



Supreme Court Allows Third-Party Retaliation Claims

On January 24, 2011, the Supreme Court unanimously held in [Thompson v. North American Stainless, LP](#) that “protected activity” under Title VII of the Civil Rights Act of 1964 extends to retaliation claims brought by third parties. Thus, the Court allowed an employee who was fired shortly after his fiancée filed a sex discrimination complaint against their mutual employer to sue his former employer for retaliation.

Background

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination on the basis of race, color, religion, sex and national origin. The statute permits an individual who claims to have been the subject of workplace discrimination to file a charge with the Equal Employment Opportunity Commission (EEOC). Title VII protects those who do so by making it unlawful for any employer to retaliate against an employee because the employee has filed a charge. If the EEOC declines to sue the employer, Title VII allows the “person claiming to be aggrieved” to pursue a civil action against the employer.

Both Eric Thompson and his fiancée, Miriam Regalado, worked for North American Stainless, LP (NAS). In February 2003, the EEOC notified NAS that Regalado had filed a sex discrimination charge. Three weeks later, NAS fired Thompson. Thompson then filed his own charge with the EEOC, claiming that NAS fired him to retaliate against his fiancée for filing a charge.

After conciliation efforts failed, Thompson sued NAS under Title VII. Ruling that Title VII “does not permit third party retaliation claims,” the federal district court dismissed the case. The U.S. Court of Appeals for the Sixth Circuit affirmed the dismissal, finding that Thompson did not engage in activity protected by Title VII and thus lacked standing to bring a retaliation claim.

Thompson v. North American Stainless, LP

In [Thompson v. North American Stainless, LP](#) (No. 09-291, January 24, 2011), the Supreme Court considered whether NAS’s firing of Thompson constituted unlawful retaliation and, if so, whether he had a cause of action under Title VII. According to the Court, Title VII’s anti-discrimination provision is limited to employer actions that affect terms and conditions of employment while Title VII’s anti-retaliation provision is broadly worded and covers a far wider range of employer conduct. Thus, the Court reasoned, Title VII prohibits any employer action that “might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” Under that

standard, the Court unanimously concluded that a reasonable worker might be dissuaded from filing an EEOC charge if she knew that her fiancé would be fired if she did.

BUCK COMMENT. *As a January 24, 2011 EEOC press [release](#) confirms, the Court's ruling is consistent with the agency's long-standing views on the scope of Title VII's anti-retaliation provision.*

Although the Court acknowledged that employers would be at risk whenever they fire employees with a connection to another employee who has filed an EEOC charge, it provided only limited guidance on which familial and non-familial relationships may be protected against third-party reprisals under Title VII. Specifically, the Court noted that Title VII's anti-retaliation standard will almost always apply to the firing of a close family member but almost never to a "milder reprisal on a mere acquaintance."

BUCK COMMENT. *By opening the door to third-party reprisal claims, the Court has exposed employers to the threat of more lawsuits. Because the Court did not establish a clear rule as to when Title VII permits third-party retaliation claims, determinations will have to be made on a case-by-case basis.*

The Court next turned to whether Thompson was a "person aggrieved" under Title VII, and thus could sue NAS for allegedly violating the statute. According to the Court, the purpose of Title VII is "to protect employees from their employers' unlawful actions" and whether a plaintiff is "aggrieved" and may sue depends on whether he or she falls within the "zone of interests" sought to be protected by Title VII. Applying that test to the facts at hand, the Court made it clear that Thompson was not simply "an accidental victim of the retaliation." Concluding that firing him was the employer's way to punish his fiancée for engaging in protected activity, the Court unanimously found that Thompson is within the zone of interests protected by Title VII and can pursue his own retaliation claim against NAS.

Conclusion

Last year, more retaliation complaints were filed with the EEOC than any other type of complaint, and in record numbers. Now that the Court has extended the reach of Title VII's anti-retaliation provisions to employees who neither complain of discrimination nor engage in any other protected activity, retaliation claims are likely to increase. More than ever, employers should ensure that they have effective anti-discrimination policies in place, exercise caution when taking adverse employment actions, and document their legitimate, nondiscriminatory reasons for them.

Buck's consultants would be pleased to discuss the impact of this decision on your employment practices.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.