



U.S. Supreme Court Hears Oral Argument in *Kasten v. Saint-Gobain Performance Plastics Corp.* (Case No. 09-834)

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On October 13, 2010, the United States Supreme Court heard oral argument in *Kasten v. Saint-Gobain Performance Plastics Corp.* (case no. 09-834). The case presents the issue of whether the Fair Labor Standards Act ("FLSA") protects workers who make oral complaints about wage and hour violations from retaliation. Petitioner Kevin Kasten was employed by Saint-Gobain Performance Plastics Corp. until December 2006 when he was terminated for failing to follow the company's policy for punching in on a time clock.

Kasten filed suit alleging he was discharged after making multiple verbal complaints to his supervisors about the illegal location of the company's time clocks. According to his brief, the clocks' location prevented the employees from being compensated for "time spent donning and doffing their protective gear."

The U.S. District Court for the Western District of Wisconsin granted the employer's motion for summary judgment. The Court held that informal complaints were not protected based on the "plain language" of the FLSA, which prohibits an employer from retaliating against an employee if the employee "has filed any complaint..." 29 USC 215(a)(3). The Seventh Circuit agreed, holding that the FLSA language required employees to submit a written complaint to "an employer, court, or administrative body."

Carter Phillips, counsel for Saint-Gobain, argued to the Supreme Court that the FLSA only protects workers from retaliation if they institute formal government proceedings. Kasten's counsel, James Kaster, argued any complaint, whether stated orally or in writing, that puts the employer on notice of the nature of the employee's complaint should suffice. Kaster contended that requiring complaints to be submitted to the federal government would foreclose internal communications.

Because Justice Kagan recused herself from the case, only eight Justices will consider the issue. Of course, under Supreme Court rules, if the Justices split 4-4, the Seventh Circuit's decision stands.

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