Supreme Court Holds that Oral Complaints Constitute Protected Activity Under the Fair Labor Standards Act

March 23, 2011

Yesterday, the United States Supreme Court clarified the scope of the anti-retaliation provision of the Fair Labor Standards Act (FLSA), holding that oral complaints by employees may constitute protected activity. The FLSA prohibits employers from discharging or discriminating against an employee because that employee "filed any complaint" under or relating to the statute. In *Kasten v. Saint-Gobain Performance Plastics*, the Supreme Court held that this language covers oral complaints, not just written ones.

In *Kasten*, the plaintiff sued his former employer under the FLSA, alleging that he had been fired for complaining about a violation of the statute. He alleged that he had orally complained to his supervisor and to human resources personnel that because of the location of the time clocks, employees were not being paid for time spent donning and doffing protective gear and walking to their workstations. The district court dismissed the plaintiff's claim on the grounds that the FLSA's anti-retaliation provision did not cover oral complaints. The Court of Appeals affirmed that decision.

The Supreme Court disagreed, holding that the plaintiff had engaged in conduct protected by the statute. The Court explained that the phrase "filed any complaint" did not preclude oral complaints and that Congress intended for such complaints to be covered by the statute. However, the Court cautioned that not all oral complaints will be protected. The oral 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 FLSA. The Court explained that if an employee is just "letting off steam," then it may not be within the scope of the statute's anti-retaliation provision.

The line between an assertion of rights under the FLSA and "letting off steam" may be a fine one, and thus employers will need to be sensitive to any verbal complaint about pay, overtime or what constitutes hours worked. Because such complaints may be made to employees' direct supervisors rather than human resources professionals, managers should be trained to recognize that casual complaints about these types of issues may constitute protected conduct under the FLSA.

RELATED PRACTICES

- Labor & Employment
- Employment Discrimination & Harassment
- Labor Relations
- Litigation