

## Supreme Court Holds FLSA Antiretaliation Provisions Cover Oral Complaints

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On March 22, in a 6-to-2 decision, the U.S. Supreme Court held that the Fair Labor Standards Act (FLSA) prohibits employers from retaliating against employees who “file” an oral complaint that the employer is violating the FLSA, as well as against those who file written complaints. The Court, however, did not reach the question of whether such a complaint must be made to a government agency, rather than to a private employer, leaving that issue for another case. Nevertheless, the Court’s ruling will significantly expand the potential for retaliation suits against employers and emphasizes the need for employers to take all internal complaints seriously and to be in a position to defend on the merits all employment actions taken against its employees.

### Lower Court Proceedings in *Kasten v. Saint-Gobain Performance Plastics Corp.*

Plaintiff Kevin Kasten brought a retaliation suit against his former employer, Saint-Gobain Performance Plastics, alleging that he was terminated based on oral complaints made to his employer that the location of the company’s time clocks violated the FLSA. Kasten claimed that the time clocks were situated in an area that prevented workers from receiving credit for the time they spent putting on and taking off their work clothes. Saint-Gobain denied Kasten’s allegations, asserting that he had not made any significant complaint about the time clock location and that he was fired for repeatedly refusing to use the time clocks as directed. At the district court, Saint-Gobain obtained summary judgment on the ground that the FLSA’s antiretaliation provision does not cover oral complaints. The district court held that the statute “requires a plaintiff employee to submit some sort of writing.” The Seventh Circuit affirmed, and the Supreme Court agreed to hear the case to resolve a conflict among the circuit courts of appeal on the issue of whether an oral complaint was sufficient to constitute protected activity under the FLSA.

### The Supreme Court’s Decision

In *Kasten*, the sole question was whether “an oral complaint of a violation of the FLSA is protected conduct under the Act’s antiretaliation provision.” The Supreme Court rejected the Seventh Circuit’s approach and held that “considering the purpose and context” of the FLSA’s antiretaliation provisions, both oral and written complaints fall within the scope of the phrase “filed any complaint.” The Court reasoned that the text of the statute, taken alone, did not provide a conclusive answer, but that reading the provision to include only written complaints would undermine the FLSA’s basic objectives and discourage the flexibility necessary for enforcement. The Court noted, however, that “filing” a complaint is a serious occasion, and that the phrase “filed any complaint” contemplates some degree of formality to ensure that the employer has fair notice that its employee has complained of a statutory

violation. Therefore, the Court set forth the following standard for determining whether an employee has filed a complaint: “[A] complaint is ‘filed’ when ‘a reasonable, objective person would have understood the employee’ to have ‘put the employer on notice that [the] employee is asserting statutory rights under the [Act].’” The Court went on to explain that “to fall within the scope of the antiretaliation provision, a complaint must 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.” The Court remanded the case to the lower courts to decide whether *Kasten* will be able to satisfy the notice standard articulated by the Court.

The majority declined to address whether the statute requires that protected complaints be made to a government agency, rather than a private employer. In a dissent joined by Justice Thomas, Justice Scalia took the position that only complaints made to government agencies are sufficient to trigger retaliation claims under the FLSA. He wrote, “[t]he plain meaning of the critical phrase and the context in which [it] appears make clear that the retaliation provision contemplates an official grievance filed with a court or an agency, not oral complaints—or even formal, written complaints—from an employee to an employer.”

### **Implications of *Kasten v. Saint-Gobain***

As a result of the *Kasten* decision, employers are likely to experience an increase in both alleged complaints and claims of retaliation under the FLSA. Thus, employers should make sure that supervisors and front-line managers are trained to identify anything that could reasonably be viewed as an FLSA complaint and are directed to promptly bring all such complaints to the attention of human resources or upper-level management, where they can be investigated and addressed. They should also be instructed on how to avoid taking any action that might be perceived to be retaliatory.

Employers should consider implementing and disseminating formal procedures through which complaints of any nature, including complaints of violations of the FLSA, can be submitted by employees. All complaints must be taken seriously and investigated to determine if, in fact, the employer is complying with the requirements of the applicable statute. As is the case in defending any claim of discrimination or retaliation, companies should also take all steps necessary to ensure that their decisions with respect to employees are based on legitimate, nondiscriminatory factors that can be articulated and demonstrated to a fact finder.

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