



Four Year Statute of Limitation For Claims Brought Pursuant to 42 USC 1981

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The Court in *Johnson v. Lucent Technologies* (No. 09-55203, opinion by Judge Betty B. Fletcher) determined whether retaliation claims brought pursuant to 42 U.S.C. section 1981 are subject to a four-year statute of limitations provided by 28 U.S.C. Section 1658(a) or the personal injury statutes of the forum state. The Court held that such claims are subject to the four-year statute of limitations as provided by 28 U.S.C. section 1658.

In *Lucent*, Defendant's former employee (Johnson), proceeding *pro se*, filed suit against his former employer, Lucent, on August 11, 2008 for terminating his long-term disability benefits in retaliation for previously filing suit against the company in 2005. Notably, Johnson's long-term disability benefits stemmed from separate litigation between Johnson, again acting in *pro se*, and Lucent beginning in 1982 and continuing through 2006.

Lucent moved to dismiss Johnson's retaliation claim on the grounds that Johnson's claim was time-barred under the relevant California statute of limitations under California Code of Civil Procedure Section 335.1 providing for a two (2) year statute of limitations. The district court dismissed the matter, and Johnson amended his complaint. Upon receipt of the second complaint, Lucent again moved to dismiss. The district court once more ruled that Johnson's claims were time-barred and refused to grant Johnson equitable tolling. Johnson appealed to the 9th Circuit. The Court began its opinion by detailing the controlling statutory provisions and relevant case law.

The court ruled that Johnson's allegations of retaliation, predicated on the termination of his long-term disability benefits, were subject to a four (4) year statute of limitations pursuant to Section 1658 because the retaliation claim being brought by Johnson was only capable of being pursued due to the post 1990 enactment.

The main conclusion to be drawn from *Johnson v. Lucent* is that claims of retaliation brought pursuant to Section 1981 are now subject to a four (4) year statute of limitations and not the statute of limitations of the forum state.

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