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ALERT

Employers Beware — Now's the Time to Carefully Examine Your FLSA Compliance

Supreme Court Rules Employees Protected Against Retaliation for *Verbal* Wage-Hour Complaints

By Bennett Pine

On March 22, 2011, the United States Supreme Court ruled that the Fair Labor Standards Act (FLSA) protects workers from retaliation for verbal, as well as, written complaints about their wages and hours. *Kasten v. Saint-Gobain Performance Plastics Corp.*, Case No. 09-834. The 6–2 ruling (Justice Kagan did not participate) continues a trend of Supreme Court decisions that broadly interpret retaliation protections. As a result, employees who have weak discrimination claims on their substantive merits are often handed strong retaliation claims by employers who impose discipline, reassignment or other adverse actions in reaction to receiving the discrimination claim.

> "The court **clearly ruled** that FLSA's retaliation protection covers **oral complaints as well as written ones.**"

The *Kasten* case involved a production worker who alleged he was terminated after he verbally complained to his employer about the location of time clocks in a manufacturing facility. Saint-Gobain argued to the court that the FLSA's phrase "file any complaint" required that the plaintiff-employee make a complaint in writing, and that the FLSA's retaliation protection does not cover internal complaints to employers but rather only those filed with a court or governmental agency.

The court clearly ruled that FLSA's retaliation protection covers oral complaints as well as written ones.

The majority ruling found that limiting the FLSA's retaliation protections to *written* complaints, as urged by the employer, would undermine the law's goal of barring labor conditions that could harm workers' general well being.

"Why would Congress want to limit the enforcement scheme's effectiveness by inhibiting use of the act's complaint procedure by those who would find it difficult to reduce their complaints to writing, particularly

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illiterate, less educated or overworked workers?" Justice Stephen Breyer wrote for the majority.

On the other hand, the court's opinion would not protect an employee's mere casual utterances. The complaint must be "sufficiently clear and detailed for a reasonable employer to understand it" as such.

The court's opinion did not explicitly rule that *internal* complaints are protected, remanding the issue for technical, procedural reasons. However, protection of internal, as well as agency or court, complaints appears to be the strong suggestion of the court.

As a result, an employer that receives an *internal* complaint from an employer about wages or hours, whether or not in writing, should exercise extreme caution before taking any action against the complaining employee that could be deemed retaliatory.

In addition, the *Kasten* decision further underscores the need for employers to examine their FLSA compliance in view of the heightened focus of the U.S. Department of Labor and the plaintiff's bar on claims asserting improper classification of employees as "exempt" from overtime and minimum wage entitlements.