

Internal Complaints Sufficient to Trigger Anti-Retaliation Protection under the FLSA

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The U.S. Court of Appeals for the Second Circuit recently ruled that oral and written complaints regarding wages made to supervisors followed by an adverse job action are sufficient to support retaliation claims under the Fair Labor Standards Act (“FLSA”). [Greathouse v. JHS Security, Inc.](#) Under the FLSA’s anti-retaliation provision it is unlawful to discharge or discriminate against any employee because such employee has filed any complaint related to the FLSA’s provisions. In previous decisions the Second Circuit held any such “complaint” must be made in writing to a government agency, and internal complaints to supervisors, as well as oral complaints to an agency, were insufficient to trigger protection. In reversing its position, the Second Circuit relied on guidance from a U.S. Supreme Court decision making oral complaints to an agency sufficient, and sister Circuit decisions making any internal complaint enough to gain protected status.

Under its new ruling, employees are protected from retaliation if they file oral or written complaints to either a government agency or a supervisor. The complaint must, however, 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 protection. Mere hallway grumblings are not enough.

In the instant case, the employee, a security guard, complained to his supervisor about a series of non-payments, late payments, and unauthorized payroll deductions. The supervisor’s response was that he would be paid when the supervisor felt like it. The supervisor then pointed

a gun at the employee, which the employee took as a sign that he was being discharged. The employee then filed claims of non-payment and retaliation based on the discharge.

The Court's ruling brings it in line with other Circuits ruling on the issue, as well as the Department of Labor's position. It also places FLSA complaints on equal footing with the law regarding retaliation under federal discrimination law, which only requires an employee to oppose discriminatory practices. Internal oral and written complaints are sufficient to show opposition.

Given this ruling, employers should be prepared to respond to internal complaints claiming violations of the wage laws, and take steps to guard against retaliation toward those making them.

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