ORAL COMPLAINTS CAN PROVIDE BASIS FOR FLSA RETALIATION CLAIM

The United States Supreme Court recently ruled that the anti-retaliation provision of the Fair Labor Standards Act (FLSA) extends to an employee's oral complaints. The anti-retaliation provision, 29 U.S.C. § 215(a)(3), makes it illegal for an employer "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]..." (emphasis added). In *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S.Ct. 1325 (2011), the Court held that the term "any complaint" includes oral and written complaints. The decision in *Kasten* continues a recent trend of rulings that have expanded employment-related anti-retaliation laws.

Facts of Case

In October 2006, Saint-Gobain Performance Plastics Corp. employee Kevin Kasten allegedly began orally complaining that the location of the company's time clocks prevented employees from being paid for time they spent donning and doffing required protective gear prior to reporting to their job location and after finishing their shifts. From October through December 2006, the company disciplined Kasten for failing to clock in and out as required by company policy. A third warning, issued in November 2006, resulted in a one-day suspension. Kasten allegedly continued to complain about the location of the time clocks and did not clock in and out as required. Ultimately, the company suspended Kasten on December 6, and then terminated his employment five days later.

Following his termination, Kasten filed a lawsuit against Saint-Gobain in which he claimed he had been fired in retaliation for his complaints about the location of the time clocks. A federal district court ruled in favor of Saint-Gobain, finding that the FLSA's anti-retaliation provision did not apply to oral complaints. On appeal, the Seventh Circuit Court of Appeals also ruled in favor of Saint-Gobain. The Supreme Court disagreed and reversed the lower courts' decisions.

Supreme Court's Ruling

The Court conducted a lengthy statutory interpretation exercise to reach the conclusion that the anti-retaliation provision extends to oral complaints. First, it determined that the word "file" has different meanings depending on context; therefore, a simple dictionary definition application of "file" did not resolve the issue of whether the word applies to both oral and written complaints. The Court then turned to an analysis of what it referred to as "functional considerations."

In conducting this additional analysis, the Court looked to Congress' intent in enacting the FLSA. Reasoning that Congress intended for the statute to cover oral complaints, it observed that a narrow interpretation of the term "filed any complaint" would undermine the FLSA's purpose of prohibiting "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." Referencing a quote by Franklin Roosevelt at the time of enactment of the FLSA, the Court noted, "Why would Congress want to limit the [FLSA] enforcement scheme's effectiveness by inhibiting use of the Act's complaint procedure by those who would find it difficult to reduce their complaints to writing, particularly the illiterate, less educated, or overworked workers who were most in need of the Act's help at the time of passage?"

To further support its decision, the Court cited the views of federal administrative agencies to which Congress has delegated the right to enforce laws such as the FLSA. It specifically noted that the U.S. Secretary of Labor has interpreted "any complaint" to cover oral and written complaints. The Court similarly cited the Equal Employment Opportunity Commission and held that these federal agencies' interpretations are reasonable and consistent with the FLSA.

Addressing Saint-Gobain's argument that oral complaints would not provide sufficient notice to an employer that an employee has actually made an FLSA complaint, the Court held that in order for a complaint to fall within the protection of the anti-retaliation 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 statute and a call for their protection."

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Practical Impact

The Court's ruling does not create a need for wholesale changes. It does, however, create an opportunity for a checkup on policies and practices for the intake and handling of workplace complaints. Retaliatory acts can create liability. Accordingly, employers should ensure that supervisors, especially front-line supervisors, have up-to-date training and understand the importance of promptly addressing oral and written complaints of all types, without taking any retaliatory action. In the event an oral or written complaint is made by an employee, the employer should be prepared to promptly investigate and take any necessary corrective action. Finally, employers should clarify – through their policies, employee handbooks and training practices – that employees will not face retaliation if they make oral or written complaints under the FLSA or other similar employment laws.

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