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Six Degrees of Separation? Supreme Court Expands Scope of Title VII Retaliation to Third Parties

By Bethany C. McCurdy, Esq.

On Monday, January 24, 2011, in [Thompson v. North American Stainless LP](#), the Supreme Court expanded the scope of coverage for retaliation suits under Title VII. In *Thompson*, Miriam Regalado, a North American employee, filed a charge with the Equal Employment Opportunity Commission ("EEOC") alleging gender discrimination. Three weeks after she filed the charge, the company fired Eric Thompson - Ms. Regalado's fiancé. While Mr. Thompson was not involved in Ms. Regalado's charge (indeed he did not participate in her case in any way), he nonetheless claimed the company fired him to retaliate against Ms. Regalado.

The Supreme Court examined two questions in *Thompson*: 1) assuming North American fired Mr. Thompson because Ms. Regalado filed her charge with the EEOC, did his termination constitute unlawful retaliation; and 2) if so, does Title VII grant Mr. Thompson a cause of action? The Court answered yes to both questions.

Looking to the first question (whether firing Mr. Thompson was unlawful retaliation under Title VII), the Court looked to its decision in *Burlington N. & S. F. R. Co. v. White*, 548 U. S. 53 (2006). In that case the Court held that Title VII's anti-retaliation provision should be broadly construed to cover a wide range of conduct beyond the "terms and conditions of employment." While the Court did not provide specific detail on what type of conduct would or would not be included, it defined Title VII retaliation as conduct that would dissuade a reasonable worker from engaging in protected activity.

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In *Thompson*, the Court held that a reasonable worker would be dissuaded from engaging in protected activity if she knew her fiancé would be fired, thus answering the first question in the affirmative. The Court, however, declined to specifically identify which relationships would or would not be covered under the anti-retaliation provisions, stating only that firing a close family member will "almost always" be included, while a "mild reprisal" against a "mere acquaintance" will "almost never" be included. The Court added that each case will depend upon the circumstances.

The second question (regarding Mr. Thompson's ability to sue) required the Court to determine whether Mr. Thompson fell into the class of individuals "claiming to be aggrieved" who have a right to bring "a civil action" under Title VII. Here, the Court looked at Title VII's purpose of protecting employees from the unlawful acts of their employers. The Court ultimately determined that Mr. Thompson could sue North American because he was among those who had an interest that "arguably [sought] to be protected by" Title VII. The Court further noted that the harm suffered by Mr. Thompson was deliberate and intended to punish Ms. Regalado for filing her EEOC charge, contrasting this from an employee who might have inadvertently suffered "collateral damage."

What does this mean for employers? At the outset, how broadly the case will reach is still unknown. Whether a terminated best friend or domestic partner could file suit under similar circumstances is unclear, and employers and lawyers alike will have to wait and see how lower courts grapple with the *Thompson* decision and its implications. Regardless, the elements of wise practices and employment decisions remain unchanged, and employers should continue to ensure that any potentially adverse action they take against any employee is both legitimate and justified.

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