PLUNKETT COONEY

Sixth Circuit Reverses Prior Decision and Narrows Those who are Protected From Retaliation Under Title VII

June 17, 2009

Claudia D. Orr
(313) 983-4863
corr@plunkettcooney.com

The Bulletin Newsletter June 17, 2009 Edition

The Sixth Circuit Court of Appeals recently restored the plain meaning of Title VII, which applies only to employees engaged in protected activities and not others who are related to them.

In 2008, the Sixth Circuit held in *Thompson v. North Am. Stainless, LP*, 520 F.3d 644 (6th Cir. 2008) that an employer violated Title VII when it retaliated against the fiancé of an employee who had exercised rights under the Act. Now a year later, the Sixth Circuit has reconsidered the correctness of this decision and has given employers cause to celebrate.

In *Thompson*, the plaintiff was engaged to a co-worker who filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC), claiming that North American Stainless had discriminated against her because of her gender. Approximately three weeks after receiving notice of her charge, North American Stainless fired the charging employee's fiancé, Thompson.

Thompson then filed his own charge, claiming he was terminated in retaliation for his fiancé's EEOC action. After receiving a right to sue letter, Thompson filed suit. The district court eventually dismissed Thompson's lawsuit, finding that he had not exercised rights under Title VII and, therefore, had no legal basis for a retaliation claim.

On appeal, a panel of the Sixth Circuit reversed, holding that it is unlawful under Title VII to retaliate against someone who is closely associated with an employee who has exercised rights under the Act. This ruling sent shock waves through both the legal community and human resources departments because it had long been the rule that only employees who *personally* engaged in protected activity received protection from retaliation under the federal civil rights laws.

© 2024 Plunkett Cooney, PC

The Sixth Circuit, in July 2008, granted a new hearing *en banc* (before the entire bench) and vacated the *Thompson* opinion. Now, nearly a year later, a sharply divided bench has reinstated the district court's ruling in favor of the employer and has held that "Title VII does not create a cause of action for third-party retaliation for persons who have not personally engaged in protected activity."

This is a huge victory for employers and has returned the law to its prior state. No longer will employers need to determine who, in addition to a party complaining of discrimination, is protected based on the affinity of relationships. Only employees who engage in protected activity under federal civil rights laws are afforded protection from retaliation. The case law now clearly reflects the plain wording of the Act.

The Bulletin Newsletter is distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to Theresa Smith Lloyd or any other members of the practice group. The brevity of this newsletter prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright© 2009. All rights reserved PLUNKETT COONEY, P.C.

© 2024 Plunkett Cooney, PC