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Supreme Court Holds Third Party Retaliation Claims Permissible Under Title VII

Can an employee maintain a Title VII retaliation claim against an employer even if the employee has not engaged in any statutorily protected activity?

According to the US Supreme Court, the answer is yes. In *Thompson v. North American Stainless, LP*, the Court held that although the plaintiff had not engaged in statutorily protected activity, he could maintain a third-party retaliation claim against his employer because he fell within the "zone of interest" protected by Title VII. (Details of the case are available in a recent post on the Squire Sanders' Sixth Circuit Appellate Blog.)

In *Thompson*, the plaintiff and his fiancée were both employed by the defendant. The plaintiff claimed that the defendant discharged him in retaliation for his fiancée filing an EEOC charge of discrimination. The Sixth Circuit, in a divided *en banc* decision, held that the plaintiff could not sue under Title VII because he had not engaged in any protected activity and thus was not within "the class of persons for whom Congress created a retaliation cause of action."

The Supreme Court determined the case presented two questions to be decided: (1) whether plaintiff's termination constituted unlawful retaliation and (2) if it did, whether Title VII granted plaintiff a cause of action. In addressing the first question, the Court found little difficulty in concluding that third party reprisals (e.g.,

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plaintiff's termination) constituted unlawful retaliation under Title VII. The second question, however, was more difficult.

In answering this question in the affirmative, the Court held that the statutory phrase "person claiming to be aggrieved" is broad enough to include "any plaintiff with an interest 'arguably [sought] to be protected by the statutes.'" As an employee who was intentionally harmed as a means of retaliation against another employee, the plaintiff fell "well within the zone of interests sought to be protected by Title VII."

The practical implications of *Thompson* are compelling. Employers should be cautious when taking adverse employment actions against a family member or fiancée of another employee who has recently engaged in statutorily protected activity under Title VII or any other state or federal antidiscrimination statute. Employers may also want to consider implementing policies prohibiting intimate relationships between coworkers or the hiring of close relatives.

If you have any questions about this decision or about how this decision may affect your employment policies, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.