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## **U.S Supreme Court Finds Oral Complaints By Employees Suffice For Retaliation Claims Under the Fair Labor Standards Act**

On March 22, 2011, the U.S. Supreme Court held, in a 6-2 ruling, that the federal Fair Labor Standards Act (FLSA) ban on retaliating against employees who “file” a complaint against an employer applies to oral complaints. However, the Court refused to address whether the ban applies to an oral complaint to an employer, as opposed to a governmental agency. *Kasten v. Saint-Gobain Performance Plastics Corp.*, No. 09-834, 3/22/11.

The case involves a claim by an employee that he was fired because he orally complained about violations of the FLSA, the federal minimum wage and overtime law, to his employer, and made threats about filing a suit. The lower courts rejected the suit, holding that oral complaints were not protected by the anti-retaliation provision of the FLSA.

In reversing the lower courts, the Supreme Court undertook a detailed discussion of the various possible meanings of the words “filed any complaint”. The statute forbids retaliation against an employee who has “filed any complaint” under the FLSA or related to the statute. Ultimately, the majority held that even though the word “filed” may suggest “some degree of formality” in an employee’s complaint, it does not require that the complaint be in writing.

If an oral 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 protected by the statute and a call for their protection”, it may be protected under the FLSA.

However, the majority ruling refused to consider whether the oral complaint must be filed with a governmental agency to be covered. The employer argued that oral complaints with the employer only should not be covered, but since it didn’t raise the issue until after review was granted by the Supreme Court, the Court refused to decide the issue, leaving that issue for the lower courts. The case was remanded for consideration of whether the complaint met the clarity test enunciated by the Court.

**Comment:** This case is yet another recent expansion of the retaliation cause of action by the U.S. Supreme Court under various federal employment laws. Employers must avoid taking any adverse actions against employees who complain about federal employment law violations, given the liberal interpretations of the courts and agencies regarding what is prohibited retaliation under federal law. Supervisors should also be trained about retaliation issues, and taught to avoid reactions and actions that create potential liability in that area of law, one of the major sources of employment claims today.

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