



SCOTUS Gives Boost To Employee Constructive Discharge Claims

Insights

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In a 7-1 decision, the U.S. Supreme Court ruled today that the statute of limitations for Title VII constructive discharge claim begins on the date of the employee's notice of resignation, not on the date of the last alleged discriminatory act by the employer. This is a bad decision for employers and will likely lead to an uptick in legal claims filed by disgruntled former workers. It opens the door for former employees to file constructive discharge claims long after the alleged discriminatory conduct occurred by simply delaying their resignation indefinitely (*Green v. Brennan*).

What Is A "Constructive Discharge?"

In a claim for constructive discharge, a former employee accuses the employer of engaging in discriminatory or retaliatory conduct that makes the working conditions so intolerable that any reasonable person in the shoes of that employee would feel they have no choice but to quit. In other words, a constructive discharge means a worker is forced off the job by the employer.

The concept of constructive discharge is a sort of legal fiction, allowing workers who claim to have been subjected to particularly egregious workplace treatment, but who have not been fired, to nonetheless resign from the offensive work environment and preserve their right to seek damages in the form of lost wages and benefits.

Timing Is Important

The question that confronted the Supreme Court is important because it goes directly to whether such constructive discharge claims are filed in a timely manner. Prior to filing suit for discrimination under Title VII, employees must first file a claim with the Equal Employment Opportunity Commission (EEOC) within 180 days "after the alleged unlawful employment practice" occurred, although the time is extended to as much as 300 days if the claim is also filed with a state or local agency authorized to investigate such claims.

Federal government employees have even a shorter timeframe: they must initiate the administrative process by contacting an EEO counselor within 45 days. These administrative filing deadlines act as a statute of limitations, and if the timeliness requirements are not met, the employee's opportunity to file a Title VII lawsuit is lost.

In the context of a constructive discharge claim, a number of lower courts have found that the deadline clock begins ticking when the employee provides notice to the employer of the intent to

resign, which usually benefits the employee by extending the deadline as far out as possible. In contrast, a number of other lower courts have held that the limitations period is triggered by the employer's last alleged discriminatory act that gave rise to the resignation, which benefits the employer by shrinking the deadline period.

Green's Case: A Race Against Time

Marvin Green is an African-American man who worked for the U.S. Postal Service from 1973 until 2010, most recently serving as postmaster in Englewood, Colorado. In 2008, Green applied for a promotion, but was not selected. He complained to a Postal Service EEO counselor that the decision was based on his race; he later alleged that relations with his supervisors soured in the wake of that initial complaint.

Over the next year, Green complained that his employer was retaliating against him for his initial complaint of race discrimination. His difficulties with the Postal Service reached their peak in December 2009, when he was placed on unpaid administrative leave pending the outcome of the investigation into allegations of mismanagement. Soon after, on December 16, he agreed to resign his position on March 31, 2010 if the Postal Service did not press criminal charges against him for the alleged mismanagement. He filed his formal retirement paperwork on February 9, 2010.

On March 22, 2010, Green filed an EEO complaint alleging that he was constructively discharged in retaliation for his prior complaints of retaliation and discrimination. Ultimately, Green filed suit against the U.S. Postal Service in the District of Colorado federal court, alleging a claim of constructive discharge.

Lower Court Proceedings: It's About Time

The lower court dismissed Green's constructive discharge claim, finding that it was filed late. Green argued that the statute of limitations clock should have started ticking on February 9, when he submitted his formal retirement paperwork, only 41 days before his EEO complaint (which meets the federal employee 45-day deadline rule).

But the Postal Service argued, and the court agreed, that Green's claim was untimely because he notified the Postal Service of his intent to resign on December 16, 2009, when he signed a settlement agreement. So even if the clock began ticking on Green's resignation date and not the date of the latest alleged discriminatory conduct, it was still over 90 days later and thus untimely.

The 10th Circuit Court of Appeals took it one step further, not only upholding the decision of the lower court, but concluding that the limitations period for a claim of constructive discharge begins running on the date of the employer's last alleged discriminatory act of the employer rather than on the date the employee finally throws in the towel and resigns. The Supreme Court granted review of the decision to resolve the split among the circuit courts, leading to today's decision.

The Decision: Court Holds Time Is Of The Essence

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In a majority opinion drafted by Justice Sonia Sotomayor, the Supreme Court agreed with Green that the trigger date for the limitations period for a claim of constructive discharge is the date on which the employee resigns. The Court reasoned that because a claim of constructive discharge requires **both** the employer's predicate discriminatory conduct **and** the employee's decision to resign in response, the statute of limitations period should not begin to run until both events have occurred.

The Court observed that because an employee's resignation is an essential part of a constructive discharge claim, the employee cannot sue until the resignation has occurred. If the limitations period were to begin running once the employer's alleged discriminatory conduct occurred, the employee would be forced to file a discrimination complaint at that time and then amend the complaint following resignation in order to include the constructive discharge claim. There is nothing in the law to suggest that this sort of two-step process is necessary.

Moreover, the Court opined that employees who are reluctant to complain about discrimination while still employed might find themselves between the proverbial rock and a hard place, essentially being forced to either go ahead and quit immediately or forfeit their right to file a complaint.

In the smallest of victories for employers, the Court did acknowledge the limitations period should begin to run when the employee gives notice of resignation rather than on the date the resignation becomes effective. With respect to Green, the Court found the facts were not sufficiently developed to pinpoint precisely when his notice of resignation occurred. Thus, the Court remanded the case back to the 10th Circuit to determine, as a factual matter, whether he gave notice of his resignation on the date he signed the settlement agreement or nearly two months later when he submitted his retirement paperwork.

What This Means for Employers: Time Will Tell

This is not a good decision for employers. You may now face litigation from an employee who resigns months after a discrimination complaint is successfully resolved. While the passage of time may make it more difficult for employees to develop evidence that the work environment was so intolerable they had no choice but to quit, the door remains open for such claims well after you believe the matter has been put to rest. Indeed, an employee could postpone resignation until new employment is found and claim that the conditions were intolerable during that job search period.

The Court's decision reinforces the need for you to periodically check in with employees who have filed complaints of discrimination, harassment, and retaliation to confirm that the working environment has improved and no further objectionable conduct has occurred. You should make sure any employees who have filed complaints or otherwise cooperated in EEO investigations are informed, in writing, of their obligation to immediately notify management or human resources of any conduct they believe to be retaliatory.

This type of information may become critical down the road for you to be able to establish that the employee's working environment was no longer objectionable at the time of resignation.

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