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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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FEDERAL EXPRESS CORP. *v.* HOLOWECKI ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 06–1322. Argued November 6, 2007—Decided February 27, 2008

The Age Discrimination in Employment Act of 1967 (ADEA) requires that "[n]o civil action . . . be commenced . . . until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission" (EEOC), 29 U. S. C. §626(d), but does not define the term "charge." After petitioner delivery service (FedEx) initiated programs tying its couriers' compensation and continued employment to certain performance benchmarks, respondent Kennedy (hereinafter respondent), a FedEx courier over age 40, filed with the EEOC, in December 2001, a Form 283 "Intake Questionnaire" and a detailed affidavit supporting her contention that the FedEx programs discriminated against older couriers in violation of the ADEA. In April 2002, respondent and others filed this ADEA suit claiming, *inter alia*, that the programs were veiled attempts to force out, harass, and discriminate against older couriers. FedEx moved to dismiss respondent's action, contending she had not filed the "charge" required by §626(d). Respondent countered that her Form 283 and affidavit constituted a valid charge, but the District Court disagreed and granted FedEx's motion. The Second Circuit reversed.

Held:

1. In addition to the information required by the implementing regulations, *i.e.*, an allegation of age discrimination and the name of the charged party, if a filing is to be deemed a "charge" under the ADEA it must be reasonably construed as a request for the agency to take remedial action to protect the employee's rights or otherwise settle a dispute between the employer and the employee. Pp. 3–13.

(a) There is little dispute that the EEOC's regulations—so far as they go—are reasonable constructions of the statutory term "charge"

and are therefore entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–845. However, while the regulations give some content to the term charge, they fall short of a comprehensive definition. Thus, the issue is the guidance the regulations give. Title 29 CFR §1626.3 says: "charge shall mean a statement filed with the [EEOC] which alleges that the named prospective defendant has engaged in or is about to engage in acts in violation of the Act." Section 1626.8(a) identifies information a "charge should contain," including: the employee's and employer's names, addresses, and phone numbers; an allegation that the employee was the victim of age discrimination; the number of employees of the charged employer; and a statement indicating whether the charging party has initiated state proceedings. Section 1626.8(b), however, seems to qualify these requirements by stating that a charge is "sufficient" if it meets the requirements of §1626.6—*i.e.*, if it is "in writing and . . . name[s] the prospective respondent and . . . generally allege[s] the discriminatory act(s)." That the meaning of charge remains unclear, even with the regulations, is evidenced by the differing positions of the parties and the Courts of Appeals on the matter. Pp. 3–5.

(b) Just as this Court defers to reasonable statutory interpretations, an agency is entitled to deference when it adopts a reasonable interpretation of its regulations, unless its position is " 'plainly erroneous or inconsistent with the regulation,' " *Auer* v. *Robbins*, 519 U. S. 452, 461. The Court accords such deference to the EEOC's position that its regulations identify certain requirements for a charge but do not provide an exhaustive definition. It follows that a document meeting §1626.6's requirements is not a charge in every instance. The language in §§1626.6 and 1626.8 cannot be viewed in isolation from the rest of the regulations. While the regulations' structure is less than clear, the relevant provisions are grouped under the title, "Procedures—Age Discrimination in Employment Act." A permissible reading is that the regulations identify the procedures for filing a charge but do not state the full contents of a charge. Pp. 5–6.

(c) That does not resolve this case because the regulations do not state what additional elements are required in a charge. The EEOC submits, in accordance with a position it has adopted in internal directives over the years, that the proper test is whether a filing, taken as a whole, should be construed as a request by the employee for the EEOC to take whatever action is necessary to vindicate her rights. Pp. 6–8.

(d) The EEOC acted within its authority in formulating its request-to-act requirement. The agency's policy statements, embodied

in its compliance manual and internal directives, interpret not only its regulations but also the statute itself. Assuming these interpretive statements are not entitled to full *Chevron* deference, they nevertheless are entitled to a "measure of respect" under the less deferential standard of *Skidmore* v. *Swift & Co.*, 323 U. S. 134, see *Alaska Dept. of Environmental Conservation* v. *EPA*, 540 U. S. 461, 487, whereby the Court considers whether the agency has consistently applied its position, *e.g., United States* v. *Mead Corp.*, 533 U. S. 218, 228. Here, the relevant interpretive statement has been binding on EEOC staff for at least five years. True, the agency's implementation has been uneven; *e.g.,* its field office did not treat respondent's filing as a charge, and, as a result, she filed suit before the EEOC could initiate conciliation with FedEx. Such undoubted deficiencies are not enough, however, to deprive an agency that processes over 175,000 inquiries a year of all judicial deference. Moreover, the charge must be defined in a way that allows the agency to fulfill its distinct statutory functions of enforcing antidiscrimination laws, see 29 U. S. C. §626(d), and disseminating information about those laws to the public, see, *e.g.,* Civil Rights Act of 1964, §§705(i), 705(g)(3). Pp. 8–12.

(e) FedEx's view that because the EEOC must act "[u]pon receiving . . . a charge," 29 U. S. C. §626(d), its failure to do so means the filing is not a charge, is rejected as too artificial a reading of the ADEA. The statute requires the aggrieved individual to file a charge before filing a lawsuit; it does not condition the individual's right to sue upon the agency taking any action. Cf. *Edelman* v. *Lynchburg College*, 535 U. S. 106, 112–113. Moreover, because the filing of a charge determines when the ADEA's time limits and procedural mechanisms commence, it would be illogical and impractical to make the definition of charge dependent upon a condition subsequent over which the parties have no control. Cf. *Logan* v. *Zimmerman Brush Co.*, 455 U. S. 422, 444. Pp. 12–13.

2. The agency's determination that respondent's December 2001 filing was a charge is a reasonable exercise of its authority to apply its own regulations and procedures in the course of the routine administration of the statute it enforces. Pp. 13–17.

(a) Respondent's completed Form 283 contained all the information outlined in 29 CFR §1626.8, and, although the form did not itself request agency action, the accompanying affidavit asked the EEOC to "force [FedEx] to end [its] age discrimination plan." FedEx contends unpersuasively that, in context, the latter statement is ambiguous because the affidavit also stated: "I have been . . . assur[ed] by [the EEOC] that this Affidavit will be considered confidential . . . and will not be disclosed . . . unless it becomes necessary . . . to produce the affidavit in a formal proceeding." This argument reads too much into

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the nondisclosure assurances. Respondent did not request the EEOC to avoid contacting FedEx, but stated only her understanding that the affidavit itself would be kept confidential and, even then, consented to disclosure of the affidavit in a "formal proceeding." Furthermore, respondent checked a box on the Form 283 giving consent for the EEOC to disclose her identity to FedEx. The fact that respondent filed a formal charge with the EEOC after she filed her District Court complaint is irrelevant because postfiling conduct does not nullify an earlier, proper charge. Pp. 13–15.

(b) Because the EEOC failed to treat respondent's filing as a charge in the first instance, both sides lost the benefits of the ADEA's informal dispute resolution process. The court that hears the merits can attempt to remedy this deficiency by staying the proceedings to allow an opportunity for conciliation and settlement. While that remedy is imperfect, it is unavoidable in this case. However, the ultimate responsibility for establishing a clearer, more consistent process lies with the EEOC, which should determine, in the first instance, what revisions to its forms and processes are necessary or appropriate to reduce the risk of future misunderstandings by those who seek its assistance. Pp. 16–17.

440 F. 3d 558, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.