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eAlert - "Associational Retaliation" Recognized by the U.S. Supreme Court

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In *Thompson v. North American Stainless*, the United States Supreme Court ruled Monday that an employee who did not himself engage in any protected activity, nonetheless had standing to assert a Title VII retaliation claim against his former employer that terminated him after his fiancée engaged in a protected activity.

Eric Thompson, formerly a metallurgical engineer for North American Stainless, claimed he was fired from his job of six years in retaliation for his fiancée's EEOC charge against their mutual employer. At the time of Thompson's termination, he and his then-girlfriend, Miriam Regalado, were engaged to be married, and their relationship was common knowledge at the worksite. Thompson claimed that Regalado filed her EEOC charge in September 2002, alleging discrimination on the basis of gender, that North American Stainless became aware of it in February 2003, and that three weeks later, on March 7, 2003, he was terminated from employment. He alleges that North American Stainless terminated him in retaliation for his then-fiancée's EEOC charge; North American Stainless defended its action, claiming it based the termination on legitimate, non-retaliatory performance-based reasons.

The Sixth Circuit affirmed the trial court's summary judgment in favor of the employer, holding that Regalado's protected activity did not, by association alone, protect Thompson even if the employer based its termination on his girlfriend's filing of a discrimination charge. Because Thompson did not himself engage in a statutorily protected activity, the appellate court found that the plain language of Title VII could not be read to include him in the class of individuals protected from retaliation.

In a unanimous decision, the U.S. Supreme Court reversed, concluding that Thompson could state a claim for retaliation under Title VII. The Court found that Title VII's anti-retaliation provisions were legislatively intended to be broadly construed to include a range of employer conduct so as not to dissuade the reasonable worker from engaging in protected activity; this included the fear that one closely related to him or her will be fired based on the underlying claimant's protected activity. While the Court recognized that it may be difficult for an employer to "draw the line" as to what third-party relationships are entitled to protection (e.g., fiancé versus close friend), it nonetheless relied upon the text of the statute that makes no exception for third party protection from retaliation.

In addition, the Court held that Thompson constituted an "aggrieved" employee under Title VII as he fell within the "zone of interests" that Title VII seeks to protect. The purpose of Title VII is to protect employees from their employers' unlawful actions. Thompson, the Court stated, was not an "accidental victim" of his employer's unlawful act, but rather an intended target designed to punish his fiancée, who engaged in the protected activity.

*Thompson* reinforces the need for employers to properly train their managers and supervisors to avoid any conduct that may be construed as retaliatory, not only with respect to the employee who may engage in protected activity, but those closely associated with such an employee/claimant. While mere friends may not fall within the protected "zone of interest" of an aggrieved employee, there is now support that a sibling, fiancé(e), and spouse do.

For further information on the *Thompson* decision and its implications for your organization's policies and procedures, please contact Glen Kraemer at [gkraemer@chklawyers.com](mailto:gkraemer@chklawyers.com) or Molly Richman at [mrichman@chklawyers.com](mailto:mrichman@chklawyers.com), both resident in our Santa Monica, CA office.

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