

“What keeps you up at night?”

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Supreme Court holds FLSA protects employees against retaliation on the basis of oral complaints

By Heather R. Pruger

SUMMARY

On March 22, 2011, the U.S. Supreme Court held in *Kasten v. Saint-Gobain Performance Plastics Corp.* that the Fair Labor Standards Act ("FLSA") prohibits employers from retaliating against employees on the basis of an employee's oral complaint. In reaching its decision, the court rejected the employer's contention that the FLSA protected only written complaints. The Supreme Court declined to address the employer's alternative argument that the FLSA does not protect employees' complaints made directly to employers, as opposed to the Department of Labor or another governmental agency.

WHAT HAPPENED?

Kevin Kasten, an employee of Saint-Gobain Performance Plastics Corporation, sued Saint-Gobain for retaliatory discharge under the FLSA. Kasten alleged that he followed his employer's internal grievance resolution procedure by orally complaining to his supervisor on multiple occasions that Saint-Gobain's timeclocks were placed in an unlawful location. In addition to making complaints to his supervisor, Kasten claimed that he had voiced his concerns to his shift supervisor, a human resources employee and his lead operator. Subsequently, Saint-Gobain terminated Kasten's employment.

While Saint-Gobain advanced a different version of the events alleged by Kasten, the U.S. District Court for the Western District of Wisconsin, accepting Kasten's versions of the facts as true, granted summary judgment in favor of Saint-Gobain on the basis that the FLSA did not protect oral complaints. The appellate court agreed with the district court, and affirmed summary judgment for Saint-Gobain on the same grounds. Recognizing that appellate courts across the nation held conflicting positions on whether employees' oral complaints are protected by the FLSA, the U.S. Supreme Court agreed to hear the case.

In a 6-2 opinion authored by Justice Breyer, the Supreme Court held that, to the extent an employee makes an oral complaint that is "clear and detailed" in light of the content and context of the complaint, and observes at least "some degree of formality," that complaint is protected by the FLSA. Such an oral complaint must give an employer "fair notice" that the employee has alleged a violation of his rights under the FLSA, and that the complaint could subject the employer to a later claim of retaliation. However, the court left the task of determining what constitutes "fair notice" to the trial courts. Additionally, because neither party had raised on certiorari the alternative argument concerning whether the FLSA's anti-retaliation provision protects only complaints filed with the government, the court declined to resolve the circuit split on that issue. The court vacated the appellate court's decision and remanded the case to allow the lower courts to decide whether Kasten's oral complaints had provided sufficient notice to Saint-Gobain that Kasten was "asserting statutory rights under the [FLSA]." Justices Scalia and Thomas dissented, contending that the FLSA's protections do not extend to complaints made to private employers, and criticizing the majority's decision to not address this issue, which would have rendered moot any distinctions between oral and written complaints made to private employers.

WHY IS IT IMPORTANT?

Following the Supreme Court's *Kasten* decision, the circuits remain split on whether internal employee complaints are protected by the FLSA, and much discretion has been left in the hands of trial courts

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to determine the level of detail and formality required for an oral complaint to be protected. In light of these uncertainties and the Supreme Court's broad interpretation of the FLSA's protection of employee complaints, employers should be particularly mindful that employees' internal oral complaints, even where those complaints are made outside the employer's internal grievance procedures, could constitute protected activity under the FLSA's anti-retaliation provision.

This Alert was written by Heather R. Pruger, a member of the firm's Labor, Employment and Employee Benefits Practice Group. Heather can be reached at 410.332.8635 or hpruger@saul.com. This publication has been prepared by the Labor, Employment and Employee Benefits Practice Group for information purposes only.

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