

EMPLOYERS BEWARE

Third Party Retaliation Claims More Likely After Supreme Court Decision

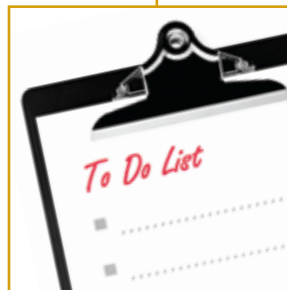
Add another item to an employer's "to do" list when terminating or disciplining an employee. Employers must now take into account whether they may be subject to retaliation claims by third parties.

Title VII of the 1964 Civil Rights Act prohibits discrimination, harassment, and retaliation in the workplace based on an individual's race, color, religion, sex, or national origin. Historically, courts have found that Title VII's "anti-retaliation" provision only protected individuals who actually made complaints of discrimination or harassment. A unanimous decision by the U.S. Supreme Court, however, expands Title VII's anti-retaliation provision to cover claims brought by third parties who never complained of discrimination or harassment.

In *Thompson v North American Stainless, LP*, North American Stainless fired Thompson three weeks after learning that Thompson's fiancé filed a sex discrimination charge against the company. Thompson then sued the company, alleging his termination was in retaliation for his fiancé's sex discrimination charge.

Reversing the Sixth Circuit Court of Appeals, the Supreme Court held that the company's firing of Thompson violated Title VII's anti-retaliation provision. The Supreme Court found that, "it [is] obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired."

Not only did the Supreme Court determine that the firing constituted unlawful retaliation, but it also held that Thompson himself may sue. Title VII grants a right to sue to "the person claiming to be aggrieved." The Supreme Court found that Thompson was an "aggrieved" party by adopting a "zone of interest" test from another area of law. Thus, the Court found that Thompson – an employee who was fired as a means to harm his fiancé – was within the "zone of interest" that Title VII was intended to protect.



GUIDANCE FOR EMPLOYERS

The Supreme Court's unanimous decision significantly extends Title VII's already broad anti-retaliation provision. Although the Supreme Court did not create a clear standard regarding when third-party retaliation claims are permissible, employers taking adverse action will now need to evaluate whether the action might be construed as a response to conduct by someone related or closely associated with the affected employee. Since the *Thompson* ruling, at least two federal courts have permitted a third-party retaliation claim involving married couples working for the same company. Employers should also be aware that a federal court in Florida declined to dismiss a third-party retaliation claim even though the plaintiff's wife – who was the subject of the original adverse action – was employed by a sub-contractor of his company. As these cases continue to define the scope of the *Thompson* holding, Miller Canfield will keep you advised. For more information on this issue contact the author or David G. King at 313.496.7585.

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