

An employee filed an employment discrimination suit in federal court against a corporation without the assistance of an attorney. After filing suit, the employee was severely injured in a car accident and hospitalized for three months. Immediately upon being released from the hospital, the employee hired an attorney to represent her in the discrimination suit. The attorney then had the corporation served with process 100 days after the employee's complaint had been filed. The corporation moved to dismiss for improper service of process.

Is the court likely to grant the corporation's motion?

- A. No, because the corporation was served with process within 90 days after the employee hired an attorney.
- B. No, because the employee can show good cause for the untimely service of process.
- C. Yes, because the corporation was not served with process within 90 days after the complaint was filed.
- D. Yes, because the delay in service of process was not caused by the corporation's misconduct.

Explanation:

A plaintiff must provide a defendant with notice of a lawsuit through service of process. A **defendant in the U.S.** must be served with process **within 90 days** after the plaintiff's **complaint is filed**.^{*} Here, service of process was untimely because the corporation was served 100 days after the employee filed her complaint. This would generally require the court—by motion or on its own initiative after notifying the plaintiff—to dismiss the action without prejudice OR order service of process within a specified time.

However, if the plaintiff provides **good cause** as to why service was untimely, the court must **extend the time** for service for an **appropriate period**. Good cause exists if service was delayed due to matters outside of the plaintiff's control (eg, sudden illness or injury)—not the plaintiff's own mistake or ignorance. Since the employee here was severely injured and hospitalized for three months after filing the complaint, good cause exists. Therefore, the court will likely deny the corporation's motion to dismiss **(Choice C)**.

^{*}The 90-day deadline for service of process applies to defendants in the U.S. For defendants in a foreign country, most federal courts require that process be served with due diligence.

(Choice A) The deadline for service of process is measured from the date the complaint is filed—not the date the plaintiff hires an attorney. That is because parties are not required to hire an attorney and can proceed pro se (ie, without legal counsel).

(Choice D) A defendant's misconduct provides good cause for untimely service of process. Although there is no indication that the corporation engaged in any misconduct, good cause exists since the employee's serious injury and hospitalization prevented her from serving the corporation within 90 days.

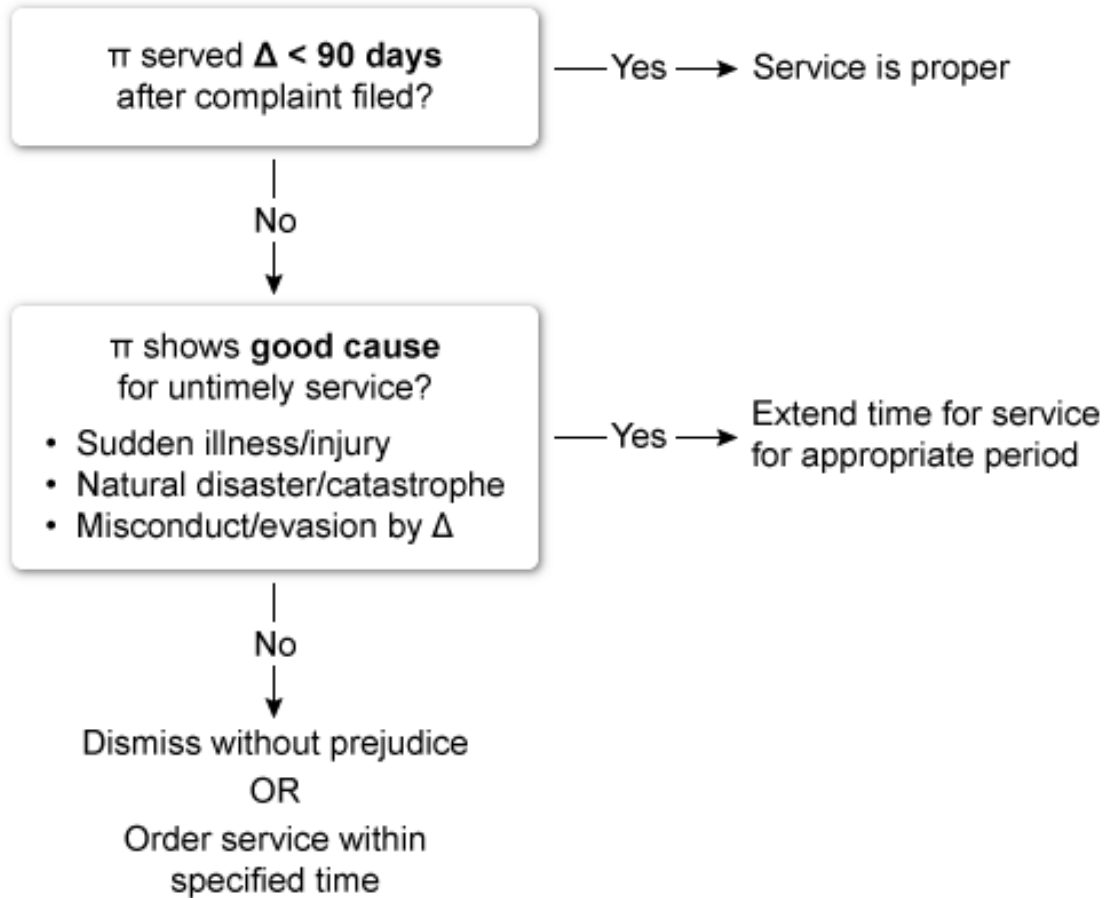
Educational objective:

A defendant in the U.S. must be served with process within 90 days after the plaintiff files the complaint unless good cause exists for missing this deadline. If good cause is shown, the court must extend the time for service of process for an appropriate period.

References

- Fed. R. Civ. P. 4(m) (deadline for service of process).
- *Floyd v. United States*, 900 F.2d 1045, 1047 (7th Cir. 1990) (explaining that good cause exists for untimely service of process when extenuating factors such as a sudden illness occur).

Time limit for domestic service of process (FRCP 4(m))



FRCP = Federal Rule of Civil Procedure; **π** = plaintiff, **Δ** = defendant

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