Supreme Court Widens Worker Protection

Business owners generally know they cannot retaliate against employees (e.g., by firing them) because the employees engaged in protected conduct, such as filing a discrimination charge with the Equal Employment Opportunity Commission (EEOC). Title VII of the Civil Rights Act of 1964 specifically states it is an "unlawful employment practice for an employer to discriminate against any of his employees . . . because he has made a charge."

In a unanimous 8-0 decision (Supreme Court Justice Elena Kagan did not participate in the ruling), the U.S. Supreme Court in Thompson v. North American Stainless (NAS) held that this anti-retaliation rule now extends to other individuals you employ as well, even if they did not file the charge themselves. This would include the employee's family members and fiancées.

The dispute involved Plaintiff Eric Thompson who worked for NAS along with his fiancée Miriam Regalado. In February, 2003, the EEOC notified NAS that Ms. Regalado filed a sex discrimination charge. NAS fired Mr. Thompson three weeks later. He then sued NAS. Mr. Thompson claimed NAS violated Title VII by terminating him in retaliation for his fiancée filing an EEOC charge against the company.

The lower appellate court (the 6th Circuit) concluded Mr. Thompson had no right to sue NAS because he, himself, did not engage in any statutorily protected activity either on his own behalf or on behalf of his fiancée. It was not Mr. Thompson who filed the EEOC charge;

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rather it was his fiancée, Ms. Regalado. Therefore, the 6th Circuit ruled Mr. Thompson was "not included in the class of persons for whom Congress created a retaliation cause of action." The U.S. Supreme Court disagreed and reversed that decision.

Citing one of its prior decisions, Burlington N. & S.F.R. Co. v. White, the U.S. Supreme Court agreed with Mr. Thompson that Title VII's anti-retaliation rules must be interpreted broadly and must also prohibit any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Delivering the opinion of the Court, Justice Scalia wrote that it is "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancée would be fired." The Court then granted Mr. Thompson the right to sue NAS for his damages.

But what does the ruling mean for employers?

The Court acknowledged NAS's concern that this ruling will cause employers some serious problems. As argued by NAS, it "will lead to difficult line-drawing problems concerning the types of relationships entitled to protection. Perhaps retaliating against an employee by firing his fiancée would dissuade the employee from engaging in protected activity, but what about firing an employee's girlfriend, close friend, or trusted co-worker?" The clear concern for employers is that employers may now be at risk when they fire an employee who has some connection to a different employee who engaged in protected activity (e.g., by filing an EEOC charge).

In trying to address this concern, the Court provided some limited guidance: "We expect that firing a close family member will almost always meet the Burlington standard; and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize," Scalia said.

So what does this mean to you, as an employer? Before firing, suspending or demoting an employee you must now consider whether that employee has some relationship with a co-worker who engaged in protected activity, such as filing an EEOC charge. You should now look at the employee's relationships with others in your workforce and make certain your records clearly outline your legitimate non-retaliatory reasons for your conduct.

Attorney Sue Bendavid, Esq. specializes in employment law at Lewitt Hackman in Encino. She represents employers in defending employment litigation. She also counsels employers on a wide variety of employee issues, including wage and hour, harassment, discrimination, wrongful termination and other areas of potential liability. For more information, see www.lewitthackman.com.