

CLIENT ALERT: Supreme Court Extends Title VII's Anti-Retaliation Protection to Third Party Reprisal Claims

In a decision that will affect employers nation-wide, the Supreme Court unanimously found that an employee has a cause of action for retaliation under Title VII when he was discharged based on his support of the protected conduct of another employee. *Thompson v. North American Stainless, LP*, (January 24, 2011). This decision signals a willingness by the Court to interpret Title VII's anti-retaliation provisions broadly. Moreover, by not limiting what types of relationships will qualify for this type of protection, the Court has potentially created claims for individuals who, prior to the decision, were not explicitly protected under the law.

Title VII's anti-retaliation provision makes it unlawful for any employer to discriminate against any of its employees for engaging in protected conduct (such as filing of a charge of discrimination or participating in an investigation into unlawful discrimination). Prior to the decision, the anti-retaliation provision of Title VII was commonly interpreted as protecting only the employee who engaged in the protected conduct and not the employee's friends or relatives employed at the same employer.

In *Thompson*, the plaintiff claimed that he was terminated from employment where he and his fiancé worked in retaliation for her filing a charge alleging gender discrimination at the Equal Employment Opportunity Commission ("EEOC"). Justice Scalia, writing for the Court, held that Title VII must be interpreted broadly and that there was no statutory reason to bar third party reprisal claims. The Court reasoned that Title VII's anti-retaliation provision was intended to prohibit any employer action that would dissuade a reasonable employee from engaging or supporting a charge of discrimination. The Court concluded that a reasonable employee might be dissuaded from engaging in a protected activity if she knew her fiancé would be fired. The Court further noted that there was no way to create a comprehensive set of rules for the Title VII anti-retaliation provision, so each case going forward will depend on the particular circumstances of that case.

The Court did stop short of allowing any employee to file suit based on the protected conduct on another employee; the Court found that the plaintiff must be within the "zone of interests" in order to be eligible for suit. In lieu of defining the 'zone of interests' affirmatively, the Court defined it in the negative and declared that employees are outside of the zone of interests "if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it can not reasonably be assumed that Congress intended to permit the suit." In applying its new rule to the facts of the case, the Court determined that Plaintiff was within the zone of interests because the record supported an inference that hurting the plaintiff was the employer's intended means of harming his fiancé who brought the initial gender discrimination charge. As a result, Plaintiff had standing to sue under Title VII.

This decision encourages a new class of plaintiff suits whereby those discharged around the same time as other employees' claims of discrimination could have viable retaliation claims depending upon their relationship to the employee engaging in the protected activity. As this decision is further tested, courts will further define the boundaries of the "zone of interests" and provide further guidance for employers in determining who may be protected pursuant to Title VII's anti-retaliation provisions.

The case also puts into perspective a recent "associational discrimination" decision by the Massachusetts Commission Against Discrimination ("MCAD"), finding, under Chapter 151B (the state anti-discrimination statute) that a Caucasian construction worker was discriminated against by his Caucasian boss based upon the employee's relationship with a black woman of Jamaican national origin. A single hearing officer at the MCAD held that the Caucasian employee was a member of a protected class as the result of his association with his Jamaican fiancé. As such he had standing to

sue, and the facts were sufficient to prove that the employer had discriminated against the employee in creating a racially hostile environment.

The MCAD's decision, taken in combination with the *Thompson* case, demonstrates a willingness under State and Federal law to extend employee protections to those associated to parties traditionally covered by Title VII and Chapter 151B. Employers should be aware of the potential for claims of this type moving forward.

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