

Indianapolis Office Newsletter – First Quarter 2017

By Michael W. Padgett, Craig W. Wiley, Zachary A. Ahonen and Melissa K. Taft

February 6, 2017

U.S. Supreme Court Clarifies Limitation Period for Claims Relying on Constructive Discharge

Under a constructive discharge theory, an employee's limitation period to file a discrimination claim with the Equal Employment Opportunity Commission begins upon the constructive discharge, *not* before, the United States Supreme Court has ruled, giving clarity to timing considerations of constructive discharge claims. *Green v. Brennan*, 136 S. Ct. 1769 (2016).

A critical element of most discrimination claims is the presence of an "adverse employment action" taken against an employee. Often, this adverse employment action is the employee's involuntary termination. However, an employee can sidestep this requirement if he can demonstrate that:

1. his employer discriminated against him to the point where a reasonable person in his situation would have felt compelled to resign, and
2. he actually resigned his employment.

The Court found that an employee's limitation period to file a discrimination claim could not begin when the alleged discriminatory acts occurred because the employee could not bring his cause of action until he actually had resigned. Additionally, the Court could not find any indication in the pertinent federal regulation of a contrary intent. Finally, the Court held that, as a matter of practicality, the constructive discharge date is the "trigger date" that made the most sense.

Equally as important, the Court determined that the date of an employee's resignation under the constructive-discharge theory is the date an employee provides notice (if any) to the employer of an intent to resign, rather than the actual date of resignation. For example, if an employee provides an employer with the customary two weeks' notice, the employee's resignation date and the beginning of his limitation period is the date he provides that two weeks' notice, not his last day working with the employer.

Timing should not be overlooked when considering effective defenses against employment-related claims.

EEOC Issues New Guidance on National Origin Discrimination

The Equal Employment Opportunity Commission's "Enforcement Guidance on National Origin Discrimination" highlights the agency's enforcement emphasis and opinion of the direction the law should be headed. It is important even though the Guidance does not create legal mandates.

The Guidance states that Title VII of the Civil Rights Act covers an employee or applicant based on actual or perceived national origin, association with others of a particular national origin, or citizenship status. Further, it states that national origin discrimination is discrimination "because an individual (or his or her ancestors) is from a certain place or has the physical, cultural, or linguistic characteristics of a particular national origin group." From the EEOC's perspective, "place of origin" includes a country or nation, and it also can include a geographic region. With respect to an employee or applicant's "group" or "ethnicity," it can include a group of people sharing a common language, culture, ancestry, race, or other social characteristics. In this way, the EEOC's definition of national origin discrimination encapsulates a broad range of circumstances.

The Guidance notes situations in which employers should use caution to avoid running afoul of Title VII. Some of these include basing employment decisions on customer or client preferences, the desire for a "corporate look" or "image," accents or fluency in English, citizenship status, or on an applicant's ability to provide a Social Security Number.

Nevertheless, most employers have legitimate business reasons for basing employment-related decisions on these factors. For example, an applicant's citizenship status frequently is a good indicator of an individual's ability to work legally in the United States. However, blanket hiring practices that directly or indirectly require a certain citizenship status might be discriminatory against individuals from particular countries or regions with work visas or other credentials allowing them to work in the United States legally.

Meet the Authors



Michael W. Padgett

Principal
Indianapolis 317-489-6936
Email



Craig W. Wiley

Principal
Indianapolis 317-489-6935
Email



Zachary A. Ahonen

Associate
Indianapolis 317-489-6945
Email



Melissa K. Taft

Principal
Indianapolis 317-489-6939
Email

Practices

Litigation

Even prepared with legitimate business reasons for their employment decisions, such reasons are a *defense* to an allegation of discrimination and not an *exception* to discrimination. Without entering a rabbit hole explaining the difference in this article, as a general matter, countering a lawsuit for unlawful discrimination with a defense is more expensive and complicated than countering a lawsuit with an exception excluding a certain action from the definition of discrimination altogether.

Management Education Opportunity

Please join us to learn about anticipated changes to employment and labor laws in the Trump Administration at our Indianapolis Office Breakfast Briefing, *Inaugurating 2017: What Employers Can Expect from a Trump Administration in 2017 and Beyond*, on February 9, 2017.

[Click here](#) for more information and to register.

©2017 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

©2021 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.