Allen Matkins Employment Alert

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A New Trap For The Unwary: U.S. Supreme Court Rules That Employees Are Protected If They Have “Filed” An Oral Complaint

The Supreme Court recently ruled that the anti-retaliation provisions of the Fair Labor Standards Act apply to employees who make an oral complaint, although the statutory phrase “filed any complaint” seems to clearly suggest that the complaint must be in writing.

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Section 215(a)(3) of the Fair Labor Standards Act of 1938 (the “Act”) forbids employers "to discharge . . . any employee because such employee has filed any complaint" alleging a violation of the Act.

Kevin Kasten was employed by Saint-Gobain Performance Plastics Corporation. Kasten orally complained to Saint-Gobain that Saint-Gobain located its timeclocks between the area where Kasten and other workers don and doff their work-related protective gear and the area where they carry out their assigned tasks. That location prevented workers from receiving credit for the time they spent donning and doffing their work clothes -- contrary to the Act's requirements. After making his oral complaints, Kasten was discharged by Saint-Gobain.

Kasten sued Saint-Gobain in the United States District Court for the Western District of Wisconsin. Kasten alleged that Saint-Gobain retaliated against him for making oral complaints, in violation of Section 215(a)(3) of the Act. The District Court granted Saint-Gobain summary judgment, concluding that the Act's anti-retaliation provision did not cover oral complaints. The Seventh Circuit affirmed.

The District Court and Seventh Circuit analysis appeared to be solid, in that the Act expressly protects only those employees who “filed any complaint,” which clearly suggests a written complaint.[1]

However, the U.S. Supreme Court granted Kasten’s petition for certiorari. On March 22, 2011, the Supreme Court ruled that the phrase "any complaint" suggested a broad interpretation that would include an oral complaint, and that limiting coverage to written complaints would undermine the Act's basic objectives. The Court noted that the Secretary of the Department of Labor and the EEOC had consistently held the view that the words "filed any complaint" covered oral, as well as written, complaints, although some would argue that the Department of Labor and the EEOC are notoriously agenda-driven in their interpretations of law. Ultimately, the

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Seventh Circuit's ruling was vacated and remanded by the Supreme Court's 6-2 decision. Kasten v. Saint-Gobain Performance Plastics Corp., 179 L. Ed. 2d 379.

Justice Scalia dissented, noting as follows: "The word "complaint" appears as part of the phrase "filed any complaint" and thus draws meaning from the verb with which it is connected. The choice of the word "filed" rather than a broader alternative like "made" [connotes] something in writing."

However, the primary focus of Justice Scalia's dissent was the assertion that § 215(a)(3) does not cover complaints to the employer at all. As stated by Justice Scalia: "The plain meaning of the critical phrase and the context in which it appears make clear that the retaliation provision contemplates an official grievance filed with a court or an agency, not oral complaints -- or even formal, written complaints -- from an employee to an employer."

Unfortunately, the foregoing issue was sidestepped by the majority opinion, which ruled that the argument that § 215(a)(3) does not cover intracompany complaints, although raised by Saint-Gobain at the Seventh Circuit, was not raised in Saint-Gobain's response to Kasten's petition to the Supreme Court for certiorari, and was therefore waived. Justice Scalia's dissent persuasively argues that this important issue was properly before the Supreme Court, but the issue remains absent from the majority ruling.

The problem that Kasten v. Saint-Gobain highlights for employers is that relatively innocuous and low-profile activity can place an employee into a protected class as a complainer, giving that employee special rights in the event of a discharge or other adverse employment action. For example, if an employer learns that a current employee has filed a complaint with the Department of Labor, such employer will typically take great care thereafter to ensure that no retaliation is imposed upon such employee, if for no other reason than the concern that the employee could so easily establish a *prima facie* case of retaliation. Kasten v. Saint-Gobain reminds us that much more low-profile activity (such as an oral complaint to a supervisor) may still give an employee special rights against retaliation.

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[1] By comparison, the California Labor Code has a much more broadly-worded anti-retaliation provision: "No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter ... or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her." Cal Lab Code § 98.6.
