

Justices for employment cases decided after January 1, 2009

| | Benjamin | Workman | McHugh | Davis | Ketchum |
|-----------------|------------|------------------------|------------------------|----------|----------|
| Political Party | Republican | Democrat | Democrat | Democrat | Democrat |
| Joined Court In | 1/1/2005 | 1988-2000, 1/1/2009 | 1980-1997, 9/1/2008 | 1996 | 1/1/2009 |

Roth v. DeFeliceCare, Inc., -- W. Va. --, -- S.E.2d --, 2010 WL 2346248 (June 8, 2010) (per curiam). 3-2 decision (Justices Ketchum and Benjamin dissenting), with dissenting opinion written by Justice Ketchum. [Discussion on Drew Capuder's blog.](#)



Issues: [Sexual harassment](#); [hostile work environment](#); [sex discrimination](#); [retaliation](#); [Harless wrongful discharge](#); [intentional infliction of emotional distress](#); [pleadings requirements](#)

Ruling(s): (1) Roth's sexual harassment and sex discrimination claims should not have been dismissed under Rule 12(b)(6) because they satisfied Rule 8(a) notice requirements. (2) Roth's Harless claim (for discharge in violation of public policy) should not have been dismissed, in that the trial court failed to consider substantial public policies that may have been violated. (3) Roth's claim for retaliation under the WV Human Rights Act was properly dismissed, in that her complaint failed to allege she engaged in any protected activity (4) Roth's claim for intentional infliction of emotional distress should not have been dismissed, in that the allegations in the complaint were sufficient to support that claim.

Decision for: [Employee](#); 3-2 (reversing trial court's Rule 12(b)(6) dismissal of lawsuit, and remanding for new trial)

Opinion(s) on [WV SC site](#), [majority opinion](#) and [dissent](#); on [Google Scholar](#)

PAR Electrical Contractors, Inc. v. Bevelle, -- W. Va. --, -- S.E.2d --, 2010 WL 2244096 (June 3, 2010) (per curiam).



Issues: Hostile work environment; sex discrimination; employer policy; prompt remedial action

Ruling(s): (1) Significant number of racially biased and insulting remarks was serious enough to create a hostile work environment. (2) The fact that some of the racially biased remarks made by supervisors were a factor supporting the conclusion of a hostile work environment. (3) When a hostile work environment exists, an employer must take swift and decisive action to eliminate such conduct from the workplace. (4) Employer failed to take swift and decisive action where it transferred the complaining employee and took no action against the harassing supervisors.

Decision for: [Employee](#); 5-0 (affirmed WV Human Rights Commission's decision in favor of employee on race discrimination claim involving hostile work environment)

Opinion(s) on [WV SC site](#); on [Google Scholar](#)

Isaacs v. Bonner, -- W. Va. --, -- S.E.2d --, 2010 WL 1838390 (May 6, 2010) (per curiam).



Issues: Wage Payment Act

Ruling(s): (1) Claim for unused accrued vacation pay by employee was not fraudulent, and trial court's decision to award damages to former employer was therefore incorrect. (2) Former employer violated Wage Payment and Collection Act by not providing employee accurate information for accrued vacation time.

Decision for: [Employee](#); 5-0 (reversing decision by trial court which had awarded damages in favor of employer)

Opinion(s) on [WV SC site](#); on [Google Scholar](#)

Ford Motor Credit v. West Virginia Human Rights Commission, -- W. Va. --, -- S.E.2d --, 2010 WL 1838393 (May 5, 2010) (per curiam).



Issues: National origin discrimination, constructive discharge, hostile work environment, legitimate non-discriminatory reason, disparate discipline

Ruling(s): (1) Plaintiff's abusive and profane language was a legitimate non-discriminatory reason for disciplinary action against plaintiff. (2) Evidence that other supervisory employees used bad language and were not disciplined was insufficient to establish that employer's claimed reason for discipline was pretext for discrimination. (3) Plaintiff's resignation was not constructive discharge, largely because plaintiff failed to cooperate with company's investigation into plaintiff's complaint of discrimination.

Decision for: [Employer](#); 5-0 (reversing West Virginia Human Rights Commission's decision for employee)

Opinion(s) on [WV SC site](#); on [Google Scholar](#); Human Rights Commission's [decision which was reversed](#)

Justices for employment cases decided after January 1, 2009

***Swears v. R.M. Roach & Sons, Inc.*, -- W. Va. --, -- S.E.2d --, 2010 WL 1839408 (May 5, 2010) (per curiam).**

Issues: Harless wrongful discharge; whistle blower claims; substantial public policy

Ruling(s): (1) Employee’s complaint about theft inside his corporate employer did not involve a substantial public policy, because the theft was internal to the company and did not affect the public good. (2) Under the employment at will rule, an employee may be discharged at any time, with or without cause.

