

PUBLICATION

FLSA Retaliation Protection Applies to Oral Complaints

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In *Kasten v. St. Gobain Performance Plastics Corp.*, the U.S. Supreme Court held that an employee's oral complaint to his employer about an alleged Fair Labor Standards Act ("FLSA") violation triggers protection from retaliation under the FLSA. In *Kasten*, the employee claimed that he orally complained to his supervisor that it was "illegal for the timeclocks to be where they were," and if he "challenged the location in court" the company "would lose."

The Supreme Court resolved a split of authority among lower courts on whether an employee's oral complaint was sufficient to give rise to FLSA protection, or whether an employee's complaint must be in writing. Specifically, the Court interpreted the phrase "filed any complaint" in the FLSA. *St. Gobain* argued that the term "filed" connotes writing, while *Kasten* argued that a complaint could be "filed" orally. After deciding that oral complaints were sufficient to trigger retaliation protection under the FLSA, the Court grappled with the question of what constitutes an "oral complaint." The Court concluded that "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 practical application of *Kasten* requires human resources professionals to take all verbal complaints of illegal pay practices or time recording practices seriously. Front line supervisors also need to understand that an employee's complaints related to pay practices or timekeeping, even if these seem like common employee grouching, need to be referred to human resources for investigation and disposition. If employee verbal complaints can arise as the basis for retaliation claims later, then an employer would be well served by documenting and dealing with the complaint, rather than leaving the complaint to the inevitable "he said/she said" that results from undocumented verbal complaints.

How We Can Help

If you have questions about this or any other labor and employment issue, please feel free to reach out to any of our nearly 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.