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WALTERS v. METROPOLITAN EDUCATIONAL ENTERPRISES, INC. 117 S.Ct. 660 (1997).

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I. FACTS

In a Title VII case alleging retaliatory firing, the Supreme Court reversed the Seventh Circuit Court of Appeals affirmation of the granting of a motion to dismiss as it held that Metropolitan Education Enterprises ("Metropolitan") met Title VII's statutory definition of "employer."The Court's decision settled a dispute among the circuits as to the proper method of determining Title VII applicability to employers. The method used can determine which employers are liable under Title VII.

In 1990, Metropolitan fired Darlene Walters, shortly after she filed a charge with the Equal Employment Opportunity Commission ("EEOC") claiming that Metropolitan discriminated against her on account of her sex by not promoting her to the position of credit manager. Subsequently, EEOC, as it does with a small minority of claims of alleged discrimination,[1] filed suit against Metropolitan in United States District Court for the Northern District of Illinois on April 7, 1993,[2] alleging that Walters' firing was retaliation for her charge of sex discrimination.[3] Walters then intervened as a plaintiff.[4]

Metropolitan moved to dismiss for lack of subject-matter jurisdiction, contending that the company failed to meet the minimum number of employees to be an "employer" subject to Title VII.[5] Section 701(b) states "[t]he term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year . . . ."[6] Following Seventh Circuit precedent, the District Court interpreted section 701(b) to mean that when counting employees, "hourly and part-time workers are considered employees . . . only on days when they are either physically present or on paid leave,"[7] putting Metropolitan below the statutory minimum of employees.[8] Rejecting the payroll method, which would count every employee maintained on the company's payroll during the workweek, whether or not the employee performs work on each day,[9] the District Court granted the motion to dismiss,[10] and the Court of Appeals affirmed.[11] In order to resolve the conflicting decisions amongst the circuits,[12] the Supreme Court granted certiorari.

II. HOLDING

In an opinion written by Justice Scalia, the Court unanimously approved the payroll method,[13] which had previously been adopted by the First and Fifth Circuits, and was favored by the EEOC and Department of Labor.[14] Because Metropolitan satisfied the statutory definition of employer under the payroll method, the judgment of the Court of Appeals was reversed and remanded for further proceedings.[15]

III. ANALYSIS / APPLICATION

In *Walters v. Metropolitan Educational Enterprises,* the Supreme Court faced the issue of whether Metropolitan qualified as an employer subject to Title VII's statutory definition of section 701(b). The Court's interpretation of the statute would determine the method used to calculate the number of employees working on "each working day" of the week. Metropolitan's status as an "employer" subject to Title VII hinged upon which one of the two interpretations the Court adopted. The two methods of counting in question had support from different circuits.

The Seventh Circuit first established the "workplace" method, advocated by Metropolitan, in *Zimmerman v.*

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[1] In 1994 EEOC made cause findings in only 2.69% of the charges filed, 1926 of 71,563. Moreover, in 1992, EEOC only filed 347 substantive lawsuits. Michael Selmi, *The Value of the EEOC: Reexamining the Agency's Role in Employment Discrimination Law,* 57 Ohio ST. L.J. 1, 12-16 (1996).

[2] *Walters v. Metropolitan Educ. Enter.,* 117 S.Ct. 660, 662 (1997).

[3] *EEOC v. Metropolitan Educ. Enter.,* 60 F.3d 1225, 1226 (1995).

[4] *Walters,* 117 S.Ct. at 662.

[5] *Id.*

[6] Title VII of the Civil Rights Act of 1964, 78 Stat. 253, amended by 42 U.S.C. § 2000e(b) (1994).

[7] *EEOC v. Metropolitan Educ. Enter.,* 864 F.Supp. 71, 73 (N.D.Ill.1994).

[8] Metropolitan, 60 F.3d at 1227

[9] *Id.*

[10] *Walters,* 117 S.Ct. at 662.

