

HR That Works! Three Supreme Court Cases From 2004

This month we are going to review the three most important employment practices cases issued by the Supreme Court during its 2004 term. All of these cases have real world impact at your organization.

1. [*Jones v. R. R. Donnelley & Sons Co.*](#), 541 U. S. 369 (May 3, 2004). In this case, former African American employees of R. R. Donnelly and Sons filed a class action claiming discrimination on the basis of race, including being subjected to a racially hostile work environment. Because the plaintiffs let some time go by before filing their claims, their counsel sought to seek recovery under U.S.C. 42, Section 1981, as opposed to Title VII of the Civil Rights Act or state law. The court ruled that the statute of limitations under Section 1981 was four years and applied in the case.

Plaintiffs gained several advantages as a result of this ruling. First of all they get to avoid dealing with the EEOC pre-filing obligations and are not restricted by the three hundred thousand dollar damages cap under Title VII. In addition the four year “catch-all” statute, which applies to Section 1981 is much longer than the filing limitations under Title VII and state law. As a result of this ruling, employers are encouraged to maintain their personnel records for at least four years (the typical advice had been three years) prior to destroying them.

Lesson learned: Maintain personnel records for at least four years (the typical advice had been three years) before destroying them

2. The second case is [*Pennsylvania State Police v. Suders*](#), No. 03-95, U.S. Supreme Court (June 14, 2004) – (see the November cases of the month). The plaintiff in this case, Nancy Suders, a wife and mother of three children, obtained a position in March of 1998 with the Pennsylvania State Police (PSP) as a communications operator. According to her claim, she was harassed from almost the first day of work. She was allegedly suffered abuse from the station manager as well as other supervisors including obscene gestures and statements. As a result of the conduct, Suders contacted the company’s EEO officer and claimed to need some help. The EEO officer gave Suders her phone number but did not take further action.

As her time on the job progressed she began receiving several reprimands and was accused of falsely stealing tests she had taken to be promoted. She was arrested and then released from custody. She thereafter quit and sued for a number of claims including sexual harassment.

In this decision, the court stated that she could file for sexual harassment under a constructive discharge theory and that the defense offered to employers in the [Faragher](#) decision would still apply. The court stated that a constructive discharge claim involves both the decision by the employee to leave an intolerable condition and some precipitating conduct on part of the employer. This conduct may or may not involve “official action”.

Faragher defense should be available to the employer. Examples of “official acts” that may result in a loss of this defense would include a “humiliating demotion, extreme cut in pay, or transfer to a position in which the employee would face unbearable working conditions.” What seems to be saying is you can be stuck with conduct by managers as opposed to rank and file and may not be afforded the **Faragher** defense. On the flip side, the defense remains available in all other circumstances where the employee is aware of their ability to complain and fails to take advantage of that ability. All the more reason for training of high-level management in this area.

Lesson learned: All the more reason for training high-level management in this area.

3. Last, but not least, in [General Dynamics Land Systems, Inc. v. Cline](#), the U.S. Supreme Court held that age discrimination is a one-way street. Apparently you can discriminate against younger people, just not against older people. GD made a collective-bargaining agreement with the union that eliminated its obligation to provide retiree health benefits, except for current workers aged 50 or more. Employees who were at least 40, but younger than 50, brought an action under the ADEA and eventually lost.

The court stated “The Age Discrimination in Employment Act of 1967 . . . forbids discriminatory preference for the young over the old. The question in this case is whether it also prohibits favoring the old over the young. We hold it does not.” As pointed out by Justice Thomas in his dissent, the court stretched itself to declare that when passing the ADEA, Congress had never considered protecting older workers against preferences given their seniors!

The court was concerned about the impact of “reverse age discrimination” cases on expanding employer liabilities in the layoff and benefits arena.

Lesson learned: This decision might lead companies to encourage older workers to retire by providing better exit packages for them than for younger employees. Because this practice can trigger an age discrimination lawsuit, word your exit packages carefully and train supervisors how to talk with employees about retirement. Use caution in basing *any* employment decision on an employee’s age. Many states — including Oregon, New York, and New Jersey — explicitly prohibit age discrimination against any worker 18 or older. California construes its civil right statutes broadly, in effect codifying a “disparate impact” theory.

These statutes, which are more broadly worded or interpreted than the ADEA, are more likely to support a reverse age discrimination claim than federal statutes, and litigation under them might well have a different outcome than the General Dynamics case.

The risk management implications of a shrinking and aging workforce are rapidly becoming a major employment practices concern. To stay ahead of the curve, consider some of the suggestions in our previous newsletters.

Note: All cases can be found by going to <http://www.findlaw.com/>