

SUPREME COURT BROADENS SCOPE OF TITLE VII RETALIATION PROVISION TO INCLUDE CLOSE FAMILY MEMBERS

On January 24, 2011, the United States Supreme Court issued its decision in *Thompson v. North American Stainless*, No. 09-291, a Title VII retaliation case. In an 8-0 opinion (Justice Kagan recused herself) written by Justice Scalia, the Supreme Court held that the fiancé of an employee had a Title VII cause of action as a “person aggrieved” under Title VII, in circumstances in which the employer terminated the fiancé within weeks of learning of the employee filing a discrimination charge. The Supreme Court’s decision in *Thompson* has tricky implications for employers who are required to abide by Title VII.

The Facts:

Eric Thompson and his fiancée Miriam Regalado both worked at North American Stainless (“NAS”). Regalado filed a sex discrimination charge against NAS with the Equal Employment Opportunity Commission (“EEOC”). NAS terminated Thompson three weeks after it learned of Regalado’s charge. Thompson then filed his own charge with the EEOC, contending that NAS fired him in retaliation for Regalado’s charge, and eventually filed suit against NAS in federal court.

The Supreme Court addressed two questions in its opinion: (1) whether NAS’s firing of Thompson constituted unlawful relation; and (2) whether Title VII granted Thompson a cause of action.

The Supreme Court first held that if the facts alleged by Thompson were true, NAS’s firing of Thompson violated Title VII. Relying on its prior opinion in *Burlington N. & S. F. R. Co. v. White*, 548 U.S. 53, 68 (2006), the Supreme Court stated that under Title VII, employers are prohibited from engaging in conduct that would

dissuade a reasonable employee from making or supporting a discrimination charge. Applying those principles to *Thompson*, the Supreme Court found it “obvious” that a reasonable person in Regalado’s shoes would be dissuaded from making or supporting a discrimination charge if the person knew his or her fiancé would be fired.

Secondly, the Supreme Court held that Thompson himself had standing to sue under Title VII. In order to pursue litigation, the individual bringing suit must have experienced a harm and have standing to sue. Title VII provides that a “person claiming to be aggrieved” may bring a cause of action. 42 U.S.C. §2000e-5(f)(1). The Supreme Court analyzed this phrase and concluded that Title VII protects those individuals within the “zone of interests” sought to be protected by the statute. The “zone of interests” would not include individuals whose interests are “marginally related” to the purposes of the statute. Applying the test to the facts at issue, the Supreme Court determined that Thompson fell within Title VII’s zone of interests. Specifically, the Supreme Court stated, “injuring [Thompson] was the employer’s intended means of harming Regalado. Hurting him was the unlawful act by which the employer punished her.”

The concurring opinion, authored by Justice Ginsburg and joined by Justice Breyer, noted that the Supreme Court’s opinion paralleled the EEOC’s Compliance Manual. The Compliance Manual states that employers may not retaliate against those closely related to an employee exercising statutory rights, such that a reasonable person in that employee’s position would be dissuaded from making or supporting a discrimination charge.

The Message for Employers:

The Supreme Court in the *Thompson* matter has further broadened Title VII's already expansive anti-retaliation provision. The Supreme Court explicitly "decline[d] to identify a fixed class of relationships for which third-party reprisals are unlawful." Instead, the Supreme Court only stated that a "close family member will almost always" be within the zone of interest protection, while "a mere acquaintance will almost never" be. Thus, employers are best advised to tread carefully when making an employment decision that could adversely

affect an individual with a close relationship to an employee who has pursued his or her rights under the federal employment discrimination statutes.

If you would like to discuss any aspect of this decision and how it may impact your business or organization, please contact any of the Cozen O'Connor Labor and Employment Department lawyers.