Supreme Court Rules That FLSA's Anti-Retaliation Provision Covers Oral Complaints

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On March 22, 2011, the United States Supreme Court, in *Kasten v. Saint-Gobain Performance Plastics Corp.,* No. 09-834, held that the Fair Labor Standards Act's anti-retaliation provision, 29 U.S.C. §215(a)(3), covers oral complaints. In a 6-2 ruling authored by Justice Stephen G. Breyer, the Court resolved a conflict among the U.S. Court of Appeals and held that the scope of the statutory term "filed any complaint" under the Fair Labor Standards Act ("FLSA") includes oral, as well as written, complaints. According to the majority opinion, 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.

Petitioner Kevin Kasten, a manufacturing and production worker at Saint-Gobain's Wisconsin plant, sued the plastics manufacturer, claiming that the company wrongfully discharged him after he verbally complained to company officials that the employer's placement of time clocks violated the FLSA because it prevented workers from receiving credit for the time spent donning and doffing work-related protective gear. The U.S. District Court for the Western District of Wisconsin found that Kasten's informal complaint did not constitute protected activity based on the plain language of the FLSA. The Seventh Circuit affirmed, reasoning that the FLSA's use of the phrase "filed any complaint" – particularly the word "filed" – can only mean that a plaintiff employee must make a complaint in writing in order to fall within the purview of the statute.

In vacating the Seventh Circuit's opinion and finding that the FLSA's anti-retaliation provision covers oral complaints, the Supreme Court reasoned that several factors demonstrate that Congress did not intend to limit the provision to written complaints. As an initial matter, the majority noted that the text of the statute, taken alone, is inconclusive. Some dictionary definitions of the word "filed," for example, allow for oral material. In addition, the majority noted instances where legislators, judges, and administrators have used the word "file" to encompass oral statements. Accordingly, while "filings" may more often be made in writing, and thus the word "filed," when considered alone, may suggest a narrow interpretation limited to writing, Congress's use of the phrase "*any* complaint" suggests a broad interpretation that would include an oral complaint.

The Court noted that several "functional considerations" support an interpretation of the anti-retaliation provision to cover oral complaints. First, it considered the FLSA's basic objective, which is to prohibit "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers," 29 U.S.C. §202(a). The Court found that "insofar as the provision covers complaints made to employers, a limiting reading would discourage using informal workplace grievance procedures to secure compliance with the Act." The Court noted that it had already broadly interpreted the language of the National Labor Relations Act's anti-retaliation provision – "filed charges or given testimony" – as protecting workers who simply participate in a Board investigation. Therefore, the Court concluded that the FLSA's similar enforcement needs argue for a broad interpretation of the word "complaint." The Court did note that the phrase "filed any complaint" contemplates some degree of formality, such that the employer has been given "fair notice" that a grievance has been made, but ruled that the "fair notice" standard could be met by an oral complaint.

Second, given Congress's delegation of enforcement powers to federal administrative agencies, the Court

gave weight to the views of the Secretary of Labor and the Equal Employment Opportunity Commission about the meaning of the enforcement provision. Both agencies are of the view that the phrase "filed a complaint" covers oral and written complaints.

The Supreme Court in *Kasten* did not consider Saint-Gobain's alternative claim that the anti-retaliation provision applies only to complaints filed with the government, since the claim was not raised by the company in its response to the petition for certiorari. Saint-Gobain had advanced this claim in the lower courts, which held to the contrary. Chief Justice John G. Roberts and Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Samuel A. Alito, and Sonia Sotomayor joined in the majority opinion. Justice Antonin Scalia, joined by Justice Clarence Thomas, dissented from the Court's ruling. Justice Elena Kagan recused herself from the decision.

In light of the Supreme Court's ruling in *Kasten*, employers should evaluate their current employee complaint procedures and ensure that managers are properly trained to identify, track, and report any complaints that are raised within the company, whether orally or in writing.

Lawyer Contacts

For further information, please contact your principal firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Matthew W. Lampe
New York
+1.212.326.8338
mwlampe@jonesday.com

Michael J. Gray
Chicago
+1.312.269.4096
mjgray@jonesday.com

Lawrence C. DiNardo
Chicago
+1.312.269.4306
lcdinardo@jonesday.com

Brian M. Jorgensen
Dallas
+1.214.969.3741
bmjorgensen@jonesday.com

Alison B. Marshall
Washington
+1.202.879.7611
abmarshall@jonesday.com

Stanley Weiner
Cleveland
+1.216.586.7763
sweiner@jonesday.com

Mark Temple
Houston
+1.832.239.3741

mdtemple@jonesday.com

Rick Bergstrom
San Diego
+1.858.314.1118
rjbergstrom@jonesday.com