



Legal Alert: Supreme Court Permits Third-Party Retaliation Claims

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In a decision that significantly expands the scope of Title VII's prohibition on retaliation, the U.S. Supreme Court has held that an employee who claimed he was fired because his fiancé filed a discrimination charge should be permitted to proceed with his Title VII retaliation claim. See *Thompson v. North American Stainless, LP* (Jan. 24, 2011). The Court's decision reverses that of the Sixth Circuit, which had held that a third party cannot pursue a retaliation claim under Title VII where he has not personally engaged in a protected activity. See our July 7, 2010 Legal Alert, "Is Having a Close Relationship Enough to Pursue Title VII Retaliation Claim?" available at <http://www.fordharrison.com/shownews.aspx?show=6352>.

Among other things, Title VII makes it unlawful for an employer to discriminate against an employee because that person has made a charge under Title VII. The statute permits "a person claiming to be aggrieved" to file a charge with the Equal Employment Opportunity Commission (EEOC) and, if the agency doesn't file suit, to sue the employer based on the employer's alleged actions.

Thompson worked for North American Stainless (NAS) and, while he was employed, met and married another employee, Miriam Regalado. While Thompson and Regalado were engaged, she filed a charge against NAS with the EEOC, claiming her supervisors discriminated against her based on her gender. About a month after the EEOC notified NAS of Regalado's charge, the company discharged Thompson. Thompson sued NAS claiming he was discharged because his fiancé filed a discrimination charge against NAS. The Sixth Circuit affirmed the trial court's decision in favor of NAS, finding that Thompson was not a proper claimant because he did not allege that he himself had engaged in protected activity under Title VII.

The Supreme Court reversed the Sixth Circuit and held that, if the facts as alleged by Thompson are true^[1], he would be protected by Title VII from retaliation and also would be within the class of individuals allowed to bring a claim. In reaching this decision, the Court relied on the language of *Burlington Northern v. White*, the Court's 2006 decision holding that Title VII's antiretaliation provision prohibits any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." The Court in *Thompson* found it "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 the employer's argument that applying the *Burlington* standard to third-party reprisals would create difficult line-drawing problems

regarding the types of relationships entitled to protection. The Court found nothing in the text of Title VII's antiretaliation provision that would provide the basis for making an exception to it for third-party reprisals.

The Court also declined to identify a fixed class of relationships for which third-party reprisals are unlawful. In his opinion for the Court, Justice Scalia wrote: "We expect that firing a close family member will almost always meet the *Burlington* standard and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize." According to the Court, Title VII's antiretaliation provision "is simply not reducible to a comprehensive set of clear rules." The Court emphasized, however, that the determination of whether a reasonable worker would have been dissuaded from making a charge of discrimination must be based on an objective standard, not based on the plaintiff's subjective feelings.

The Court then addressed whether Thompson should be permitted to sue NAS for its alleged Title VII violation. The Court held that the term "aggrieved" in Title VII's antiretaliation provision incorporates the "zone of interest" test, enabling suit by any person "with an interest arguably sought to be protected by" the statute while precluding suit by those who might technically be injured but whose interests are unrelated to the statutory provisions in Title VII.

Applying the zone of interests test to this case, the Court held that Thompson should be permitted to proceed with his retaliation lawsuit. The Court noted that Thompson was not an accidental victim of retaliation. Instead, based on the facts alleged, injuring Thompson (that is, firing him) was the unlawful act by which NAS punished his fiancé. "In those circumstances, 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." The Court's decision was 8-0; Justice Kagan took no part in the consideration or in the decision.

Employers' Bottom Line:

The Court's decision significantly expands the potential scope of Title VII's antiretaliation provision and will likely result in additional lawsuits by those claiming their relationship with someone who filed an EEOC charge was the reason they were discharged or subjected to some other adverse action. In light of the fact-specific nature of such claims, they may be difficult to resolve short of a jury trial. Accordingly, it is more important than ever for employers to ensure that their legitimate reasons for adverse employment actions are sufficiently and properly documented.

If you have any questions regarding this decision or other labor or employment law issues, please contact the Ford & Harrison attorney with whom you usually work.

[1] The Court did not rule on whether the facts Thompson alleged are true.