

## High Court Allows Third-Party Retaliation Claim

It is well known that an employer cannot retaliate against a worker who has complained about discrimination or harassment. But what if the employer takes adverse action against, not the complaining employee, but someone related to or associated with that employee? That was the issue addressed recently by the U.S. Supreme Court. Miriam Regaldo filed a sex discrimination charge against her employer, North America Stainless (NAS), with the Equal Employment Opportunity Commission (EEOC). After that occurred, NAS fired Regaldo's fiancé, Eric Thompson, who also worked for the company. He then filed his own charge and subsequently sued NAS under Title VII of the Civil Rights Act, claiming that NAS retaliated against him because of Regaldo's EEOC charge. The federal district court granted NAS a summary judgment, dismissing Thompson's lawsuit, on the theory that "third party" retaliation claims are not permitted under Title VII.

The case reached the Supreme Court after the Sixth Circuit Court of Appeals agreed with the lower court and affirmed its dismissal of the case. *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006). The High Court first addressed the question of whether or not Thompson's firing constituted unlawful retaliation. It cited one of its recent decisions holding the anti-retaliation provision in Title VII extends to any employer conduct that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." The Court then had no difficulty in concluding that a reasonable worker might be dissuaded from pursuing a discrimination claim if she knew that her fiancé would be discharged as a result. It declined, however, to define a specific category of relationships that would qualify as unlawful third party retaliation.

The second question dealt with the Title VII provision that suit may be brought "by the person claiming to be aggrieved." 42 U.S.C. § 2000e-5(f)(1). Was Thompson such an "aggrieved person"? If not, the dismissal of his suit would be appropriate. The Court adopted the common usage of this term under general federal law that enabled suit by any person who falls within the zone of interests protected by the statute that is the basis for the lawsuit. Applying that "zone of interests" test to this case, the Court readily found that Thompson was an "aggrieved person." He was an employee of NAS, and Title VII was intended to protect employees from the unlawful conduct of their employers. Thompson was not an "accidental victim" - he was the target, because, in the Court's words, "injuring him was the employer's intended means of harming Regaldo."

Retaliation continues to be a popular claim for employees to bring. The *Thompson* case serves as a reminder that the group of potential plaintiffs in a retaliation lawsuit may be broader than some employers may have thought.