Green v. Brennan, No. 14-613

A federal civil servant claiming a violation of Title VII of the Civil Rights Act of 1964 must “initiate contact” with the EEOC “within 45 days of the date of the matter alleged to be discriminatory.” Today, in an opinion for a six-Justice majority authored by Justice Sotomayor, the Supreme Court ruled that, when an employee claims he was forced by discrimination to resign, the limitations clock begins when he gives the employer definitive notice of his intent to

resign.

In so holding, the Court adopted a middle ground between two alternative counting approaches. Under the most

plaintiff-friendly approach, the clock would begin on the employer’s last day on the job. Under the approach

favored by the Tenth Circuit (and by Justice Thomas's dissent), the clock would begin when the employer took the allegedly discriminatory act precipitating the resignation. (Both the plaintiff and the Government had agreed, in the briefing before the Supreme Court, that the clock should begin on the date when notice is given.)

The Court also rejected a middle-ground approach favored by Justice Alito, who concurred in the judgment. Justice Alito would have distinguished between two types of constructive discharge—those in which the employer intended to force the employee to quit and those in which the resignation was unintended. In Justice Alito's view, in the former circumstance, the resignation could be tied to the employer but not in the latter circumstance. The Court

rejected Justice Alito’s approach as unmoored to the doctrine of constructive discharge.

For private sector workers, the deadlines are different: the employee must file a charge of discrimination within 180 days after alleged unlawful employment practice occurred, or up to 300 days if a charge is also filed with the state.

But this decision will dictate how those deadlines are computed, which may make a difference in some cases.

As a general matter, this decision may not be revolutionary, but the Court’s characterization of the elements of a constructive-discharge claim was not strictly required by the text of the statute. The willingness of a six-Justice bloc

to view discrimination claims in a favorable light for employees may then be significant, in and of itself.

Any questions should be directed to Brian D. Netter (+1 202 263 3339) in our Washington office.