring, firing, and promotion.¹ Title VII also provides remedies for violations of employees' rights.² An employee alleging a violation of Title VII first must file a complaint with the Equal Employment Opportunity Commission (EEOC).³ If the employee's claim is valid or prosecutable, the EEOC encourages the employer to comply with Title VII and seeks conciliation between the employee and employer.⁴ If the EEOC fails to convince the offending employer to comply with Title VII, the EEOC files suit against the employer.⁵ Alternatively, if the EEOC does not find enough evidence to support its own action against the employer, the EEOC issues a Right to Sue letter to the employee.⁶ The Right to Sue

1. Civil Rights Act of 1964 § 706, 42 U.S.C. § 2000e-2 (1982). Congress designed Title VII of the Civil Rights Act of 1964 (Title VII) to ensure that employees would have a cause of action against employers who discriminated against the employees in employment practices. *Id.* Congress established the Equal Employment Opportunity Commission (EEOC) as an administrative body to hear employees' allegations of their employers' violations of Title VII. *Id.*

2. *Id.* If the EEOC finds that sufficient evidence supports an employee's allegations of an employer's Title VII violations, the EEOC may file a lawsuit against the offending employer. *Id.* The EEOC also may allow the employee to file charges against the employer, depending on the circumstances of the employer's Title VII violation. *Id.*; see *infra* notes 3-7 and accompanying text (discussing process of filing complaint with EEOC).

3. 42 U.S.C. § 2000e-5(b) (1982). After the alleged discriminatory action, an employee has 180 days to file a complaint with the Equal Employment Opportunity Commission. *Id.* § 2000e-5(e). The EEOC examines the employee's allegations and decides whether enough evidence exists to support a claim against the employer. *Id.* § 2000e-5(b). The procedure for filing a Title VII complaint against an employer changes if the state in which the unlawful employment practice took place has its own agency to investigate an employee's claims of employment discrimination. *Id.* § 2000e-5(c). If the state does not have its own agency, the EEOC follows the EEOC's normal procedure. *Id.* If the state has established an agency to hear employees claims of employment discrimination, the EEOC forwards the complaint to the state agency. *Id.* The state agency has sixty days to complete its investigation. *Id.* After completing its investigation, the state agency may file in a state court charges against the employer in accordance with state administrative procedures. *Id.* § 2000e-5(d). If the state agency cannot conciliate the employer and employee, then the state agency files its report with the EEOC, and the EEOC proceeds against the employer who allegedly violated the Act. *Id.*

4. 42 U.S.C. § 2000e-5(d) (1982). Title VII establishes a conciliation period to try to rectify the employer's violation of the Act without the plaintiff having to sue his employer in court. EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972-CONFERENCE REPORT 118 Cong. Rec. at 7166, 7168 (1972). Furthermore, supporters of Title VII indicated that, because of the conciliation period, lawsuits would be the rare exception in discrimination cases. *Id.* at 7563.

5. 42 U.S.C. § 2000e-5(f)(1) (1982).

6. *Id.* The Right to Sue Letter is a necessary prerequisite to an employee's private action against his employer. *Id.* The Right to Sue letter signifies the EEOC's permission for

letter enables the employee to file a private action against the employer after the EEOC has completed its own investigation and has decided not to bring charges against the employer.⁷

Upon receiving the EEOC's Right to Sue letter, the employee has ninety days to file in a federal district court a complaint against his employer.⁸ The question of when the ninety day filing period begins to run has generated controversy among the federal circuit courts of appeals.⁹ The United States Courts of Appeals for the Fifth and Eleventh Circuits, in considering when the ninety day filing period begins, have adopted a flexible rule.¹⁰ Under the Fifth and Eleventh Circuits' flexible rule, the ninety day period begins to run when a person of suitable age and discretion receives the Right to Sue letter at the address that the plaintiff gave the EEOC.¹¹ The flexible rule also allows for a case by case determination of whether equitable tolling of the filing period is appropriate.¹² The United States Court of Appeals for the Seventh Circuit, however, has adopted an actual receipt rule, which

the employee to bring his own suit against his employer. *Id.* Title VII suggests that the EEOC issue notice, which the EEOC calls a Right to Sue letter to the employee within 120 days after the employee files a complaint with the EEOC. *Id.* § 2000e-5(b). Although Title VII does not expressly provide for a "Right to Sue" letter, Title VII expressly states that the EEOC must provide a plaintiff with some form of notice of his right to sue his employer in a private civil action. *Id.* § 2000e-5(f)(1). The EEOC has enacted its own regulations that require the EEOC to send to the plaintiff a Right to Sue letter as notice of the plaintiff's right to institute a private action against his employer. 29 C.F.R. § 1601.28 (1986). The EEOC regulations allow a plaintiff to request a Right to Sue letter from the EEOC 180 days after the plaintiff has filed charges with the EEOC. 29 C.F.R. § 1601.25(b)-(c) (1986). The plaintiff may request the letter regardless of the EEOC's disposition of the case. *Id.*

7. 42 U.S.C. § 2000e-5(f)(1) (1982).

8. *Id.* Originally, Title VII required a plaintiff to file a complaint within 30 days after the plaintiff's receipt of a Right to Sue letter. Civil Rights Act of 1964 § 706e, 42 U.S.C. 2000e (1964). In 1972 Congress extended the filing period to ninety days. 42 U.S.C. § 2000e-5(f)(1) (1972). Recognizing the inadequacy of the original thirty day filing period, Congress chose to expand the filing period to give a plaintiff more time to obtain counsel and file a complaint. *See* CONFERENCE REPORT, *supra* note 4, 7167-68 (explaining that 90 days is adequate time for plaintiff to file Title VII complaint against his employer).

9. *See infra* notes 44-97 and accompanying text (discussing opposing rules for establishing beginning of 90 day filing period); *see also* *Espinoza v. Missouri Pac. R.R.*, 754 F.2d 1247, 1250 (5th Cir. 1985) (adopting flexible rule); *Bell v. Eagle Motor Lines*, 693 F.2d 1086, 1087 (11th Cir. 1982) (applying flexible rule); *Archie v. Chicago Truck Drivers, Helpers and Warehouse Union*, 585 F.2d 210, 215 (7th Cir. 1978) (applying actual receipt rule).

