

## ALERTS AND UPDATES

### Supreme Court Broadens Scope of Title VII Anti-Retaliation Provision to Include Employees with Close Relationships to Employee Engaging in Protected Activity

January 28, 2010

On January 24, 2011, the U.S. Supreme Court issued an 8–0 decision in [Thompson v. North Am. Stainless, LP](#),<sup>1</sup> holding that a male employee who claimed he was fired because his fiancée filed a sex discrimination charge against their mutual employer may pursue a retaliation claim against his employer under Title VII of the 1964 Civil Rights Act (Title VII).

Eric Thompson and his fiancée, Miriam Regalado, were both employed by North American Stainless (NAS). In February 2003, the Equal Employment Opportunity Commission (EEOC) notified NAS that Regalado had filed a charge alleging sex discrimination by NAS. Three weeks after this notification, NAS fired Thompson.

Thompson filed his own charge against NAS with the EEOC, alleging retaliation, and subsequently sued NAS under Title VII. Title VII outlaws retaliation against employees for exercising the rights it grants, and provides that "[it] shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has made a charge under Title VII."

The Supreme Court, without addressing the merits of Thompson's claim, first concluded that Regalado's filing of a charge with the EEOC was protected conduct under Title VII. The Court then determined that the case presented two distinct issues:

1. Did NAS's firing of Thompson, if Thompson's allegations were taken as true, constitute unlawful retaliation?
2. If the firing did constitute retaliation, does Thompson have standing—that is the right to sue—for the alleged retaliation?

The Court held that if Thompson's allegations were true, NAS's firing of Thompson constituted unlawful retaliation. Drawing upon its interpretation of Title VII's anti-retaliation provision in *Burlington N. & S.F.R. Co. v. White*,<sup>2</sup> the Court noted that the anti-retaliation provision "prohibits any employer action that 'well might have dissuaded a reasonable worker from making or supporting a charge of discrimination'" and believed it "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." The Court acknowledged NAS's contention that prohibiting reprisals against third parties would lead to difficult line-drawing problems concerning the types of relationships entitled to protection. Nevertheless, it declined to either create a categorical rule that reprisals against third parties could not violate Title VII or to identify a fixed class of relationships for which third-party reprisals are unlawful. Instead, the Court endorsed a case-by-case analysis of the objective harm to a Title VII complainant caused by a third-party reprisal in order to determine whether that reprisal is sufficient to fall under the anti-retaliation provision.

The Court also held that Thompson possessed standing to sue NAS for its alleged violation of Title VII. The language of Title VII provides that "a civil action may be brought . . . by the person claiming to be aggrieved." The Court concluded that an "aggrieved" is one who "falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." The Court held that "Thompson was an employee of NAS, and the purpose of Title VII is to protect employees from their employers' unlawful actions." Furthermore, if NAS had terminated Thompson on purpose, as alleged, it had caused harm to Thompson in order to harm Regalado. Under the alleged circumstances, the Court found that Thompson had standing to sue.

## What This Means for Employers

Employers may want to consider seeking legal counsel prior to taking an adverse employment action against any employee who has a romantic, personal or familial relationship with an employee who has filed a charge of employment discrimination under Title VII. Employers should consider adopting and enforcing anti-nepotism policies that could minimize the type of situation that could fall into the flexible category of protected third parties established in *Thompson*.

## For Further Information

If you have any questions about the information addressed in this *Alert*, please contact any [member](#) of our [Employment, Labor, Benefits and Immigration Practice Group](#), or the attorney in the firm with whom you are regularly in contact.

## Notes

1. *Thompson v. N. Am. Stainless, LP*, 2011 U.S. LEXIS 913 (U.S. Jan. 24, 2011).
2. *Burlington N. & S.F.R. Co. v. White*, 348 U.S. 53 (2006).

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