4th Circuit: Job Candidates Canâ€™t Sue Prospective Employers for Retaliation over Past Overtime Complaints

By Graig F. Zappia

After 14 long years, employers have finally received a reprieve from the expansion of employees' protections against retaliation. A federal appellate court recently ruled that a worker cannot sue a prospective employer who allegedly refused to hire her because she filed a minimum wage and overtime complaint against a former employer.

The 4th

U.S. Circuit Court of Appeals in Richmond, Va. ruled in Dellinger v. Science Applications International Corporation

that the Fair Labor Standards Act (FLSA) shields employees who have filed complaints under the law from retaliation by past and current employers – but not future employers. This ruling could have broad implications on Capital Region employers because many of them have overextended their workforces in the down economy and are being been hit with FLSA overtime complaints.

The case involved Natalie L. Dellinger, who in July 2009 sued her former employer for violating FLSA's minimum wage and overtime provisions. A month later, Science Application International Corp. (SAIC) made Dellinger a conditional job offer that hinged on factors such as her passage of a drug test and the verification and transfer of her security clearance. After submitting her completed security clearance paperwork, which noted her FLSA suit, SAIC withdrew its job offer.

In response to the withdrawal, Dellinger sued SAIC claiming the scientific, engineering and technology applications company violated FLSA's anti-retaliation provisions. SAIC countered saying FLSA did not cover Dillinger because she did not qualify as an "employee" under the act. The 4th

Circuit agreed with SAIC and affirmed a district court's dismissal of Dellinger's claim. The appellate could said the FLSA's anti-retaliation provision does not stand as "a free-standing protection against any societal retaliation."

In his dissenting opinion, Judge Robert B. King said the majority's opinion "bucks the trend" of expanding employee protections against retaliation that began with the U.S. Supreme Court's 1997 ruling in Robinson v. Shell Oil Co

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, the nation's highest court said an employee could sue a former employer for unlawful retaliation under Title VII of the Civil Rights Act of 1964.

What Employers Need to Know:

The FLSA holds employers liable to compensating certain employees at a rate of time-and-a-half for hours worked exceeding a 40-hour workweek.

Employers who unwittingly fail to pay overtime are liable for up to two years of unpaid overtime compensation in addition to an equal amount in liquidated damages. The statute of limitations is extended to three years for willful violations.

The act prohibits employers from retaliating against employees who formally file an FLSA minimum wage or overtime complaint.

Employers who retaliate against employees who file FLSA complaints can be sued in federal or state courts and can be ordered to reinstate, promote or pay wages lost in addition to an equal amount in liquidated damages.

Employees covered by the FLSA's anti-retaliation provision have "an employment relationship with their employer," according to the 4th

Circuit. This employer-employee relationship encompasses both current and previous employers.

Other laws, such as the National Labor Relations Act, do protect prospective employees from retaliation.

For the past three years, many Capital Region employers have struggled to stay afloat with smaller workforces. As of last July, the Albany-Troy-Schenectady metropolitan area's private sector employed 338,700, down 6,400 from July 2008, according to the U.S. Bureau of Labor Statistics. Many employers – especially small businesses – frequently misunderstand the FLSA's complex overtime exemptions and calculations. Employers accused of unlawfully failing to pay overtime wages should contact an employment law

attorney.

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