10. *See Espinoza v. Missouri Pac. R.R.*, 754 F.2d 1247, 1250 (5th Cir. 1985) (holding that filing period begins upon receipt of Right to Sue letter at plaintiff's address unless principles of equity demand tolling of statute until plaintiff actually receives notice); *Bell v. Eagle Motor Lines*, 693 F.2d 1086, 1087 (11th Cir. 1982) (same); *Franks v. Bowman Transp. Co.*, 495 F.2d 398, 404 (5th Cir. 1974) (holding that filing period begins when person receives letter at plaintiff's address, and that court equitably may toll filing period); *see infra* notes 59-97 and accompanying text (discussing rule that filing period begins when plaintiff receives Right to Sue letter at his residence).

11. *See infra* notes 81-97 and accompanying text (discussing Fifth Circuit's application of equitable tolling in *Franks*).

12. *Id.*

measures the ninety day period from the time a plaintiff actually receives the Right to Sue letter.¹³ In *Harvey v. City of New Bern Police Department*¹⁴ the United States Court of Appeals for the Fourth Circuit considered when the ninety day filing period for an employee's Title VII action against an employer begins to run.¹⁵

In *Harvey* the plaintiff was a black police officer who filed with the EEOC charges against the New Bern Police Department.¹⁶ The plaintiff alleged that the New Bern Police Department, in violation of Title VII, preferentially promoted a white officer to a position for which both the plaintiff and the white officer had applied.¹⁷ The EEOC failed in its attempts at conciliation between the plaintiff and employer, but decided not to institute an action against the employer because of a lack of evidence to support the plaintiff's claim.¹⁸ On November 26, 1985, the EEOC issued a Right to Sue letter to the plaintiff.¹⁹ The plaintiff's wife signed for the letter upon its delivery to the plaintiff's home on November 27, because the plaintiff was not at home when the letter arrived.²⁰ Subsequently, the plaintiff and his wife left town for a holiday trip, and the plaintiff's wife did not give the letter to the plaintiff, or tell him that the letter had arrived until six days after she had received the letter.²¹ On February 26, 1986, ninety-one days after the plaintiff's wife had signed for the letter, the plaintiff's attorney filed a complaint in the United States District Court for the Eastern District of North Carolina against the plaintiff's employer.²² Claiming that the plaintiff did not file his complaint within the ninety day filing period for which Title VII provides, the defendant moved for summary judgement.²³ The district court granted the defendant's motion, finding that the plaintiff had not filed his complaint within the ninety day period provided for by Title VII.²⁴ Because the plaintiff had offered no equitable ground that would allow the court to toll the filing period, the court held that the untimely filing of the complaint barred the plaintiff's cause of action.²⁵

The plaintiff appealed the district court's decision to the United States Court of Appeals for the Fourth Circuit, arguing that the district court

13. See *Archie v. Chicago Truck Drivers, Helpers and Warehouse Workers Union*, 585 F.2d 210, 215 (7th Cir. 1978) (holding that 90 day filing period commenced upon plaintiff's actual receipt of Right to Sue letter); *infra* notes 48-58 and accompanying text (discussing Seventh Circuit's application of actual receipt rule in *Archie*).

14. 813 F.2d 652 (4th Cir. 1987).

15. *Harvey v. City of New Bern Police Dep't*, 813 F.2d 652, 653 (4th Cir. 1987).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

erred in holding that the filing period began when the plaintiff's wife received the Right to Sue letter.²⁶ The plaintiff urged that the district court should have tolled the filing period until the plaintiff actually received the Right to Sue letter.²⁷ Because the plaintiff's complaint presented the Fourth Circuit with an issue of first impression, the court examined the two existing rules that dictate when the filing period begins.²⁸ The Fourth Circuit initially noted that, under the actual receipt rule, the filing period begins to run when an employee actually receives a Right to Sue letter.²⁹ The Fourth Circuit also noted that some courts have determined that the actual receipt rule effectively enables claimants to extend their deadlines for filing Title VII actions at will.³⁰ In analyzing the actual receipt rule, the Fourth Circuit determined that the actual receipt rule did not best serve the congressional intent underlying Title VII.³¹ According to the Fourth Circuit, Congress limited the filing period under Title VII to ninety days to force a plaintiff expeditiously to commence a Title VII action against his employer.³² The Fourth Circuit implied that because the actual receipt rule enables a plaintiff indefinitely to extend the filing deadline by delaying his actual receipt of the letter, the actual receipt rule circumvents the congressional intent underlying the ninety day filing period.³³

Finding that the flexible rule better serves congressional intent, the Fourth Circuit rejected the actual receipt rule and instead chose to adopt the flexible rule to determine when the filing period begins.³⁴ With the adoption of the flexible rule, the Fourth Circuit impliedly adopted the reasoning of the Eleventh Circuit that a plaintiff should not be able to enjoy a manipulable open ended extension of the ninety day filing period.³⁵ The Fourth Circuit explained that the flexible rule would require a district court to determine on a case by case basis whether equitable considerations dictate that the court should toll the filing period.³⁶ Thus, because the Fourth Circuit found that the flexible rule best served congressional desire

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*; see *Archie v. Chicago Truck Drivers, Helpers and Warehouse Workers Union*, 585 F.2d 210, 216 (7th Cir. 1978) (holding that 90 day filing period began upon plaintiff's actual receipt of Right to Sue letter); see *infra* notes 45-57 and accompanying text (discussing Seventh Circuit's adoption of actual receipt rule).

30. See *Harvey*, 813 F.2d at 654 (noting Fifth and Eleventh Circuits' criticism of actual receipt rule).

31. *Harvey*, 813 F.2d at 654.

32. *Id.*

33. See *id.* (implying that congressional desire for expedition is grounds for rejection of actual receipt rule).

34. *Id.*

35. *Harvey*, 813 F.2d at 654.

