Supreme Court Says Verbal Complaints of Alleged FLSA Violations are Protected

Posted on May 18, 2011 by Adam Santucci

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In a 6-2 decision, the United States Supreme Court recently ruled in *Kasten v. Saint-Gobain Performance Plastics Corp.*, ___ U.S. ___, No. 09-834 (2011) (pdf), that an employee's verbal complaint about alleged wage and hour violations can be sufficient to trigger the anti-retaliation protections under the Fair Labor Standards Act ("FLSA").

At issue was the provision in the statute that makes it illegal "to discharge . . . any employee because such employee has filed any complaint" alleging a violation of the Act. 29 U.S.C. § 215(a)(3). Plaintiff Kevin Kasten, a former employee of Saint-Gobain, alleged he was terminated in retaliation for making oral complaints to his supervisors and human resources personnel regarding the location of the company's time clocks, which Kasten alleged prevented employees from recording time spent "donning and doffing" protective equipment. The question before the Court was whether the phrase "filed any complaint" in the statutory text of the FLSA included both verbal and written complaints. The District Court granted Saint-Gobain's motion for summary judgment, concluding the FLSA's anti-retaliation provision did not cover verbal complaints. The Seventh Circuit affirmed the lower court's decision.

In reversing the Seventh Circuit's decision, the Supreme Court first analyzed the actual text of the statute but, finding the text to be open to multiple interpretations, ultimately relied on an examination of congressional intent and the Department of Labor's and the Equal Employment Opportunity Commission's interpretation of the phrase. With respect to Congress's intended purpose in enacting the anti-retaliation provision of the FLSA, the Court stated specifically:

> Several functional considerations indicate that Congress intended the anti-retaliation provision to cover oral, as well as written, "complaint[s]." First, an interpretation that limited the provision's coverage to written complaints would undermine the Act's basic objectives. 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." 29 U.S.C. § 202(a). It does so in part by setting forth substantive wage, hour, and overtime standards. It relies for enforcement of these standards, not upon "continuing detailed federal supervision or inspection of payrolls," but upon "information and complaints received from employees seeking to vindicate rights claimed to have been denied." And its anti-retaliation provision makes this enforcement scheme effective by

> preventing "fear of economic retaliation" from inducing workers "quietly to accept substandard conditions."

Slip op. at 7.

The Court articulated a test to determine whether a complaint is "filed" for FLSA purposes. Under the test, if a reasonable and objective person would have "fair notice" that the employee is asserting statutory rights, the employee is protected under the FLSA. "Fair notice" is achieved where a "complaint [is] sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights."

What does the Court's decision mean for employers? It should be clear that the case expands the bounds of potential employer liability under the FLSA. The Court's decision may also have farther reaching implications beyond the FLSA as several other federal statutes, including Occupational Safety and Health Act and the Clean Air Act, contain similar anti-retaliation provisions. A cautious employer will treat a verbal complaint the same as a written complaint. In disciplinary investigations, employers should ask supervisors whether the particular employee has made any oral complaints to determine whether the employee may make an argument in the future that any disciplinary action was in retaliation for making the complaint. As always, employers should document the specific reasons for employee terminations and disciplinary actions and follow established company policies to limit later arguments by a terminated employee that he or she was terminated because of a retaliatory motive on the part of the employer.