



Legal Alert: Supreme Court Holds That FLSA's Antiretaliation Provision Includes Oral Complaints

3/28/2011

In a 6-2 decision^[1] issued March 22, the U.S. Supreme Court held that oral complaints are covered by the antiretaliation provision of the Fair Labor Standards Act (FLSA), resolving a split of authority among the federal appeals courts on this issue. See *Kasten v. Saint-Gobain Performance Plastics Corp.*

Kasten sued his former employer for retaliation under the FLSA, claiming he was terminated because of his oral complaints about the location of the company's time clocks. The time clocks were located in an area between where the employees put on and took off their protective equipment and the area where they carried out their assigned tasks. In a companion case, a federal court held that the placement of these time clocks was a violation of the FLSA because the employer did not compensate employees for time they spent putting on and taking off their protective equipment.

Both the district court and the Seventh Circuit Court of Appeals held that these complaints did not trigger the antiretaliation provision of the FLSA because the Act does not protect oral complaints. Kasten sought review from the Supreme Court, which held that the FLSA's antiretaliation provision does cover oral complaints to the employer.

The FLSA's antiretaliation provision, 29 U.S.C. § 215(a)(3), prohibits employers from taking certain retaliatory actions against employees who raise concerns over FLSA issues. Specifically the provision makes it unlawful:

to discharge or in any other manner discriminate against any employee because such employee has *filed any complaint* or instituted or caused to be instituted any proceeding under or related to [the FLSA], or has testified or is about to testify in such proceeding, or has served or is about to serve on an industry committee.

(emphasis added).

In determining that this provision covered Kasten's oral complaints, the Court looked specifically at the part of the provision reading "file any complaint." Because the dictionary definition of "file" did not necessarily limit the scope of its use to written complaints, and because of the word's ambiguous usage in other parts of the Act did not provide guidance to its meaning, the Court turned to so-called "functional considerations" to determine whether the

phrase "file any complaint" included oral complaints.

First, the Court asserted that not allowing an individual to receive protection for oral complaints would undermine the basic objectives of the FLSA. Second, the National Labor Relations Act, which the Court posited had similar enforcement needs, has been given a similarly broad interpretation. Third, taking into account Congress' delegation of enforcement powers to administrative agencies, the Court also gave weight to the interpretation of both the Equal Employment Opportunity Commission and the Secretary of Labor. According to both of these administrative bodies, "file any complaint" includes both oral and written complaints.

In response to the employer's concern that an oral complaint may not provide the employer fair notice that the employee is, in fact, making a complaint about a violation of the FLSA, the Court held that to fall within the protection 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."

Finally, the Court noted that it would not consider the employer's argument that it should prevail on the grounds that the employee complained to a private employer, as opposed to the Government, because the Court does not normally consider a separate legal question that was not raised in the certiorari briefs. The Seventh Circuit's decision was therefore vacated and remanded for further proceedings consistent with the opinion.

Employers' Bottom Line

The Supreme Court's decision expanding the scope of the FLSA's antiretaliation provision to cover oral as well as written complaints means an employer is potentially liable for retaliatory acts of a much broader variety. Accordingly, employers must be more diligent than ever regarding employee complaints about FLSA issues.

If you have any questions regarding this decision or the issues addressed in this Alert, please contact the author, [Heath Edwards](#), hedwards@fordharrison.com, an attorney in our Atlanta office, or the Ford & Harrison attorney with whom you usually work.

[1] Justice Kagan did not take part in the decision.