36. *Harvey*, 813 F.2d at 654; see *Espinoza v. Missouri Pac. R.R.*, 754 F.2d 1247, 1250 (5th Cir. 1985) (explaining how court applies flexible rule by examining each case individually to see if circumstances require tolling of 90 day filing period); *Franks v. Bowman Transp. Co.*, 495 F.2d 398, 404 (5th Cir. 1974) (same).

for expedition and the requirements of justice, the Fourth Circuit adopted the flexible rule.³⁷

Applying the flexible rule to the plaintiff's allegations in *Harvey*, the Fourth Circuit found that the filing period began to run on November 27, 1985, when the plaintiff's wife received and signed for the Right to Sue letter.³⁸ Because the plaintiff filed the complaint against the defendant on February 26, 1986, ninety-one days after the plaintiff's wife had received the letter, the Fourth Circuit held that the Title VII statute of limitation barred the plaintiff's complaint.³⁹ Noting that the flexible rule allows for equitable tolling of the filing period in egregious situations, however, the Fourth Circuit considered whether the circumstances of the plaintiff's delayed filing warranted equitable tolling.⁴⁰ The court held that equitable tolling was inappropriate because the six day delay in plaintiff's actual receipt of the Right to Sue letter did not disadvantage the plaintiff by depriving the plaintiff of adequate time to file a complaint against his employer.⁴¹ Furthermore, the court observed that the plaintiff failed to prove that circumstances beyond his control prevented him from filing the complaint within the ninety day filing period.⁴² Thus, the Fourth Circuit affirmed the district court's decision to grant summary judgment in favor of the defendant.⁴³

With one exception, the United States Courts of Appeals consistently have used the flexible rule in determining when the ninety day filing period under Title VII begins.⁴⁴ The United States Court of Appeals for the Seventh Circuit is the only Circuit Court to reject the flexible rule and instead adopt the actual receipt rule.⁴⁵ In *Archie v. Chicago Truck Drivers, Helpers and Warehouse Workers Union*⁴⁶ the Seventh Circuit considered whether the filing period started when the plaintiff's wife received the Right to Sue letter, or when the plaintiff himself received the letter.⁴⁷ In *Archie* the plaintiff filed with the EEOC a discrimination action against his employer.⁴⁸

37. *Harvey*, 813 F.2d at 654.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. See *infra* notes 61-79 and accompanying text (discussing flexible rule's application in *Espinoza*). But see *infra* notes 45-57 and accompanying text (discussing adoption of actual receipt rule by United States Court of Appeals for Seventh Circuit).

45. See *Archie v. Chicago Truck Drivers, Helpers, and Warehouse Workers Union*, 585 F.2d 210, 216 (7th Cir. 1978) (holding that filing period begins when plaintiff actually receives Right to Sue letter); *infra* notes 54-57 and accompanying text (discussing Seventh Circuit's rationale for adopting actual receipt rule in *Archie*).

46. 585 F.2d 210 (7th Cir. 1978).

47. *Archie v. Chicago Truck Drivers, Helpers, and Warehouse Workers Union*, 585 F.2d 210, 213-15 (7th Cir. 1978).

48. *Id.* at 213. In *Archie v. Chicago Truck Drivers, Helpers, and Warehouse Workers*

The EEOC found no ground upon which to base its own suit against the defendant and, therefore, issued a Right to Sue letter to the plaintiff.⁴⁹ The plaintiff's wife received the letter on July 28, 1976, but the plaintiff claimed that he did not receive the letter until August 6, 1976.⁵⁰ The plaintiff filed a complaint in the United States District Court for the Northern District of Illinois ninety-one days after the plaintiff's wife received the Right to Sue Letter.⁵¹ The district court dismissed with prejudice the plaintiff's complaint holding that the plaintiff did not file his complaint within the ninety-day filing period.⁵² The plaintiff appealed to the United States Court of Appeals for the Seventh Circuit, arguing that, because he had filed his complaint within ninety days of receiving the Right to Sue letter, he had complied with the congressional intent underlying the ninety day filing period by quickly filing his complaint.⁵³ In adopting the actual receipt rule, the Seventh Circuit reasoned that the plaintiff's right to sue his employer should not depend on the circumstances surrounding the delivery of the Right to Sue Letter.⁵⁴ The *Archie* court expressed concern that the delayed receipt of a letter would disadvantage a plaintiff because the plaintiff was not aware of his right to sue until he actually received the letter.⁵⁵ Finally, the *Archie* court observed that, generally, courts liberally have construed the filing period limitations of Title VII to effectuate Title VII's remedial purpose.⁵⁶ The Seventh Circuit, therefore, liberally construed the filing

Union the plaintiff was a black man whom the defendant employed as a dockworker. *Id.* The defendant's foreman discharged the plaintiff for allegedly tallying freight improperly. *Id.* The plaintiff appealed the discharge to his union, which convinced the defendant to rehire the plaintiff. *Id.* The plaintiff signed an agreement with the defendant stating that, if the plaintiff failed to perform his duties adequately in the following year, the defendant irrevocably could terminate the plaintiff. *Id.* Within four months after returning to work for the defendant, the defendant dismissed the plaintiff for allegedly erring in loading freight. *Id.* Subsequently, the plaintiff filed with the EEOC a charge of racial discrimination against the defendant, alleging that the defendant dismissed the plaintiff because the plaintiff was black. *Id.*

49. *Id.* at 213. Because the State of Illinois had an Illinois Fair Employment Practices Commission ("IFEPC"), the EEOC referred the plaintiff's charge of racial discrimination to the IFEPC in accordance with Title VII. *Id.*; see *supra* note 3 (discussing state commission's intervention in discrimination actions). After conducting an investigation into the plaintiff's charge of employment discrimination, the IFEPC found no basis for the plaintiff's allegations. *Archie*, 585 F.2d at 213. Accordingly, the IFEPC reported to the EEOC the lack of a factual basis for the plaintiff's allegations, and the EEOC adopted the IFEPC's findings. *Id.*

50. *Archie*, 585 F.2d at 214.

51. *Id.*

52. *Id.* at 212.

53. *Id.* at 213.

54. *Id.* at 215.

55. *Id.*

56. *Id.* at 216 (agreeing with *Franks* opinion that courts liberally have construed Title VII provisions); see *Franks v. Bowman Trans. Co.*, 495 F.2d 398, 404 (5th Cir. 1974). The United States Supreme Court has reasoned that courts liberally should construe Title VII provisions to promote the remedial nature of Title VII. *Love v. Pullman Co.*, 404 U.S. 522, 525-27 (1971). For example, in *Love v. Pullman Co.*, the Supreme Court considered whether the plaintiff had filed with the EEOC a charge of discrimination against his employer in

period limitation of Title VII and held that the filing period began when the plaintiff actually received the Right to Sue letter, rather than when the plaintiff's wife received the letter.⁵⁷

