

Supreme Court Rules That Constructive Discharge Limitations Clock Starts at Resignation

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Resolving a circuit court split, the U.S. Supreme Court ruled, 7-1, that because part of the “matter alleged to be discriminatory” in a Title VII constructive discharge claim includes the employee’s resignation, the statute of limitations begins to run only after the date the employee resigns. *Green v. Brennan*, No. 14-613 (May 23, 2016). In so holding, the Court vacated the decision of the Tenth Circuit, which held that the statute of limitations in a constructive discharge claim, starts running at the time of the employer’s last alleged act of discrimination that forces the employee to resign his or her employment.

The dispute originated after U.S. Postal Service employee, Marvin Green, complained to his employer that he was denied a promotion because he is black. Shortly thereafter, his supervisors accused him of intentionally delaying the mail. The parties reached a settlement agreement dated December 16, 2009, wherein the Postal Service agreed not to pursue criminal charges, and Green agreed either to retire or to accept another position in a remote location with a reduced salary. Green chose to retire and submitted his resignation paperwork on February 9, 2010. On March 22 – 41 days after submitting his resignation paperwork, but 96 days after signing the settlement agreement – Green contacted an Equal Employment Opportunity counselor to report an unlawful constructive discharge. Green subsequently filed suit in federal district court, which the court dismissed as untimely. The Tenth Circuit affirmed, holding that the limitations period began to run from the time of the employer’s alleged “last discriminatory act,” and not from the resignation itself.

Before a federal civil servant may sue his employer for violating Title VII, he must, among other things, “initiate contact” with an Equal Employment Opportunity counselor at his agency “within 45-days of the date of the matter alleged to be discriminatory.” In *Green*, the Court addressed the specific question of when the 45-day federal civil servant limitations period begins to run for an employee who resigns in the face of intolerable discrimination—a constructive discharge.

The Court, in a decision written by Justice Sotomayor, determined the most helpful canon in this context was the “standard rule,” which provides that a limitations period ordinarily begins to run “when the plaintiff has a complete and present cause of action.” Applying the standard rule, the Court held that the “matter alleged to be discriminatory” includes the employee’s resignation, and that the 45-day clock for a constructive discharge begins running only after the employee resigns.

First, the Court found that an employee’s resignation is part of the “complete and present cause of action” in a constructive discharge claim. The Court determined that a constructive discharge claim includes (1) the underlying discriminatory conduct such that a reasonable employee would have felt compelled to resign, and (2) the actual resignation. Because no “complete and present cause of action” for constructive discharge exists until the employee resigns, under the standard rule, the second basic requirement – resignation – is required to trigger the running of the limitations period.

Second, the Court found that nothing in Title VII’s regulations, which create the limitations period, clearly indicated an intent to displace the standard rule. Finally, the Court determined that practical considerations supported application of the standard rule. The Court found that it was impractical to suggest a two-step process, in which an employee would have to file a complaint after an employer’s discriminatory conduct, only to be forced to amend that complaint to allege constructive discharge after resigning. In addition, the Court found that requiring a complaint be filed before resignation occurs would also ignore that an employee may not be in a position to leave his job immediately.

The Supreme Court reversed and remanded the matter to the Tenth Circuit to determine the date notice of resignation was provided.

Notably, in a footnote, the Court majority pointed out that the Title VII regulation at issue in Green applies only to federal employees, however, the regulation does have a statutory analog for private-sector Title VII plaintiffs requiring them to file charges with the EEOC within 180 or 300 days “after the alleged unlawful employment practice occurred.” Although the language is different, the EEOC Compliance Manual treats the federal and private-sector employee limitations periods as identical in operation. Therefore, it is likely that the holding in Green will be applied to similar private sector statute of limitations questions.

In dissent, Justice Thomas asserted that the majority holding inappropriately expanded the constructive discharge doctrine by transforming constructive discharge into a claim focused on the employee’s conduct, rather than on the employer’s conduct. Justice Thomas wrote that “[b]y ignoring the date on which an employer’s discriminatory act occurred and instead focusing only on an employee’s subjective response to that discriminatory act, the majority dispenses with the function of an employer’s conduct.” Justice Thomas further argued that only an employer’s actions should constitute a ‘matter alleged to be discriminatory.’”

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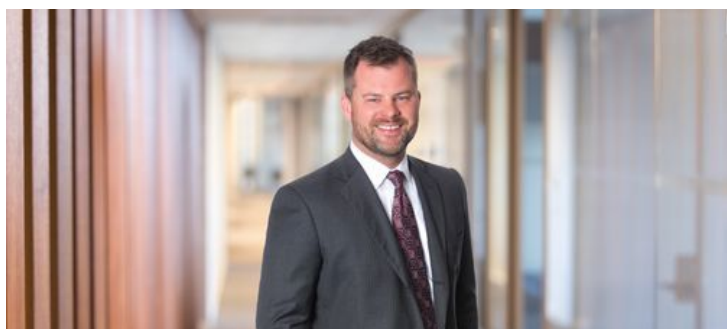
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