



# JW | Employer's e-Alert

An important Labor & Employment law update from the law firm of Jackson Walker.

**January 25, 2011**

## Resources

JW Labor Practice Area

JW Labor Attorneys

JW Labor Publications

Contact JW

[www.jw.com](http://www.jw.com)

## Offices

### Austin

100 Congress Avenue  
Suite 1100  
Austin, TX 78701

### Dallas

901 Main Street  
Suite 6000  
Dallas, TX 75202

### Fort Worth

777 Main Street  
Suite 2100  
Fort Worth, TX 76102

### Houston

1401 McKinney Street  
Suite 1900  
Houston, TX 77010

### San Angelo

301 W. Beauregard  
Avenue  
Suite 200  
San Angelo, TX 76903

### San Antonio

112 E. Pecan Street  
Suite 2400  
San Antonio, TX 78205

## U.S. Supreme Court Prohibits Retaliating Against Third-Parties in the Workplace

By Lionel M. Schooler

INTERACTIONS WITH "RELATED" EMPLOYEES. Employers who employ more than one family member or someone with a close relationship to another co-worker must now exercise caution in its workplace relationships with such employees.

This is because in a decision styled *Thompson v. North American Stainless L.P.*, the United States Supreme Court announced on January 24, 2011, an expansion of the "anti-retaliation" component of Title VII of the 1964 Civil Rights Act. This decision imposes new limits on employers' right to take disciplinary actions against third-party employees who are "related" to co-workers who complain about discriminatory practices in the workplace.

The impact of this decision (as explained below) will be that when one employee makes a charge of discrimination under Title VII against the employer, employers will need to avoid any conduct against an individual who is "related" to that complaining co-worker that could violate Title VII's anti-retaliation provision.

THE DECISION IN THE THOMPSON CASE. In the *Thompson* case, Miriam Regalado filed a charge of sex discrimination against her employer. At the time both she and her fiancé, Eric Thompson, worked for the employer. Within three weeks of having been notified by the Equal Employment Opportunity Commission (EEOC) that Ms. Regalado had filed such a charge, the employer fired Mr. Thompson.

Mr. Thompson then filed his own charge with the EEOC, claiming that he had been subjected to unlawful "retaliation" by the employer in violation of Title VII's anti-retaliation provision because of its reaction to the charge of discrimination filed by his fiancée. Although this case arose in another part of the country, our federal appeals court covering cases arising in Texas (the United States Court of Appeals for the Fifth Circuit) had previously held that merely being related to a co-worker who files a charge does not entitle an individual to claim retaliation if he or she then suffers an "adverse employment action."

Rather, the Fifth Circuit (like the Court of Appeals ruling upon Mr. Thompson's claim) had held that to be eligible to file a claim of retaliation, an employee had to show that he or she had actually opposed a discriminatory practice of the employer, not just that he or she was a target of retaliation solely because of being "related" to the person claiming discriminatory practices.

The United States Supreme Court rejected this restrictive approach to Title VII's anti-retaliation clause, holding that this statute was intended to cover any person "claiming to be aggrieved." The Court indicated that this section of Title VII prohibits any employer action that "well might dissuade a reasonable worker from making or supporting a charge of discrimination," in other words, any employer

action that could dissuade a person like Ms. Regalado in this case from lodging a discrimination complaint for fear of having her fiancé fired.

WHO IS PROTECTED BY THIS DECISION? The Court's decision interjects a "relationship" test into the anti-retaliation provision of Title VII, expanding persons eligible to complain about retaliation beyond those who actually oppose an allegedly discriminatory employment practice or actively aid others in opposing them. Nevertheless, while making clear that the anti-retaliation is not restricted solely to those actively opposing discriminatory employment practices, and is not restricted to "persons related by blood or marriage" to those who do complain about discriminatory employment practices, the Court did not answer a difficult corollary question posed by its ruling: what is the meaning of the concept "related"? Does this cover not only a blood relative but also a girl/boy friend, a close friend, a trusted co-worker?

The Court discussed this question against the backdrop of its landmark 2006 decision in *Burlington Northern Railroad v. White*, which established that employers can be liable for retaliating against individuals for a broad range of employer conduct, not just firing or demoting them.

Acknowledging the force of the question about a need for a potential limit as to which third-parties are to be protected by the anti-retaliation clause, the Court declined to identify a "fixed class of relationships for which third-party reprisals are unlawful." It described in broad terms a spectrum of eligibility such that "firing a close family member will almost always meet the standard, while inflicting a milder reprisal on a mere acquaintance will almost never do so," but declined to generalize beyond that point. It also made clear that judging harm to an "aggrieved" person under this law had to be based upon an "objective" standard, rather than an individual's "unusual subjective feelings."

CONCLUSION. This new decision by the U.S. Supreme Court obligates employers to exercise greater care in reacting (if at all) to claims of discrimination. Employers are best advised to ensure that well-documented legitimate, non-discriminatory or non-retaliatory reasons underlie any significant disciplinary action towards any employee. To the extent possible, employers are also well advised to consider timing issues when dealing with discipline or termination issues for employees who are related to another employee, particularly where there is a family or close personal relationship.

For further assistance, please contact **Lionel M. Schooler** at 713.752.4516 or [lschooler@jw.com](mailto:lschooler@jw.com).

---

*If you wish to be added to this e-Alert listing, please **SIGN UP HERE**. If you wish to follow the JW Labor group on Twitter, please **CLICK HERE**.*

Austin

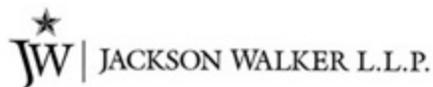
Dallas

Fort Worth

Houston

San Angelo

San Antonio



*Employer's e-Alert* is published by the law firm of Jackson Walker L.L.P. to inform readers of relevant information in labor law and related areas. It is not intended nor should it be used as a substitute for legal advice or opinion which can be rendered only when related to specific fact situations. For more information, please call 1.866.922.5559 or visit us at [www.jw.com](http://www.jw.com).

[Click here to unsubscribe your e-mail address](#)  
901 Main Street, Suite 6000 | Dallas, Texas 75202