

SMITH O'CALLAGHAN & WHITE

33 NORTH LA SALLE STREET

SUITE 3800

CHICAGO, ILLINOIS 60602

TELEPHONE
(312) 419-1000

FACSIMILE
(312) 419-1007

WEBSITE
www.socw.com

U. S. Supreme Court Rules: Race Retaliation Claims Are Actionable Under Section 1981

Last week, on May 27, 2008, the U. S. Supreme Court ruled that race retaliation claims are actionable under section 1981, 42 U.S.C. §1981. CBOCS West, Inc. v. Humphries, No. 06-1431, 2008 U.S. LEXIS 4516 (May 27, 2008). Section 1981 of the Civil Rights Act of 1866, a predecessor to Title VII of the Civil Rights Act of 1964, prohibits racial discrimination in the making and enforcement of contracts. The Court's decision will not change current law as lower courts have uniformly found such claims actionable under section 1981.

This case has been closely watched because some employers and commentators have strongly advocated a more narrow interpretation of section 1981. However, the majority of the Court, in a 7-2 decision (Justices Scalia and Thomas dissenting), held that the right to make and enforce contracts without regard to race under section 1981 encompasses claims of retaliation.

The decision is noteworthy for employers as section 1981 offers a potentially powerful alternative to Title VII for employees who file race retaliation claims. With claims under section 1981, plaintiffs may avoid Title VII's more stringent statute of limitations and caps on damages, and may bypass the EEOC and initiate suit directly in the federal courts.*

Key Facts and Points of Law

Hedrick Humphries sued his former employer, Cracker Barrel, alleging race discrimination and retaliation under both Title VII and section 1981. The U. S. District Court for the Northern District of Illinois dismissed Humphries' Title VII claims as time-barred, and granted summary judgment in favor of Cracker Barrel on his section 1981 claims. On appeal, the Seventh Circuit Court of Appeals held that race retaliation claims are actionable under section 1981 and that Humphries had made the necessary prima facie showing for his retaliation claim.

The U. S. Supreme Court held that *stare decisis*, or adherence to prior legal precedent, demands that section 1981's prohibitions on race discrimination also bar retaliation against workers who complain of racial bias or discrimination. The Court rejected the argument that a narrow construction of section 1981 was warranted due to Title VII's existing prohibitions against retaliation. The Court's ruling is in line with nine circuits (Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits) that have directly addressed the issue.

* Also on May 27, 2008, in a separate case, the U. S. Supreme Court ruled that federal government employees who complain about age bias may bring retaliation claims under a statutory provision applying to federal workers – the case is not relevant to employers in the private sector as such claims have previously been available to private sector employees under the ADEA. Gomez-Perez v. Potter, Postmaster General, No. 06-1321, 2008 U.S. LEXIS 4518 (May 27, 2008).

Implications for Employers

- Although section 1981 and Title VII overlap in prohibiting racial discrimination and retaliation, section 1981 provides particular advantages to an employee bringing suit against an employer:

Section 1981	Title VII
No caps on compensatory and punitive damages	Caps at \$300,000 for large employers
No EEOC filing requirement prior to lawsuit	Charge of discrimination must first be filed with EEOC
4 year limitations period for filing most lawsuits (2 year or shorter limitations period on some claims)	180 or 300 days (depending on jurisdiction) to file EEOC charge
Allows for individual supervisor liability in certain circumstances	No individual supervisor liability
Applies to all employers regardless of size	Applies to employers with at least 15 employees

- Section 1981 prohibits discrimination and now retaliation based on race – importantly, many lower courts have held that race is defined broadly to include identifiable classes of persons based on ancestry or ethnicity. Section 1981 generally does not apply to other protected characteristics such as sex, age, religion or disability.
- The Court’s opinion confirming the broad application of section 1981 is consistent with its most recent opinions this year in the labor and employment area. So far this year, the Court has taken a more expansive view of the employment discrimination laws and declined to embrace strict readings of federal statutes governing the workplace.

Smith O’Callaghan & White

www.socw.com

Terry J. Smith

terry.smith@socw.com

Mary Aileen O’Callaghan

maoc@socw.com

Laura A. White

laura.white@socw.com

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