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Supreme Court Decision: Oral Complaints Are Covered by FLSA Anti-Retaliation Provision

Earlier this week, the Supreme Court resolved a split among federal appellate courts by deciding that an employee who merely makes an oral complaint about a violation of the Fair Labor Standards Act (“FLSA”) has “filed any complaint” for the purposes of triggering the FLSA’s protection against retaliation.

Kevin Katsen brought a retaliation complaint against his former employer, Saint-Gobain Performance Plastics Corporation, alleging that he was fired for complaining about the location of the time clocks. The employer had apparently placed the time clocks in an area that was not accessible to employees until they had already “donned and doffed” their gear, meaning that employees were not being compensated for the time they spent putting on and taking off their work outfits. Kasten claimed that he repeatedly called attention to the problem with the time clock location, following the procedure outlined in Saint-Gobain’s informal grievance procedure, contained in the employee handbook, but Kasten never actually filed a written formal complaint. He alleged that he told the shift supervisor about the problem and later also told an HR employee that “if they were to get challenged on” the issue in court “they would lose.” Kasten also said he commented to another supervisor that he was “thinking about starting a lawsuit” over the location of the clocks.

Kasten was fired in December 2006. Saint-Gobain denied that Kasten ever made any significant complaint about the time clock location, and says that it fired Kasten for failing to accurately record his comings and goings on the time clock. Katsen sued, claiming the real reason he was fired was because of his complaints about the location of the time clock. After discovery, Saint-Gobain filed for summary judgment in Federal District Court.

The FLSA contains an anti-retaliation provision that makes it illegal for employers

to discharge or in any other manner discriminate against any employee because such employee has *filed any complaint* or instituted or caused to be instituted any proceeding under or related to [the FLSA], or has testified or is about to testify in such proceeding, or has served or is about to serve on an industry committee. 29 U.S.C. § 215(a)(3) (emphasis added).

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Because the language “filed any complaint” seemed to require something more formal than the oral complaints Katsen claimed to have made, the trial court ruled in favor of Saint-Gobain and dismissed the case before trial. On appeal, the United States Court of Appeals for the Seventh Circuit agreed. However, other appellate courts have held differently, so the Supreme Court decided to review the matter.

In its opinion, the Supreme Court interpreted the phrase “filed any complaint” and concluded that it included Katsen’s informal oral grievances. The Supreme Court held that a complaint is “filed” when a reasonable, objective person would have understood that the employee had put his employer on notice that he was asserting his statutory rights under the FLSA.

While federal courts with jurisdiction in Massachusetts had already reached the same conclusion, the Supreme Court’s decision is an important reminder that anti-retaliation protections are often triggered by informal grievances. To avoid exposure to costly litigation, employers should ensure that any employee who is about to be terminated has not engaged in any protected conduct, which would include informal complaints about wage and hour issues, before making any termination decision. When in doubt, consult your labor and employment attorneys for guidance.

If you have any questions or concerns about this or any other labor and employment matter, please contact any of the attorneys at Skoler, Abbott & Presser, P.C. at (413) 737-4753.

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