



2. The harassing atmosphere was alleged to have existed during Ms. Womack's employment at the UW Veterinary School of Medicine where she was hired in the fall of 1988 as a full-time, fixed-term academic staff member to serve as a student services coordinator in the veterinary school's Office of Academic Affairs. Her position was scheduled to end on June 30, 1993. The person who hired her was Dr. Susan Hyland, who was the Assistant Dean of the veterinary school from 1980 until July 1, 1990, when she became the Associate Dean.
3. In July 1992, Ms. Womack commenced a medical leave of absence. Dr. Hyland learned in late August 1992, that Ms. Womack was working as a student teacher at the UW-Platteville campus while Ms. Womack continued on medical leave. At this time, Ms. Womack still had not provided the requested medical documentation to support her medical leave request. Based, at least in part, on the lack of medical documentation and the information that Ms. Womack was working elsewhere, Dr. Hyland questioned Ms. Womack's need for a medical leave.
4. Ultimately, Ms. Womack's employment with the veterinary school ended as the result of an informally-mediated settlement agreement which was signed by the UW on November 4, 1992, and by Ms. Womack on November 18, 1992. The settlement terms authorized Ms. Womack's medical leave from August 10, 1992, until the beginning of the next term which started in January 1993. The settlement terms allowed Ms. Womack to work from January 1993 until the end of her contract term (June 30, 1993), at the UW's Office of Admissions in a position (the Transfer Position) in which she had expressed interest. The UW Office of Admissions was agreeable to the transfer if the veterinary school continued to pay Ms. Womack's salary through the end of her contract term, which the veterinary school agreed to do.
5. The settlement agreement included terms in addition to those mentioned in the prior paragraph. One of the additional terms was an exculpatory clause, which is shown below.

This agreement shall constitute a complete and final settlement of any and all claims and causes of action against the Board of Regents, the University of Wisconsin-Madison,

their officers, agents and employes, arising out of Ms. Womack's employment at the University of Wisconsin-Madison. Ms Womack waives any right she may have to attorneys' fees under state or federal law, including those under 42 U.S.C. sec. 1988.

6. The last day Ms. Womack actually performed services for the veterinary school was sometime prior to commencement of her medical leave on August 10, 1992.
7. The complaint filed by Ms. Womack alleged events which occurred while she worked at the veterinary school. She alleged no discriminatory events in relation to her employment in the Transfer Position.
8. Ms. Womack's employment with the UW ended on June 30, 1993. However, all preceding events to the end of her employment were established by November 18, 1992, when she signed the settlement agreement. Specifically, the settlement agreement included the decisions to end Ms. Womack's employment at the veterinary school effective November 18, 1993; to place her in the Transfer Position from January to June 30, 1993; and to end her UW employment effective June 30, 1993. Further, she received notice of such decisions by November 18, 1992, when she signed the settlement agreement. Pertinent portions of the settlement agreement are shown below.

1. Ms. Womack hereby resigns her employment at the University of Wisconsin-Madison effective June 30, 1993.
2. Dr. Susan Hyland, Associate Dean of Academic Affairs, School of Veterinary Medicine hereby accepts the resignation on behalf of the University.

\* \* \*

5. ...[S]he will be assigned to work in the Office of Admissions, under the supervision and direction of Mr. Esrold Nurse. Ms. Womack will have no further work responsibilities with the School of Veterinary Medicine. Ms. Womack's assignment to the Office of Admissions will terminate on June 30, 1993.

## DISCUSSION

### Effect of the Settlement Agreement Signed in November 1992

Ms. Womack claimed she signed the settlement agreement "under fraud and duress". (C's Brief, p. 11) The UW replied that such "spurious allegations" were "vigorously denie[d]". (R's Reply Brief, p. 4)

The Commission does not reach the settlement-agreement issue because it is unnecessary to do so. As explained below, the charge of discrimination should be dismissed because it was untimely filed.

### Timeliness Issue

As a general rule, a complaint is considered timely filed as to events which occurred within 300 days of filing, pursuant to the limitations period in s. 111.39(1), Stats. Ms. Womack filed her complaint with the Commission on January 12, 1994.<sup>1</sup> The resulting 300-day limitations period runs from March 19, 1993 to January 12, 1994.

The last date upon which any specific incident of harassment by the veterinary school could have occurred was November 18, 1992, the date the settlement agreement was signed which released Ms. Womack from any further work responsibilities at the veterinary school. Such incidents, therefore, only could have occurred more than 300 days prior to the filing of her complaint.

Ms. Womack contends her complaint was timely filed because the "constructive discharge" occurred on June 30, 1993, which is within 300 days of when she filed her complaint. For the reasons given below, the Commission holds that the complaint was filed untimely.

The statutory text which establishes the 300-day limitations period (s. 111.39(1), Stats.), is shown below in pertinent part.

(1) The [commission] may receive and investigate a complaint charging discrimination ... in a particular case if the complaint is filed with the [commission] no more than 300 days after the alleged discrimination ... occurred. ... (Emphasis added.)

