

U.S. Supreme Court To Provide Guidance On Constructive Discharge Statute Of Limitations Period

April 29, 2015 | [Employment Discrimination, Labor And Employment](#)



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On April 27, the Supreme Court granted the Petition for a Writ of Certiorari filed by former Englewood, Colorado Postmaster, Marvin Green, agreeing to consider the following question:

Under federal employment discrimination law, does the filing period for a constructive discharge claim begin to run when an employee resigns, as five circuits have held, or at the time of an employer's last allegedly discriminatory act giving rise to the resignation, as three other circuits have held?

The petition arose after the U.S. Court of Appeals for the Tenth Circuit rejected Green's constructive discharge claim that alleged harassment and bullying by the Postal Service forced him to retire. In its opinion, the Tenth Circuit engaged in a detailed discussion of the nature of a constructive discharge claim and positions taken by various courts on both sides of the circuit split regarding when the time begins running to file a constructive discharge under the law. Ultimately, after weighing the various arguments in the context of federal discrimination laws and laws such as Title VII, the Tenth Circuit sided with "the courts that have required some discriminatory act by the employer within the limitations period." The Tenth Circuit held that Green's constructive discharge was raised too late, finding that his December 2009 execution of a settlement agreement (which pertained to a discrimination claim he had filed, and contained language relating to his employment options -- one of which was separation by March 31), had triggered the 45-day limitation period for initiating the requisite EEO counseling regarding a constructive discharge claim under 29 C.F.R. § 1614.105(a)(1). Rejecting Green's contention that his resignation itself -- tendered on or about February 2010, and effective March 31 consistent with the option in the settlement agreement-- triggered the 45-day period, and finding that Green did not undertake such counseling until March 22, 2010, the Tenth Circuit opined that his constructive discharge claim fell outside the 45-day window and was, therefore, untimely. This case will be an important one for employers to watch, as the Supreme Court's determination will dictate what time-bar arguments may be available in constructive discharge cases when the last allegedly discriminatory/harassing act pre-dates the actual resignation.

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