Decision for: [Employer](#); 5-0 (affirmed trial court’s summary judgment for employer)

Opinion(s) on [WV SC site](#); on [Google Scholar](#)

***Benson v. AJR, Inc.*, -- W. Va. --, -- S.E.2d --, 2010 WL 323996 (January 28, 2010) (per curiam).**

Issues: Breach of contract

Ruling(s): (1) Trial court properly instructed jury to determine reason for discharge of employee. (2) Fact that employee breached employment contract did not automatically mean he was not entitled to be paid for remainder of contract period. (3) Employee was entitled to be paid for remainder of contract period under relevant contract provision because employee was not fired for a reason that would have made that provision inapplicable.

Decision for: [Employee](#); 5-0 (affirmed trial court’s judgment in favor of employee on breach of contract claim)

Opinion(s) on [WV SC site](#); on [Google Scholar](#)

***State ex rel. Clites v. Clawges*, 224 W. Va. 299, 685 S.E.2d 693 (October 13, 2009) (per curiam). [Discussion on Drew Capuder’s blog.](#)**

Issues: [Arbitration agreements](#) ([sexual harassment](#) and [retaliation](#) under [WV Human Rights Act](#))

Ruling(s): (1) While the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, preempts state laws which would undercut the enforceability of arbitration agreements, the issue of whether a particular arbitration agreement is a valid contract is a matter of state contract law capable of state court judicial review. (2) The arbitration agreement in issue was a contract of adhesion, but that does not, without more, mean the contract is unenforceable. (3) The arbitration agreement at issue was not unconscionable.

Decision for: [Employer](#); 5-0 (affirmed trial court’s decision that arbitration agreement was binding and not unconscionable)

Opinion(s) on [WV SC site](#); on [FindLaw site](#) (per curiam)

***Erps v. West Virginia Human Rights Commission*, 224 W. Va. 126, 680 S.E.2d 371 (June 22, 2009)**

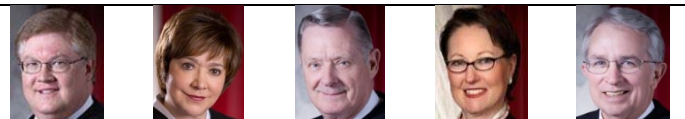
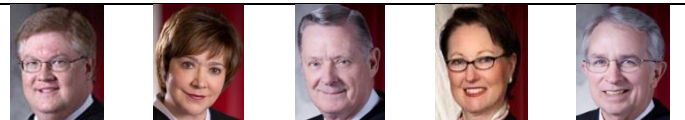
Issues: [Hostile work environment](#); [retaliation](#) (race discrimination case under WV Human Rights Act)

Ruling(s): (1) For conduct allegedly creating hostile work environment, where the plaintiff “solicited, incited, or participated” in the offensive conduct, plaintiff must prove that (a) plaintiff informed co-workers and/or supervisors that future repetition of conduct would be unwelcome, and (b) conduct nevertheless continued. (2) Where plaintiff alleged he was terminated after complaining about discrimination, but plaintiff then refused to return to work until situation was addressed and employer then terminated plaintiff for refusing to return to work, plaintiff must prove evidence of pretext and prove that real reason for termination was the complaint about discrimination.

Decision for: [Employer](#); 5-0 (mostly reversing decisions in favor of employee by WV Human Rights Commission)

Opinion(s) on [WV SC site](#); on [FindLaw site](#)

Benjamin Workman McHugh Davis Ketchum



[Maj Op](#)

Justices for employment cases decided **after January 1, 2009**

***Peters v. Rivers Edge Mining, Inc.*, 224 W. Va. 160, 680 S.E.2d 791 (June 4, 2009)**

Issues: [Future lost income](#); mitigation of damages; [punitive damages](#) (discrimination case based on worker's comp claim under WV Workers' Compensation Act)

Ruling(s): (1) Affirmed front pay award (\$513,410) for 52 year old plaintiff through retirement age, (2) Malicious termination eliminates duty of plaintiff to mitigate damages; (3) punitive damage award (\$1m) was supported by the evidence (with detailed discussion of punitive damage standards in WV)

Decision for [Employee](#); 5-0 (affirming \$1.8m jury verdict for employee)

Opinion(s) on [WV SC site](#); on [FindLaw site](#)

Benjamin



Workman



McHugh



Davis



[Maj Op](#)

Ketchum



***Little v. West Virginia Adjutant General*, 223 W. Va. 790, 679 S.E.2d 622 (May 19, 2009)**

Issues: Defense under [West Virginia Human Rights Act](#)

Ruling(s): Statutory requirement that firefighter be member of Air National Guard was complete defense to firefighter's claim under Human Rights Act.

Decision for [Employer](#); 5-0

Opinion(s) on [WV SC site](#); on [FindLaw site](#)



[Maj Op](#)



Decisions in favor of [employer](#): 5

Decisions in favor of [employee](#): 5

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