

SUPREME COURT HOLDS THIRD PARTY RETALIATION CLAIMS ARE ACTIONABLE

Yesterday, the United States Supreme Court issued its decision in **Thompson v. North American Stainless, LP**, and answered in the affirmative the question of whether an employee who is terminated because of the filing of a charge of discrimination by a closely related employee may sue for retaliation under Title VII.

WHAT THE CASE WAS ABOUT

The plaintiff Eric Thompson and his fiancée Miriam Regalado, both worked for North American Stainless (NAS). In February 2003, Regalado filed a charge of discrimination with the EEOC alleging sex discrimination. Three weeks later, NAS terminated Thompson's employment. In response, Thompson filed his own charge of discrimination with the EEOC alleging retaliation under Title VII. When conciliation efforts failed at the EEOC, Thompson filed suit alleging that NAS terminated his employment in order to retaliate against Regalado for filing her charge with the EEOC.

The federal District Court granted NAS's motion for summary judgment, holding that Title VII "does not permit third party retaliation claims." The Sixth Circuit Court of Appeals reversed, but ultimately affirmed, finding that because Thompson had not engaged in any statutorily protected activity, either on his own behalf or on behalf of Miriam Regalado, he was not included in the class of persons Congress intended to protect from retaliation.

THE SUPREME COURT'S REASONING

The Supreme Court agreed to review the case, and in a unanimous opinion, reversed the lower court's decision. The Court addressed two questions on appeal:

1. whether NAS's firing of Thompson constituted unlawful retaliation;
2. and if it did, does Title VII grant Thompson a cause of action?

As to the first question, the Court found "little difficulty" concluding that if the facts alleged by Thompson are true, then NAS's firing of Thompson violated Title VII. The Court found that the anti-retaliation provisions of Title VII should be construed to cover a broad range of actions taken by an employer, including conduct that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." In this respect, the Court held that it was "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancée would be fired." Although NAS argued that prohibiting reprisals against third parties will lead to difficult line-drawing problems concerning the types of relationships entitled to protection (such as a girlfriend, close friend, or trusted co-worker), the Court declined to define a fixed class of relationships for which third-party retaliation is unlawful.

Having found the firing of Thompson constituted unlawful retaliation, the Court turned to the question of whether Title VII provides Thompson with a cause of action. Under Title VII, "a civil action may be brought ... by the person claiming to be aggrieved." In defining the terms "person aggrieved," the Court applied the "zone of interests" test. In other words, does the plaintiff's complaint fall within the "zone of interests" that was intended to be protected?

Applying the "zone of interests" test to the facts of this case, the Court held that Thompson fell within the zone of interests protected by Title VII because he was an employee of NAS, "and the purpose of Title VII is to protect employees from their employers' unlawful actions." Moreover, the Court noted that Thompson was not an accidental victim of the retaliation, but was "collateral damage" of NAS's unlawful act. By injuring him the employer accomplished the intended harm to his fiancée Regalado. In those circumstances, the Court held that Thompson was well within the zone of interests sought to be protected by Title VII and was therefore a "person aggrieved" with standing to sue.

IMPLICATIONS FOR EMPLOYERS

Retaliation claims are often troublesome for employers in that any action taken against the employee who has filed a charge or complained of discrimination may form the basis of a claim for retaliation. This decision clearly signals a significant expansion of the anti-retaliation provisions of Title VII. A person closely related to an individual who files a charge of discrimination may now seek redress in the Court if they

are subjected to retaliation because of their relationship with the person who filed the charge. In this case, it involved a fiancée. Certainly, a close family member such as a husband, wife, parent or child would also fall within Title VII's zone of protection. But after that, it is difficult to know where the line is because the Court refused to draw the line on how close a relationship must be to support a retaliation claim. This will likely open the door to future litigation testing the limits of the Court's ruling.

Now, when disciplining or discharging an employee, it will be prudent to determine if any close relative, friend or fiancée has recently complained of discrimination. If so, be very sure that you will be able to prove your legitimate nondiscriminatory reasons for the action you take.

Reference: *Thompson v. North American Stainless, LP*, 2011 WL 197638 (U.S. Jan. 24, 2011)

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