

## SUPREME COURT ALLOWS THIRD-PARTY RELATION CLAIMS UNDER TITLE VII

In *Thompson v. North American Stainless, LP* (January 24, 2011), the U. S. Supreme Court ruled that an employee can bring a retaliation claim under Title VII when a person closely related to the employee, such as a family member or fiancé, has engaged in activity protected under Title VII.

“Protected activity” under Title VII includes making a charge, testifying, assisting or participating in any manner in an investigation, proceeding or hearing under Title VII. 42 § 2000e-3(a). Title VII forbids retaliation against an employee because he or she has engaged in such protected activity. Circuit courts of appeal have differed, however, as to whether an employee could bring a retaliation claim based upon protected activity of a third party. The *Thompson* decision resolves the division among circuit courts in favor of expanded parameters for retaliation claims and highlights for employers that retaliation concerns go beyond the employee who actually engaged in protected activity.

### Background of the *Thompson* Decision

Miriam Regalado and her fiancé, Eric Thompson, were employees of North American Stainless. In 2003, Regalado filed a sex discrimination charge with the Equal Employment Opportunity Commission (EEOC) against the company. Three weeks later, the company terminated Thompson. Thompson then filed his own charge with the EEOC and subsequent lawsuit under Title VII, claiming that the company terminated him to retaliate against Regalado.

The trial court granted summary judgment to North American Stainless on the ground that Title VII did not permit third-party retaliation claims. The Sixth Circuit Court of Appeals affirmed, reasoning that Thompson was not entitled to sue for retaliation because he had not engaged in any activity protected by the statute. Thompson then petitioned to the U.S. Supreme Court.

### The Supreme Court’s Decision

The Supreme Court was presented with two issues: (1) whether Thomson’s termination constituted unlawful retaliation under Title VII, and (2) if so, whether Title VII provided Thompson a cause of action. Because the case was on appeal from the grant of summary judgment, the court assumed the facts as alleged by Thompson were true.

First, the Supreme Court held that Thompson’s termination constituted unlawful retaliation under Title VII. In doing so, the court relied upon its 2006 decision in *Burlington N. & S.F.R. Co. v. White*, and emphasized that Title VII’s anti-retaliation provisions are construed to cover a broad range of employer conduct, including action “that well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” The court noted that the test must be applied in an objective fashion to “avoif[d] the uncertainties and unfair discrepancies that can plague a judicial effort to determine a plaintiff’s unusual subjective feelings.” Applying those principles, the court concluded that a reasonable worker might be dissuaded from engaging in protected activity if the worker knew that his or her fiancé would be fired.

The court declined to identify a class of relationships for which third-party reprisals would be unlawful, noting the fact-specific nature of retaliation claims. Nevertheless, it provided some guidance by stating that “[w]e expect that firing a close family member will almost always meet the *Burlington* standard, and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize.”

Second, the court found that Thompson could bring a cause of action for retaliation, even though he was not the individual who had engaged in the protected activity. In doing so, the court interpreted Title VII’s provision that a “civil action may be brought . . . by the person claiming to be aggrieved.” 42 U.S.C. § 2000e-5(f)(1). Although North American Stainless argued that “person aggrieved” means the employee who engaged in the protected activity, the court disagreed and noted that limiting the phrase

in that way would be an artificially narrow reading of the statute. Ultimately, the court adopted a test that a plaintiff may sue if he or she falls within the “zone of interests” arguably sought to be protected by the statutory provisions of Title VII.

Applying the “zone of interests” test, the court concluded that Thompson fell within the zone of interests protected by Title VII. He was an employee of North American Stainless, and Title VII’s purpose is to protect employees from their employers’ unlawful actions. Moreover, accepting the facts as alleged, Thompson was not an accidental victim of retaliation. Terminating him was the unlawful act by which North American Stainless punished Regalado. Thus, the court held that Thompson constituted a “person aggrieved” with standing to sue under Title VII.

## Considerations for Employers

The Supreme Court remanded the *Thompson* case for trial, so the plaintiff will still have to prove that his termination was the result of retaliation by the company against his fiancée. Nevertheless, the *Thompson* decision serves as powerful reminder to employers about the breadth of Title VII’s anti-retaliation provisions. It is a favorable decision for employees and is consistent with the longstanding view of the EEOC that Title VII “prohibit[s] retaliation against someone so closely related to or associated with the person exercising his or her statutory rights that it would discourage or prevent the person from pursuing those rights.” EEOC Compliance Manual § 8-II(C)(3)(1998).

The decision also provides an opportunity for employers to revisit the policies and procedures they have in place to avoid retaliation claims in the first instance, including documentation of any disciplinary matters, treating employees consistently and taking employee complaints – particularly protected activity complaints – seriously and investigating them thoroughly.

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