



KD Alert: U.S. Supreme Court "Expands" Employee Anti-Retaliation Protections

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In a decision further expanding employee workplace rights, the Supreme Court of the United States has just decided that oral complaints constitute "filed complaints" under the anti-retaliatory provision of The Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 215(a)(3). The FLSA forbids employers from taking any adverse employment action (e.g., demotion, reassignment, termination) against any employee who is or has filed an FLSA complaint. While otherwise "formal complaints (i.e. written) of FLSA violations have long been covered by the anti-retaliation protection. The Court noted, however, that the oral complains "must be 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."

Admittedly, the Court determined that the FLSA was inconclusive as to whether or not Congress' intent encompassed oral complaints. In its analysis, the Court looked to both the U.S. Department of Labor and U.S. Equal Opportunity Commission, federal agencies that have consistently held that the "filing" of any complaint covers both oral and written complaints.

The Court ultimately concluded that limiting the anti-retaliation provision's scope to written complaints (1) would inhibit use of the FLSA's complaint procedure by those who would find it difficult to reduce their complaints to writing, particularly the illiterate, less educated or overworked workers; (2) could prevent government agencies from using hotlines, interviews, and other oral methods to receive complaints; and (3) discourage informal workplace grievance procedures to secure compliance with the FLSA.

What does this decision mean to employers?

At a minimum, the decision dilutes a company's ability to challenge a "filing" using the FLSA's statute of limitations. It is anticipated that the FLSA will afford a wide berth of victimized employees. Certainly, the insurance and business communities can expect increased FLSA retaliation claims, reflecting the overall surge in such claims as a whole. Companies are further advised to check their professional liability insurance in order to determine whether a retaliation claim is a covered loss, as many policies exclude claims under the FLSA. Finally, employment "best practices" would demand that companies become even more attuned to the pulse of their human resources and ensure that complaints are handled internally before they seek outside assistance.

Kaufman Dolowich & Voluck is available to assist employers with compliance and otherwise answer any questions about their rights and obligations under the Fair Labor Standards Act. For more information, contact Keith Gutstein, Philip Voluck, or Anna Maria Tejada, or please contact one of the attorneys in KD's Employment Law practice.