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SCOTUS Rejects A Rule Neither Employers Nor Employees Wanted: Green V. Brennan Decision

May 24, 2016 | | Employment Discrimination, Currents - Employment Law

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In Monday's *Green v. Brennan* ruling, the U.S. Supreme Court decided that the limitations period for constructive discharge runs from the date the employee gives notice of the intent to resign. The 7-1 outcome was not a surprise following the questioning by the justices during oral arguments. The justices held that the filing period begins when an employee resigns as a result of discriminatory behavior, not when an employer creates an environment so adversarial that an employee feels forced to resign, previously ruled in 2014 by the Tenth Circuit. The case stems from an original complaint in 2008 by Green, a postmaster in Colorado. Green, who was passed over for a promotion, claimed someone less qualified received the position which caused him to file a discrimination complaint with the equal employment opportunity commission (EEOC). The court was confronted with three alternative dates by which the limitations period that the EEOC must be contacted would begin to run:

1. The date Green signed a settlement agreement giving him the option to retire or take a position 300 miles away with a significant pay cut, Dec. 16, 2009, and also the date alleged to be the last act of discriminatory conduct compelling petitioner Green to resign
2. The date on which Green notified the respondent Postal Service of his intention to resign, Feb. 9, 2010, or,
3. The date Green's resignation actually became effective, March 31, 2010.

The choice was determinative because the controlling statute of limitations required Green to contact an EEOC counselor within 45 days of the "matter alleged to be discriminatory," a notably ambiguous requirement. Green contacted an EEOC counselor on March 22, 2010, 96 days after signing a settlement agreement and 41 days after submitting his notice of resignation. The circuits were split on whether the limitations period ran from the "last discriminatory act" or the date the employee resigns. The rule represents both interpretive and practical considerations that should be viewed favorable to employers, including:

- It places constructive discharge claims on equal footing with ordinary wrongful discharge claims that require both discrimination and notification of being fired
- Nothing in the limitations regulation provided an "exception" to the ordinary rule
- Practical consideration supported the rule applied because it made

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> little sense to start the clock ticking before a plaintiff could actually file suit

Employers should welcome this outcome and breathe a sigh of relief because of the definitiveness and certainty it brings to both the accrual and repose of limitation periods applying to federal employment discrimination claims.