

COURT OPENS DOOR TO MORE RETALIATION CLAIMS

Can an employer be held liable under Title VII anti-retaliation provisions when it fires an employee who has a romantic relation with another co-worker, when the latter has presented an employment discrimination claim against the employer? The United States Supreme Court recently answered this question in the affirmative. *Thompson v. North American Stainless* (Op. January 24, 2011). In doing so, the Court has expanded the availability of retaliation claims under Title VII, and probably under other employment discrimination laws, to a broader group of individuals.

THE FACTS

Eric Thompson worked for North American Stainless, L.P. ("NAS"). While working for NAS he became engaged with Miriam Regalado, also a NAS employee. Some time after their engagement, Regalado filed a charge before the EEOC in which she claimed NAS discriminated against her because of her gender. Three weeks after being notified of Regalado's EEOC charge, NAS fired Thompson because of his performance. Thompson filed an EEOC charge against NAS claiming that he was fired in retaliation as the result of his fiancée's charge.

The District Court granted summary judgment in favor of NAS, concluding that Title VII does not permit retaliation claims by individuals with personal ties to an employee that presents a discrimination complaint. On Appeal, the Sixth Circuit confirmed the District Court judgment. The Circuit reasoned that because Thompson did not "engag[e] in any statutorily protected activity, either on his own behalf or on behalf of Miriam Regalado," he "is not included in the class of persons for whom Congress created a retaliation cause of action."

THE DECISION

When analyzing the case, the Supreme Court found itself before two questions: 1) Did NAS's firing of Thompson constitute unlawful retaliation?; 2) If it did, does Title VII grant Thompson a cause of action? The Court answered both questions in the affirmative.

a) Did NAS's firing of Thompson constitute unlawful retaliation?

The Court concluded that Title VII's anti-retaliation

provision must be construed to cover "any employer action that well might have dissuaded a reasonable worker from making or supporting a charge of discrimination". This construction is broader than Title VII's anti-discrimination provision, which only covers discriminatory practices that would affect any individual's compensation, terms, conditions, or privileges of employment, and that would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee.

After having assumed as true the facts stated by Thompson, the Court concluded it is "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." Although the Court made such statement, it accepted that this conclusion will lead to difficult line-drawing problems concerning the type of relationship entitled to protection, and acknowledged this standard "will place 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." The Court, however, refused to identify a fixed class of relationships that will be protected, and only advanced the following not-so-useful advice: "firing a close family member" will almost always meet the standard, and "inflicting a milder reprisal on a mere acquaintance will almost never do so."

b) If NAS's firing of Thompson did constitute unlawful retaliation, does Title VII grant Thompson a cause of action?

To answer this question, the Court had to analyze if Thompson was a person aggrieved under Title VII. In doing so, the Court applied a "zone of interests" test, which denies the right to claim to a person whose interests are so marginally related to or inconsistent with the purposes implicit in a statute that it cannot be reasonably assumed that Congress intended to permit the lawsuit, and that, on the contrary, will allow the right to claim to a person with an interest "arguably [sought] to be protected by the statutes". The Court stated that the purpose of Title VII is to protect employees from their employers' unlawful actions and that Thompson was an employee of NAS. Moreover, it reasoned that Thompson "was not an accidental victim of the retaliation—collateral damage, so to speak, of the employer's unlawful act. To the contrary, injuring him was the employer's intended means of harming" his fiancée. Accordingly, the Court found that Thompson fell within the

"zone of interests" and, therefore, he was a person aggrieved protected by Title VII with a cause of action.

EFFECT

Considering the Supreme Court declined to set a clear test for this kind of situation, it can be reasonably concluded that *Thompson v. North American Stainless* will increase the number of lawsuits filed against employers. Specifically, it will multiply lawsuits filed by employees claiming that they have suffered an adverse employment action because they have a close, personal tie to the employee who filed a discrimination claim or incurred in any other Title VII protected act (e.g. long time co-workers). Consequently, employers should be aware of this possible scenario and be prepared to avoid any additional exposure when deciding to implement adverse employment actions.

Some measures that may be taken are: 1) establish procedures to help decision-makers identify any potential third-party claimants; 2) implement and/or enforce anti-retaliation policies in the workplace; 3) train managers and decision-maker of this new anti-retaliation development.

Note: Because of the general nature of this Labor News Legal Update, nothing herein should be considered as legal advice or a legal opinion.

For further information, please contact our labor and employment lawyers.

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