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U.S. Supreme Court Clarifies Accrual of Constructive Discharge Claims

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A constructive discharge under Title VII of the Civil Rights Act of 1964 occurs when an employee is not discharged by an employer, but rather resigns as the result of what he or she deems to be intolerable discrimination. On May 23, 2016, in a 7-1 decision, the United States Supreme Court ruled in the case of *Green v. Brennan* that constructive discharge claims under Title VII accrue when an employee gives notice of his resignation, rather than on the date on which the employer's discriminatory action occurred. The majority opinion penned by Justice Sonia Sotomayor clarifies statutory language relating to the time frame within which actions must be brought by former employees on the basis of discriminatory behavior that led to their resignation.

Marvin Green, a black 35-year Postal Service veteran, was denied a promotion for a vacant postmaster position and complained to his supervisors that this decision was made on the basis of his race. Green's interactions with his supervisors quickly went downhill after his complaint: he was accused of intentionally delaying mail, which is a criminal offense. Even after an official investigation of the issue was completed, Green's supervisors continued to threaten legal consequences for his alleged actions.

On December 16, 2009, Green and the Postal Service signed an agreement in which the Postal Service promised not to pursue criminal charges against Green if he promised to leave his current post. The agreement gave Green the choice of either retiring or accepting a post in another town with a considerably lower salary. Green decided to retire and submitted his resignation paperwork to the Postal Service on February 9, 2010, effective March 31. On March 22, 2010, 41 days after submitting his resignation paperwork, but 96 days after signing the settlement agreement, Green contacted an Equal Employment Opportunity (EEO) counselor to file a complaint for unlawful constructive discharge in violation of Title VII. Green alleged that he was constructively discharged by the Postal Service because they threatened him with criminal charges based on his original complaint of discrimination, and the resulting agreement with the Postal Service essentially forced him to resign rather than giving him a legitimate choice to retain his employment.

Title VII prohibits employers from discriminating against employees on the basis of race,

color, religion, sex, or national origin. It also prohibits employers from retaliating against employees for making complaints or for seeking relief for these types of discrimination. Employees who work for the federal government are required to initiate contact with an EEO counselor in order to sue their employer for violating Title VII. This contact must take place “within 45 days of the date of the matter alleged to be discriminatory.” The question before the Court was when did this 45-day clock begin to tick against Green for him to bring his claims to the attention of an EEO counselor. As a point of clarification, employees in the private sector have 180 days to file a charge with the EEOC and 300 days to file a charge with a state agency, but the rationale of the Supreme Court’s decision, in this case, would also apply to the private sector.

If Green had been *fired* for discriminatory reasons, the answer would be simple: the 45-day clock starts after an employee is fired. In this case, however, Green resigned, and the Supreme Court, therefore, needed to determine the definition of “the matter alleged to be discriminatory” within the realm of constructive discharge claims. If it determined that the relevant date of accrual was the date on which the Postal Service’s last discriminatory action took place or the date on which the settlement agreement was finalized, Green’s charge would have been brought too late. However, if the Court concluded that “the matter alleged to be discriminatory” accrued on the date of Green’s resignation, then Green’s charge could proceed.

The Supreme Court held that a “matter alleged to be discriminatory,” for purposes of calculating the statute of limitations in constructive discharge cases, must start to accrue on the date of the employee’s resignation. Using “the standard rule” for limitations periods, the Court referred to prior cases which held that limitations periods typically begin running once a plaintiff has a “complete and present cause of action.” It based its reasoning on three key points:

1. “In the context of a constructive-discharge claim, a resignation is part of the ‘complete and present cause of action’ necessary before a limitations period ordinarily begins to run”;
2. “Nothing in the regulation creating the limitations period. . . clearly indicates an intent to displace this standard rule”; and
3. “Practical considerations confirm the merit of applying the standard rule here.”

So what does this mean? Short-term, it means that Marvin Green might have been within his 45-day limit for “initial contact” with an EEO counselor and could potentially bring his suit against the Postal Service. Long-term, it impacts the amount of time that employers are at risk for suits filed against them by employees. Because a key element of a constructive discharge claim under Title VII includes the actual resignation of an employee, that resignation—or at least notice of it—must occur before the 45-day clock starts to run. If there is no resignation to begin with, then a constructive discharge suit cannot be filed at all. It wouldn’t make sense, the Court reasoned, to allow a limitations period to start running before an employee is actually out of work and can file his claim.

However, the Court also made it clear that the limitations period doesn’t start running

on the day that an employee actually stops working; rather, it begins at the time that the employer has notice of the employee's resignation. The Supreme Court sent the case back to the lower court to decide if Green's claim accrued as of the signing of the settlement agreement—meaning that his claim would be barred—or if it accrued as of the time he submitted his retirement paperwork—meaning that his claim would be timely.

The Supreme Court's ruling provides clarity to employers regarding how long an employee has to bring a constructive discharge claim under Title VII. In light of this ruling, employers will want to be sure to document when an employee provides notice that he or she is resigning. The decision will also likely lead to more charges being filed with the EEOC as it affords employees with more time to file a charge than if the Court had determined that the claim accrues as of the date of the employer's last discriminatory act.

If you have questions about the impact of this decision or any other matter relating to employment practices, please contact Connie Carrigan at ccarrigan@smithdebnamlaw.com.

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