Unlike the Seventh Circuit in *Archie*, the United States Courts of Appeals for the Fifth and Eleventh Circuits have applied the flexible rule in deciding when the ninety day filing period begins.⁵⁸ The flexible rule designates as the beginning of the ninety day filing period for a Title VII action the delivery of the Right to Sue letter to a person of suitable age and discretion at the plaintiff's address.⁵⁹ The flexible rule further allows a court equitably to toll the filing period when circumstances beyond the plaintiff's control prevent him from filing a timely complaint in a district court.⁶⁰ For example, the Fifth Circuit adopted the flexible rule in *Espinoza*

conformity with Title VII. *Id.* at 524. The plaintiff was a black porter-in-charge for the defendant. *Id.* at 523. Alleging that the defendant did not pay black and white porters the same wage for the same work, the plaintiff filed a complaint with the Colorado Civil Rights Commission (CCRC) in accordance with Title VII's provisions. *Id.*; see *supra* note 3 (discussing state commissions' intervention in discrimination actions). The CCRC did not reach a resolution of the dispute between the plaintiff and defendant that satisfied the plaintiff, and the plaintiff subsequently wrote a letter of inquiry to the EEOC alleging that the defendant discriminated in its wage practices. *Love*, 404 U.S. 522, 524. The EEOC treated the letter of inquiry as a complaint for the purpose of starting the necessary proceedings under Title VII. *Id.* The EEOC, however, did not formally file the letter as a complaint. *Id.* The EEOC failed in its attempts to obtain the defendant's voluntary compliance with Title VII and issued a Right to Sue letter to the plaintiff. *Id.* The plaintiff filed in the United States District Court for the District of Colorado charges against his employer, alleging that the defendant's discriminatory wage practices violated Title VII. *Id.* at 523. The district court treated the plaintiff's initial inquiry letter to the EEOC as a complaint for the purposes of Title VII. *Love v. Pullman Co.*, 430 F.2d 49, 52 (10th Cir. 1969). Because the plaintiff filed a Title VII complaint after the filing period ended, the district court dismissed the plaintiff's complaint. *Id.* The United States Supreme Court considered whether the plaintiff had filed a timely complaint within the provisions of Title VII. *Love*, 404 U.S. at 523. The Supreme Court reasoned that, if a court dismissed a plaintiff's claim because the EEOC improperly treated the letter of inquiry as a complaint, a court would not effectuate the remedial purpose of Title VII by strictly enforcing the complaint filing requirement under Title VII. *Id.* at 526. The Supreme Court held, therefore, that the plaintiff filed a valid complaint by sending a letter of inquiry to the EEOC. *Id.* Furthermore, the Supreme Court concluded that the plaintiff filed a timely complaint in accordance with Title VII's provisions. *Id.*

57. *Archie v. Chicago Truck Drivers, Helpers and Warehouse Workers Union*, 585 F.2d 210, 215-16 (7th Cir. 1978).

58. See *infra* notes 61-75 and accompanying text (discussing adoption of flexible rule in *Espinoza* by United States Court of Appeals for the Fifth Circuit); *infra* note 64 (discussing Eleventh Circuit's application of flexible rule in *Lewis v. Conners Steel Co.*).

59. See *supra* note 10 and accompanying text (stating that, in *Espinoza*, Fifth Circuit held that flexible rule filing period begins when person of suitable age and discretion receives Right to Sue letter at plaintiff's address).

60. See *Franks v. Bowman Transp. Co.*, 495 F.2d 398, 405-06 (5th Cir. 1974) (holding that unusual circumstances surrounding plaintiff's receipt of Right to Sue letter warranted equitable tolling); *infra* notes 81-97 and accompanying text (discussing facts and holding of *Franks*); see also *McQueen v. E.M.C. Plastics Co.*, 302 F. Supp. 881, 884-85 (holding that unusual circumstances surrounding plaintiff's filing of complaint warranted equitable tolling); *infra* note 73 (discussing reasoning of United States District Court for the Eastern District of Texas in *McQueen*).

v. Missouri Pacific Railroad Company,⁶¹ to determine whether the ninety day filing period began when the plaintiff's wife received the Right to Sue letter, or eight days later, when the plaintiff actually received the letter.⁶² In *Espinoza* the plaintiff filed with the EEOC a discrimination complaint against the plaintiff's employer.⁶³ Subsequently, the EEOC issued a Right to Sue letter, which the plaintiff's wife received on May 4, 1983.⁶⁴ The plaintiff, however, was out of town and did not actually receive the letter until May 12, 1983.⁶⁵ Ninety-two days after the plaintiff's wife received the letter and eighty-four days after the plaintiff received the letter, the plaintiff filed in the United States District Court for the Southern District of Texas a complaint against his employer.⁶⁶ The district court dismissed the plaintiff's claim for lack of subject matter jurisdiction because the plaintiff filed the

61. 754 F.2d 1247 (5th Cir. 1985).

62. *Espinoza v. Missouri Pac. R.R.*, 754 F.2d 1247, 1249 (5th Cir. 1985). Like the Fifth Circuit, the Eleventh Circuit consistently has adhered to the flexible rule. *Lewis v. Conners Steel Company*, 673 F.2d 1240, 1242 (11th Cir. 1982). In *Lewis v. Conners Steel Co.*, the United States Court of Appeals for the Eleventh Circuit first implied the flexible rule as a case by case analysis that allows a court equitably to toll the ninety day filing period under Title VII. *Id.* In *Lewis* the Eleventh Circuit considered whether the plaintiff filed a complaint against his employer within the ninety day filing period. *Id.* In *Lewis* the plaintiff filed with the EEOC a complaint charging that the plaintiff's employer fired the plaintiff because the plaintiff was black. *Id.* at 1241. The plaintiff temporarily was living with a friend, and therefore gave the EEOC the friend's address. *Id.* The plaintiff moved from his friend's house during the time the EEOC was conducting its own investigation, but did not inform the EEOC of the plaintiff's new address. *Id.* The EEOC issued a Right to Sue letter to the plaintiff. *Id.* The EEOC's records showed that the EEOC received a registered mail receipt three days after the EEOC sent the letter to the plaintiff. *Id.* The plaintiff, however, alleged that he never received the letter. *Id.* The plaintiff contacted the EEOC, inquiring about the Right to Sue letter, three months after the EEOC had delivered the first letter to the plaintiff's old address. *Id.* The EEOC gave the plaintiff a copy of the original letter. *Id.* The plaintiff filed a complaint in the United States District Court for the Northern District of Alabama within four days after he received the copy of the original letter. *Id.* The plaintiff had filed his complaint more than 90 days after the EEOC delivered the first letter to the plaintiff's temporary address. *Id.* The district court determined that the 90 day filing period began upon the delivery of the original letter to the plaintiff's temporary address, and dismissed the case because the plaintiff filed his complaint after the 90 day filing period had expired. *Id.* The plaintiff appealed the district court's decision to the United States Court of Appeals for the Eleventh Circuit. *Id.*

In determining when a court should start the filing period in a Title VII claim, the Eleventh Circuit initially noted that the court would not provide the plaintiff with a manipulable, open-ended time extension of the filing period. *Id.* at 1242. The Eleventh Circuit explained that fair and reasonable standards dictated that a plaintiff should bear some responsibility for the timely filing of his complaint by informing the EEOC of any address changes. *Id.* at 1243. Because the plaintiff did not give his new address to the EEOC, the court refused to toll the filing period until the plaintiff received the second letter. *Id.* Instead, the Eleventh Circuit reversed and remanded the case for further evidentiary hearings with the implied understanding that the district court should apply the flexible rule. *Id.*

63. *Espinoza* at 1248.

