

Employment, Labor & Benefits Alert



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Two Recent Cases Expand the Scope of Potential Discrimination/Retaliation Claims Based on an Employee's Relationship with Others

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Two recent rulings—one by the U.S. Supreme Court and one by the Massachusetts Commission Against Discrimination (MCAD)—have greatly expanded the scope of potential liability under federal and Massachusetts state antidiscrimination laws.

On January 24th, the Supreme Court issued its decision in *Thompson v. North American Stainless* (*Thompson*), holding that an employer may violate Title VII by retaliating against an employee who is related to a worker engaged in conduct protected by Title VII—even if the employee himself neither raised a claim of discrimination nor engaged in any protected conduct.

In *Thompson*, both the plaintiff and his fiancée worked for the defendant, North American Stainless. Three weeks after the plaintiff's fiancée filed a sex discrimination claim against the employer, the plaintiff was fired. The plaintiff was not involved in the filing of his fiancée's discrimination claim and was not otherwise involved in the events giving rise to the claim or the internal investigation that followed. Nonetheless, he filed suit against the employer alleging that the employer fired him as retaliation against his fiancée for the complaints she had made.

In an 8–0 decision, the Supreme Court found that Title VII's antiretaliation provisions prohibit employers from any conduct that might dissuade a reasonable worker from making or supporting a charge of discrimination, including conduct that impacts a third party. Based only on the plaintiff's relationship to the complainant, the Court concluded that a reasonable worker might be dissuaded from engaging in protected conduct (i.e., complaining about discriminatory conduct) if he knew his fiancée would be fired as a result.

The Court, therefore, held that the plaintiff could pursue his claim that the retaliation against him was based on protected conduct engaged in by his fiancée. The Court's holding, therefore, means that employers are now exposed to a new type of Title VII retaliation claim that can be brought by an employee who has not engaged in any protected activity, but is related to someone who has.

Similarly, MCAD recently ruled in *Grzych v. American Reclamation Corp., et al.* (*Grzych*), that racist comments about a white employee's relationship with a member of a protected class is sufficient to confer standing to bring a racial harassment suit under M.G.L. c. 151B.

In *Grzych*, a white employee sued his former employer for racial harassment, based on certain racially derogatory statements made by the company's owner regarding the employee's relationship with a black woman of Jamaican descent. Because the owner repeatedly made racist comments to the employee regarding this relationship, MCAD found that the employee had standing to sue, based on his association with a member of a protected class.

The company's owner, who refused to testify at MCAD, appeared to take the position that he could not be held liable for racial harassment because both he and the complainant were white. MCAD disagreed and awarded \$50,000 in emotional distress damages and levied a statutory maximum \$10,000 civil penalty, holding the company and the owner jointly and severally liable for the full damage award and civil fine.

While both of these cases represent a significant expansion of the types of employees that are entitled to protection under federal and Massachusetts antidiscrimination laws, neither the Supreme Court nor MCAD specifically identified the specific class of relationships or individuals for which the theory of relational discrimination/retaliation would be cognizable. Accordingly, the precise lines defining the expansion of liability contemplated by *Thompson* and *Grzych* will likely be drawn in future cases.

Nevertheless, these decisions highlight our courts' new willingness to interpret antidiscrimination laws broadly—even by expanding protection to individuals who seemingly are not in a protected class under such laws—in order to further the goal of eliminating unlawful discrimination and harassment in the workplace.

These decisions underscore the fundamental precept that employers should in all cases be able to articulate legitimate, nondiscriminatory and nonretaliatory reasons for their actions, and further underscore the importance of consulting with counsel where an employment action could be construed as violative of applicable antidiscrimination laws.

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