

# Associational Retaliation Claims

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Most companies have some form of non-retaliation policy for employees who make a good faith report of a problem. But what if the company retaliates against someone else instead? That was the situation presented in a recent court case: *Thompson v. North American Stainless*. A woman and her fiancée worked at the same company. She complained and they fired him.

## Factual Background:

The plaintiff, Eric Thompson, claimed he was fired in retaliation for his fiancée's discrimination charge. Thompson met the woman, Miriam Regalado, at work. In 2002, Regalado filed a charge with the EEOC alleging that she was discriminated against because of her gender. At the time of Thompson's termination, he and Regalado were engaged to be married, and their relationship was common knowledge at North American Stainless.

## The Problem

[Title VII of the Civil Rights Act](#) says an employer may not fire, demote, harass or otherwise "retaliate" against an individual for filing a charge of discrimination. Most companies have a policy that takes the same position for reporting other violations of company policy or illegal acts.

Clearly if the company had fired Regalado, the fiancée, they would have broken the law. But is it still "retaliation" if you fire a close friend or relative? (That's associational retaliation.)

## The Result

No, at least under [Title VII of the Civil Rights Act](#). The Court relied on the plain language of the statute limiting the class of persons authorized to sue for retaliation to those who opposed an unlawful employment practice; made a charge; or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. The statute does not authorize a retaliation claim by a plaintiff who did not himself engage in protected activity.

But . . .

The Court did note that Thompson's fiancée, who filed the original discrimination charge, could have filed a retaliation complaint herself alleging that the termination of Thompson in response to her protected activity was an adverse employment action against her. There is no background on why she didn't do that.

Companies should be careful of these potential associational retaliation claims when dealing with its complaint process

## Resources:

- [Thompson v. North American Stainless](#), Sixth Circuit, June 5, 2009 (.pdf)
- [Court Ruling Both a Victory and Warning for Cos.](#) by Melissa Klein Aguilar on [The Filing Cabinet](#) on Compliance Week
- [En Banc Sixth Circuit Holds that there is no Cause of Action for Third-Party](#)

[Retaliation, Reversing Earlier Decision](#) by [Jamie LaPlante](#) on Employer Law Report

Document hosted at [JDSUPRA™](#)  
<http://www.jdsupra.com/post/documentViewer.aspx?fid=9d7e2d84-54b8-4ebb-ba51-365d18912ebd>

- [Your Fiancée Can Get You Fired](#) by Robert J. Ambrogi on Legal Blog Watch

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