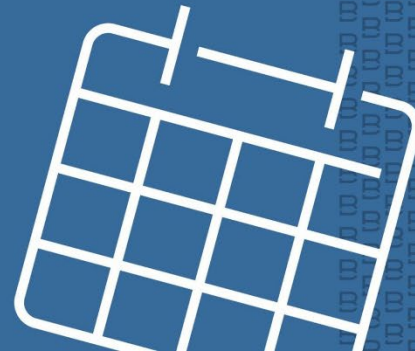


The Work Week

News from the
Bassford Remele
Labor & Employment
Practice Group



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Pushed Out or Walked Out?

What *Pronk* and *Henry* Teach Employers About Constructive Discharge

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When an employee resigns after a demotion or a poor review, the question is whether the employer pushed the employee out. A recent Eighth Circuit decision and a 2023 Minnesota Supreme Court decision reached differing results. In *Pronk v. City of Rochester*, the Eighth Circuit rejected a fire department manager's constructive discharge claim because the record showed the city was trying to keep him, and it treated his silence about age bias as a further ground for dismissing his age claims. In *Henry v. Independent School District #625*, the Minnesota Supreme Court let a state-law claim proceed because the record suggested officials wanted the employee gone, and it held she did not have to report the problem first.

Both courts ask the same two things: were the conditions objectively intolerable, and did the employer intend to force a resignation, or was resignation a reasonably foreseeable result? The differences lie in the evidence of intent, in what the employee must do before leaving, and in whether federal or Minnesota law supplies the rule.

Pronk v. City of Rochester

Earlier this month, the Eighth Circuit affirmed the dismissal of an age discrimination and constructive discharge suit brought by a longtime Rochester, Minnesota fire department manager who retired after his job was reclassified, resulting in removal of supervisory duties, salary reduction, and loss of his seat on the executive team. The employee felt “walked out the door” and retired. The employee filed an EEOC charge and then sued alleging claims under the Age Discrimination in Employment Act (ADEA). The employee amended his complaint to include a Minnesota Human Rights Act claim and claims under 42 U.S.C. § 1983 for equal protection and due process.

The court, relying on precedent, held that losing supervisory duties, feeling unfairly criticized, disliking assignments and losing pay do not, standing alone, amount to the intolerable conditions (i.e., conditions so intolerable that a reasonable employee would have had no realistic option but to resign) needed for a constructive discharge. The court also considered the employer's intent. Referencing the reclassification which allowed the employee to keep working in a role he could handle, the court concluded that the record did not show officials meant to force him out or that retirement was a foreseeable result. Finally, the court reaffirmed its prior decisions which held that constructive discharge claims based on federal laws (ADEA, Title VII) are foreclosed when the employee fails to seek a solution before quitting.

Henry v. Independent School District #625

The plaintiff, a 20-year employee who had excellent reviews for most of her career, received below-standards reviews under new supervisors and was placed on a performance improvement plan. A supervisor testified that her supervisor told her to make the plan unachievable so the plaintiff would be terminated. The supervisor's notes read "[plaintiff]—out by May—rehire." The plaintiff retired right before a meeting where she was set to be terminated. She filed a lawsuit alleging Minnesota Human Rights Act ("MHRA") age discrimination through disparate treatment ending in constructive discharge, and a hostile work environment.

The Minnesota Supreme Court concluded that the conduct was not severe or pervasive enough under a totality-of-the-circumstances test to maintain a hostile work environment claim. The court reiterated prior holdings that constructive discharge because of a hostile work environment requires conduct that is so severe or pervasive that it "alter[s] the conditions of employment and create[s] an abusive working environment." The court cautioned that although federal courts use the same "severe-or-pervasive" standard for hostile work environment claims, conclusions drawn by federal courts are not necessarily binding in MHRA-based claims, and that the standard "must evolve to reflect changes in societal attitudes towards what is acceptable behavior in the workplace."

Although the hostile work environment did not survive, the plaintiff's disparate treatment claim survived. The court concluded that an employee can show an adverse employment action through constructive discharge without proving a hostile work environment. In other words, an employer's conduct may be sufficiently intolerable for a disparate treatment claim involving constructive discharge, even if it is not sufficient for a hostile work environment claim. The employee must show objectively intolerable conditions such that a reasonable person would have quit and that the employer either intended to force a resignation or that resignation was a reasonably foreseeable result.

In contrast to constructive discharge claims under federal law which require the employee to notify their employer of concerns that they are being forced out for discriminatory reasons, the court in *Henry* rejected the requirement that the employee give the employer a chance to fix the problem before resigning. Stated differently, employees asserting disparate treatment claims involving constructive discharge under the MHRA do not need to mitigate by reporting their concerns to the employer before resigning.

What employers should do

- **Make improvement plans a genuine opportunity—not a predetermined exit.** Set achievable expectations, identify available support, and allow a meaningful opportunity to improve. Henry illustrates the risk when evidence suggests a plan was designed to fail.
- **Document the legitimate purpose of job changes.** When changing compensation, responsibilities, or reporting relationships, explain the business reasons and any realistic path for continued employment. In Pronk, evidence that the employer was trying to retain the employee helped undermine the constructive discharge claim.
- Review the whole picture before assuming a resignation is voluntary. A demotion, pay reduction, or loss of supervisory duties may not establish constructive discharge standing alone. But employers should consider the combined circumstances and whether resignation could be a reasonably foreseeable result.
- **Do not treat silence as a safe harbor.** Maintain accessible reporting channels and address concerns promptly, but do not assume that an employee's failure to complain will preclude a claim. As *Henry* explains, an MHRA disparate-treatment claim involving constructive discharge does not require the employee to give the employer an opportunity to fix the problem before resigning.
- **Keep the legal theories separate.** Defeating a hostile work environment claim does not necessarily defeat a constructive discharge theory. Henry shows that a disparate-treatment claim may proceed even when the alleged conduct does not meet the severe-or-pervasive standard.

Bottom line: Employers should be able to show that workplace changes serve legitimate purposes—not an effort to make continued employment untenable.

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