

CLIENT ALERT

Oral Complaints are Sufficient to Support an FLSA Retaliation Claim

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The U.S. Supreme Court recently held, in *Kasten v Saint-Gobain Performance Plastics Corp.*, that an employee who is discharged after orally complaining to his employer about wage and hour issues may bring a claim for retaliation under the Fair Labor Standards Act ("FLSA"). An oral complaint, according to the Court, may be "sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the statute and a call for their protection." Employers must, in light of the *Saint-Gobain* decision, pay close attention to the manner in which they receive, respond to and address such oral complaints by employees.

The plaintiff, Kevin Kasten, was discharged after complaining to supervisors that the location of timeclocks at his worksite prevented employees from receiving credit for time spent putting on and removing work clothes. After his discharge, Kasten brought a retaliation lawsuit against his employer, Saint-Gobain Performance Plastics, under the FLSA's retaliation provision, which prohibits employers from discharging or discriminating against an employee "because such employee has filed any complaint" thereunder. This claim was rejected by both the District Court and the Court of Appeals for the Seventh Circuit on the grounds that oral complaints were insufficient to invoke that provision.

In a 6 to 2 ruling, in which Justice Kagan took no part, the Supreme Court reversed, holding that the prohibition against retaliation because an employee has "filed any complaint" covered oral as well as written complaints. While the statutory language "may be open to competing interpretations," functional considerations and the interpretations of enforcement agencies compelled broader coverage. Limiting this provision to written complaints, the Court concluded, would "undermine the Act's basic objectives" to protect the health, efficiency, and general well-being of employees. The Court further reasoned that the purpose of the filing requirement was to "put the employer on notice that [the] employee is asserting statutory rights" under the FLSA, and that a sufficiently clear and detailed oral complaint achieved this objective. The phrase "filing any complaint" requires "some degree of formality," so that the employer "has been given fair notice that a grievance has been lodged and does, or should, reasonably understand the matter as part of its business concerns." Such a complaint, however, need not be in writing.

The employer did not raise, in its response to the plaintiff's writ of certiorari, the argument that the FLSA's anti-retaliation provision only applied to complaints to government agencies. Therefore, the Court did not consider this argument.

The *Saint-Gobain* opinion poses important challenges for employers. By allowing retaliation claims premised on oral complaints alone, the Court has made it significantly easier for a claimant to create factual disputes that may prevent dismissal of unfounded retaliation claims on motions to dismiss or motions for summary judgment. In light of this decision, employers should carefully assess their internal complaint procedures in order to, among other objectives, minimize the chances that informal off-hand comments will form the basis of a retaliation claim. Employers should notify their employees, in a demonstrable manner, of the availability of these procedures, the different ways to invoke those procedures, and their protection from retaliation for using those procedures. Managers and supervisors should be instructed and trained to properly

and promptly report to the appropriate company official and, where applicable, address all workplace problems, complaints or concerns raised by employees, whether in writing, orally, or in any other manner, without retaliation, and with appropriate documentation. We are available to assist you in developing, modifying and/or evaluating existing strategies for addressing such internal communications.

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