64. *Id.* at 1249.

65. *Id.*

66. *Id.*

complaint after the ninety day limitation under Title VII had expired.⁶⁷

The plaintiff subsequently appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit, arguing that the circumstances surrounding his receipt of the letter required the court to toll the filing period until the plaintiff actually received the letter.⁶⁸ The Fifth Circuit initially noted that generally, courts will serve the purposes of the Civil Rights Act if the courts interpret Title VII to require that the ninety day filing period commence upon delivery of the Right to Sue letter to the plaintiff's address.⁶⁹ The *Espinoza* court explained, however, that a court could toll the filing period to prevent any inequity that might result if the court strictly imposed the ninety day limitation.⁷⁰ The Fifth Circuit listed four circumstances requiring a court equitably to toll the filing period.⁷¹ First, the Fifth Circuit noted that, when the EEOC gives a plaintiff inadequate notice of the plaintiff's right to sue by sending a letter other than a Right to Sue letter, a court should toll the filing period until the plaintiff received the actual Right to Sue letter.⁷² Second, the Fifth Circuit observed that a court should toll the filing period when the court delays granting a plaintiff's motion for appointment of counsel and, consequently, causes the plaintiff to file his complaint after the ninety day period has expired.⁷³

67. *Id.* at 1248.

68. *Id.*

69. *Id.* at 1249 (holding that commencement of ninety day period on date that notice delivered to plaintiff's address ordinarily will serve purpose of Title VII); *infra* notes 109-18 and accompanying text (discussing congressional intent of Title VII).

70. *Espinoza v. Missouri Pac. R.R.*, 754 F.2d 1247, 1250-51 (5th Cir. 1985) (recognizing that court should toll filing period to prevent inequity when circumstances dictate).

71. *See Espinoza*, 754 F.2d at 1251. The United States Court of Appeals for the Fifth Circuit referred to a United States Supreme Court case, *Baldwin County Welcome Center v. Brown*, when the Fifth Circuit listed some of the circumstances that might justify equitable tolling of 90 day filing period. *See Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151 (1983) (discussing circumstances that justify equitable tolling of filing period); *see also* *Suarez v. Little Havana Activities*, 721 F.2d 338, 340 (11th Cir. 1983) (citing *Baldwin* circumstances that may justify equitable tolling of 90 day filing period).

72. *Espinoza*, 754 F.2d at 1251; *see Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151 (1983) (stating that if EEOC gives inadequate notice to plaintiff, court may toll filing period); *Gates v. Georgia Pac. Corp.*, 492 F.2d 292, 295 (9th Cir. 1974) (tolling filing period because EEOC did not send plaintiff adequate notice of his right to sue his employer in private civil action).

73. *Espinoza*, 754 F.2d at 1251; *see Baldwin*, 466 U.S. at 151 (holding that equity justifies tolling filing period when motion for appointment of counsel is pending); *Harris v. Walgreen's Distrib. Center*, 456 F.2d 588, 592 (6th Cir. 1972) (same); *Harris v. National Tea Co.*, 454 F.2d 307, 310 (7th Cir. 1971) (stating that if motion for appointment of counsel prevents plaintiff from filing timely complaint, court equitably may toll filing period); *McQueen v. E.M.C. Plastics Co.*, 302 F. Supp. 881, 882-83 (E.D. Tex. 1969) (stating that pending motion for appointment of counsel warrants tolling of filing period). In *McQueen v. E.M.C. Plastics Co.*, the United States District Court for the Eastern District of Texas considered whether to toll the filing period because of the unusual circumstances under which the plaintiff filed the complaint. *McQueen v. E.M.C. Plastics Co.*, 302 F. Supp. 881, 882-83 (E.D. Tex. 1969). In *McQueen*, the plaintiff requested the district court to appoint counsel to the plaintiff.

Third, the court noted that equitable tolling also applies when a court leads a plaintiff to believe that the plaintiff has satisfied all prerequisites to maintaining a Title VII cause of action.⁷⁴ Finally, the court noted that equitable tolling applies if a defendant deceptively has prevented a plaintiff from filing a timely complaint.⁷⁵ The court held that the plaintiff's absence at the time his wife received the letter did not constitute a circumstance warranting equitable tolling.⁷⁶ Thus, the Fifth Circuit held that the filing period began when the plaintiff's wife received the Right to Sue letter.⁷⁷ The Fifth Circuit concluded, therefore, that the plaintiff did not file his complaint within the ninety day limitation and affirmed the district court's decision to dismiss the plaintiff's complaint.⁷⁸

In adopting the flexible rule, the *Espinoza* court noted that a court using the flexible rule equitably can toll the filing period under Title VII when circumstances beyond the plaintiff's control prevented the plaintiff from filing his complaint within the filing period.⁷⁹ In *Espinoza* the Fifth Circuit cited a previous Fifth Circuit decision to illustrate a set of circumstances requiring equitable tolling.⁸⁰ In *Franks v. Bowman Transportation Company*⁸¹ the United States Court of Appeals for the Fifth Circuit con-

Id. The court, however, did not appoint counsel until after the 90 day filing period had expired. *Id.* Furthermore, the terminal illness of the attorney's wife severely limited the attorney's ability to represent the plaintiff. *Id.* The plaintiff's attorney had determined that the plaintiff had no ground for a lawsuit against the plaintiff's employer and notified the plaintiff that he would not file a lawsuit against the defendant. *Id.* Moreover, the judge who had appointed counsel for the plaintiff died before making any further decision in the proceeding, requiring a new judge to acquaint himself with the plaintiff's circumstances. *Id.* Accordingly, the district court found that the plaintiff had fulfilled her obligations to the best of her ability, and because the circumstances surrounding the filing of the plaintiff's complaint were beyond her control, the court tolled the filing period until the court could appoint another attorney to represent the plaintiff. *Id.* at 884.