[11] *Metropolitan,* 60 F.3d at 1227.

[12] The Fifth Circuit approved the payroll method in *Dumas v. Mount Vernon,* 612 F.2d 974, 979, n.7 (5th Cir.1980), and the First Circuit adopted it in *Thurber v. Jack Reilly's, Inc.,* 717 F.2d 633, 634-35 (1st Cir.1983), cert. denied, 104 S.Ct. 1678, 80 (1984). On the other hand, the Seventh Circuit adopted the workplace method in *Zimmerman v. North American Signal Co.,* 704 F.2d 347, 354 (7th Cir. 1983) and the Eighth Circuit agreed in *McGraw v. Warren County Oil Co.,* 707 F.2d 990, 991 (8th Cir. 1983).

[13] *Walters,* 117 S.Ct. at 664.

[14] *Id.*

[15] *Id.* at 666.

North American Signal Co., stating "that the lower court was correct in declining to count hourly paid workers as employees for days when they were neither working nor on paid leave."[16] Although Zimmerman dealt with the Age Discrimination in Employment Act ("ADEA"), the Seventh Circuit had extended the workplace method to Title VII.[17] The ADEA and Title VII define "employer" nearly identically, differing only in the minimum number of employees.[18] Under the same rationale, the Eighth Circuit also implemented the workplace method, deciding not to count part-time workers who did not work everyday of the workweek.[19]

Conversely, the First and Fifth Circuit Courts of Appeals approved the payroll method. In the First Circuit, the court affirmed the District Court's decision that "the number of employees should be determined by examining the payroll and not by counting the number of employees who report to work."[20] Moreover, the First Circuit also cited cases in other district courts and the Fifth Circuit Court of Appeals which also agreed that "regular part-time employees are employees within the meaning of section 2000e(b)."[21] In addition to the other circuits, the EEOC adopted the payroll method under the ADEA and the Department of Labor adopted the payroll method under the Family and Medical Leave Act of 1993 ("FMLA").[22]

Applying the two methods to the case at hand gives greatly varying results. Metropolitan's workweek lasted Monday through Friday, and the current or preceding calendar years in question were 1989 and 1990. Although the parties stipulated that Metropolitan failed to meet the requisite employee minimum in 1989, they differed on whether Metropolitan qualified in 1990. The parties stipulated that Metropolitan had 15 or more employees on its payroll for 47 weeks in 1990, however, 15 or more employees were compensated on each working day for only nine weeks.[23] Therefore, under the workplace method only those nine weeks would have counted toward the statutory requirement, six weeks less then the required fifteen. Under the payroll method, nine weeks must be subtracted from the 47, wherein Metropolitan experienced mid-week changes because in those weeks the requisite number of employees were not on the payroll for the whole week. However, that leaves Metropolitan with 38 weeks to be calculated toward Title VII's definition, easily meeting Title VII's minimum to qualify.[24]

Writing for the majority ultimately approving the payroll method, Justice Scalia first established that "on any particular day, all of the individuals with whom an employer *has* an employment relationship are 'employees' of that employer."[25] This employment relationship interpretation of 42 U.S.C. § 2000e(b)'s definition of "employer" is more expansive than the workplace method in that it encompasses employees who do not receive compensation from their employer on the day at issue. Respondent Metropolitan's position, in advocating the use of the workplace method, was that an employer, under § 2000e(b), "has" an employee on a certain day, only when the employer compensates the employee on that day, regardless of whether or not the individual in question "is" an employee, under the same statute. Metropolitan agreed that an uncompensated employee is an employee in employment relationship terms, but argued that the employer did not have that employee in Title VII terms. EEOC, on the other hand, argued that the test for an individual being an employee and an employer having an employee are the same, i.e. "whether the employer has an employment relationship with the individual on the day in question."[26]

The Court stated "that the payroll method represents the fair reading of the statutory language, which sets as the criterion for the number of employees that the employer 'has' for each working day."[27] Justice Scalia acceded to Metropolitan's point that the language of the statute could possibly "be thought to convey the idea that the employee must actually be working on the day in question," because of the phrase, "have an employee for a given working day."[28] But the statute cannot be construed to ask, "[h]ow many employees were you compensating on that day?"[29] The Court stated that such an interpretation could "not be derived from any possible reading of the text."[30]

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[16] *Zimmerman,* 704 F.2d at 354.

