

JANUARY 2011

## Supreme Court Broadens Protections for Employees Who File Discrimination Claims--And May Create Protections for Their Closest Friends and Relatives

By a unanimous vote, the Supreme Court ruled on January 24th that not only are workers who file discrimination claims protected from retaliation, but so are their family members and their fiancés. The decision could open the gates to retaliation litigation even wider.

Eric Thompson and his fiancé, Miriam Regalado, were both employees of North American Stainless in Kentucky. Thompson was fired three weeks after the EEOC notified the company that Regalado had filed a sex discrimination charge against the company, alleging that she was not receiving the same raises as her male counterparts. Thompson filed suit, alleging that the company had terminated him as a way of retaliating against Regalado for filing the EEOC charge, and to discourage others from making discrimination claims. Thompson's suit was thrown out by the lower courts. The Supreme Court reversed and agreed with Thompson that he too was protected by law.

Justice Scalia, writing for the unanimous court, said that firing a fiancé could clearly rise to illegal retaliation. "We think it obvious," he said, "that a reasonable worker might be dissuaded" from filing a discrimination claim "if she knew that her fiancé would be fired." The Supreme Court was less clear about who else would be entitled to protection under the anti-retaliation laws, and stated that it would depend on the circumstances of each case. Firing a "close family member will almost always" create a cause of action for unlawful retaliation, but "inflicting a milder reprisal on a mere acquaintance will almost

never do so." The decision raises as many questions as it answers, as it creates a spectrum of protection depending upon the nature of the "relationship" that may exist among employees, and even leaves open the door that firing a mere acquaintance of an employee who files a discrimination complaint could give rise to a retaliation claim.

### **Practical Advice:**

In light of the Supreme Court's decision, employers should be ever more diligent about timely documentation of their legitimate, non-discriminatory reasons for taking disciplinary actions and other adverse actions against all employees, and especially against employees who have complained of discrimination, and those employees' close family members and friends. Well-documented performance records will help an employer establish, in the event a lawsuit is filed, that a retaliatory motive played no role in the employment decision. Additionally, when taking adverse action against a friend or family member of someone who has filed a discrimination claim or complained to management about discrimination, a careful review of the planned action should be made to minimize the risk of a retaliation claim based on the relationship.

### **Questions or Assistance?**

If you have any questions regarding this alert, please contact Shari Goodstein at (203) 324-8161 or [sgoodstein@goodwin.com](mailto:sgoodstein@goodwin.com), Gary Starr at (860) 251-5501 or [gstarr@goodwin.com](mailto:gstarr@goodwin.com) or Clarisse Thomas at (203) 324-8164 or [cthomas@goodwin.com](mailto:cthomas@goodwin.com).

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