

March 30, 2011

Some Things Don't Have to Be In Writing: Supreme Court Protects Employees Against Retaliation After Making Verbal Complaints of Wage and Hour Violations

The federal [Fair Labor Standards Act](#) (FLSA) establishes complex regulations governing minimum wage and overtime pay. Like many other employment laws, FLSA has an anti-retaliation provision that forbids employers “to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to [FLSA].”

In a recent decision, [Kasten v. Saint-Gobain Performance Plastics Corp.](#), the Supreme Court found that the term “filed any complaint” includes oral as well as written complaints, and thus clarifying that employees who make verbal complaints of federal wage and hour violations are protected against retaliation.

Kasten repeatedly complained that the company was violating FLSA through its placement of time clocks. According to Kasten, the location prevented workers from receiving pay for time spent putting on and taking off work clothes – in FLSA parlance, “donning and doffing.” Kasten was persistent, reporting his concerns to his lead operator, shift supervisor, and two HR employees. In each case, however, the complaints were verbal.

Kasten later was fired. In his lawsuit, he alleged that the company discharged him because of his complaints. The company disagreed. It explained that Kasten made no significant complaint about the time clock location and that it discharged him because he failed to punch in and out.

The lower courts did not try to reconcile the two accounts, ruling simply that FLSA does not protect oral complainants against retaliation. The Supreme Court disagreed, sending the case back to the trial court to determine whether the company had adequate notice of the complaints and whether the discharge was retaliatory or justified.

The Kasten decision offers two reminders for employers.

AUTHORS:

[Steve Peltin](#)

RELATED SERVICES:

[Employment & Labor](#)

March 30, 2011

Some Things Don't Have to Be In Writing: Supreme Court Protects Employees Against Retaliation After Making Verbal Complaints of Wage and Hour Violations

First, employers should not ignore or minimize complaints of alleged illegal or improper treatment of employees, whether based on FLSA or other laws. Instead, each complaint – written or oral, formal or informal – should be reported to HR, reduced to writing, and given careful consideration. Depending upon the circumstances, an internal investigation might be prudent. Naturally, the employer should create documentation showing its thoughtful and respectful consideration of the complaint.

Second, once it receives a complaint, the employer should carefully consider any discipline of the complainant in light of a possible retaliation lawsuit. If possible, the employer should have full documentation of the facts and of its justification for the decision, justification that is independent of the complaint.

The treatment of workplace complaints and the discipline of complaining employees present complex issues. Sound advice from an employment lawyer can help to lower the risk of a lawsuit. If you have any questions about the information in this posting please contact the Foster Pepper [Employment & Labor](#) practice group.

For more information about Foster Pepper or to register for other firm communications, visit www.foster.com.

This publication is for informational purposes only and does not contain or convey legal advice.