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Technical Update

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US Supreme Court Upholds Retaliation Protections for Employees under EEO Claims

Protection for anti-retaliation includes oral complaints if a reasonable person would have understood that the employee put the employer on notice that he was asserting a right under the FLSA (and, by legal extension, Title VII protections).

On March 22, 2011, in Kasten v. Saint-Gobain Performance Plastics Corp, the Supreme Court ruled that the Fair Labor Standards Act of 1938 (FLSA) prohibits employers from retaliating against employees who make oral complaints about violations of the FLSA. The FLSA is a federal law that sets minimum wages, maximum hours, and overtime pay. It includes an anti-retaliation provision which forbids employers from firing or otherwise discriminating against employees because they "filed any complaint" under the FLSA. These anti-retaliation provisions are the same ones that extend to Title VII cases.

Kasten claimed that Saint-Gobain fired him in retaliation for his verbal objections to the company's violation of the FLSA. Specifically, he repeatedly told his supervisor, several human resources representatives, and other Saint-Gobain officials that the company was violating the law by locating its time clocks in a place where employees could not get credit for the time they spent putting on and taking off their protective gear. In a separate lawsuit, Mr. Kasten proved that Saint-Gobain violated the FLSA because it was required to pay its employees for the time they spent "donning and doffing" their protective gear.

The Supreme Court found that Mr. Kasten is entitled to try to prove his retaliation case because "filing any complaint" under the FLSA can include making a verbal complaint to your employer. The Supreme Court noted that the word "filed" has different meanings in different contexts. Sometimes it implies something in writing, but in other contexts it can include verbal statements. It then considered that when Congress passed the FLSA, it recognized enforcement of the law was likely to depend on "information and complaints received from employees seeking to vindicate rights claimed to have been denied," and that the anti-retaliation provision was intended to encourage employees to come forward by preventing employers from silencing them through "fear of economic retaliation."

The Supreme Court reaffirmed that Congress did not intend to limit the FLSA's anti-retaliation protection to written complaints, since that would make it more difficult for illiterate, less educated, and overworked workers to complain. It also explained that limiting complaints to written complaints would prevent government agencies from using hotlines, interviews, and other verbal complaint methods, and would discourage employees from using informal workplace grievance procedures.

However, the Supreme Court also recognized that it would not be fair to employers if the FLSA's anti-retaliation provision applied when the employer did not have fair notice that the employee made a complaint that could subject the company to a retaliation claim. It therefore ruled

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that an oral complaint must have enough formality that the employer either understood or reasonably should have understood that the complaint was a business concern. In other words, a complaint is "filed" when a reasonable person would have understood that the employee put the employer on notice that he was asserting a right under the FLSA. Protection extends to other employees within the zone of interests for workers that Congress intended Title VII to protect.

The Supreme Court also unanimously reversed an appeals court's decision on a ground-breaking employer retaliation case in January, 2011. In the case, Thompson vs. North American Stainless LP, the plaintiff, Eric Thompson, claimed he was fired because his fiancee filed a charge with the Equal Employment Opportunity Commission (EEOC) against their common employer.

Thompson's fiancee filed a charge with the EEOC in September 2002, alleging her supervisors discriminated against her based on her gender. About five months later, the EEOC notified North American Stainless of the charge, and less than a month later, North American Stainless fired Thompson, saying it was for performance-based reasons.

In the majority opinion, Justice Antonin Scalia writes that "injuring [Thompson] was the employer's intended means of harming [the fiancee, Miriam] Regalado. Hurting him was the unlawful act by which the employer punished her," Scalia writes. "In those circumstances, we think Thompson well within the zone of interests sought to be protected by Title VII [of the 1964 Civil Rights Act]." The key question in the case, he says, was how Title VII protection is extended to those close to the complaining worker. Scalia also wrote that it is "obvious that a reasonable worker might be dissuaded from" filing a complaint "if she knew that her fiancee would be fired."

What This Means For Counties

These two cases emphasize the need for counties to include training on EEOC rules and responsibilities as an essential requirement for any supervisory position and require that training to be continuously refreshed. The potential liability of the county can be affected by any supervisor. A supervisor with knowledge and authority can create a retaliation claim by ignoring verbal complaints, failing to investigate the facts, or acting with vengeful intent toward other employees within the protected zone of interests.

It is more important than ever that supervisors be alert to avoiding potential claims by complainants and potential employee witnesses, especially those in the zone of interests. Since the Court did not specifically define that zone, employers need to be vigilant in protecting the rights of employees to make verbal or written complaints, participating in the fact finding process, and correcting wrongdoing.

For more information, contact CTSI at 303-861-0507.