A NEWSLETTER PUBLISHED BY
DICKIE, McCAMEY & CHILCOTE'S
EMPLOYMENT AND LABOR LAW GROUP

Employment Law Update

Dickie McCamey
Integrity. Experience. Solutions.

March 28, 2011

United States Supreme Court rules that oral complaint is protected activity under the Fair Labor Standards Act.

The Fair Labor Standards Act "FLSA—the act that governs minimum wage and overtime pay—makes it unlawful for an employer to retaliate against an employee because he has "filed any complaint" alleging violations covered by the Act. Until now, there have been conflicting views among the courts as to whether oral complaints constitute protected activity under the FLSA. However, the Supreme Court agreed to hear this case involving an oral complaint and ruled conclusively that oral complaints are covered under the retaliation provision of the FLSA.

The employer in this case, a performance plastics manufacturer, placed its time clocks between the area where employees put on and take off their work-related protective gear and the area where they carry out their work duties. The employee in question orally complained to company officials on a number of occasions that the location of the clock prevented employees from being compensated for time spent donning and doffing required protective gear in violation of the FLSA. His oral complaints were in compliance with the company's internal problem-solving procedure. The complaints were also in keeping with the company's code of ethics and business conduct which requires employees to report to the company suspected violations of any applicable laws. The employee claims he orally complained about the location of the clock to his shift supervisor, a human resources employee, his lead operator, the human resources manager, and the operations manager on separate occasions. The company, on the other hand, denied that the employee made any significant complaint about the clock. Nevertheless, the company discharged the employee because he repeatedly failed to punch in and out of work, despite a number of warnings.

The employee filed a lawsuit alleging that he was discharged because he complained about the time clock which he alleged constituted retaliation under the FLSA. The Federal District Court granted summary judgment in favor of the employer, holding that oral/informal complaints of FLSA violations are not protected activity under the FLSA. The employee appealed, and the Supreme Court agreed to hear the case and issue a conclusive ruling on whether the FLSA's phrase "any complaint" includes oral complaints. For the high court, the issue turned, in large part, on the definition of "filed" in conjunction with the intent of Congress when it enacted the law. The Court found that to limit a complaint under the FLSA to one in writing would undermine the Act's basic objectives, to prohibit labor conditions that are "detrimental to the maintenance of the minimum standard of living and general well-being of workers." 29 U.S.C. § 202(a). The Court's analysis found that to limit the FLSA's protection to written complaints also could prevent the use of hotlines and other similar methods for receiving complaints and may discourage employees from using internal informal problem-solving procedures. For these and other reasons, the Supreme Court ruled that the FLSA's anti-retaliation provision prohibits an employer from retaliating against an employee for any complaint —written or oral.

A separate issue not addressed by the high court is whether a complaint to a private employer rather than to a governmental agency invokes the anti-retaliation provision. The Federal District Court addressed the issue and held that the Act does apply to complaints made to employers as well as the government, although that ruling would not necessarily be applicable to other District Courts. Based upon the Supreme Court's decision in this case, it would be prudent for employers to revisit their internal complaint procedures and advise company officials, including human resources employees, that any complaint concerning a wage and hour violation, whether written or oral, should be documented and brought to the attention of the appropriate company personnel. Employers should also take this opportunity to remind all supervisory personnel that no adverse action should be taken against an employee because he or she complains about a wage and hour violation or any other unlawful and/or discriminatory act.

* * *

If you have any questions or comments regarding this information, or would like to discuss other labor and employment issues, please contact Terri Imbarlina Patak at 412-392-5613 or via e-mail at tpatak@dmclaw.com, Thomas H. May at 412-392-5437 or via e-mail at tmay@dmclaw.com, or any other Dickie, McCamey & Chilcote lawyer with whom you have worked.

This *Employment Law Update* is provided by the law firm of Dickie, McCamey & Chilcote to inform readers of recent developments within the field of employment law. The firm regularly counsels corporate clients concerning labor and employment law issues and legislation and is available to provide presentations and seminars regarding a variety of preventive law subjects. To learn more about the firm's capabilities in this area, please visit the website at www.dmclaw.com and look for information on the firm's Employment and Labor Law Practice Group.