CLIENT ALERT

Fifth Circuit Applies Recent Supreme Court Decision to Revive Son's Title VII Retaliation Claim Based on Father's Protected Activity

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Applying recent Supreme Court precedent, the U.S. Court of Appeals for the Fifth Circuit has revived a police officer's Title VII retaliation claim based on the protected activity of his father, a lieutenant in the same police force. *See Zamora v. Houston*, No. 10-20625 (5th Cir. May 12, 2011).

Plaintiff Christopher Zamora had sued the City of Houston in the U.S. District Court for the Southern District of Texas, challenging his transfer from a prestigious crime reduction unit to a less desirable patrol officer position. He alleged that he was transferred in retaliation for his father's lawsuit against the City claiming racial discrimination against Hispanic officers.

Title VII prohibits retaliation by an employer against an employee who opposes an unlawful employment practice. To establish a prima facie retaliation claim, a plaintiff must prove that: (1) he engaged in activity protected by Title VII; (2) the employer took an adverse employment action against him; and (3) a causal connection exists between the protected activity and the adverse employment action. The trial court granted summary judgment for the City of Houston, finding that Zamora had not met the first prong of the test. Applying then-applicable Fifth Circuit precedent, the trial court found that a Title VII retaliation claim must be based on one's own protected activity, not that of a third party.

The Fifth Circuit vacated summary judgment for the employer on the retaliation claim. It did so in light of a recent Supreme Court decision holding that an employee can assert a Title VII retaliation claim based on the protected activity of a co-employee who is a close family member. On January 24, 2011, the Supreme Court held that an employee who had been discharged after his fiancée filed a sex discrimination charge with the Equal Employment Opportunity Commission could bring a Title VII retaliation claim. *See Thompson v. N. Am. Stainless, LP*, 131 S. Ct. 863 (2011). The Court reasoned that it was "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." The Court declined to define the limits of the third-party relationship that could give rise to a retaliation claim, instead stating that the firing of a close family member would almost always give rise to a claim, while "inflicting a milder reprisal on a mere acquaintance would almost never do so . . . ." In a straightforward application of *Thompson*, the Fifth Circuit found genuine issues of triable fact on the first prong of the test for retaliation under Title VII, and remanded the retaliation claims so that the trial court could address the two remaining prongs.

The Fifth Circuit decision in *Zamora* demonstrates the impact of the *Thompson* decision in expanding the scope of Title VII's protections against retaliation. Plaintiffs still must overcome the hurdle of demonstrating the causal connection between the protected activity and the alleged adverse action. Nonetheless, employers should exercise caution before acting, or failing to act, in a manner that could be construed as an adverse employment action against an employee who has a relationship with another person who has engaged in protected activity.

We will keep you updated as this issue develops.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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