

Supreme Court Holds That Employees May Bring Race-Based Retaliation Claims With Fewer Restrictions Under Section 1981

On May 27, 2008 the Supreme Court issued its opinion in *CBOCS West, Inc. v. Humphries*. The Court held, for the first time, that plaintiffs may bring claims for race-based retaliation under Section 1981 of the Civil Rights Act of 1866. Retaliation claims already are available under Title VII of the Civil Rights Act of 1864, but that statute imposes significant limits on damages and requires plaintiffs to submit their claims for review by the Equal Employment Opportunity Commission (EEOC) before they may file suit. The *CBOCS* ruling will have substantial consequences for employers, including exposure to unlimited damages, and a longer time period for employees to file retaliation suits.

In *CBOCS*, *Humphries*, an African-American assistant manager at an Illinois Cracker Barrel restaurant complained to a district manager that his supervisor's reports contained racially offensive remarks. The district manager took no action. Instead, he terminated *Humphries*' employment based on a report from another employee that *Humphries* left the store safe open overnight. *Humphries* filed suit under both Title VII and Section 1981, alleging race discrimination and unlawful retaliation for his complaints about the alleged racial remarks. *Humphries*' Title VII claims were dismissed because he failed to pay a filing fee on time. The district court also dismissed his Section 1981 retaliation claim, holding that the statute does not authorize such claims.

The Supreme Court disagreed, and in a 7-2 decision, held that plaintiffs may recover for race-based retaliation under Section 1981. The majority opinion, written by Justice Breyer, acknowledged that Section 1981 does not expressly prohibit retaliation against employees who raise concerns relating to race. However, the Court held that its previous decisions required it to interpret Section 1981's protections broadly. The dissent, written by Justice Thomas and joined by Justice Scalia, called the majority's deference to precedent a "fig leaf" and said that Section 1981 should be strictly interpreted in accordance with its plain statutory language.

The *CBOCS* decision is likely to trigger an increase in the already-growing number of retaliation lawsuits filed by employees. For plaintiffs, Section 1981 provides a far easier road to victory on retaliation claims than Title VII does. First, it allows plaintiffs to bypass administrative review by the EEOC and go directly to court. Second, employees will have up to four years to file suit—far longer than the 180 day limit under Title VII. Third, Section 1981 contains no cap on

compensatory or punitive damages, in contrast to Title VII's ceiling of \$300,000. Fourth, Section 1981, unlike Title VII, applies to small employers with fewer than fifteen employees, opening them up to retaliation suits (and unlimited damages) for the first time.

Considering the prospect of unlimited damages under *CBOCS* alongside the Supreme Court's current, broad interpretation of what actions may give rise to a retaliation claim, it is absolutely imperative that employers have in place effective policies for addressing complaints relating to bias in the workplace. If you have questions or concerns about the Supreme Court's decision, or retaliation claims generally, please contact Brett Harvey at harveyb@phelps.com or your regular Phelps Dunbar attorney.

eLABORate

Inquiries concerning topics addressed in the *eLABORate* may be directed to any of our Employment Law attorneys:

Jackson, Mississippi

Joseph L. Adams	adamsjo@phelps.com	(601) 360-9708
Deborah Shelby Dees	deesd@phelps.com	(601) 360-9334
Gary E. Friedman	friedmag@phelps.com	(601) 360-9355
Paul O. Miller, III	millerp@phelps.com	(601) 360-9350
W. Thomas Siler, Jr.	silert@phelps.com	(601) 360-9357
Mark Fijman	fijmanm@phelps.com	(601) 360-9716
Kenneth G. Fairly	fairlyk@phelps.com	(601) 360-9705
W. Brett Harvey*	brett.harvey@phelps.com	(601) 360-9721
LaToya C. Merritt	merrittl@phelps.com	(601) 360-9749
Seale Pylate	pylates@phelps.com	(601) 360-9342
Sandra Brown Strong	sandra.strong@phelps.com	(601) 360-9729
Tori L. Winfield	winfielt@phelps.com	(601) 360-9366

Tupelo, Mississippi

Mark N. Halbert	halbertm@phelps.com	(662) 690-8165
-----------------	--	----------------

Baton Rouge, Louisiana

Susan W. Furr	furrs@phelps.com	(225) 376-0230
Karleen J. Green	greenk@phelps.com	(225) 376-0244
Thomas H. Kiggans	kigganst@phelps.com	(225) 376-0247
Jessica Coco	jessica.coco@phelps.com	(225) 376-7954
Mimi Flowers Plauché	plauchem@phelps.com	(225) 376-0279
Betty Burke Uzee	betty.uzee@phelps.com	(225) 376-0235

New Orleans, Louisiana

M. Nan Alessandra	alessann@phelps.com	(504) 584-9297
Jane E. Armstrong	armstroj@phelps.com	(504) 584-9244
Kim M. Boyle	boylek@phelps.com	(504) 679-5790
David M. Korn	kornd@phelps.com	(504) 584-9374
Brandon Davis	brandon.davis@phelps.com	(504) 584-9312
Taryn Southon Nunes	nunest@phelps.com	(504) 584-9383
MaryJo Roberts	maryjo.roberts@phelps.com	(504) 584-9262

Tampa, Florida

Jolee Land	jolee.land@phelps.com	(813) 472-7857
Dennis M. McClelland	dennis.mcclelland@phelps.com	(813) 472-7865
John David Mullen	john.mullen@phelps.com	(813) 472-7867
John E. Phillips	john.phillips@phelps.com	(813) 472-7863
Miguel B. Bouzas	miguel.bouzas@phelps.com	(813) 472-7752

*Contributing Author

All rights reserved, Phelps Dunbar LLP *eLABORate* is published as a service to clients and friends of Phelps Dunbar LLP and should not be construed as legal or professional advice or as opinion on specific fact.