Wrong Response To Pay Complaint Can Pose Big Risks

February 5, 2012 by John E. Thompson

Betty works for The Big Store as a non-exempt Accounts-Payable Clerk. She is assigned to help with taking a merchandise inventory over one weekend, and she works a total of 60 hours in that workweek.

On the next payday, she is paid only straight-time wages for the 20 hours of overtime work. She complains to the Accounting Manager that wage-hour law requires The Big Store to pay her overtime premium pay for this overtime work. She adds that she is not going to let the matter go. The Accounting Manager responds simply with a wide-eyed "Whoa!" and walks away. Ten minutes later, The Vice President of Operations comes to Betty's office and angrily fires her for "not being a team player."

The federal Fair Labor Standards Act's Section 15(a)(3) says in part that it is 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. Betty has not yet complained to the U.S. Labor Department or filed a lawsuit, so does this mean that she cannot make a claim for unlawful retaliation under the FLSA?

Bad News For The Big Store

The Fourth Circuit U.S. Court of Appeals (with jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia) recently joined the majority of other federal appellate courts to have considered the question to rule that even *purely internal* FLSA complaints by employees *can* support an FLSA retaliation claim. In Minor v. Bostwick Laboratories, Inc., that court interpreted the words "filed any complaint" to require even "intracompany complaints to be considered protected activity within the meaning of [the FLSA's] antiretaliation provision."

The court emphasized that not every situation in which an employee "let[s] off steam" to an employer is protected under the FLSA. Drawing upon the U.S. Supreme Court's 2011 ruling in *Kasten v. Saint-Gobain Performance Plastics Corp*. (about which we reported last March), the Fourth Circuit framed the question as being whether an employee's complaint is "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." Do Betty's statements meet this standard? Is this an argument that The Big Store wants to have?

It's Not The "Ordinary" FLSA Claim

Under the FLSA, the liability for unlawful retaliation can include more than just back-wages, liquidated damages, attorney's fees, and the other, more traditional remedies. Instead, the exposure can also consist of awards of compensatory damages, reinstatement for a terminated employee or "front pay" in the alternative, and (in many jurisdictions) even punitive damages.

The Big Store is probably in for a rough ride. Wiser employers will want to take a more considered approach in evaluating and responding to an employee's wage complaints.