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The United States Supreme Court Rules that the FLSA Protects an Employee from Retaliation for Making an Oral Internal Complaint

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***Kasten v. Saint-Gobain Performance Plastics Corp*., -- S. Ct. ----, 2011 WL 977061 (Mar. 22, 2011)**

In another employment law decision in 2011, this time in a 6-2 decision, the United States Supreme Court interpreted the anti-retaliation provision of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq*., which prohibits retaliation against employees who file a complaint or institute any proceeding under the FLSA, to include oral complaints made by an employee to the employer. This decision resolved a split among the circuit courts of appeal and expands the potential liability for employers under the FLSA for retaliation claims.

Factual Background and Procedural History

The plaintiff-employee had sued his employer, defendant Saint-Gobain Performance Plastics Corporation, in a prior lawsuit for alleged violations of the FLSA relating to payment of wages. In that suit, the trial court agreed with the plaintiff and found that the employer had violated the FLSA by not compensating employees for time spent taking their work gear on and off and walking to the work area.

Then, the plaintiff sued his employer in the instant lawsuit claiming he was terminated because he orally complained to company officials about the location of employee time clocks. Specifically, plaintiff claimed that: the time clocks were located between an area where he and other workers put on and take off their work related protective gear and the area where they carry out their assigned tasks; the location of the time clocks prevented workers from receiving credit for the time they incurred changing their work cloths contrary to the FLSA's requirements; he repeatedly called the unlawful time clock location to the attention of the company in accordance with the internal grievance procedure; he "raised a concern" with the shift supervisor about the location; he told a human resources employee that the company would "lose in court" on the issue of the location of the time clocks; he told his lead operator that the location was illegal and he was considering starting a lawsuit, told the human resources and operations manager that the clock location was illegal.

Plaintiff claimed these activities led to his dismissal in December 2006. The company, on the other hand, denied that plaintiff made any "significant complaint" about the time clock location and, moreover, that it terminated plaintiff because, after repeated warnings, plaintiff failed to record his comings and goings on the time clock.

The district court and the Seventh Circuit Court of Appeals agreed with the employer

that the plain language of the FLSA's anti-retaliation provision did not protect oral complaints made to the employer. The United States Supreme Court granted certiorari because of a split among the circuit courts on the issue. Reversing the Seventh Circuit, the Court found that the FLSA's purpose and intent clearly showed that Congress intended to protect oral complaints.

The anti-retaliation provision of the FLSA prohibits employers:

> "to discharge or in any other manner discriminate against any employee because such employee has *filed any complaint* or instituted or caused to be instituted any proceeding under or related to [the FLSA], or has testified or is about to testify in such proceeding, or has served or is about to serve on an industry committee."[1]

Although rejecting the employer's argument that a written complaint is required, the Court agreed that "fair notice" is required under the statute but there is no requirement that the notice be in writing. The Court agreed with the government's position at oral argument that a complaint is "filed" under the FLSA when "'a reasonable, objective person would have understood the employee' to have 'put the employer that [the] employee is asserting statutory rights under the [Act].'"[2] The Court went on to write that the new standard requires that the complaint 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 statute and a call for their protection. This standard can be met, however, by oral complaints, as well as written ones."[3]

Implications for Employers

The FLSA now protects internal complaints by employees about alleged violations of the FLSA against retaliation. Further complicating matters for employers is that the Court did not limit the complaints to written complaints. Instead, the Court has left employers with an ambiguous legal standard that protects any notice – oral or written – that a reasonable employer, "in light of both content and context . . ." would understand "as an assertion of rights protected by the statute and a call for their protection."[4]

Given that the Court has resolved the circuit split on this issue, employers *must* add this new standard to the regular training provided to his supervisors, management, and human resources professionals charged with making personnel decisions.

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[1] 29 U.S.C. § 215(a)(3).
[2] *Kasten*, 2011 WL 977061 at *9.
[3] *Id.*
[4] *Id.*

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