

U.S. Supreme Court Expands Anti-Retaliation Protections for Employees

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The recent United States Supreme Court decision in Kasten v. St. Gobain Performance Plastics Corp. expanded employers' potential liability for retaliation by clarifying that oral complaints to supervisors about wage and hour violations fall within the anti-retaliation provisions of the Fair Labor Standards Act ("FLSA"). This decision is a reminder to employers to take all complaints seriously, regardless of how they are communicated to management.

The plaintiff in Kasten made several oral complaints to his supervisors that the location of time clocks in his workplace violated the FLSA. Specifically, he complained that the clocks' locations prevented employees from punching in and out while they were putting on and taking off work clothes and protective equipment. The plaintiff even said he was thinking of filing a lawsuit about the issue. Shortly after he complained to his supervisors, Mr. Kasten was disciplined and then terminated.

Mr. Kasten sued his former employer for retaliation under the FLSA. The District Court granted summary judgment to the defendant company and dismissed the case, and the 7th Circuit Court of Appeals affirmed the dismissal, holding that the FLSA anti-retaliation provision protected only written complaints.

The Supreme Court reversed the earlier decisions, holding that the word "file" in the relevant statute could also mean the filing of oral complaints. Much of the courts analysis discussed various meanings of the word "file," but the important message for employers is that oral complaints of wage and hour violations may give rise to retaliation claims. The Kasten decision brings the analysis of FLSA retaliation law in line with other federal employment statutes, such as Title VII of the Civil Rights Act, that already clearly protect oral complaints.

The Kasten opinion did not resolve the question of how much an employee must say to put the employer on fair notice that he or she is making a protected complaint. Employers must be aware, however, that the courts read anti-retaliation protections



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broadly, and should fully investigate all employee complaints. In addition, an employer who takes any adverse employment actions against employees who have complained should be able to articulate a legitimate reason for the action unrelated to the complaint in order to defend against a potential claim. It is also helpful to document the reason in the employee's file.



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