



May 28, 2008

## Employees Have a Longer Time to Sue for Retaliation Claims, and Can Recover More Damages

Yesterday the United States Supreme Court issued a significant ruling that gives employees up to four years to sue for retaliation relating to complaints of race discrimination under federal law. In *CBOCS West, Inc. v. Humphries* (May 27, 2008, No. 06-1431) the Court held by a 7-2 vote that a Reconstruction-era civil rights statute prohibiting race discrimination also prohibits retaliation against workers who complain about race discrimination.

The plaintiff, Hedrick Humphries, worked as an assistant manager for the Cracker Barrel restaurant chain. Mr. Humphries claimed his employer terminated him because of his race and because he complained about race discrimination against a co-worker. Mr. Humphries sued under both Title VII of the Civil Rights Act of 1964 and Section 1981, a post-Civil War statute prohibiting race discrimination with regard to the right to "make and enforce contracts." Although Title VII specifically protects employees from retaliation, Section 1981 does not. Nevertheless, the Supreme Court determined that Mr. Humphries could proceed with his Section 1981 retaliation claim.

### So, what?

The ruling is important for at least three reasons:

1. **Section 1981 plaintiffs can sue immediately, without first filing a complaint with the EEOC.** Section 1981 plaintiffs are entitled to file lawsuits in court immediately following adverse retaliatory action. On the other hand, Title VII claimants must first file a claim with the Equal Employment Opportunity Commission (EEOC). If they fail to do so, their Title VII claims are barred.
2. **Section 1981 plaintiffs have a longer time to sue.** Section 1981 claims have a four-year statute of limitations within which someone can file a lawsuit. Under Title VII, a claimant must file a claim with the EEOC within 300 days of the alleged retaliatory conduct.
3. **Section 1981 plaintiffs are not limited in the amount of pain and suffering and punitive damages they can recover.** Section 1981 does not place a cap on recoverable damages. On the other hand, Title VII limits the combined recovery for pain and suffering, emotional distress, inconvenience, mental anguish, "other nonpecuniary losses," and punitive damages to between \$50,000 and \$300,000, depending on the number of employees the employer has. The specific Title VII limits are:

Up to 100 employees:	\$50,000
101 – 200 employees:	\$100,000
201 – 500 employees:	\$200,000

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501+ employees:

\$300,000

### What does this mean for businesses in California?

Employers must diligently assess and respond to employee complaints regarding race discrimination in the workplace, and must ensure that employees are not retaliated against for voicing those complaints. Based on the Supreme Court's decision, an employer's legal exposure is much higher and an employee's time to assert a retaliation claim is much longer than many businesses believed.

For additional information regarding this decision, or for assistance in assessing or responding to discrimination and retaliation claims, please contact a member of our Employment Law Group.

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