Wage & Hour Insights
Guidance & Solutions for Employers

4th Circuit: FLSA Prohibits Retaliation For Internal Complaints

By Bill Pokorny February 07, 2012

According to the facts described in her complaint, Kathy Minor was hired by Bostwick Laboratiries, Inc. as a medical technologist on December 24, 2007. Just a few months later, on May 6, 2008, Minor claims that she and several co-workers met with Bostwick's chief operating officer to complain that their supervisor had altered employee time sheets to reflect that they had not worked overtime when they had. The following Monday, May 12, 2008, Minor alleged that she was fired because, according to her supervisor, there was "too much conflict with [her] supervisors and the relationship just [was not] working." Minor filed suit in federal district court, alleging that she was fired in violation of the anti-retaliation provisions of the Fair Labor Standards Act. Minor's complaint was dismissed by the district court, which held that the FLSA's anti-retaliation provision does not protect purely internal complaints about FLSA violations. Minor appealed to the Fourth Circuit Court of Appeals.

Courts Review Scope of the FLSA's Anti-Retaliation Clause

As complaints of wage and hour violations increase, courts have also increasingly grappled with claims from employees that they have been subjected to retaliation for such complaints. The Fair Labor Standards Act prohibits retaliation. However, unlike the broader anti-retaliation provisions in other commonly-cited employment laws, the FLSA's clause makes it illegal to discharge or discriminate against any employee who "has filed any complaint or instituted or caused to be instituted any proceeding under or related to" the FLSA. That phrase, "filed any complaint," has been read by some to suggest that an oral complaint or a complaint made only internally, but not to the Department of Labor or some other government agency, is not sufficient to trigger the FLSA's anti-retaliation provision.

The Supreme Court settled part of this dispute last year in Kasten v. Saint-Gobain Performance Plastics Corporation, where it held that an oral complaint can fall within the FLSA's anti-retaliation provision, so long as it 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." However, the Kasten Court expressly declined to address the question of whether the anti-retaliation provision applies to a purely internal complaint that is not "filed" with any government agency.

Although the issue remains unresolved by the Supreme Court, the majority of courts that have considered the question have held that internal complaints are protected by the the FLSA. On

January 27, 2012, the Fourth Circuit joined that party with its ruling in Minor's favor, reversing the district court's dismissal order and remanding the case to the district court for further proceedings.

Insights for Employers

Given the direction taken in the other federal circuits that have addressed this issue, the Fourth Circuit's ruling comes as no real surprise. Even if an employee's complaint were found to be unprotected by federal law, many states also have wage and hour laws that include anti-retaliation provisions. Employers should assume, therefore, that any employee complaint about overtime, minimum wage, or other wage and hour issues may be protected by law, and that adverse actions against a complaining employee may give rise to a retaliation claim. To protect against such claims, employers should take the same basic precautions that we employment lawyers are constantly pushing:

- Treat like employees alike;
- Document your decisions;
- Promptly and effectively investigate and follow up on complaints;
- Have a policy prohibiting retaliation;
- Follow your policies;
- Train your supervisors;

And most importantly:

- Don't refer to the complaining employee as "troublemaker," "Benedict Arnold," "ungrateful wretch," etc., especially in an e-mail.