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<sup>1</sup> Ms. Womack initially filed her complaint on January 10, 1994 with DILHR, the wrong administrative agency. The Commission received her complaint on January 12, 1994.

The Wisconsin Court of Appeals, in 1988, issued the first precedent-setting decision which interpreted the above-noted statute. Hilmes v. DILHR, 147 Wis. 2d 48, 433 N.W.2d 251 (Ct. App. 1988). Hilmes involved an employe who received notice on June 13, 1986, that her employment would be terminated effective June 14, 1986. She filed a discrimination complaint on April 10, 1987, which was 300 days after she received notice of the termination (June 13, 1986 was the notice date), and 301 days after the effective date of the termination (June 14, 1986 was the effective date).

Ms. Hilmes' complaint was dismissed as untimely by the Court of Appeals. The Court stated as follows:

We hold that consistent with the analogous federal statute and with the policy underlying the WFEA [Wisconsin Fair Employment Act], the word "occurred" in sec. 111.39(1), Stats., as applied to the facts of this case, means the date of notice of termination. That date is June 13, 1986. Accordingly, sec. 111.39 required that Hilmes file a complaint on or before April 9, 1987. Neither party disputes that she failed to do so. Therefore, the complaint was untimely. Hilmes, 147 Wis. 2d at 53.

\* \* \*

In this case ... the discriminatory act preceded the termination of employment date. . . . Employees must determine, either through counsel or by their own efforts, when the discriminatory acts occurred. Ignorance of one's rights does not suspend the operation of a statute of limitations. (Cite omitted.) Hilmes, 147 Wis. 2d at 56.

Ms. Womack received notice on November 18, 1992, of the end of her employment relationships in the veterinary school and in the Transfer Position. Therefore, her complaint was filed untimely under the precedent established by the Hilmes decision.<sup>2</sup>

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<sup>2</sup> Historical note: The Court of Appeals decision in Hilmes was issued on October 26, 1988 and, in effect, overruled the Commission's prior interpretation of s. 111.39(1), Stats. For example, compare the Commission's decision in Latimer v. UW System (Oshkosh), Case No. 84-0034-PC-ER (11/21/84), with Harris v. UW System (La Crosse), Case No. 87-0178-PC-ER (11/23/88).

Ms. Womack argued that her complaint alleges a continuing violation which culminated in "constructive discharge" on June 30, 1993. Her complaint, however, would still be considered untimely filed, as explained below.

The employment relationship involved with the alleged harassment is Ms. Womack's employment with the veterinary school which ended at least by December 31, 1992. The alleged discriminatory act was the "constructive discharge". This act *occurred* on November 18, 1992, when the settlement agreement was signed by Ms. Womack. While it is true that the *consequence* of the alleged discrimination may not have been fully realized by Ms. Womack until her last day of work in the Transfer Position (June 30, 1993), the result remains the same. As the Hilmes court explained:

The United States Supreme Court ... [focuses] "on the time of the *discriminatory act*, not the point at which the *consequences* of the act become painful. ... *The fact of termination is not itself an illegal act* . (Cite omitted.) Rather, it is when the employer makes known its decision to discriminate--in this case, by terminating employment for an allegedly illegal reason--that an unlawful employment practice occurs. Hilmes, 147 Wis. 2d at 52. (Emphasis shown is contained in the original).

#### Other Arguments Raised by Complainant

Ms. Womack discussed several federal case rulings regarding the timely filing of claims under Title VII of the Civil Rights Act of 1964. The cited cases do not control here. Rather, the Wisconsin Court of Appeals decision in Hilmes controls.<sup>3</sup>

Ms. Womack asserts on page 6 of her brief as follows:

Moreover, Complainant has alleged in her complaint that her racial harassment due to the hostile work environment at the

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<sup>3</sup> Complainant's brief incorrectly states on the first page, that the case was before the Commission under Title VII of the Civil Rights Act of 1964. The Commission is a creation of state statutes and has jurisdiction to hear certain discrimination claims brought under state statutes. The Commission lacks jurisdiction to review claims brought under federal statutes.

School of Veterinary Medicine continued into the 300 days preceding the filing of Complainant's complaint.

The following statements are the only complaint allegations which provide dates upon which the discrimination is alleged to have occurred.

5. Permitted and contributed to a hostile work environment of continuous racial harassment on the job which resulted in Complainant's constructive discharge on June 30, 1993.
6. On what date did the above action first happen? (mo/day/yr) Approximately September/October 1989. On what date did it last happen? (mo/day/yr) June 30, 1993.

The Commission cannot conclude from the foregoing excerpts from the complaint that Ms. Womack alleged the racial harassment "continued into the 300 days prior to" filing her complaint. She failed in her complaint and motion brief to cite any discriminatory incident which occurred while she was in the Transfer Position. It is patently inconsistent to say that the racial harassment continued into the 300-day limitations period when the alleged harassing employment at the veterinary school ended a minimum of 11 weeks before the first day of the limitations period.

ORDER

UW's motion to dismiss based on the untimely filed complaint is granted and this case is dismissed.

Dated July 25, 1994.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

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NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.



Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)