

[U.S. Supreme Court Widens the Scope of Retaliation Claims under Title VII](#)

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The number of retaliation-based charges of discrimination filed with the [Equal Employment Opportunity Commission](#) (the "EEOC") has doubled from approximately 18,000 to 36,000 in the last ten years. Last week, the United States Supreme Court issued a decision that surely will cause this trend to continue. In a unanimous decision, the Court held in [Thompson v. North American Stainless \(pdf\)](#) that an employee who claimed he was terminated because his fiancée engaged in protected activity, could bring a retaliation claim against their mutual employer under Title VII of the Civil Rights Act of 1964 ("Title VII").

Plaintiff Eric Thompson met and eventually became engaged to Miriam Regalado met while both worked for North American Stainless ("NAS"). Subsequently, Regalado filed a charge of discrimination with the EEOC, claiming NAS discriminated against her because of her sex. Approximately three weeks later, NAS fired Thompson. Thompson filed suit, alleging his termination was in retaliation for his fiancée's protected activity.

Both the U.S. District Court for the Eastern District of Kentucky and the Sixth Circuit Court of Appeals ruled that Thompson did not have standing to sue for retaliation under Title VII because he had not engaged in any protected activity under the law. The Sixth Circuit reasoned that the plain language of Title VII did not contemplate third-party retaliation claims. The statute specifically provides that: "It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . *because he has opposed* any practice made an unlawful employment practice by this title, or *because he has made* a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title."

In an opinion written by Justice Scalia, the Supreme Court determined that NAS's alleged conduct was prohibited by Title VII. The Court ruled that the anti-retaliation provision of Title VII must be construed broadly to prohibit any employer action that would "have dissuaded a reasonable worker from making or supporting a charge of discrimination." Applying this rule, the Court found that a reasonable employee certainly would be dissuaded from engaging in protected activity if she knew that the consequence would be her fiancé's termination from the company.

NAS argued unsuccessfully that this standard will force employers into an unenviable position of having to try to identify whether an employee who is about to be terminated has a close relationship with someone who recently engaged in protected activity before taking an adverse

action that could expose it to a third-party retaliation claim. In rejecting this argument, the Court noted that, "[a]lthough we acknowledge the force of this point, we do not think it justifies a categorical rule that third-party reprisals do not violate Title VII."

The Court refused to articulate a bright-line rule concerning how close a relationship must be to afford third-party retaliation protection, stating in pertinent part, "[w]e expect that firing a close family member will almost always meet the *Burlington* standard, and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize."

In analyzing Thompson's standing to sue under Title VII, the Supreme Court went on to find that the term "person aggrieved" under the statute includes a plaintiff who falls within the "zone of interests" sought to be protected by Title VII. Thus, if Title VII "arguably sought" to protect that person's rights, he or she has standing under Title VII; however, if the individual has interests that are only "marginally related to or inconsistent" with the purposes of law, no standing to sue exists.

According to the Supreme Court, Thompson had standing to pursue his own retaliation claim against NAS because he fell within the amorphous "zone of interests" contemplated by Title VII.

It should be clear that this case expands the bounds of employers' potential liability under Title VII. Now, more than ever, employers should use caution when taking adverse action against an employee whose spouse, family member, domestic partner or fiancé(e) recently engaged in protected activity. And, as always, employers should document the specific reasons for employee terminations and follow established company policies to limit later arguments by a terminated employee that he or she was terminated because of a retaliatory motive on the part of the employer.

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