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U.S. Supreme Court: Oral Complaints Are Covered Under FLSA's Anti-retaliation Provision

Opinion underscores need for employers to review policies and train supervisors

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March 22, 2011

Is an oral complaint protected under the Fair Labor Standards Act (FLSA), and how may employers distinguish between generalized workplace gripes and protected complaints? Courts have struggled with these questions for years. In *Kasten v. Saint-Gobain Performance Plastics Corp.*, the U.S. Supreme Court held that a "sufficiently clear and detailed" oral complaint is protected under the anti-retaliation provision of the FLSA.

Case background

The FLSA prohibits retaliating against an employee who has "filed a complaint." Kevin Kasten, a manufacturing employee, made several oral complaints to different supervisors at different times that his employer, Saint-Gobain, was violating the FLSA because time clocks were placed in a location beyond the area where protective gear was donned, resulting in employees not receiving credit for that time.

Kasten first "raised a concern" with a shift supervisor that time clocks were not properly located. He later told a human resources employee that Saint-Gobain would lose if the issue was litigated in court. He mentioned to his lead operator that he thought he might file a lawsuit. He made similar comments to the human resources and operations managers.

Meanwhile, Kasten was terminated because, despite several warnings, he failed to clock in and out to record his time. He filed suit alleging his termination was in retaliation for his complaints. The district court dismissed his retaliation claim on the grounds that the FLSA only protected "filed" complaints and, as a matter of law, an oral complaint is not a "filed" complaint.

The U.S. Court of Appeals for the 7th Circuit affirmed. The court concluded that to be protected under the FLSA a complaint had to be made with a sufficient degree of formality to impress upon the employer that it was an actual complaint, not merely a casual gripe. Kasten's diffuse oral grievances fell short of this mark.

The opinion

The U.S. Supreme Court reversed (6-2). In an opinion authored by Justice Stephen Breyer, the majority observed that several state and federal statutes or regulations allow the filing of an oral complaint. Therefore, the requirement of a "filed complaint" did not preclude oral complaints. Also, with respect to the FLSA's purpose, the majority stated that limiting "filed complaints" to formal written statements would make it more difficult for less-educated or overworked workers to vindicate their rights, and hamstring efforts by government agencies to accept and investigate allegations of statutory violations.

The majority recognized, however, that allowing generalized oral complaints would fail to give employers adequate and fair notice. To safeguard against this, the majority held that, to be protected under the FLSA, an oral 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."

The Court did not address whether the FLSA protection covers only complaints filed in court or with an agency because Saint-Gobain did not raise that issue in its response to the petition for review.

Justices Antonin Scalia and Clarence Thomas dissented. The dissent did not object to the conclusion that oral complaints could be protected. However, it contended that the FLSA's anti-retaliation provision was intended to protect complaints filed with a court or an agency, and not internal complaints filed with the employer.

Significance

Distinguishing generalized workplace gripes from "sufficiently clear and detailed" complaints that are protected under law will obviously be tested on a case-by-case basis. To minimize and better manage risks, employers should:

- Review their grievance policies. In particular, consider defining complaints and limiting to whom complaints should

be directed. Traditional structures—such as Step 1 to supervisor, Step 2 to manager, and Step 3 to CEO—may no longer reflect best practice. Consider whether all complaints should be made to human resources professionals or in-house counsel who have been trained to investigate claims that the employer is not in compliance with workplace laws or regulations.

- Train supervisors to immediately pass along any "gripes" or complaints for review and action. Supervisors, managers, human resources professionals, and in-house counsel need to be trained to identify protected complaints, understand the legal protections against retaliation (and how to prevent retaliation complaints), and know their responsibilities during a workplace investigation.

- Employer representatives responsible for investigating complaints (whether human resources, in-house counsel, or first-line supervisors) need training on conducting effective workplace investigations and preventing retaliation.

- Confer with counsel where decisions have the likelihood of sparking litigation (such as employment termination).

Please contact us if we can assist your organization in updating your grievance or open-door procedures, or in training your team members who may receive or investigate protected complaints.