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United States Supreme Court Rules Oral Complaints Protected Under FLSA

The United States Supreme Court in *Kasten v. Saint-Gobain Performance Plastics Corp.* (March 22, 2011) --- U.S. ---, has resolved the issue of whether oral complaints are protected under the Fair Labor Standards Act ("FLSA"). At issue in *Kasten* was whether an employee's oral complaints of a FLSA violation were sufficient to constitute protected conduct under the FLSA's anti-retaliation provision. Specifically, the FLSA makes it illegal "to discharge...any employee because such employee has filed any complaint" alleging a violation of the Act. (29 U.S.C. § 215(a)(3).)

At the trial court level, the employee claimed that the employer had terminated him for orally complaining about an FLSA violation. The trial court granted a summary judgment by the employer based on the determination that the FLSA did not protect oral complaints. On appeal, the judgment was affirmed by the Seventh Circuit Court of Appeals.

The Supreme Court reversed the Court of Appeal decision, holding that Congress intended the anti-retaliation provisions of the FLSA to cover oral, as well as written, complaints. The Supreme Court indicated that while the provision of the FLSA may be ambiguous when looked at alone, "considering the provision in conjunction with the purpose and context leads us to conclude that only one interpretation is permissible." After reviewing and concluding that the text of the provision alone could not lead to a conclusive answer, the Supreme Court found that "[s]everal functional considerations indicate that Congress intended the antiretaliation provision to cover oral, as well as written, 'complaint[s].'" Specifically, the Supreme Court goes on to find that an interpretation that limited the provision's coverage to written complaints would undermine the Act's basic objectives. Further, since Congress had delegated the enforcement powers of the FLSA to the Secretary of Labor, the Supreme Court would give weight to the Secretary of Labor's interpretation of the enforcement language, which has consistently been that the words "filed any complaint" cover both oral, as well as written, complaints. Based on these findings, the Supreme Court concluded that the Court of Appeal erred in determining that oral complaints did not fall within the purviews of the FLSA's anti-retaliation provisions.

What should employers do?

Based on the Supreme Court's ruling in *Kasten*, employers should be aware of all complaints, oral or written, regarding alleged violations of FLSA claims and investigate them appropriately. Further, before taking any adverse employment action, employers should add to the checklist of items to review, any oral or written complaint of an FLSA violation.