MILLER CANFIELD

Supreme Court: Constructive Discharge Limitations Period Starts When Employee Resigns

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The Supreme Court ruled, on May 23, 2016, that for employees alleging that they were "constructively discharged" from their employment (as opposed to terminated by their employer), the statute of limitations begins to run from the date the employee resigns, rather than from the date the alleged discrimination occurred, causing the employee to resign.

In *Green v. Brennan*, after postal worker Marvin Green complained that he was denied a promotion because of his race, his relationship with his supervisors deteriorated, with the supervisors accusing him of deliberately delaying the mail (a federal offense). On December 16, 2009, Green and the Postal Service signed an agreement, with the employer promising not to pursue criminal charges in exchange for Green leaving his post. The agreement also provided that the employee could report to a new post effective March 31, 2010, at a considerably lower salary, or retire. Green chose to retire, and submitted his resignation on February 9, 2010, effective March 31, 2010.

On March 22, 2010, Green contacted an Equal Employment Opportunity (EEO) counselor (an administrative requirement for federal sector employees), and alleged he was unlawfully constructively discharged in retaliation for his original discrimination claim. The district court dismissed the claim, concluding that the employee did not contact the EEO counselor within 45 days of December 21, 2009, and the Tenth Circuit affirmed.

Reversing the lower courts, the Supreme Court ruled that for an employee who is not fired, but who resigns alleging he or she was constructively discharged, the 45-day clock for federal employees to contact an EEO counselor begins to run from the date of the resignation. The Court reasoned that until the employee resigns, he or she cannot bring a cause of action alleging constructive discharge. Finally, the Court clarified that an employee resigns on the day he or she tells the employer, and not on the last day of work. Thus, if an employee provides two weeks' notice, the clock begins on the date of the notice.

What does this case mean for employers?

The Supreme Court's ruling makes it easier for employees alleging that they were constructively discharged to file a charge of discrimination with an administrative agency or a federal lawsuit. If an employee alleges that they experienced intolerable working conditions, but waits weeks, months or years to resign, the time period for them to file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) will not start running until the actual resignation. While *Green* addresses a federal employee's obligations under Title VII, the Court's ruling indicates that lower courts might apply the same reasoning to private sector employees, who must file a charge of discrimination with the EEOC within 180 or, in the case of Michigan and Illinois, 300 days.