



TITLE VII'S ANTI-RETALIATION PROVISION – WHO CAN SUE?

U.S. SUPREME COURT EXTENDS TITLE VII'S ANTI-RETALIATION PROTECTIONS TO THIRD PARTIES

On January 24, 2011, the United States Supreme Court issued a decision in *Thompson v. North American Stainless, LP*, 131 S.Ct. 863 (2011), holding that a third party may be afforded protection under the anti-retaliation provision of Title VII of the Civil Rights Act of 1964 (Title VII) based solely upon that party's association with an employee who has engaged in protected activity.

Eric Thompson and his fiancée (now wife), Miriam Regaldo, were both employed by North American Stainless (NAS). Regaldo filed a charge with the Equal Employment Opportunity Commission (EEOC), alleging that her supervisors at NAS had discriminated against her based on her gender. Three weeks later, NAS fired Thompson.

Thompson sued NAS in federal court under Title VII's anti-retaliation provision (42 U.S.C. § 2000e-3(a)), alleging NAS fired him in retaliation for his fiancée filing a charge with the EEOC. Thompson asserted he had standing to pursue a retaliation claim under Title VII because of his "close association" with his fiancée, even though he was not the person who had filed a discrimination charge with the EEOC. The district court granted summary judgment to NAS, concluding that Title VII does not permit third party retaliation claims. The Sixth Circuit Court of Appeals affirmed, reasoning that Thompson was not entitled to sue his employer for retaliation because he had not engaged in any statutorily protected activity under Title VII. Certiorari was granted to the United States Supreme Court.

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The Supreme Court reversed and remanded the case back to the district court. In the Court's opinion, the justices noted that they did not have difficulty deciding the issue of whether, if the facts alleged by Thompson were true, his firing violated Title VII. In earlier cases the Court has held that "Title VII's anti-retaliation provision must be construed to cover a broad range of employer conduct," and that the 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 "obvious" that a reasonable worker might be dissuaded from engaging in protected activity if the worker knew that his or her fiancée would be fired.

The question that the Supreme Court justices found more difficult was whether Thompson had standing to bring suit against his employer under Title VII. Title VII provides that "a civil action may be brought . . . by the person claiming to be aggrieved." 42 U.S.C. § 2000e-5(f)(1). The Court concluded that in order to determine who is an "aggrieved" person under Title VII, the "zone of interests" test should be applied. Under this test, a plaintiff may bring suit so long as he or she falls within the broad "zone of interests" sought to be protected by the law. When applying the test here, the Court found that Thompson would fall within the "zone of interests" sought to be protected by Title VII because the purpose of Title VII is to protect employees from their employers' unlawful actions.

The Supreme Court reasoned that Thompson's termination was NAS's intended means of punishing Regalado for filing a discrimination charge with the EEOC. Under these circumstances, the Court found that Thompson was well within the "zone of interests" sought to be protected under Title VII. Accordingly, Thompson was an "aggrieved" person under Title VII with standing to file suit against NAS for retaliation.

IMPACT ON EMPLOYERS

The U.S. Supreme Court's decision in Thompson clarifies that Title VII's anti-retaliation protections may extend to a third party based solely upon that party's association with an employee who has engaged in protected activity. The Court's decision broadens the range of individuals who may be able to pursue a retaliation claim against an employer under Title VII. Any individual found to fall within the "zone of interests" as described by the Court may now have standing to raise a Title VII retaliation claim – even if it was another employee who engaged in the protected conduct.

Employers with questions about how the Thompson decision may impact employee retaliation claims in the workplace, or how to defend against such claims, should feel free to contact one of our labor and employment attorneys.

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