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U.S. Supreme Court Says a Complaint Is a 'Complaint'

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According to the U.S. Supreme Court, a complaint is a "complaint," whether made orally or in writing. An opinion authored by Justice Stephen Breyer, *Kasten v. Saint-Gobain Performance Plastics Corp.*, addressed the issue of whether the Fair Labor Standards Act (FLSA) protects employees from retaliation for making oral complaints.

The March 22 U.S. Supreme Court decision confirms that it does, as long as the complaint is "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."

In lieu of intrusive regulating measures, the U.S. Department of Labor ensures compliance with the FLSA in large part by relying on employee reports of alleged FLSA violations. So as to encourage such reporting, the FLSA also makes it unlawful for an employer to retaliate against an employee who has filed such a complaint, forbidding an employer "to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the act." (See 29 U.S.C. § 215(a)(3).)

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Although this may sound straightforward enough, in *Kasten* the Supreme Court had to resolve a conflict among the federal circuits regarding whether this provision is limited to written complaints or also includes oral complaints made to the employer.

According to the decision, Kevin Kasten had complained to supervisors and human resources at his employer, Saint-Gobain, about the location of employee time-clocks. He and other workers were required to wear protective gear, for which there was a changing area at work. However, the time-clock was located in between the work area and the changing area, meaning that employees were not being compensated for time spent changing. In a prior lawsuit instigated by Kasten's complaints, the U.S. District Court for the Western District of Wisconsin agreed with Kasten that this was unlawful under the FLSA. Time spent changing into and out of required protective gear must be included in an employee's hours worked.

In the matter reaching the Supreme Court, Kasten claimed he was suspended and then fired in retaliation for his complaints. The lower courts had granted summary judgment for Saint-Gobain, on the basis that the FLSA's anti-

retaliation provision does not apply to oral complaints.

The Supreme Court's inquiry was into the meaning of the phrase "filed any complaint," and more specifically into the meaning of the word "file." It reviewed dictionary definitions, regulations of federal agencies, judicial usage at the time FLSA was passed, its use within the FLSA as well as in other statutes, and usage by legislators, administrators and judges. Because in different contexts the word "filed" has been used to apply to writings, and others to include oral statements, the court looked further into functional considerations. In doing so, the court determined that Congress' intent was to have the provision include oral complaints.

According to the decision, the purpose of the FLSA is only met if it is enforced via information received from employees. This can only be effective if employees do not have to fear retaliation from their employers for seeking to enforce the FLSA. In the court's view, limiting complaints to those that are formal and written would curtail the act's effectiveness. It pointed out that those workers who are "illiterate, less educated, or overworked" may be particularly at risk of FLSA violations and may not be able or willing to file a written complaint.

In addition, not protecting oral complaints would prevent the government and agencies from using oral methods of receiving complaints, such as through hotlines. In fact, the Department of Labor has created a hotline for receiving oral complaints, indicating the administrative agency's view that complaints may be made orally. It would also discourage employees from using internal grievance procedures.

The court did address Saint-Gobain's concerns about the need to be sure an employee is making a protected complaint, which can be difficult to discern in oral comments. The court agreed that to "file" a complaint orally "is a serious occasion, rather than a triviality." It further stated that the FLSA "contemplates some degree of formality, certainly to the point where the recipient has been given fair notice that a grievance has been lodged and does, or should, reasonably understand the matter as part of its business concerns." This is important for parties on both sides to understand, as an employer cannot retaliate against an employee making a complaint if the employer does not know an FLSA complaint has been made.

Justices Antonin Scalia and Clarence Thomas dissented, indicating that they would limit the anti-retaliation provision to complaints made to the government. In their view, the FLSA does not even apply to written complaints made to a non-government employer. They disagreed with the majority's analysis of "filed any complaint," saying that its meaning is more clearly referring to written complaints. Both the majority and the dissenters certainly made convincing arguments over the meaning of the phrase, so it seems that the majority was swayed more by what they felt the purpose of the FLSA requires.

The fact that the court determined oral complaints to one's employer to be protected under the somewhat vague anti-retaliation provision of the FLSA is an indication that it is concerned about employee rights and protections. This decision certainly makes it easier for employees to file lawsuits against their employers based on retaliation. Therefore, it would be wise to ensure workplace compliance with the FLSA, and to put in place and notify employees about procedures for making complaints about workplace conditions that might be affected by the FLSA.

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