Supreme Court Holds Oral Complaints Receive Protection Under the Fair Labor Standards Act

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In a 6-2 majority opinion written by Justice Breyer, the United States Supreme Court held that a complaint need not be in writing to invoke the anti-retaliation provision of the Fair Labor Standards Act ("FLSA").[1] The Court, however, declined to decide whether a purely "internal" complaint made to the employer is enough to trigger the anti-retaliation provision. While narrow in scope, the Court's ruling expands the potential exposure for retaliation suits and serves as a reminder to employers of the need to take all internal complaints seriously.

Lower Courts Rule in Favor of Employer, Hold that Complaint Must be in Writing

In Kasten, the Plaintiff alleged that he complained to his employer, Saint-Gobain ("Defendant"), about the unlawful placement of its timeclocks. According to Plaintiff, the timeclocks were placed in a location that prevented workers from receiving pay for the time they spent putting on and taking off their work clothes.[2] Plaintiff first raised his concerns with his shift supervisor, then a lead operator, and finally Defendant's human resources manager.[3] Shortly after voicing his complaints, Plaintiff was disciplined and terminated by Defendant.[4] Plaintiff filed suit alleging that he was terminated in retaliation for making oral complaints to Defendant regarding the location of the timeclock.

The FLSA makes it illegal for employers "to discharge or in any other manner discriminate against an employee because such employee has *filed any complaint....*[5] " The District Court for the Western District of Wisconsin entered summary judgment in favor of Defendant, holding that "the FLSA's anti-retaliation provision protects more informal complaints, including those made to employers, so long as they are *in writing and are filed*.[6] " Because Plaintiff did not reduce his complaints to writing, the lower court held, his "abstract grumbling" or "amorphous expression[s] of discontent" did not amount to a protected activity under the FLSA.[7] The Seventh Circuit Court of Appeals agreed and held that, although the FLSA's anti-retaliation provision covers internal complaints made to employers, the phrase "filed any complaint" requires the submission of some sort of writing.[8]

Supreme Court Reverses, Holds that Oral Complaints May be Protected Conduct

The Supreme Court granted an appeal of the Seventh Circuit's decision on the sole issue of whether "an

oral complaint of a violation of the Fair Labor Standards Act" is "protected conduct under the [FLSA's] anti-retaliation provision.[9] " Holding that it does, the Supreme Court rejected the argument that the word "filing" necessarily contemplates a writing. Instead, the Court reasoned that the FLSA's objectives and remedial nature mandate greater flexibility and a broader reading of the phrase "filed any complaint.[10] The Supreme Court concluded that, although the statute requires "fair notice," it does not require that such notice be in writing.[11]

The Court went further, setting forth a standard to determine whether an employee has "filed" a complaint triggering the FLSA's anti-retaliation provision: "[t]he phrase 'filed any complaint' contemplates some degree of formality, certainly to a point where the recipient has been given fair notice that a grievance has been lodged and does, or should, reasonably understand the matter as part of its business concerns.[12] " Elaborating further, the Court noted that "[t]o fall within the scope of the antiretaliation provision, a complaint must be sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the [FLSA] and a call for their protection.[13] " Under this standard, an employee can invoke the protection of the FLSA by voicing concerns orally or in writing.

Notably, the majority opinion declined to answer whether the FLSA requires that complaints be made to a government agency, rather than a private employer, to invoke anti-retaliation protection. Instead, the Court remanded the case to the lower courts to decide whether Plaintiff was able to satisfy the FLSA's notice standard as set forth in this opinion.[14] Thus, although the Court has given guidance on **how** to make a protected complaint, the question as to whom a complaint must be made remains open. Although, by focusing on notice, the majority opinion suggests that purely "internal" complaints may be enough to trigger FLSA protection.

Justice Scalia, joined by Justice Thomas, dissented from the majority opinion, taking the position that FLSA's anti-retaliation provision does not cover complaints made to the employer.[15] According to Justice Scalia, "[t]he plain meaning of the critical phrase ['filed any complaint'] and the context in which it appears make clear that the retaliation provision contemplates an official grievance filed with a court or an agency, not oral complaints--or even formal, written complaints--from an employee to an employer.[16] "

What Does Kasten v. Saint Gobain Mean to Employers?

The Supreme Court's decision bolsters the protection afforded to employees who raise concerns with their employers about FLSA violations. Consequently, employers are likely to see an increase in both internal complaints and allegations of retaliation. Going forward, employers need to have proper procedures in place for indentifying and remedying possible FLSA violations and responding to employee complaints. This includes training supervisors to identify possible violations and ensuring that all complaints are investigated and addressed by human resources or other appropriate personnel. In addition, employers should have procedures in place to avoid taking actions against employees that can be perceived as retaliatory in nature. Finally, employers should make certain that all adverse employment decisions are made based on a legitimate, non-discriminatory, and non-retaliatory reason that can be demonstrated to a court or government agency.

For more information about this topic, please contact the authors or any member of the Williams Mullen Labor & Employment Team.

[1] Kasten v. Saint-Gobain Performance Plastics Corp., 2011 U.S. LEXIS 2417 (Mar. 22, 2011).
[2] In a related suit, the District Court for the Western District of Wisconsin agreed with Plaintiff and found that Defendant's timeclock location violated the FLSA. See Kasten v. Saint-Gobain Performance Plastics Corp., 556 F. Supp. 2d 941, 954 (W.D. Wis. 2008).
[3] Kasten, 2011 U.S. LEXIS 2417, at * 8-9.
[4] Id.
[5] 29 U.S.C. ? 215(a)(3) (emphasis added).
[6] Kasten v. Saint Gobain Performance Plastics Corp., 619 F. Supp. 2d 608, 613 (W.D. Wis. 2008).
[7] Id. (internal citations omitted).
[8] Kasten v. Saint Gobain Performance Plastics Corp., 570 F.3d 834, 840 (7th Cir. 2009).
[9] Kasten, 2011 U.S. LEXIS 2417, at * 10. The Supreme Court granted certiorari to settle a Circuit split on the issue. Compare Echostar Satellite, L.L.C., 529 f.3D 617, 625,626 (5th Cir. 2008) (anti-retaliation provision covers oral complaints), with Lambert v. Genesee Hospital, 10 F.3d 46, 55-56 (2d Cir. 1993).
[10] Kastern, 2011 U.S. LEXIS 2417, at * 18-22.
[11] Id., at * 22.
[12] Id.
[13] Id., at * 23.
[14] Id., at * 26-27.
[15] Id., at * 28.
[16] Id., at * 29.

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