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U.S. Supreme Court Holds that Retaliation Claims Under the FLSA can be Based on the "Filing" of Oral Complaints

Earlier this week, the United States Supreme Court yet again made it easier for employees to bring retaliation lawsuits against their employers. By a 6-2 decision (Justice Kagan did not participate), the Court held that ***oral*** complaints implicating the Fair Labor Standards Act ("FLSA") are covered by the Act's anti-retaliation protections.

The Facts

The case, *Kagan v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. __ (March 22, 2011), involved an employee who claimed to have orally complained to his employer, on numerous occasions, that the location of the time clocks in the plant made it difficult for employees to be paid for donning and doffing protective gear, in violation of the law. He also claimed that he even threatened to sue. Some of these complaints, he claimed, were made pursuant to the company's internal grievance procedure and to his shift supervisor. The employee, having been repeatedly warned, was later fired for not properly recording his work time. The employer contended that the time clock complaints had no relation to the discharge. The employee contended otherwise and sued under the FLSA on the basis of alleged retaliation. (In another case, the employee successfully sued for unpaid overtime for the off-the-clock time spent donning and doffing the gear. *Kagan v. Saint-Gobain Performance Plastics Corp.*, 556 F. Supp. 2d 941 (W.D. Wisc. 2008).)

The Law

Section 215(a)(3) of the FLSA prohibits employers from discharging or otherwise discriminating against "any employee because such employee has ***filed any complaint*** or instituted or caused to be instituted any proceeding under or related to [the Act], or has testified or is about to testify in such proceeding..." (Emphasis supplied) Both the trial and appellate courts held that this provision limited the Act's retaliation protection to written complaints -- on the basis that only written complaints can be "filed." The highest court, though, disagreed.

The Court's Rationale

The Supreme Court acknowledged that, in isolation, the term "filed" easily could be read to require a written filing. However, and as a few circuit courts have held, the term could also encompass complaints made orally. Indeed, some laws and regulations contemplate oral filings. Therefore, the Court viewed that in this context, and since the phrase regards the filing of "*any* complaint",

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it is conceivable the Congress was not only concerned about written complaints. This view was strengthened by Congress's expressed intent when it passed the FLSA that the Act seeks to prohibit "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers," not only by government oversight, but also by information and complaints received from workers.

The Court then observed: "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?" Further, if only written complaints are protected, the Court noted, then complaints made to government hotlines and to employers in the first steps of their grievance procedures would be unprotected.

The Types of Oral Complaints Protected

In response to the employer's argument that it would be unfair and perhaps dangerous to construe the Act as protecting casual statements, the Court stated that filings must still be serious occasions, rather than trivialities. Thus, employers must be "given fair notice that a grievance has been lodged and does, or should, reasonably understand the matter as part of it business concerns." While this can be achieved orally, a complaint will only be deemed "filed" if "a reasonable, objective person would have understood the employee to have 'put the employer on notice that (the) employee is asserting statutory rights under the (Act).'" The Court provided no additional guidance as to what types of markers are needed to place an employer on such "reasonable notice."

The employer also contended that only complaints made to the government, as opposed to the employer, are covered by the anti-retaliation provision of the Act. The majority concluded that this issue was not properly preserved for review and limited its decision to the sole question of whether an oral complaint suffices. The dissent, however, would have limited the Act's protections to complaints made to the government.

The Significance to Employers

Based on this case, the recent trend of courts abandoning bright-line tests for recognizing protected conduct in favor of standards which will require juries to decide most retaliation cases, continues. As a result, it is extremely important for employers to re-train supervisors as to how to deal with complaints implicating legal rights and establish protocols for thoroughly and carefully documenting complaints.

If you have any questions regarding this E-News Bulletin, please contact your Butzel Long attorney or the authors of this E-news Bulletin.

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