

Second Circuit Synchs Up With its Sister Courts: Now Says Employees May Premise FLSA Retaliation Claim on Oral Complaints to Employer

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This week, in ***Greathouse v. JHS Security, Inc.***, the Second Circuit Court of Appeals held that employees may pursue a ***Fair Labor Standards Act*** retaliation claim premised upon an oral complaint to their employer – a clear expansion of its earlier interpretation of the law.

The FLSA's anti-retaliation provision makes it unlawful for an employer to discharge or in any other manner discriminate against an employee because such employee ***has filed any complaint*** related to" the FLSA's provisions (emphasis mine). To satisfy the "filed any complaint" requirement, the Second Circuit had previously held that an employee must file a *written* complaint with the *government*. That was back in 1993. Twenty-two years later, the Second Circuit decided to revisit the issue in *Greathouse*. The Second Circuit said that its previous decision no longer held up because (i) of the Supreme Court's 2011 decision in ***Kasten v. Saint-Gobain Performance Plastics Corp.*** and (ii) it went against the weight of the authority of its sister circuit courts and other federal authorities that have addressed this issue.

The Second Circuit acknowledged that in *Kasten*, the Supreme Court did not expressly address whether complaints to employers as opposed to the government were sufficient; instead that decision decided whether oral complaints were sufficient. But the Second Circuit drew upon the language the *Kasten* court used in its decision to conclude that the Supreme Court would have allowed an retaliation claim based upon employer-based complaint. The Second Court also expressed a desire to bring its view on this issue into "harmony" with each of the other circuit courts and administrative bodies that have addressed this issue in favor of employees.

Now, an employee may premise FLSA retaliation claim on an oral complaint made to an employer so long as the complaint is "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 FLSA] and a call for their protection."

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