

May 26, 2016

Supreme Court Rules That Resignation Starts Time Clock to File Title VII Constructive Discharge Claim

The U.S. Supreme Court has ruled that the limitations period for filing a Title VII charge with the EEOC alleging constructive discharge begins to run when the plaintiff gives notice of his or her resignation. *Green v. U.S. Postal Service*, No. 14-613 (May 23, 2016).

In brief, the plaintiff worked as postmaster in a Denver suburb. After he unsuccessfully applied for the postmaster position in a nearby city, the plaintiff complained about racial discrimination. According to the plaintiff's complaint, in December 2009, the Postal Service retaliated against him by charging that he had intentionally delayed the mail, a criminal offense. An internal investigation resulted in no action being taken against the plaintiff, but his supervisor allegedly told him that that charge would be a "life changer" for him. A few days later, in mid-December 2009, the plaintiff and the Postal Service signed an agreement under which the plaintiff would either retire or accept a transfer to a very small town in Wyoming, with a resulting reduction in salary. The plaintiff submitted his resignation on February 9, 2010, effective March 31, 2010. Then, forty-one days later, the plaintiff contacted an EEOC counselor and reported he had been forced to resign because conditions in his workplace had become intolerable.

After the plaintiff filed his lawsuit, the district court and then the Tenth Circuit ruled that the plaintiff had failed to timely exhaust his administrative remedy. Under Title VII regulations, a federal employee must contact an EEOC counselor "within 45 days of the date of the matter alleged to be discriminatory." The Tenth Circuit ruled that this period began to run in mid-December 2009, when the plaintiff and the Postal Service signed their agreement, reasoning that the plaintiff's subsequent decision to resign was not part of "the matter alleged to be discriminatory."

In a seven-to-one decision, the Supreme Court reversed, explaining that, for purposes of a constructive discharge claim, the phrase "the matter alleged to be discriminatory" includes the employee's resignation, so that the limitations period begins to run upon resignation. The Court supported this result by relying on the "standard rule," under which a limitations period begins to run when a plaintiff has a "complete and present cause of action." As the Court then held, for constructive discharge claims, the plaintiff has such a cause of action

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only upon resignation. Until then, no discharge, constructive or otherwise, has occurred. The Court also agreed with both parties' view that the period begins to run upon the employee's decision to resign, rather than the date the resignation takes effect.

The Supreme Court explained why it did not believe it was appropriate to have the limitations period commence as of the date the underlying discriminatory acts occurred. Such a rule, the Court explained, would force an employee to file a discrimination complaint based on those discriminatory acts and then, after resigning, amend the complaint to allege constructive discharge. The Court did not find anything in the Title VII regulation to suggest that a layperson should have to "follow such a two-step process in order to preserve any remedy if he is constructively discharged." The Court also observed that a rule that would have the limitations period commence when the underlying discriminatory acts occurred could create problems for an employee who may choose to delay resignation for valid reasons and could subject the employee to termination, "an additional adverse consequence that he may have to disclose in future job applications."

Despite its holding, the Court did not rule that the plaintiff's action was timely as a matter of law. Rather, the Court stated that the lower courts still needed to decide whether the plaintiff resigned only when he submitted his resignation paperwork (as the plaintiff argues) or whether he in fact resigned when he and the Postal Service signed their agreement in mid-December 2009 (as the Postal Service argues).

Practical Impact

Despite this lingering factual issue, *Green* is a pro-plaintiff decision that not only settles the law, but will minimize limitations period barriers for employees who believe they have been subjected to discrimination based on allegedly intolerable working conditions but do not immediately resign. Further, although *Green* expressly applies only to federal employees, the Court observed in a footnote that the EEOC has stated that the limitations period for private employees, though worded differently, is "identical in operation." Thus, lower courts will no doubt apply *Green's* reasoning in actions filed by private employees.

[Click here](#) to read the decision.

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