

LABOR & EMPLOYMENT

SUPREME COURT GREATLY EXPANDS TITLE VII RETALIATION CLAIMS

by M. Reid Estes Jr.

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The Scope of Retaliation Claims Under Title VII of the Civil Rights Act

In the recent case of *Thompson v. North American Stainless*, 131 S. Ct. 863 (January 24, 2011), the U.S. Supreme Court significantly broadened the scope of retaliation claims under Title VII of the Civil Rights Act by unanimously holding that an employee who claimed he was fired in retaliation for his fiancé's complaint of discrimination could sue for unlawful retaliation.

The facts are straightforward: North American Stainless (NAS) terminated Eric Thompson shortly after Thompson's fiancé, Miriam Regalado, who also worked for NAS, filed a gender discrimination complaint with the EEOC. Thompson then sued NAS, claiming that NAS fired him in retaliation for his fiancé's protected activity of filing a charge of discrimination against NAS. NAS moved to dismiss the case, arguing that Title VII does not permit third-party ("associational") retaliation claims. Both the trial court and the en banc Sixth Circuit Court agreed, holding that Thompson couldn't sue NAS for retaliation since Thompson did not personally engage in protected activity.

The Supreme Court reversed, holding that Title VII's protection against retaliation extends not only to employees who themselves oppose discrimination or participate in a proceeding, but also to other employees who can demonstrate some sort of close relationship with an employee who engaged in the protected activity.

The Supreme Court Ruling

In ruling for Thompson, the Supreme Court stated it "had little difficulty concluding" that Thompson could sue for unlawful retaliation since "Title VII's antiretaliation provision must be construed to cover a broad range of employer conduct," and "prohibits any employer action that 'well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" The Court concluded that it thought it was "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." The Court rejected NAS's argument that permitting associational or third party retaliation claims would "lead to difficult line-drawing problems concerning the types of relationships entitled to protection" and "place the employer at risk any time it fires any employee who happens to have a connection to a different employee who filed a charge with the EEOC." Although the Court ruled that an employee could sue for "associational retaliation," it refused to "identify a fixed class of relationships for which third-party reprisals are unlawful," except to say that "firing a close family member will almost always" trigger potential retaliation liability, but "inflicting a milder reprisal on a mere acquaintance will almost never do so." The Court

concluded by observing that "Thompson is not an accidental victim of the retaliation ... [t]o the contrary, injuring him was the employer's intended means of harming Regalado," and that "we think Thompson well within the zone of interests sought to be protected by Title VII. He is a person aggrieved with standing to sue."

In light of the Supreme Court's ruling in *Thompson*, employers should redouble efforts to train managers about the broad reach of anti-retaliation rules, adopt or update anti-retaliation policies, exercise care in disciplining employees closely associated with an employee who has engaged in protected activity, and adopt or update a no-nepotism policy to limit exposure to retaliation claims.

FOR MORE INFORMATION, PLEASE CONTACT:



M. Reid Estes is a member in Dickinson Wright's Nashville office. Reid has over 30 years of litigation experience, with extensive work in the areas of class actions and collective actions, including numerous consumer, wage and hour and employment cases. He can be reached at 615.620.1737 or restes@dickinsonwright.com.