



April 29, 2011

**FLSA'S ANTI-RETALIATION PROVISION –
ORAL COMPLAINTS COUNT**

U.S. Supreme Court Clarifies that Oral Complaints of FLSA
Violations are Protected

On March 22, 2011, the United States Supreme Court issued a decision in *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. ____, No. 09-834 (2011), holding that an employee's verbal, internal complaint about an employer's alleged labor violation is protected activity under the anti-retaliation provision of the federal Fair Labor Standards Act (FLSA).

Plaintiff sued his employer in federal court alleging he was terminated in retaliation for making verbal complaints to his supervisors that the location of the employer's time clocks violated the FLSA. The FLSA's anti-retaliation provision prohibits an employer "to discharge . . . any employee because such employee has filed any complaint" alleging a violation of the Act. 29 U.S.C. § 215(a)(3).

The district court granted summary judgment to the employer, concluding that while an employee's internal complaints are protected activity under the anti-retaliation provision of the FLSA, an employee's unwritten, verbal complaints were not protected. The Seventh Circuit Court of Appeals affirmed, reasoning that an employee who makes a purely verbal complaint does not "file" a complaint. Since plaintiff's complaints had been purely verbal, the Court of Appeals found the complaints were not protected. Certiorari was granted to the United States Supreme Court.

For employers in business and government alike, employees are your most valuable, and often most expensive, asset. How you handle employment issues can have a significant impact on your bottom line. Our labor and employment attorneys provide creative, strategic legal counsel – targeted to your mission and business environment – to help ensure the most proficient use of human resources, prevent costly disruptions, and help you identify and address issues before they become costly claims or lawsuits.

We specialize in providing labor and employment advice, counseling and litigation services to public and private employers.

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In a 6-2 decision, the Supreme Court held that the scope of the term “filed any complaint” under the FLSA’s anti-retaliation provision encompasses both oral and written complaints. In its opinion, the Court noted that other anti-retaliation statutes – such as the National Labor Relations Act’s anti-retaliation provision – have been interpreted to protect both oral and written complaints. The Court also held that policy reasons support the conclusion that the statute’s language should be broadly interpreted in favor of the employee. A narrow interpretation of the language would undermine the FLSA’s basic objective to prohibit labor conditions detrimental to the well-being of workers. Writing for the majority of the Court, Justice Breyer stated:

“Why would Congress want to limit the enforcement scheme’s effectiveness by inhibiting use of the Act’s complaint procedure by those who would find it difficult to reduce their complaints to writing, particularly illiterate, less educated, or overworked workers? . . . To limit the scope of the antiretaliation provision to the filing of written complaints . . . could prevent Government agencies from using hotlines, interviews, and other oral methods of receiving complaints. [I]t would discourage the use of desirable informal workplace grievance procedures to secure compliance with the Act.”

Impact on Employers

The Supreme Court’s decision in *Kasten* signals yet another expansion of workplace anti-retaliation laws favoring employees. Employers should have clear workplace policies in place on how to handle employee complaints. These policies should address the receipt and processing of both oral and written complaints from employees. Employers also need to make supervisors and employees aware of such policies and provide training to supervisors and employees regarding complaint procedures and prohibitions on retaliation in the workplace.

Employers with questions about employee complaints or on claims of retaliation in the workplace, or how to take proactive measures to address workplace complaints on claims of retaliation, should contact one of our labor and employment lawyers.

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