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Supreme Court Broadens Scope of Employment Retaliation Claims Under Civil Rights Act of 1866

In *CBOCS West, Inc. v. Humphries*, No. 06-1431, 553 U.S. ____ (May 27, 2008), the United States Supreme Court recognized that employees may bring retaliation claims under 42 U.S.C. §1981 (“Section 1981”), despite the fact that the statute makes no mention of such claims. The decision, based largely upon the principles of *stare decisis*, will operate to increase greatly the time in which an employee may bring a retaliation lawsuit, and will allow an individual to bring such a lawsuit without first exhausting administrative remedies through the Equal Employment Opportunity Commission (“EEOC”). The decision also allows an individual to pursue unlimited punitive and pain and suffering damages against employers.

Case Overview

Section 1981, part of the Civil Rights Act of 1866, precludes race discrimination in the making and enforcement of contracts. Because an employment relationship is considered contractual, Section 1981 has long been held to apply to employment decisions. Whether retaliation claims also could be pursued under Section 1981 was unclear because such claims are not specifically addressed in the statute.

Plaintiff Hedrick G. Humphries (“Humphries”), who is African-American, was an assistant manager of a Cracker Barrel restaurant, where he worked for three years until his termination for violation of company policy. Humphries claimed that he was fired from Cracker Barrel because of his race and in retaliation for complaining about the termination of another African-American assistant manager. Humphries filed a charge of discrimination with the EEOC and obtained a “right to sue” letter. He then sued in federal court under Title VII of the Civil Rights Act of 1964 (“Title VII”), as well as Section 1981.

The federal district court dismissed Humphries’ Title VII claim because he failed to pay the filing fee, and it granted Cracker Barrel’s motion for summary judgment on the Section 1981 retaliation claim on the grounds that Section 1981 did not recognize such a cause of action. While the Seventh Circuit Court of Appeals upheld the district court’s ruling on Humphries’ Title VII claim, it reversed the district court’s grant of summary judgment on the Section 1981 claim, concluding that retaliation claims are

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included within Section 1981 and remanded for a trial on the retaliation claim only.

In a 7-2 ruling, the Supreme Court affirmed the Seventh Circuit's decision, holding that retaliation claims are included under Section 1981. Justice Breyer, writing for the majority, based the decision "in significant part upon principles of *stare decisis*." He explained that in *Sullivan v. Little Hunting Park, Inc.*, 369 U.S. 229 (1969), the Court had construed the nearly identical language of the statute's companion provision Section 1982, which prohibits discrimination with respect to property rights, as prohibiting retaliation. Because Sections 1981 and 1982 were passed at the same time, as part of the same provision of the Civil Rights Act of 1866, the Court gave the same construction to both provisions.

Justice Thomas, joined by Justice Scalia, dissented, stating that if Congress intended for a law to cover retaliation it would have said so in the statute. "The court does not even purport to identify any basis in the statutory text for the 'well-embedded interpretation [of the law]' it adopts for the first time today," Justice Thomas wrote. He found the statute's text conclusive and argued that retaliation claims are based on conduct, not status. Justice Thomas argued that that the majority misread *Sullivan*, pointing out that the *Sullivan* decision does not even include the word "retaliation."

What This Means for Employers

The Court's decision expands the coverage for race retaliation claims to include small employers with 15 or fewer employees who are not covered under Title VII. Their employees may now sue for retaliation under Section 1981. Additionally, because claims under Section 1981 need not be submitted first to the EEOC, employees may proceed directly to court on retaliation claims under Section 1981, or may do so after the time for filing a complaint with the EEOC has passed. Indeed, because the statute of limitations for Section 1981 claims is four (4) years, employees have a much longer time to bring such claims than if they did so under Title VII, which generally requires that an EEOC complaint be filed within 300 days of the alleged retaliatory act. Moreover, while Title VII places a cap on compensatory and punitive damages at \$300,000 for employers with 500 or more employees, and has lower caps for smaller employers, Section 1981 has no such caps.

As a result of this decision, employees and their attorneys are more likely to pursue retaliation claims under Section 1981 than under Title VII, or to pursue claims under both statutes in order to take advantage of the longer limitations period or the greater potential exposure.

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If you have any questions on *CBOCS West, Inc. v. Humphries* or similar issues, please contact Michael Kun at (310) 557-9501 (mkun@ebgklaw.com) or Kathryn McGuigan at (310) 557-9570 (kmcGuigan@ebglaw.com) at the Firm's Los Angeles office.

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