



United States Supreme Court Reaffirms Breadth of the Anti-Retaliation Provision of Title VII of the Civil Rights Act of 1964

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On January 24, 2011, in an 8-0 Decision, the United States Supreme Court, in Thompson v. North American Stainless, LP, Civil Action No. 09-291 (2011) reversed the lower courts' dismissal of the case, and held, that if the facts alleged are true, an employer violates the anti-retaliation provision in Title VII of the Civil Rights Act of 1964 by terminating an employee in alleged retaliation for his fiancée's filing a charge of discrimination with the Federal Equal Employment Opportunity Commission (EEOC). This decision follows the Court's 2006 decision in Burlington Northern and Santa Fe Railway Co. v. White, 548 US 53 (2006) in which it held Title VII's anti-retaliation provision must be construed to cover a "broad range" of employer conduct. (In Burlington Northern, supra, the Court held Title VII's anti-retaliation provision is not limited to terms and conditions or status of employment or to acts simply arising in the workplace. In that case, the female employee, after making several sex discrimination complaints, was, among other things, transferred to another piece of equipment. Even though she did not suffer any loss of wages or other benefits, the Court held she stated a retaliation claim.)

In Thompson, supra, the Court reaffirmed Title VII's anti-retaliation provision prohibits any employer action that "might dissuade a reasonable worker from making or supporting a charge of discrimination." In finding a reasonable

worker could be unlawfully dissuaded from engaging in protected activity if she thought her fiancé would be fired for pursuing a discrimination complaint, the Court refused to set a fixed class of relationships for which third party reprisal would be prohibited. The Court advised the class of persons protected against retaliation based upon "relationship" will likely depend upon the totality of circumstances in a given case. In Thompson, supra, the Court held that if the employee's allegations proved true, he was within the "zone of interests" which the statute sought to protect.

Like all retaliation claims, a Thompson-like cause of action would survive even if the underlying charge of discrimination was dismissed. "Retaliation" is an independent claim of discrimination. (As a practical matter, beware, retaliation claims, more often than not, prove easier to prosecute than the underlying cause of action.)

The Court emphasized that the text of Title VII provides broader protection against retaliation than defined substantive forms of discrimination, because unlike the enumerated classes of persons entitled to Title VII's protection and the "things" protected, Title VII's anti-retaliation provision lacks similar specificity.

Based upon Thompson, supra, and Burlington Northern, supra, an employer investigating or charged with employment discrimination must not only assiduously protect the claimant from retaliatory acts (Burlington Northern) but an employer must also carefully weigh any discipline or discharge or change in terms or conditions of employment, later to be imposed upon witnesses or persons with a relationship to the charging party. When imposing discipline or changing the terms and conditions of employment upon this undefined, but broad class of protected employees, not only should

the employer's negative employment action be based upon non-discriminatory business reasons but the employer should be sensitive that a relationship between the affected employee and a charging party could become an independent cause of action. Therefore, an employer must not only be vigilant in protecting the rights of persons who assert claims of discrimination to be free of retaliation, but supervisors, managers, and co-workers cannot discriminate or retaliate against persons who assert claims, or participate in discrimination investigations, and, now, persons "related" to the charging party.