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Verbal Complaints Can Fall Within the Protection of the Fair Labor Standards Act's Anti-Retaliation Provision

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On March 22, 2011, in *Kasten v. Saint-Gobain Performance Plastics Corp.*, the United States Supreme Court held that an employee who lodges verbal complaints regarding alleged violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §201 *et seq.* (“FLSA”), may be entitled to protection of the FLSA’s anti-retaliation provision. The *Kasten* decision is a boon to employees, but could create potential problems for employers.

The FLSA’s anti-retaliation provision prohibits an employer from discharging or discriminating against an employee “because such employee has filed any complaint or instituted any proceedings under or related to [the FLSA].” 29 U.S.C. §215(a)(3). The *Kasten* Court was presented with the question as to whether “filed any complaint” includes oral as well as written complaints. In a 6-2 decision, the Court concluded that it did.

In *Kasten*, the plaintiff, Kevin Kasten (“Kasten”), sued his former employer, Saint-Gobain Performance Plastics Corp. (“Saint-Gobain”), alleging that he was terminated in violation of the FLSA’s anti-retaliation provision after he orally complained to Saint-Gobain’s management of alleged violations of the FLSA. Kasten complained internally in accordance with Saint-Gobain’s grievance resolution process. Saint-Gobain subsequently terminated Kasten, leading to the underlying lawsuit.

Even though the parties disputed the reason for Kasten's termination, the district court granted summary judgment in favor of Saint-Gobain and dismissed the complaint, finding that the FLSA's anti-retaliation provision did not protect oral complaints. The Seventh Circuit Court of Appeal, agreed and affirmed the grant of summary judgment.

The Supreme Court, however, held differently, resolving a conflict on this question among the Circuit Courts. The Court analyzed the meaning of "filed" and "any complaint," and held that the FLSA includes oral complaints. In reaching this holding the Court considered dictionary definitions of the words in question, legislative intent, and the views of agencies such as the Department of Labor and the Equal Employment Opportunity Commission.

The Court appears to have left somewhat open the question of when an oral complaint will be deemed "filed" within the meaning of the FLSA. The Court did, however, note that "a 'filing' is a serious occasion, rather than a triviality", and that the FLSA "contemplates some degree of formality" such that the employer receives fair notice of the complaint. The Court did not, however, expound upon the contours of such formality and notice, and these will likely be issues in future FLSA retaliation lawsuits.

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