



Legal Alert: Is Having a Close Relationship Enough to Pursue Title VII Retaliation Claim?

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Although the federal appeals courts were in agreement that a close relationship with someone who has engaged in protected activity under Title VII is not sufficient to permit a person who has not engaged in such activity to pursue a retaliation claim, that issue may now be less than clear. On June 29, 2010, the U.S. Supreme Court granted review of the Sixth Circuit's decision in *Thompson v. North American Stainless, LP*, in which the Sixth Circuit held that a third party cannot pursue a retaliation claim under Title VII where he has not personally engaged in a protected activity.

Title VII is the federal law that, among other things, prohibits employers from discriminating against employees and job applicants based on their membership in protected classes (race, color, religion, sex, or national origin). Title VII also prohibits employers from taking adverse actions against employees for engaging in a protected activity, such as filing a discrimination complaint.

In this case, Thompson worked for North American Stainless (NAS) and, while he was employed, met and married another employee, Miriam Regalado. While Thompson and Regalado were engaged, she filed a charge against NAS with the Equal Employment Opportunity Commission (EEOC), claiming her supervisors discriminated against her based on her gender. About a month after the EEOC notified NAS of Regalado's charge, the company discharged Thompson. Thompson sued NAS claiming he was discharged because his fiancé filed a discrimination charge against NAS. The trial court ruled in favor of NAS and the Sixth Circuit upheld this decision, finding that Thompson was not a proper claimant because he did not allege that he himself had engaged in protected activity under Title VII. In reaching this decision, the Sixth Circuit noted that the Third, Fifth and Eighth Circuits have unanimously rejected such third-party retaliation claims.

By agreeing to review *Thompson*, the U.S. Supreme Court will consider whether Title VII prohibits an employer from retaliating against a third party who has a close associate that files a discrimination claim, and if yes, whether the third party may pursue an independent retaliation claim. The Supreme Court is anticipated to hear oral argument during its next term, which begins October 2010. Thus, its final decision may not be issued for more than a year.

What Does This Mean for Employers?

Depending on the Supreme Court's decision, employers may have to defend against more Title VII retaliation claims. Prudent employers will continue to ensure that their legitimate reasons for terminating employees, as well as other adverse actions, are sufficiently and properly documented.

We will continue to keep you updated on the status of this litigation. If you have any questions regarding this Alert or other labor or employment related issues, please contact the author of the Alert, Jolina Abrena, jabrena@fordharrison.com or the Ford & Harrison attorney with whom you usually work.