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EMPLOYMENT LAW ALERT

February 2011

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For further information, please contact these Employment Law Group members:

Jeffrey M. Schlossberg
Chair
(516) 663-6554
jschlossberg@rmfpc.com

Douglas J. Good
(516) 663-6630
dgood@rmfpc.com

Joseph R. Harbeson
(516) 663-6545
jharbeson@rmfpc.com

Kimberly Malerba
(516) 663-6679
kmalerba@rmfpc.com

Supreme Court Expands Scope of Retaliation Claims

By: Jeffrey M. Schlossberg and Kimberly B. Malerba

Last month, the U.S. Supreme Court issued a unanimous decision dramatically expanding the reach of Title VII's anti-retaliation provision. In this decision, the court held that an employee who claimed he was terminated because his fiancé filed a discrimination claim against their common employer may pursue a retaliation claim under Title VII.

In this case, Eric Thompson and his fiancé, Miriam Regalado, were employed by North American Steel. Ms. Regalado filed a discrimination claim with the EEOC alleging sex discrimination. Three weeks later, the company fired Thompson. The company asserted that it terminated Thompson for poor performance.

Title VII of the Civil Rights Act of 1964 states that it is unlawful to retaliate against someone who has opposed any practice that violates Title VII or because the person filed a charge or participated in a proceeding under Title VII. Based on the statute's apparently plain language, there would seem to be no cause of action for Thompson, who did not oppose a practice or participate in a proceeding. Nevertheless, the Supreme Court stated that "Title VII's antiretaliation provision must be construed to cover a broad range of employer conduct. It prohibits any employer action that well might have dissuaded a reasonable worker from making or supporting a discrimination charge." The Court further explained that Title VII covers retaliating against an employee's fiancé because "a reasonable worker obviously might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired."

What does this decision mean for employers? All we know for sure is that retaliation against an employee's fiancé is prohibited. But, how far that concept extends is yet to be determined. Does it

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apply to relatives? Friends? The Court did hint that "firing a close family member will almost always meet the standard." Beyond that, only time will tell.

We do take this opportunity to remind everyone - as discussed in last month's RMF Employment Alert - that retaliation claims have already risen to become the number one charge filed with the EEOC. The Supreme Court's decision likely will lead to even more such claims being filed, given that the class of potential retaliation victims has been so dramatically expanded. As noted last month, employers are encouraged to consider the risk of retaliation claims when dealing with employees who have alleged discrimination.

Follow-up: NLRB Facebook Complaint Settled

We reported in the November 2010 RMF Employment Alert that the National Labor Relations Board brought a complaint alleging an unfair labor practice against an employer for firing an employee who voiced complaints about the employer on Facebook.

On February 7, the NLRB announced a settlement with the employer. The terms include a requirement that the company revise its policy to ensure that it does not improperly restrict the rights of employees to discuss wages, hours, and other terms and conditions of employment. The company also agreed that it would not discipline employees for engaging in such activity.

Employers are reminded that, under the National Labor Relations Act, employees (whether unionized or not) have the right to engage in protected concerted activity, which includes discussions among employees about the company or individual supervisors. Employers should be sure that their Internet/social networking policies are not too broad so as to prohibit otherwise protected activity.

If we can be of assistance on these or any other employment law issues, please do not hesitate to contact us.

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RUSKINMOSCOUFALTISCHEK P.C.
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East Tower, 15th Floor
1425 RXR Plaza, Uniondale, NY 11556-1425
516.663.6600
www.rmfpc.com