

Alerts and Updates

SUPREME COURT HOLDS THAT FLSA'S ANTI-RETALIATION PROVISION APPLIES TO ORAL COMPLAINTS

March 28, 2011

On March 22, 2011, in a 6–2 decision, the U.S. Supreme Court in *Kasten v. Saint-Gobain Performance Plastics Corp.*,¹ held that the FLSA's anti-retaliation provision—which prohibits employers from discharging or otherwise discriminating against an employee because such employee has "filed any complaint"—includes oral as well as written complaints.

While employed by Saint-Gobain, Kevin Kasten made an oral complaint to Saint-Gobain officials that the location of the time clocks, past where the employees were required to put on and take off protective gear, was illegal under the FLSA. Kasten alleged that he was terminated because of the complaint and brought suit, alleging a claim of retaliation under the FLSA. The district court granted summary judgment to Saint-Gobain, finding that the FLSA's anti-retaliation provision did not protect oral complaints. The Seventh Circuit affirmed the district court's decision.

The Supreme Court granted certiorari, limited to the question of whether an oral complaint of a potential violation of the FLSA qualified as protected conduct under the FLSA. The Court surveyed dictionary definitions; contemporaneous judicial usage at the time of the FLSA's enactment; the use of the word "filed" elsewhere in the FLSA; and the language of other statutes to analyze whether the text, taken alone, provided a conclusive answer to the question—and concluded that it did not.

Relying upon the "basic objectives" of the FLSA's anti-retaliation provision, the Court found that Congress intended the provision to cover oral as well as written complaints. It also cited the high illiteracy rate at the time of the FLSA's enactment to support its reasoning. In addition, the Court deferred to the U.S. Department of Labor's interpretation that the statutory language encompassed oral complaints.

In response to Saint-Gobain's contention that opening the door to oral complaints would make it difficult for employers to discern exactly when oral statements of employees qualified as protected conduct, the Court found that the touchstone should be whether the employer has fair notice, reasoning that the phrase "filed a complaint" contemplates "some degree of formality." The Court stated that "[t]o fall within the scope of the antiretaliation provision, a complaint must be sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the statute and a call for their protection."

The Supreme Court specifically reserved the question of whether the FLSA's anti-retaliation provision applies to complaints made by employees to private employers, finding that this question was not squarely raised in the petition for certiorari. However, the Court's expansive interpretation of the FLSA, and reliance upon the FLSA's objectives in reaching its holding, indicates that the Court may be inclined to read the FLSA's statutory language broadly.

What This Means for Employers

The Supreme Court's decision in *Kasten* illustrates the significance of reviewing and revising employer policies and training employees to ensure that employers provide employee complaint procedures and investigatory mechanisms to promptly and thoroughly address oral as well as written complaints of potential FLSA violations. Employers should evaluate the findings of any investigation and take prompt and effective corrective action where appropriate. Moreover, employers should clarify through their policies and employee training that employees cannot be retaliated against for making oral or written complaints of potential FLSA violations. Employers should be mindful of whether an employee has engaged in protected conduct under the FLSA prior to taking any type of adverse employment action or any action that might have dissuaded a reasonable worker from making or supporting a complaint under the FLSA.

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For Further Information

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Note

1. *Kasten v. Saint-Gobain Performance Plastics Corp.*, 2011 U.S. LEXIS 2417 (U.S. Mar. 22, 2011).

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