Supreme Court Holds That Employers Can Assert Affirmative Defense in Some Constructive Discharge Cases

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On June 14, 2004, the United States Supreme Court issued an important opinion concerning an employer’s liability for constructive discharge relating to sexual harassment or a hostile work environment attributable to a supervisor. In Pennsylvania State Police v. Suders, U.S. No. 03-95 (June 14, 2004), the Supreme Court held that:

- Title VII can give rise to liability for constructive discharge where the plaintiff can show that resignation was a reasonable response to intolerable working conditions; and

- An employer can avoid liability for supervisory sexual harassment that resulted in an employee’s resignation
  - if the resignation was not precipitated by an official company act; and
  - if the employer can prove that it exercised reasonable care to prevent and resolve sexual harassment complaints and that the plaintiff unreasonably failed to take advantage of that remedy.

In Suders, a police communications operator filed suit alleging that she was subjected to a continuous barrage of sexual harassment by her supervisors that ceased only when she resigned from the police force. During her employment, she never filed a sexual harassment complaint. In her lawsuit, Suders claimed that as a result of the sexual harassment, she was constructively discharged.

The district court dismissed the plaintiff’s sexual harassment claim on the grounds that the employer had proven the affirmative defense set forth by the Supreme Court in the Ellerth/Faragher cases that Suders unreasonably failed to complain of sexual harassment under the Company’s policy. In Ellerth/Faragher, the Court previously held that an employer can raise this affirmative defense to supervisory harassment when there is no tangible employment action, such as a demotion or discharge.

The Third Circuit reversed the district court, holding that constructive discharge (if proven) constitutes a tangible employment action, and thus the employer was barred from asserting the Ellerth/Faragher affirmative defense. Instead, the employer was strictly liable for any supervisory harassment.

The issue before the Supreme Court was whether the affirmative defense established by the Supreme Court in the Ellerth/Faragher cases can be extended to the employer in the case of a constructive discharge. In other words, is constructive discharge a tangible employment action? The Supreme Court, reversing the Third Circuit, held that constructive discharge constitutes a tangible employment action precluding an employer from asserting an affirmative defense only when the resignation is prompted by an official act by the employer changing the employee’s employment status or situation. Some examples of official acts cited by the Court include such things as “a humiliating demotion, extreme cut in pay or transfer to a position [with] unbearable working
conditions.” If an official act does not underlie the constructive discharge, the Supreme Court held, the affirmative defense is available.

This ruling reiterates for employers the importance of having effective avenues for employees to bring sexual harassment complaints; disseminating the sexual harassment policy, including the complaint procedure, to all employees; promptly and thoroughly investigating complaints; and responding with appropriate remedial action.

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