

**“Zone of Interest” Concept Applied to Title VII Retaliation Claims**

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In a significant case issued last year, the U.S. Supreme Court expanded the right to file Title VII retaliation claims to employees, based on their relationship to other employees who directly engaged in protected activity. Thompson v. North American Stainless, LP, Case No. 09-291 (U.S. January 24, 2011). Historically, only employees who engaged in protected activity were thought to have the right to file retaliation claims.

In this case, an employee, Miriam Regalado, filed a claim of sex discrimination against her employer with the EEOC. Three weeks later her fiancé, Eric Thompson, was fired by the same employer. Thompson brought a claim of retaliatory discharge under Title VII. The company argued his termination was due to poor performance.

Title VII makes it illegal to retaliate against any employee who has opposed an unlawful practice, or who has made a charge, testified, assisted, or participated in a Title VII investigation, proceeding or hearing. In reversing the lower court, the Supreme Court relied on its prior ruling in Burlington Northern & Santa Fe Railway Co., v. White, 548 U.S. 53 (2006). In that case the Court stated Title VII’s anti-retaliation provision prohibits any employer action that may dissuade a reasonable worker from making, or supporting a charge of discrimination. The Court went on to find that an employee with a legitimate claim might be dissuaded from engaging in protected activity if she knew her fiancé would be fired. Therefore, Thompson’s discharge, if in retaliation for his fiancée’s complaint, would violate the law.

It then turned to whether Thompson could bring suit in his own name for an act deemed to be directed toward his fiancée for bringing her discrimination claim. The Court noted that Title VII permits any person “aggrieved” by a Title VII violation to bring suit. Those who might be “aggrieved” form a larger class than those who may have been directly “discriminated” against. By virtue of his firing, Thompson was “aggrieved” and fell within the “zone of interests” sought to be protected by the law. As such, he gained standing to bring suit.

The Court left open the question of which third party relationships fall within the “zone of interest,” beyond stating “we expect that firing a close family member will almost always meet the standard, and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize.”

This decision opens the door to a wider group of employees who may be able to bring a retaliation charge, even if they did not directly file a of claim discrimination, or participate in any investigation or protected activity.

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