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Supreme Court Ruling Expands Title VII Protections to 'Affinity' Relationships

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Retaliation claims will be more difficult for employers to defend now that the U.S. Supreme Court recently expanded Title VII's protections to individuals who are related to the person engaged in protected activities.

Unfortunately for employers, on Jan. 24, the U.S. Supreme Court issued its opinion and reversed a 2009 Sixth Circuit Court of Appeal's opinion, which had restored the plain meaning of Title VII holding that only employees who engaged in protected activities were protected from retaliation and not others who are somehow related to them.

Noting that the anti-retaliation provision of Title VII "covers a broad range of employer conduct," the Supreme Court opined that it includes "any employer action that … might have dissuaded a reasonable worker from making or supporting a charge of discrimination." Because an employee would be dissuaded from asserting rights under Title VII if someone close to him or her, such as a fiancé, were to be fired in retaliation, such retaliatory terminations must be prohibited under the act.

Specifically, in 2008, a panel of the Sixth Circuit held in *Thompson v. North Am. Stainless, LP*, 520 F.3d 644 (6th Cir. 2008), that an employer violated Title VII when it retaliated against the fiancé of an employee who had exercised rights under the Act. A year later, the full bench of the Sixth Circuit reconsidered the correctness of that decision and gave employers cause to celebrate.

In *Thompson*, the plaintiff was engaged to a co-worker who filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC), claiming that the defendant had discriminated against her because of her gender. Approximately three weeks after receiving notice of her charge, the employer fired the charging employee's fiancé, Thompson.

Plaintiff Thompson then filed his own charge, claiming he was terminated in retaliation for his fiancé's EEOC charge. After receiving a right to sue letter, he filed suit. The district court eventually dismissed the plaintiff's lawsuit, finding that ***he*** had not exercised rights under Title VII and, therefore, he had no legal basis for a retaliation claim.

On appeal, a panel of the Sixth Circuit reversed, holding that it is unlawful under Title VII to retaliate against someone who is closely associated with an employee who has exercised rights under the Act. This ruling sent shock waves through both the legal and human resources communities because it had

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long been the rule that only employees who ***personally*** engaged in protected activity received protection from retaliation under the federal civil rights laws.

However, the Sixth Circuit, in July 2008, granted a new hearing *en banc* (before the entire bench). The following year, a sharply divided full bench vacated the prior Sixth Circuit opinion and reinstated the district court's ruling in favor of the employer, holding that "Title VII does not create a cause of action for third-party retaliation for persons who have not personally engaged in protected activity."

This was a huge victory for employers and returned the law to its prior state. No longer did employers need to determine who may be protected based on the affinity of relationships in addition to a party complaining of discrimination. Only employees who engaged in protected activity under federal civil rights laws were afforded protection from retaliation.

However, the U.S. Supreme Court's recent ruling has changed the playing field once again in favor of the employee. While acknowledging that this rule may create difficulties for employers in determining how close a connection was required between a person who engages in protected activity and another employee who suffers an adverse action, it refused to draw a bright line, offering the following guidance:

We expect that firing a close family member will almost always meet the … standard, and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize.

A person will arguably be protected from retaliation if they are within a "zone of interest." As the charging party's fiancé, the plaintiff satisfied this standard.

Employers are back to guessing who, besides the employee engaging in protected activity, may receive protection from retaliation under Title VII. The closer the relationship, the more cautious the employer should be in taking adverse action against the employee. Eventually, the courts will provide much needed guidance for such determinations. But, for now, employers should seek legal advice whenever they take action against an employee who is relatively close to an individual who asserted rights under federal civil rights laws.

If you would like advice on defending retaliation claims, contact any member of Plunkett Cooney's Labor and Employment Law Practice Group.

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