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Fourth Circuit Finds EEOC's Expert Report Unreliable Under Federal Rules of Evidence

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As part of an employer's business in providing integrated services for high level events, it commenced background checks of all prospective employees, including credit checks for positions dealing with "credit sensitive" information. An employee who was denied a position based on the employer's credit filed suit with the EEOC. The EEOC later issued a letter of determination that the employer's background and credit checks violated Title VII. The claim was later amended to state the background and credit checks also had a disparate impact on black applicants.

In proving its case, the EEOC obtained the services of an analytical expert. The employer moved to have the expert's testimony dismissed on the basis the testimony was "rife with analytical errors" and "completely unreliable." The district court granted the employer's motion stating the EEOC's expert testimony did not satisfy Federal Rule of Evidence 702, which sets forth the requirements for expert testimony in a lawsuit. The EEOC appealed, sending the case to the Fourth Circuit Court of Appeals. On appeal in the case, *EEOC v. Freeman*, No. 13-2365 (4th Dist. Feb. 20, 2015), the Fourth Circuit agreed with the district court, noting that the district court had identified an alarming number of errors and analytical fallacies in the expert's reports, making it impossible to rely on any of his conclusions. Further, the court found that the sheer number of mistakes and omissions in the expert's analysis rendered it "outside the range where experts might reasonably differ." The Fourth Circuit, therefore, found that the district court had not abused its discretion in finding the EEOC's expert testimony unreliable.

Employers should be aware that the EEOC has failed in the past to provide experts that meet the standard of Federal Rule 702, and should not be afraid to object to so called "expert testimony," where clear mistakes are evident. If you have questions about this case or the issues, please contact Thaddeus Harrell of Hinshaw's Fort Lauderdale office.

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