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Employers Beware: Clock Ticking on Constructive Discharge Claims

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On May 23, the U.S. Supreme Court ruled that the statute of limitations for a Title VII constructive discharge claim begins to run on the date of the employee's notice of resignation – not on the date of the employer's last alleged discriminatory act or even on the last day the employee works.

Although this decision provides employers with a rare bright-line rule, it is by no means a good one for them. The door for constructive discharge claims will now remain open until well after employers believe a potential problem has been remedied. Indeed, employers may now face litigation from employees who resign months after their discrimination complaints have been successfully resolved.

So, what should employers do to protect themselves in the face of this new pro-employee decision? First, regularly check in with your employees who have filed complaints of discrimination, harassment and retaliation and confirm that working conditions have improved and that there have been no further instances of intolerable or discriminatory conduct. Second, make sure all employees, and in particular those who have filed complaints or cooperated in an EEOC investigation, are informed, in writing, of their obligation to notify human resources of any conduct they believe to be retaliatory and that they have clearly agreed to such conditions of employment.

It's also important for employers to keep records of this information, as it may be useful in establishing that an employee's working environment was no longer objectionable at the time the employee resigned.

If employers follow these simple suggestions, SCOTUS's new rule should not be much cause for concern.

Stay in contact with employees who have made complaints of discrimination to assure they have no further issues of retaliation or discrimination and document the follow-up to avoid constructive discharge claims.