

Ohio ‘Reverse’ Racial Discrimination Ruling Reinforces Employers’ Advantage In Constructive Discharge Cases

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Our clients are typically employers, but [this decision](#) from the U.S. Court of Appeals for the Sixth Circuit (the appellate court for Ohio, Michigan, Kentucky and Tennessee) on Sept. 28 illustrates one piece of advice we would give an aggrieved employee if asked: Don’t quit! (We’re not changing sides, by the way.) Steve Fletcher, a white registered nurse, sued his employer alleging racial discrimination, and his story has many hallmarks of discrimination cases we see every day:

- A new supervisor who, it seems, had heightened the enforcement of rules in comparison to a predecessor. (Both the current and past supervisor are African-American.)
- A complaint by Fletcher to HR of racist actions against him, including that he was being singled out for the enforcement of policies; he claimed HR did not respond to his complaint
- Fletcher was placed on a final warning, in large part for inadequate patient charting. He signed the warning under duress and, he claimed, without the opportunity to respond to the infractions

While Fletcher does not appear to have had demographics on his side for his race discrimination case (other decision-makers and his replacement are white), most readers will recognize this as a challenging situation that requires carefully navigating around the apparent step-up of the rules and policies enforcement, not to mention a complaint to HR that often paves the way for a retaliation claim. Fletcher made his legal path much more difficult by resigning because of his alleged mistreatment, requiring him to claim “constructive discharge” as the adverse action underlying his claims. The court was not buying it. A plaintiff has to demonstrate extreme mistreatment to show constructive discharge and, without that, there often is no underlying adverse action to support the claim. Even assuming Fletcher’s allegations about mistreatment were true, the court said they do not rise to the sort of “badgering, harassment, or humiliation” necessary to show constructive discharge. In an increasingly complex world of employment law, we can perhaps take a little comfort knowing that the challenging employee who quits may find it difficult to prevail in court.

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