[17] *Metropolitan,* 60 F.3d at 1226-27. The Seventh Circuit found dispositive that earlier precedents had established that Title VII and ADEA shared a "common purpose." *Id.* at 1227 n.2.

[18] *Zimmerman,* 704 F.2d at 352.

[19] *McGraw,* 707 F.2d at 991.

[20] *Thurber,* 717 F.2d at 634.

[21] *Id.* The court cited as examples: Dumas, 612 F.2d at 979 n.7; *Hornick v. Borough of Duryea,* 507 F.Supp. 1091, 1097 (M.D. Pa. 1980); *Pedreyra v. Cornell Prescription Pharmacies,* 465 F.Supp. 936, 941 (D. Colo. 1979); *Pascutoi v. Washburn-McReavy Mortuary,* 11 Fair Empl. Prac. Cas. (BNA) 1325, 1327 (D. Minn. 1975).

[22] *Walters,* 117 S.Ct. at 663.

[23] *Id.* at 662-63.

[24] *Id.*

[25] *Id.* at 663.

[26] *Id.*

[27] *Id.* at 664.

[28] *Id.*

[29] 117 S.Ct. at 664.

[30] *Id.* Furthermore, the Court stated:

[N]o one before us urges that interpretation of the language, which would count even salaried employees only on days that they are actually working. Such a disposition is so improbable and so impossible to administer (few employers keep daily attendance records of all their salaried employees) that Congress should be thought to have prescribed it only if the language could bear no other meaning.

Moreover, the Court rejected the Court of Appeals construction of the phrase "for each working day."[31] The Court of Appeals had reaffirmed its decision in the *Zimmerman* case, finding its interpretation of the phrase as "the most natural interpretation."[32] The Court of Appeals adopted the *Zimmerman* court's reasoning, stating that the phrase is not superfluous, because it "looks to the number of employees physically at work on each day of the week." Moreover, the Court of Appeals rejected EEOC's contention that "for each working day" referred to midweek hiring and firings because they believed it would be too infrequent an occurrence to merit inclusion in the statute.[33] The Supreme Court, however, disagreed with the Court of Appeals finding of rarity and that the mid-week interpretation of the phrase justified its inclusion. Consequently, the Court found that the words, "for each working day" would not become superfluous under its interpretation. They clarify the statute by not counting employees whose employment terminated or commenced mid-week.[34]

The Court's adoption of the payroll method expands the reach of Title VII by making more employers subject to its regulations and makes circumvention of this classification more difficult. Title VII's more expansive reach is best understood by the payroll method's treatment of different types of employees. The payroll and workplace methods count all salaried employees for every week on the payroll, regardless if they work every day of the week or not.[35] Under the workplace method, however, hourly paid workers only count if they either work or are compensated, for a paid absence for example, for everyday of the week. On the other hand, the payroll method includes all hourly paid workers on the payroll for the week, even if they had an uncompensated day in which they did not work. Similarly, part-time workers on the payroll count, no matter if they work a few hours a day or only on certain days of the week. Thus, smaller businesses that rely on part-time or hourly workers are more likely to qualify as an employer under Title VII.

