

ROLAND | STOCK

ATTORNEYS AT LAW

John W. Roland
Edwin L. Stock
S. Whitney Rahman*
Robert R. Kreitz
John E. Muir
Deborah A. Sottosanti
Dante C. Cutrona
Gregory A. Shantz
Joseph P. Bradica

A Limited Liability Company

Firm@RolandStock.com
www.RolandStock.com

Of Counsel
David H. Roland
Mary M. Bertolet
Jerry R. Richwine

Raymond C. Schlegel (2004)
D. Frederick Muth (2006)

April 11, 2011

* Also Member of New York Bar

****EMPLOYMENT LAW ALERT****

Supreme Court: Retaliation Claim Can Be Based on an Oral Complaint

By: S. Whitney Rahman

The Supreme Court held on March 22, 2011 that a claim of retaliation under the Fair Labor Standards Act (“FLSA”) can be based on an oral complaint. Under the FLSA, employers may not:

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 FLSA], or has testified or is about to testify in such proceeding, or has served or is about to serve on an industry committee.

29 U.S.C. § 215(a)(3)(emphasis added).

The employee in this case claimed that he was fired for orally reporting to his employer that the employer was violating the FLSA because its time clocks were situated in such a way that employees did not get paid for time spent donning and doffing work-related clothing.

The Court examined whether the language “filed any complaint” includes oral as well as written complaints, and concluded that it does. The Court examined the meaning of the word

“filed,” as well as the intended expansive reach of the FLSA, to determine that oral complaints could be the basis of a retaliation claim.

The employer argued that, if oral complaints are within the reach of the antiretaliation provision, it may be hard to differentiate simple employee gripes from protected activity. In response the Court stated: “To fall within the scope of the antiretaliation provision, 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.”

Despite this broad language, however, the Court specifically chose not to decide whether the term “filed any complaint” included complaints made directly to the employer, as the employee had done in this case, or whether it required that the oral complaint had to be made to a government entity. The Court ruled that this issue has not been properly preserved by the employer. Nevertheless, the language used by the Court strongly suggests that oral complaints made to employers are covered by the FLSA’s antiretaliation provision.

In a strongly worded dissent, Justice Scalia, joined for the most part by Justice Thomas, argued that oral complaints, as well as any complaints made solely to the employer, were not covered by the FLSA’s anti-retaliation provision.

WHAT DOES THIS MEAN FOR YOU?

Despite the fact that the Supreme Court did not specifically decide that oral complaints made to employers, rather than to government agencies, are covered by the FLSA’s antiretaliation provisions, you should take precautions to ensure that any such oral complaints by employees are

taken seriously and investigated. In making any adverse employment decisions, be sure that complains about FLSA-related matters do not form any part of the basis for the decision.

If you have any questions or need assistance with situations that may raise potential retaliation claims, contact S. Whitney Rahman or John W. Roland at 610-372-5588.