

Employers Now Likely To Face Third Party Retaliation Claims

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In a unanimous decision issued by the U.S. Supreme Court on January 24, 2011, the Court expanded Title VII's anti-retaliation provision to cover--in some circumstances--claims brought by third parties. Title VII of the 1964 Civil Rights Act prohibits discrimination, harassment and retaliation in the workplace based on an individual's race, color, religion, sex or national origin. The Court's ruling resolved differing treatment of this issue by the lower courts. Several lower courts--including the Sixth Circuit--had held that Title VII only protected individuals who actually made complaints.

In *Thompson v North American Stainless, LP*, North American Stainless fired Thompson only three weeks after learning that Thompson's fiancée had filed a sex discrimination charge against the Company. Thompson then sued the Company, alleging his termination was in retaliation against his fiancée for filing a sex discrimination charge. The Court had two separate, but related holdings: (1) his firing was unlawful retaliation under Title VII and (2) Title VII grants Thompson the ability to sue.

Reversing the Sixth Circuit, the Supreme Court first held that the Company's firing of Thompson violated Title VII's anti-retaliation provision. This is because "Title VII's anti-retaliation provision prohibits any employer action that 'well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" Here, the Court found, "it [is] obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." While the Supreme Court refused to create a rule as to when third-party reprisals are unlawful, it hinted that "firing a close family member will almost always" constitute actionable retaliation, but that "inflicting a milder reprisal on a mere acquaintance will almost never do so."

Not only did the firing constitute unlawful retaliation, the Supreme Court held that Thompson himself may sue. Title VII grants a right to sue to "the person claiming to be aggrieved." The Court found that Thompson was an "aggrieved" party (even though the Company technically retaliated against his fiancée) by adopting a "zone of interest" test from another area of law. Thus the Court found that Thompson--an employee who was fired as a means to harm his fiancée--was within the "zone of interest" that Title VII was intended to protect.

Guidance for Employers

The Court's unanimous decision significantly extends Title VII's already broad anti-retaliation provision. Although the Court stated that it would not create a bright line rule and decide when third-party retaliation claims are permissible, employers taking adverse action will now need to evaluate whether the action might be construed as a response to conduct by someone related or closely associated with the affected employee. Miller Canfield will keep you advised as the lower courts apply this ruling and start to define how close of an association is required.