

Recent Supreme Court Case Allows Third Party Retaliation Claims

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On January 24, 2011, the Supreme Court of the United States issued a unanimous (8-0, Justice Kagan recused herself) decision in *Thompson v. North American Stainless, LP*, 131 S. Ct. 863 (2011) that expanded the provisions of Title VII retaliation. In *Thompson*, the Supreme Court ruled that Title VII prohibits third party retaliation. Specifically, the Court found that the employer violated Title VII by terminating an employee after his fiancée had filed a charge with the Equal Employment Opportunity Commission ("EEOC"). After *Thompson*, employers now must contend with a different type of retaliation, one brought by an employee who claims he or she was retaliated against because of a "relationship" he or she had with a co-worker who engaged in protected activity, but not because he or she engaged in protected activity.

In *Thompson*, both petitioner Eric Thompson and his fiancée, Miriam Regalado, worked for the respondent North American Stainless ("NAS"). In February of 2003, Regalado filed a charge of sex discrimination with the EEOC against NAS. Three weeks later, NAS terminated Thompson's employment. Thompson then filed an EEOC charge and after conciliation efforts were unsuccessful, he filed suit against NAS in the United States District Court for the Eastern District of Kentucky for Title VII retaliation.

Thompson alleged that NAS fired him in order to retaliate against his fiancée for filing her EEOC charge. The District Court granted summary judgment in favor of NAS, concluding that Title VII does not permit third party retaliation claims. On appeal, the United States Court of Appeals for the Sixth Circuit reversed the District Court. However, on rehearing en banc, the Sixth Circuit then affirmed the District Court, finding that Thompson did not engage in any statutorily protected activity under Title VII. The Supreme Court then granted certiorari to determine whether Thompson's termination constituted unlawful retaliation and whether Title VII granted Thompson a cause of action.

Regarding the first issue, the Court found that Title VII prohibited NAS from terminating Thompson. Relying on the Court's previous decision in *Burlington N. & S. F. R. Co. v. White*, 548 U.S. 53 (2006), the Court determined that Title VII's antiretaliation provision must be construed broadly. The Court noted that Title VII's anti-retaliation provisions are designed to prohibit employers from taking actions that "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Accordingly, the Court found that a reasonable worker might be dissuaded from engaging in a protected activity if her fiancé was going to be fired as a result.

While the Court declined to identify a fixed class of relationships that are protected from third party retaliation, the Court indicated that "firing a close family member will almost always meet the ... standard, and inflicting a milder reprisal upon a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize." The Court stated that given the variety of workplace contexts in which retaliation may occur, the antiretaliation provision cannot be reduced to a clear set of rules.

The Court next considered the issue of whether Thompson could sue NAS under Title VII even though, unlike his fiancée, he had not engaged in protected activity. The Court rejected NAS's argument that

Thompson was not, in the words of Title VII, a "person aggrieved" under that law. The Court concluded that Thompson could bring a cause of action because he was within the "zone of interests protected by Title VII" as he was an employee of NAS. The Court found, "Thompson was an employee of NAS, and the purpose of Title VII is to protect employees from their employers' unlawful actions . . . Hurting him was the unlawful act by which the employer punished her. In those circumstances, we think Thompson well within the zone of interests sought to be protected by Title VII."

There will likely be an increase in retaliation claims following this decision. The difficulty for employers is that the Court specifically declined to establish a rule defining this new third party retaliation cause of action, and instead indicated that these claims will be analyzed on a case-by-case basis. This case brings light to another avenue of retaliation claims with which employers need to be aware.