

FLSA Protects Employees Who File Oral Complaints

March 23, 2011

In a case that may lead to an influx of retaliation lawsuits by employees, on March 22, 2011, the United States Supreme Court held that the Fair Labor Standard Act's (FLSA) antiretaliation provision protects employees who file oral complaints. In *Kasten v. Saint-Gobain Performance Plastics Corp.*, an employee alleged that he was discharged after he orally complained to company officials that the placement of timeclocks violated the FLSA because it prevented workers from receiving credit for time spent donning and doffing required protective gear and walking to work areas. The FLSA's antiretaliation provision states that it is unlawful for an employer "to discharge or in any other manner discriminate against any employee because such employee has filed any complaint...." The district court dismissed the case after concluding that the FLSA did not cover oral complaints.

Reversing the dismissal, the Supreme Court broadly interpreted the phrase "filed any complaint" to include both oral and written complaints. The Court acknowledged, however, that this language "contemplates some degree of formality" and requires that the employer receive "fair notice that a grievance has been lodged." The Court further explained that complaints protected by the FLSA's antiretaliation provision "must be sufficiently clear and detailed for a reasonable employer to understand it."

Notwithstanding its broad interpretation of the phrase "filed any complaint," the Court declined to address whether the statute protects complaints to private employers, as opposed to government agencies. Nevertheless, a majority of the courts to address this issue, including the Sixth and Seventh Circuits, have concluded that the FLSA protects informal complaints to employers.

What Does This Case Mean For Employers?

Recent Supreme Court decisions have broadly interpreted the antiretaliation provisions contained in federal employment statutes (see our January 26, 2011 and June 26, 2006 alerts). The *Kasten* decision continues this trend. Therefore, employers must carefully evaluate any personnel actions that will affect employees who have previously complained (either orally or in writing) of violations of wage and hour or antidiscrimination statutes.

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