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The anti-retaliation provision of Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits an employer from discriminating against any of its employees for engaging in protected conduct. In *Thompson v. North American Stainless,* the United States Supreme Court unanimously held on January 24, 2011 that an employee who claims that he was terminated because his fiancé filed a discrimination charge against their mutual employer, may pursue a retaliation claim under Title VII.

Facts

Eric Thompson and his fiancé, Miriam Regalado, were employees of North American Steel ("NAS"). In February 2003, Ms. Regalado filed a charge with the Equal Employment Opportunity Commission (the "EEOC") against NAS alleging sex discrimination. Three weeks later, NAS fired Mr. Thompson. Mr. Thompson then filed a Title VII lawsuit against NAS in the United States District Court for the Eastern District of Kentucky, claiming that NAS fired him in order to retaliate against Ms. Regalado for filing her charge with the EEOC. The District Court granted summary judgment for NAS, concluding that Title VII "does not permit third party retaliation claims." The Sixth Circuit Court of Appeals affirmed, holding that Mr. Thompson did not "engag[e] in any statutorily protected activity, either on his own behalf or on behalf of Miriam Regalado [thus he] is not included in the class of persons for whom Congress created a retaliation cause of action."

In granting certiorari, the Supreme Court agreed to consider two issues: (1) whether NAS's firing of Mr. Thompson constituted unlawful retaliation and (2) if so, whether Title VII provides a cause of action for Mr. Thompson.

On the first issue, the Supreme Court held that Mr. Thompson's firing did constitute unlawful retaliation. The Court relied on language from *Burlington N. & S. F. R. Co. v. White,* where it had previously determined that Title VII's anti-retaliation provision is worded broadly and prohibits any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." In *North American Stainless,* the Court stated "[w]e think it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." The Court discounted NAS's argument that allowing third party retaliation claims would lead to difficult line-drawing regarding the types of relationships entitled to protection. While the Court declined to identify a fixed class of relationships for which retaliation is unlawful, it did note that "we expect that firing a close family member will almost always meet the *Burlington* standard, and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize."

On the second issue, the Supreme Court held that in Title VII actions, any plaintiff with an interest "arguably [sought] to be protected by the statutes" can bring suit, and that Mr. Thompson fell within the "zone of interests" protected by Title VII. Thus, Mr. Thompson could state a retaliation cause of action against NAS. In particular, the Court noted that the purpose of Title VII is to protect employees from their employers' unlawful actions and, accepting the facts as alleged, firing Mr. Thompson was NAS's unlawful act by which it intended to punish Ms. Regalado for bringing her EEOC charge.

Practical Considerations

The Supreme Court's decision expands the scope of Title VII's anti-retaliation provision and will likely lead to additional lawsuits by individuals claiming that they were fired or subject to an adverse employment action because a family member or someone close to them filed an action against their employer. Employers must now be mindful of an employee's family and close relationships within the workplace when making adverse employment decisions.

Although *North American Stainless* is a clear victory for employees, it is important to note that it speaks only to the first two elements of a Title VII retaliation claim, and that an employee must satisfy three elements to prove retaliation: (1) the employee engaged in a protected activity; (2) the employer subjected the employee to an adverse employment action; and (3) a causal link exists between the employee's protected activity and the

employer's action. Thus, an employer can still defend against a claim that an employee was retaliated against because a family member or someone close to them filed an action against their common employer by demonstrating that there was a legitimate non-retaliatory reason for taking the adverse employment action (and therefore no causal link between the protected activity and the adverse employment action).

If you would like to discuss these issues further, please contact one of the attorneys listed above.

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