

THE U.S. SUPREME COURT RULES THAT TITLE VII ANTI-RETALIATION PROVISIONS APPLY TO THIRD PARTIES

Employment Litigation Alert
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In a landmark decision issued on January 24, 2011, the U.S. Supreme Court decided that, under the anti-retaliation provisions of Title VII, which prohibit retaliation against employees who engage in protected conduct, a third party may bring a claim of retaliation against an employer.

In the case of *Thompson v. North American Stainless, LP*, the plaintiff, Eric Thompson, was engaged to be married to a co-worker. Both Thompson and his fiancée, Miriam Regalado, were employed by North American Stainless when Regalado filed a claim with the EEOC against the employer alleging sex discrimination in the workplace. Three weeks later, Thompson was fired. He then brought suit against the employer, alleging his termination was a violation of Title VII.

In the Supreme Court decision, issued by Judge Scalia, the court cited its 2006 decision in *Burlington Northern and Santa Fe Railroad v. White*, holding that the anti-retaliation provision of Title VII is broad, prohibiting employer action that might dissuade a reasonable worker from making or supporting a charge of discrimination. In the *Thompson* case, the court extended this protection to third parties — in this case to fiancée Eric Thompson — by applying this standard.

Justice Scalia indicated that firing a close family member of a complainant who works for the same employer will almost always meet the standard for third-person liability under the anti-retaliation provisions, but inflicting a milder reprisal on a mere acquaintance would almost never do so. The court emphasized, however, that it could not articulate a general rule about the nature of workplace relationships that meet or do not meet the standard, so courts will have to analyze the merits of third-person liability on a case-by-case basis. Employers need to be aware that the standard for actionable retaliatory conduct under Title VII is broad, and they need to know that known workplace relationships may be cause for concern under these provisions. Our attorneys will continue to monitor new cases of third-party liability under the anti-retaliation provisions of Title VII.

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