

## Publications

### *Labor and Employment Alert: Supreme Court Issues Bright-Line Rule for Constructive Discharge Cases*

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The United States Supreme Court recently resolved a split among the federal circuits about when the limitations period begins on a constructive discharge claim (as opposed to a claim by an employee that he or she was terminated by an employer). In *Green v. Brennan* the Court held that the “clock for constructive discharge begins running only after the employee resigns.”

Postmaster Marvin Green complained that the Postal Service denied him a promotion because he was black. After he complained, his supervisors accused him of the federal crime of intentionally delaying the mail. In a signed agreement, the Postal Service agreed not to pursue criminal charges if Green either retired or transferred from his suburban post in Denver, Colorado, to “Wamsutter, Wyoming – population 451.” Green chose to retire, and then, 41 days after resigning and 96 days after signing the agreement, filed an unlawful constructive discharge charge with the Equal Employment Opportunity Commission alleging discrimination and retaliation. Federal employees have 45 days in which to file a discrimination charge with the U.S. Equal Employment Opportunity Commission (EEOC), which they must do before filing a lawsuit (by contrast private-sector employees have either 180 or 300 days to file a charge with the EEOC).

The district court and Tenth Circuit Court of Appeals found that Green’s complaint to the EEOC was untimely because he had failed to contact the EEOC within 45 days of when he signed the agreement with the Postal Service (even though he was within the 45-day timeframe considering the date of his retirement). Therefore, his claims were time-barred. The Supreme Court reversed and remanded the case for a determination of when Green actually resigned.

The Court held that, for a federal employee who claims he is constructively discharged (as opposed to terminated), the 45-day statute of limitations to contact the EEOC begins to run from the date the employee resigns. The Court reasoned that a constructive discharge claim “accrues only after an employee resigns.” Additionally, the Court held that a constructive discharge claim accrues – and the

statute of limitations period begins to run – when the employee gives notice of his resignation, and not on the notice’s effective date. This means that, if an employee gives a two-week notice, the limitations period begins on the date he or she gives the notice and not two weeks later when the resignation is effective.

*Green* involved a federal employee’s responsibilities under Title VII. However, the Court noted that the federal regulation at issue in *Green* “has a statutory analog for private-sector Title VII plaintiffs, who are required to file a charge with the EEOC within 180 or 300 days after the alleged unlawful employment practice occurred.” Given this, it is likely that lower courts will apply the Court’s reasoning to private-sector employees in evaluating constructive discharge cases.

Contact your Vorys lawyer if you have questions about Title VII or responding to charges of discrimination.