74. *Espinoza*, 754 F.2d at 1251; see *Baldwin*, 466 U.S. at 151 (stating that court may apply equitable tolling when court led plaintiff to believe that plaintiff had fulfilled all necessary requirements for suit); *Carlile v. South Routt School Dist.* RE 3-J, 652 F.2d 981, 986 (10th Cir. 1981) (same).

75. *Espinoza*, 754 F.2d at 1251; see *Baldwin*, 466 U.S. at 151 (noting that if defendant's intentional misconduct influences plaintiff to delay filing of complaint, court may equitably toll filing period); *Villasenor v. Lockheed Aircraft Corp.*, 640 F.2d 207, 208 (9th Cir. 1981) (holding that defendant's misconduct of promising to settle dispute out of court deceived plaintiff to delay filing complaint, and therefore, justified equitable tolling of filing period).

76. *Espinoza v. Missouri Pac. R.R.*, 754 F.2d 1247, 1250-51 (5th Cir. 1985). In *Espinoza*, the plaintiff alleged that he had been out of town when the Right to Sue letter arrived at his home. *Id.* at 1249. The United States Court of Appeals for the Fifth Circuit rejected the plaintiff's argument that his absence justified equitable tolling of the filing period until the plaintiff had received the letter. *Id.* at 1249-50.

77. *Id.*

78. *Id.* at 1251.

79. *Id.* at 1250; see *McQueen v. E.M.C. Plastics Co.*, 302 F.Supp. 881, 882-83 (E.D. Tex. 1969) (holding that situations beyond plaintiff's control, which prevented plaintiff from filing timely complaint, justified tolling filing period); *supra* note 72 (discussing facts of *McQueen* which required equitable tolling).

80. *Espinoza*, 754 F.2d at 1249.

81. 495 F.2d 398 (5th Cir. 1974).

sidered whether the circumstances of the plaintiff's delayed receipt of his Right to Sue letter warranted equitable tolling.⁸² In *Franks* the plaintiff filed with the EEOC charges against his employer for discriminatory promotion practices.⁸³ The EEOC tried to conciliate the plaintiff and his employer, but the attempts failed, and the EEOC decided that it had no grounds upon which to sue and issued a Right to Sue letter to the plaintiff.⁸⁴ The plaintiff's nine-year-old nephew signed for the Right to Sue letter.⁸⁵ The nephew then lost the letter and told the plaintiff that a letter had arrived for the plaintiff.⁸⁶ The plaintiff, however, had no idea that the letter which had arrived for the plaintiff was the Right to Sue letter.⁸⁷ Because he received no word from the EEOC for approximately a year after the first letter had arrived, the plaintiff contacted the EEOC and learned that the EEOC had delivered the Right to Sue letter.⁸⁸ Subsequently, the EEOC issued a second letter to the plaintiff.⁸⁹ The plaintiff received the second letter and within thirty days of receiving the second letter filed a complaint in the United States District Court for the Northern District of Georgia.⁹⁰ The district court dismissed the plaintiff's complaint, holding that the plaintiff did not file his complaint within the filing period which follows the EEOC's issuance of the initial Right to Sue letter.⁹¹ The plaintiff appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit.⁹²

The Fifth Circuit first determined that the filing period began when the plaintiff received the second letter.⁹³ The court reasoned that the nephew's loss of the letter warranted equitable tolling of the filing period until the plaintiff received the second letter.⁹⁴ The court also reasoned that the nephew's loss of the letter constituted a situation over which the plaintiff had no control.⁹⁵ The *Franks* court refused to condition the plaintiff's right to sue on circumstances beyond the plaintiff's control.⁹⁶ To resolve the

82. *Franks v. Bowman Transp. Co.*, 495 F.2d 398, 404-06 (5th Cir. 1974).

83. *Id.* at 402.

84. *Id.* at 403.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* In *Franks*, the filing period was 30 days because Congress had not extended the filing period to 90 days at the time of the plaintiff's suit. *Id.*; see *supra* note 8 and accompanying text (discussing congressional extension of complaint filing period from 30 to 90 days).

91. *Id.*

92. *Id.* at 398.

93. *Id.* at 405.

94. *Id.*

95. *Id.* In *Franks*, the United States Court of Appeals for the Fifth Circuit reasoned that the plaintiff's nephew's loss of the Right to Sue letter was similar to the EEOC's loss of the letter in multitudinous paper work, or the postal service's loss of the letter. *Id.* Therefore, the Fifth Circuit reasoned that loss of the first letter was a circumstance beyond the plaintiff's control. *Id.*

96. See *id.* (discussing instance of fortuitous circumstance in *Franks*). In *Franks*, the

unfairness of the *Franks* situation, therefore, the Fifth Circuit applied the flexible rule and equitably tolled the ninety day filing period until the plaintiff received the second Right to Sue letter.⁹⁷

The flexible rule allows a court to toll the ninety day filing period when circumstances beyond a plaintiff's control prevent the plaintiff from filing a timely complaint and thus is an efficient and reasonable rule for a court to apply in determining when the Title VII filing period begins to run.⁹⁸ In contrast to the flexible rule, the actual receipt rule entails several problems.⁹⁹ First, under the actual receipt rule, a court must distinguish between when the plaintiff actually receives the letter and when another person in the plaintiff's household receives the letter.¹⁰⁰ The distinction is problematic because the court further must inquire into the circumstances surrounding the letter's delivery and who actually receives the Right to Sue letter to determine the beginning of the ninety day filing period.¹⁰¹ The Seventh Circuit in *Archie* attempted to avoid the problem of determining when a plaintiff receives the Right to Sue letter by suggesting that the EEOC require delivery of the letter to the plaintiff himself.¹⁰² By requiring delivery to the plaintiff, however, the Seventh Circuit would impose an administratively infeasible requirement on the EEOC.¹⁰³ Requiring the EEOC to deliver the letter only to the plaintiff would waste time and money, because the EEOC might have to deliver the letter several times before catching the plaintiff at home at the time of delivery.¹⁰⁴

The actual receipt rule not only creates a problem for courts in establishing the beginning of the filing period, but it also places a plaintiff at an advantage over a defendant.¹⁰⁵ Under the actual receipt rule, the plaintiff has an advantage over the defendant because he indefinitely can extend the filing period deadline by manipulating the date on which he actually receives the Right to Sue letter.¹⁰⁶ The plaintiff effectively could extend the ninety

United States Court of Appeals for the Fifth Circuit noted several fortuitous circumstances that require equitable tolling. *Id.* at 404-05. The Fifth Circuit noted that when the EEOC's workload, mistakes, or lack of diligence delay proceedings, and prevent a plaintiff from filing a timely complaint, the court should toll the filing period. *Id.* at 405.