In addition, using the payroll method increases the difficulty in circumventing the regulations under Title VII. Companies can no longer avoid coverage under Title VII by having one less than the minimum number of employees required working on one day of the workweek, for instance Saturday. In order to avoid coverage, the companies would have to resort to midweek firing and rehiring or other forms of payroll manipulations. A history of such manipulations would be faithfully recorded by the company in the form of its biweekly payroll taxes to the IRS. Therefore, if contested, the issue would have a paper trail that could be investigated.

Although neither method measures the size of the business completely accurately,[36] the Court found that the workplace method "would turn the coverage determination into an incredibly complex and expensive factual inquiry."[37] Under the payroll method, however, all that is needed is a simple factual inquiry of when an employee started and ended his or her employment, as the employee is counted toward the requirement for everyday in between.[38] Thus, given the contrast in cost and facility of the two methods, Court found that Metropolitan's argument of practical consequences was unfounded.[39]

By the terms of the Civil Rights Act, this decision impacts employers accused of discrimination based on an individual's "race, color, religion, sex, or national origin." The types of discriminatory practices include situations of hiring, firing, compensation, terms, conditions and privileges of employment, and practices that deprive an individual of employment opportunities or adversely affect his or her status.[40] Furthermore, the Court has established uniformity between Title VII, ADEA, FMLA, and ADA, all of which define "employer" almost the same way.[41]

The Court's decision acknowledges that there is no difference in the meaning of "being employed" and "hav-

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[31] *Id.*

[32] *Metropolitan,* 60 F3d at 1228.

[33] *Id.*

[34] *Walters,* 117 S.Ct. at 664-65.

[35] *Zimmerman,* 704 F2d at 353.

[36] The respondent, *Metropolitan,* pointed out that " an employee who works irregular hours, perhaps only a few days a month, will be counted toward the 15-employee minimum for every week in the month." *Walters,* 117 S.Ct. at 665. The Court countered by citing the following examples of the awkward consequences of the workplace method:

A company that has 15 employees working for it on each day of a 5-day workweek is covered, but if it decides to add Saturday to its workweek with only one less than its full complement of employees, it will become exempt from coverage . . . . Unsalaried employees who work the same number of hours per week are counted or not counted, depending on how their hours are scheduled. A half-time worker who works only on mornings is counted; a half-time worker who works alternate days is not.

Walters, 117 S.Ct. at 665.

[37] *Id.*

[38] *Id.* at 665-66.

[39] *Id.*

[40] Title VII of the Civil Rights Act of 1964, 78 Stat. 253, amended by 42 U.S.C. § 2000e-2(a) (1994).

[41] Title VII of the Civil Rights Act of 1964, 78 Stat. 253, amended by 42 U.S.C. § 2000e(b) (1994); Age Discrimination in Employment Act § 11, 29 U.S.C. § 630(b); Family and Medical Leave Act, 29 U.S.C. § 2611(4)(A)(i); Americans with Disabilities Act, 42 U.S.C. § 12111(5)(A).

ing an employee."An individual is an employee, because of her continued employment relationship, on the one day of the week she does not work, and is still an employee that her employer has.The fact that she is returning to work the next week is more evidence proving the relationship continues to exist.

IV. CONCLUSION

The Court implemented the payroll method to determine that Metropolitan fulfilled the fifteen employee threshold in 1990. By adopting the payroll method, the Court chose a more expansive definition of "employer" under Title VII, causing a simpler evaluation that covers more employers under Title VII. Previously marginal employers which might not have had fifteen employees under the workplace method are now under federal jurisdiction, thus decreasing the number of employees who can rely solely upon state jurisdiction, depending on the state. For example, the Virginia Human Rights Act covers employers employing between five and fifteen employees.[42] Moreover, the decreased factual inquiry necessary to establish an employer under Title VII may reduce litigation costs, making it more advantageous to the client and private lawyer. Finally, the uniform interpretation across the different federal acts facilitates cases with multiple claims of discrimination by eliminating the need for different factual inquiries in order to establish coverage of employers under different acts.

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[42]Va. Code Ann. § 2.1-725(B) (1997).