



U.S. Supreme Court Endorses Retaliation Claims

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In two cases decided this year, the United States Supreme Court determined that two federal statutes provide a basis for retaliation claims by employees against their employers, although the statutes themselves do not on their face prohibit retaliation. In the first case, *CBOCS West, Inc. v. Humphries*, a terminated African-American employee sued his former employer Cracker Barrel, alleging race discrimination and retaliation, and asserting claims under Title VII of the Civil Rights Act of 1964 and § 1981. Prior to his termination, the fired assistant manager had complained to Cracker Barrel that a fellow employee had been discharged for race-based reasons. The trial court dismissed plaintiff's Title VII claims on procedural grounds, and granted summary judgment for the employer on § 1981 claims, on the basis that the statute, enacted shortly after the Civil War, did not specifically encompass retaliation claims. After the United States Court of Appeals for the Seventh Circuit reversed and remanded in part, ruling that employee's retaliation claim was cognizable under § 1981, the U.S. Supreme Court granted Certiorari. Upon review, the Supreme Court, by a 7-2 majority, affirmed the Seventh Circuit. In so ruling, the Court relied strongly upon past precedent. It rejected the employer's linguistic arguments, and determined that § 1981 encompasses retaliation claims, such § 1981 retaliation claims include claims by an individual who suffers retaliation for having tried to help another, and § 1981 retaliation claims include employment-related charges.

In the second case, *Gomez-Perez v. Potter*, involving the federal-sector provision of the Age Discrimination in Employment Act ("ADEA"), and applicable only to federal employers, an employee of United States Postal Service ("USPS") sued her employer and the Postmaster General, claiming that she had been retaliated against for filing an administrative age discrimination complaint, in violation of the ADEA. The trial court granted summary judgment in favor of defendants on the basis of sovereign immunity, which was affirmed on appeal. The Supreme Court reversed, ruling that a federal employee who is a victim of retaliation due to the filing of an age discrimination complaint may assert a claim under the ADEA's federal-sector provision, despite the ADEA's lack of specific anti-retaliation language.



These cases reflect a tendency by the judiciary to assume an anti-retaliation cause of action, even if an employment statute does not include exact language authorizing it. Once an employee complains of workplace discrimination, the prudent employer will thoroughly investigate the same, and proceed only after thoughtful consideration.