97. *Id.*

98. See *infra* notes 113-25 and accompanying text (discussing advantages of flexible rule).

99. See *infra* notes 100-09 and accompanying text (discussing inequities of actual receipt rule).

100. *Archie v. Chicago Truck Drivers, Helpers and Warehouse Workers Union*, 585 F.2d 210, 215-16 (7th Cir. 1978) (discussing courts examination of plaintiff's actual receipt of Right to Sue letter).

101. *Id.*

102. *Id.* at 216.

103. *Id.*

104. *Id.*

105. See *Bell v. Eagle Motor Lines, Inc.*, 693 F.2d 1086, 1087 (11th Cir. 1982) (examining possibility of plaintiff's manipulating beginning of filing period under actual receipt rule, and thus placing plaintiff in advantageous position over defendant); *infra* notes 105-108 and accompanying text (same).

106. *Archie* at 215. *But see Mouriz v. Avondale Shipyards, Inc.*, 428 F. Supp. 1025, 1027

day limitation period if the plaintiff were willing to testify that he did not receive the letter until sometime after the date of delivery.¹⁰⁷ The plaintiff also could extend the filing period by neglecting to find or open the letter until the plaintiff considered the time ripe for his suit.¹⁰⁸ Finally, the actual receipt rule fails to effectuate the remedial purposes and efficiency goals that underlie the ninety day filing period of Title VII.¹⁰⁹ Congress enacted Title VII to discourage discriminatory employment practices.¹¹⁰ Congress desired that employees and employers resolve their differences quickly and

(E.D. La. 1977). In *Mouriz*, the United States District Court for the Eastern District of Louisiana considered whether the 90 day filing period began when the plaintiff's wife received the Right to Sue letter, or when the plaintiff actually received the letter. *Id.* The plaintiff filed a discrimination action against the defendant for refusing to hire the plaintiff. *Id.* at 1026. The plaintiff alleged that the defendant refused to hire the plaintiff because of the plaintiff's national origin. *Id.* After investigating the plaintiff's allegations, the EEOC mailed a Right to Sue letter to the plaintiff, and the plaintiff's wife received the letter at the plaintiff's address. *Id.* at 1027. The plaintiff's wife placed the letter on the plaintiff's desk, but the plaintiff contended that the letter was on his desk for several days before he actually read the letter. *Id.* After the filing period had ended, the plaintiff filed in the United States District Court for the Eastern District of Louisiana a suit against the defendant. *Id.* The court noted that the filing period began when the plaintiff's wife received the letter because the plaintiff had the opportunity, from the time his wife received the letter, to learn of the letter's contents. *Id.* The court also reasoned that adopting an actual receipt rule would enable the plaintiff to toll the filing period for an indefinite period of time. *Id.* The court analogized the Right to Sue letter to a subpoena and complaint, which both are effective when they are served, not when the receiver reads them. *Id.* The court analogized the complaint and subpoena to the Right to Sue letter, because all three documents inform the receiver of his rights or duties in civil actions. *Id.* Because the Right to Sue letter is similar to a complaint and subpoena, the court determined that the Right to Sue letter also is effective upon delivery. *Id.* Therefore, the court held that the filing period began when the plaintiff's wife received the letter, not when the plaintiff actually read the letter. *Id.*

107. See *Krieger v. Republic Van Lines of S.W., Inc.*, 435 F. Supp. 335, 337 (S.D. Tex. 1977). In *Krieger*, the United States District Court for the Southern District of Texas expressed concern that, under the actual receipt rule, a plaintiff at will could extend the 90 day filing period. *Id.* The court noted that the only objective evidence of the date of receipt of the Right to Sue letter is the certified mail receipt. *Id.* Thus, the district court observed that, in adopting an actual receipt rule, a court could allow a plaintiff to extend the filing period by testifying that he actually received the letter at a date subsequent to the date on the certified mail receipt. *Id.*

108. *Id.*

109. See Civil Rights Act of 1964 § 706, 42 U.S.C. § 2000e (1982). Congress set definite limits on the amount of time for a plaintiff to file an employee discrimination complaint with the EEOC. *Id.* § 2000e-5(b). Congress also set definite limits on the amount of time that the EEOC can work for conciliation between the plaintiff and defendant. *Id.* Congress set a 90 day limit on the length of time within which a plaintiff must file a complaint in district court after receiving a Right to Sue letter. *Id.* § 2000e-5(f). The time limits that Congress imposed under Title VII evidence the congressional intent to benefit both employees and employers by forcing a quick resolution of the conflicts that arise between an employee and his employer. See *Hendrix v. Memorial Hosp. of Galveston County*, 776 F.2d 1255, 1256 (5th Cir. 1985) (noting that 90 day limitation prevents prosecution of stale claims and thus enhances remedial nature of Title VII to settle conflicts between employer and employee).

110. See *supra* notes 1-8 and accompanying text (discussing Title VII's remedial purpose in settling disputes between employer and employee).

efficiently, when discriminatory employment practices occur.¹¹¹ The actual receipt rule, however, hinders the purposes underlying the ninety day filing period by allowing a plaintiff indefinitely to extend the filing period and thus prolonging disputes between employers and employees.¹¹²

Unlike the actual receipt rule, the flexible rule fulfills the Congressional intent underlying Title VII.¹¹³ Congress intended the filing period to be long enough to allow a plaintiff who has no knowledge of law or limitations periods to file a timely complaint.¹¹⁴ Congress believed that ninety days gave a plaintiff sufficient time to file a complaint.¹¹⁵ By extending the period, which originally was thirty days in length, to ninety days, Congress evidenced its intent to provide sufficient time for a plaintiff to file a Title VII complaint.¹¹⁶ Additionally, Congress designed Title VII to resolve employment discrimination complaints quickly and thus benefit both the employee and his employer.¹¹⁷ Accordingly, Congress imposed on Title VII plaintiffs a ninety day filing period to force plaintiffs quickly to file their discrimination claims against their employers.¹¹⁸ By strictly enforcing the ninety day statute of limitations, the flexible rule supports Congress' belief that courts quickly should resolve employment discrimination claims.

