CARLTON FIELDS

Supreme Court: Don't Retaliate Against One Employee to Get Back at Another

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Do you employ a father and son? Maybe you employ two people engaged to be married? The United States Supreme Court has held that third party reprisals against one employee may be prohibited for complaints by another employee. In *Thompson v. North American Stainless* (January 24, 2011), a female employee filed a discrimination charge against her employer with the EEOC. Less than a month later, the employer fired the charging party's fiancé, who also worked for the employer. The Court decided this could violate Title VII's prohibitions against retaliation because a reasonable employee would be dissuaded from engaging in protected activity if she thought her fiancé would be terminated. The Court refused to articulate a "fixed class of relationships" that are entitled to protection. It depends on the circumstances, the Court stated. While "firing a close family member will almost always" dissuade a reasonable employee from making or supporting a charge of discrimination, "inflicting a milder reprisal on a mere acquaintance will almost never do so." What amounts to a "close family member" was not defined by the Court. And there are a wide range of relationships that fall in between close family members and acquaintances. The employer in *Thompson* questioned whether girlfriends, close friends, and trusted co-workers would be protected if the Court permitted third party retaliation claims. The Court acknowledged there would be difficulty in deciding who would qualify for protection, but rejected the notion that such a concern could justify a categorical rule that third party reprisals do not violate Title VII. The failure to identify what relationships are protected leaves some uncertainty for employers. Therefore, before taking an adverse action against an employee, the best practice is to fully consider the connection he or she may have to a different employee who has engaged in protected activity.

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