

U.S. SUPREME COURT RULING IN *THOMPSON V. NORTH AMERICAN STAINLESS, LP* ALLOWS EMPLOYEE TITLE VII RETALIATION CLAIMS

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The U.S. Supreme Court, in *Thompson v. North American Stainless, LP*, recently held that employees can bring Title VII claims for third-party retaliation. 2011 WL 197638 (Jan. 24, 2011). This case exemplifies the recent trend of plaintiff-friendly decisions by the Supreme Court in employment retaliation cases.

In *Thompson*, Eric Thompson and his fiancée, Miriam Regalado, were employees of North American Stainless, LP (NAS). Regalado filed a complaint with the Equal Employment Opportunity Commission (EEOC) against NAS for sex discrimination. Three weeks later, NAS fired Thompson. Thompson then filed his own EEOC complaint. After conciliation efforts proved unsuccessful, Thompson sued NAS under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* Thompson claimed that NAS fired him to retaliate against Regalado for filing an EEOC complaint. The federal district court granted NAS summary judgment, concluding that Title VII did not permit third-party retaliation claims. The full *en banc* Sixth Circuit affirmed.

The Supreme Court reversed the Sixth Circuit's decision, holding that Thompson could bring a Title VII third-party retaliation claim against NAS. The Court said it had "little difficulty" concluding that Title VII forbids employers from firing an employee in retaliation for the employee's fiancée's protected conduct. In ruling that Title VII forbids third-party retaliation, *Thompson* noted "that Title VII's antiretaliation provision must be construed to cover a broad range of employer conduct." The Court reasoned that the text of Title VII's antiretaliation provision was broader than Title VII's antidiscrimination provision.

The Court thought it "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." But *Thompson* does not establish a clear rule for how close of a relationship a person must have for the third-party reprisal to be unlawful. Instead, it simply reiterates that the retaliation inquiry is an objective standard based on what "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." The Court did acknowledge that "firing a close family member will almost always" qualify, but "inflicting a milder reprisal on a mere acquaintance will almost never do so."

Thompson ended by concluding that a plaintiff has a cause of action under Title VII if he or she is within the “zone of interests protected by Title VII.” The Court found that Thompson was within this zone of interests because he “was an employee of NAS” and was “not an accidental victim of the retaliation.”

This case confirms the Supreme Court’s recent trend of favoring employee retaliation claims. For example, in 2009, *Crawford v. Metropolitan Government of Nashville* held that Title VII’s antiretaliation provision covered an employee who spoke about sexual harassment, not on her own initiative, but as part of an employer’s internal investigation of a coworker’s complaints. 129 S. Ct. 846, 849. In 2008, *CBOCS West, Inc. v. Humphries* held that the cause of action under 42 U.S.C. §1981 encompasses retaliation claims. 128 S. Ct. 1951, 1955. And in 2006, *Burlington Northern & Santa Fe Railway Co. v. White* adopted the objective standard quoted in *Thompson* and ruled that retaliation claims are “not limited to discriminatory actions that affect the terms and conditions of employment.” 548 U.S. 53, 64

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