

## Fourth Circuit Court of Appeals Clarifies FLSA Retaliation Protections

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In *Dellinger v. Science Applications Int'l Corp.*, the Fourth Circuit Court of Appeals ruled the Fair Labor Standards Act (FLSA) did not provide protection from retaliation against a prospective employee. The plaintiff, Natalie Dellinger, had sued a previous employer for alleged violations of the FLSA. She later applied for and accepted a position with the defendant, Science Applications International Corporation (Science Applications). In completing her pre-hire paperwork, Dellinger disclosed her lawsuit against her prior employer. Science Applications then withdrew its employment offer.

Dellinger sued Science Applications, arguing the company withdrew the employment offer in violation of the FLSA's protections against retaliation. Science Applications moved to dismiss the lawsuit, arguing the FLSA's anti-retaliation protections only extend to employees and do not cover prospective employees. The United States District Court for the Eastern District of Virginia dismissed the complaint, and Dellinger appealed to the Fourth Circuit Court of Appeals.

The Fourth Circuit ruled 2-1 that the FLSA's anti-retaliation section, 29 U.S.C. § 215(a)(3), did not protect prospective employees who sued prospective employers for retaliation. The court rejected Dellinger's argument that she met the FLSA's definition of "employee" and that Science Applications met the FLSA's definition of "employer," ruling the FLSA restricts the anti-retaliation provision to employers of the retaliation victim. The court held, "the FLSA gives an employee the right to sue only his or her current or former employer and that a prospective employee cannot sue a prospective employer for retaliation."

Dellinger only addressed civil actions under the FLSA, and the court did not directly address whether an employer could still face criminal liability under 29 U.S.C. § 216(a) for refusing to hire an applicant because of prior protected activity under the FLSA. Although the case clarifies the extent of possible employer liability for retaliation claims, employers should remain wary of basing any hiring decisions on potentially protected activity.



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