

PUBLICATION

Sixth Circuit Court of Appeals Extends Anti-Retaliation Protection to Third Parties Associated With Employees Who Engage in Protected Activity

April 4, 2008

In a case of first impression in this Circuit, the United States Court of Appeals for the Sixth Circuit has ruled that the anti-retaliation provision of Title VII of the Civil Rights Act applies not only to employees or applicants for employment who engage in protected activity but also to individuals who are "related" to or "associated" with those who engage in protected activity. *Thompson v. North American Stainless, LP*, ___ F.3d ___, 2008 WL 834005 (6th Cir. March 31, 2008).

In the *Thompson* case, the plaintiff, Eric Thompson, was the fiancé of an employee, Miriam Regalado, who filed a charge of gender discrimination against their common employer, North American Stainless, LP. Three weeks after the employer received notice of the charge, it terminated Mr. Thompson's employment. Mr. Thompson had not participated in the charge process in any way. He contended that he was fired simply because of his fiancée's charge of discrimination.

Title VII makes it an unlawful employment practice for an employer to discriminate against any employee or applicant for employment "because [he or she] has opposed any practice made an unlawful employment practice by this subchapter, or because [he or she] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a).

The Plaintiff in the *Thompson* case had engaged in none of the activities for which the statute provides protection. The Court ruled, however, that Mr. Thompson was entitled to protection under the statute because he was "so closely related to or associated with" an individual directly involved in the protected activity that a jury might find "that the protected activity motivated the employer's action." 2008 WL 834005 at *2.

In his dissent, Judge Griffin pointed out that the majority opinion is contrary to decisions from the Fifth, Eighth and Third Circuits. He argued that "the majority has rewritten the Civil Rights Act of 1964 to conform it to their notion of desirable public policy." 2008 WL 834005 at *5.

The Court's decision does not define the degree or type of "relationship" or "association" that will give rise to anti-retaliation protection. In the *Thompson* case, the parties were engaged to be married and, by the time the lawsuit was filed, they were married. It remains to be seen whether Title VII protection will be extended to boyfriends, girlfriends, friends, colleagues, carpoolers or any of the associations or relationships that exist in the workplace.

Ultimately, the United States Supreme Court will have to resolve the split of authority among the Circuit Courts of Appeal. In the meantime, at least in the Sixth Circuit (Tennessee, Kentucky, Ohio and Michigan), employers would be wise to consider an employee's relation to or association with others who have engaged in protected activity before taking an adverse employment action.