



## Federal Court Expands Class of Persons Protected by Title VII Retaliation

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In a very significant March 31, 2008 opinion, a divided Sixth Circuit Court of Appeals panel in *Thompson v North American Stainless, LP*, expanded the class of persons protected from retaliation under Title VII. *Thompson v. North American Stainless, LP*, 520 F.3d 644 (C.A. 6 2008). The Sixth Circuit, the Federal Court of Appeals governing Michigan, held that Title VII prohibits employers from taking retaliatory action against employees not directly involved in protected activity, but who are so closely related to those who are directly involved that it is clear that the protected activity motivated the employer's action.

### **THE DECISION:**

*Thompson v. North American Stainless, LP*, involved a male employee who alleged he was terminated because his co-employee fiancé (now wife) filed a sex discrimination claim. The male employee was fired three (3) weeks after the employer found out about his fiancé's claim of discrimination filed with the EEOC. The trial court granted summary judgment in favor of the employer and against the husband on the ground that he himself had never engaged in any of conduct protected by Title VII – such as opposing the alleged discrimination or participating in the government investigation. However, the Sixth Circuit Court of Appeals reversed.

The majority acknowledged, "a literal reading of [Title VII] section 704(a) suggests a prohibition on employer retaliation only when it is directed to the individual who conducted the protected activity." It concluded, however, that the language of the statute itself should not be controlling because "tolerance of third-party reprisals would, no less than the tolerance of direct reprisals, deter persons from exercising their protected rights under Title VII." Thus, the Court followed the position urged by the EEOC by extending statutory protection to any third party that is deemed to be "so closely related to or associated with the person exercising his or her statutory rights that it would discourage that person from pursuing those rights."

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The Sixth Circuit stated further that just because a plaintiff is allowed to state such a claim does not establish that the plaintiff can prove the elements of the alleged Title VII cause of action. The court acknowledged that "[a]s part of a prima facie retaliation case, all such claimants must demonstrate, inter alia, 'that there was a causal connection between the protected activity and adverse employment action.' The requirement of a prima facie case in general, and a causal link specifically protect employers from defending against meritless suits."

**THE DISSENT:**

Not too surprisingly, the majority's decision prompted a rather lengthy dissent. The dissent characterizes the decision as the first time a court of appeals has held that Title VII creates a claim for third-party retaliation. The dissent also said that the court was legislating with its decision, not judging the facts based on existing law.

The Fifth, Eighth, and Third Circuit Courts of Appeal have previously unanimously rejected such third-party retaliation claims. In so doing, these circuits rejected such a construction finding that it was neither supported by the plain language of Title VII nor necessary to protect third parties, such as spouses or significant others from retaliation. Given the split among the circuit courts, it is our hope that the U.S. Supreme Court will hopefully provide guidance on this issue.

**PRACTICAL IMPLICATIONS:**

Employers must recognize that action affecting "associated" individuals will now be subjected to increased scrutiny. When faced with a discrimination complaint or EEOC charge from an employee who is associated with or related to the other employees in the employer's workforce, the employer should proceed cautiously in making any hiring, promotion, discipline or termination decisions.