The flexible rule allows a plaintiff sufficient time to file a complaint, and, under the flexible rule, a court that applies the flexible rule determines when to extend the filing period instead of the plaintiff determining the beginning of the filing period.¹¹⁹ The certified mail requirement under the EEOC regulations about Right to Sue letters gives a trial court a documented date to signal the start of the filing period.¹²⁰ A court applying the flexible

111. *Id.*

112. *See* Bell v. Eagle Motor Lines, Inc., 693 F.2d 1086, 1087 (11th Cir. 1982) (reiterating Lewis opinion which states that actual receipt rule allows plaintiff indefinitely to extend filing period contrary to congressional intent).

113. *See infra* notes 114-18 and accompanying text (discussing congressional intent behind placing statutory limit on claims brought under Title VII).

114. *See* CONFERENCE REPORT, *supra* note 4, at 7167-68 (discussing congressional intent to facilitate plaintiffs by giving plaintiffs sufficient time to file Title VII complaint).

115. *See id.* (stating that 90 day period is sufficient time to file a Title VII complaint in district court).

116. *Id.*; *see* Archie v. Chicago Truck Drivers, Helpers and Warehouse Workers Union, 585 F.2d 210, 215 (7th Cir. 1978) (interpreting extension of filing period as evidence of congressional intent that plaintiff have sufficient time to file complaint); *supra* note 8 and accompanying text (discussing congressional intent to provide plaintiff with sufficient time to file Title VII claim).

117. *See* CONFERENCE REPORT, *supra* note 4, at 7167-68 (discussing congressional intent to expedite employee's claims against employers).

118. *Id.*

119. *See infra* notes 120-25 and accompanying text (discussing manner in which court applying flexible rule determines when filing period begins).

120. *See* Cook v. Providence Hosp., 820 F.2d 176, 179 (6th Cir. 1987) (EEOC sent Right to Sue letter to plaintiff by certified mail); Harvey v. City of New Bern Police Dep't, 813 F.2d 652, 653 (4th Cir. 1987) (same); Jones v. Madison Serv. Corp., 744 F.2d 1309, 1311 (7th Cir. 1984) (same); Bell v. Eagle Motor Lines, Inc., 693 F.2d 1086, 1086 (11th Cir. 1982)

rule establishes the documented date as the beginning of the filing period, but may ignore the certified mailing date and toll the filing period if the circumstances require equitable tolling.¹²¹ Furthermore, under the flexible rule, the court can examine the circumstances that prevented the plaintiff from filing within the ninety day limitation to determine whether the plaintiff had any control in filing his complaint.¹²² If the circumstances were within the plaintiff's control, the court does not toll the filing period.¹²³ If the circumstances were not within the plaintiff's control, the court tolls the filing period.¹²⁴ A court applying the flexible rule, therefore, adheres to the ninety day filing period and prevents the plaintiff from determining when the complaint filing period begins.¹²⁵

In *Harvey v. City of New Bern Police Department*, the Fourth Circuit considered when the plaintiff's ninety day filing period under Title VII begins to run.¹²⁶ In *Harvey* the Fourth Circuit correctly rejected the actual receipt rule.¹²⁷ By adopting the flexible rule to determine the beginning of the Title VII complaint filing period, the Fourth Circuit fulfilled Congress' intent to limit the complaint filing period to ninety days and expedite a plaintiff's employment discrimination claim.¹²⁸ In addition to quickly resolving civil rights disputes between employers and employees under Title VII, the flexible rule also provides a plaintiff with sufficient time to file his

(same); *Lewis v. Conners Steel Co.*, 673 F.2d 1240, 1241 (11th Cir. 1982) (same); *Franks v. Bowman Transp. Co.*, 495 F.2d 398, 403 (5th Cir. 1974) (same); *Krieger v. Republic Van Lines of the S.W., Inc.*, 435 F. Supp. 335, 336-37 (S.D. Tex. 1977) (same).

The courts that have adopted the flexible rule have adopted the standard that any person of suitable age and discretion at the plaintiff's address may receive the letter for the purposes of Title VII. See *Krieger v. Republic Van Lines of the S.W., Inc.*, 435 F.Supp. 335, 337 (S.D. Tex. 1977) (explaining that plaintiff receives Right to Sue letter when person of suitable age and discretion signs for letter at plaintiff's residence).

121. Compare *Archie v. Chicago Truck Drivers, Helpers and Warehouse Workers*, 585 F.2d 210, 215 (7th Cir. 1978) (extending, under actual receipt rule, beginning of filing period beyond certified mailing date, because plaintiff alleged that he had received letter several days after date on certified mail records) with *Espinoza v. Missouri Pac. R.R.*, 754 F.2d 1247, 1250 (5th Cir. 1985) (court began filing period on date which certified mail records established as date that plaintiff received Right to Sue letter).

122. See *supra* notes 70-75 and accompanying text (explaining that courts may toll filing period if plaintiff establishes circumstances that justify tolling).

123. *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151 (1984) (stating that court cannot toll filing period unless circumstances beyond plaintiff's control prevent timely filing of Title VII complaint); *Bell v. Eagle Motor Lines, Inc.*, 693 F.2d 1086, 1087 (11th Cir. 1982) (same); *Lewis v. Conners Steel Co.*, 673 F.2d 1240, 1242 (11th Cir. 1982) (same); *Mouriz v. Avondale Shipyard, Inc.*, 428 F. Supp. 1025, 1027 (E.D. La. 1977) (same).

124. See *supra* notes 71-75 (citing cases in which court has tolled filing period because circumstances of filing were beyond plaintiff's control).

125. See *supra* notes 119-24 and accompanying text (explaining that flexible rule allows court rather than plaintiff to determine beginning of filing period).

126. *Harvey v. City of New Bern Police Dep't*, 813 F.2d 652, 653-54 (4th Cir. 1987).

127. See *supra* notes 29-39 and accompanying text (discussing analysis and rejection of actual receipt rule by United States Court of Appeals for the Fourth Circuit).

128. See *supra* notes 113-18 and accompanying text (discussing congressional intent to expedite plaintiff's Title VII claims).

complaint in a district court.¹²⁹ Finally, the flexible rule promotes equitable results because it allows a court to take into account the individual circumstances of each case, thus allowing a court to toll the filing period in appropriate cases.¹³⁰

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129. *See supra* notes 8, 115 and accompanying text (concluding that 90 days is sufficient time for plaintiff to file complaint).

130. *See supra* notes 79-97 and accompanying text (discussing court's application of tolling filing period under flexible rule in appropriate circumstances); *supra* notes 73-77 and accompanying text (listing circumstances when court equitably may toll Title VII filing period).