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For more information on our services, please contact:

Leslie A. Lajewski, Esq.  
(973) 631-6061  
[llajewski@coughlinduffy.com](mailto:llajewski@coughlinduffy.com)

or

Steven J. Luckner, Esq.  
(973) 631-6065  
[sluckner@coughlinduffy.com](mailto:sluckner@coughlinduffy.com)

[www.coughlinduffy.com](http://www.coughlinduffy.com)

## The Employment Law Lowdown June 3, 2008

### E- ALERT - U.S. SUPREME COURT ALLOWS NEW RETALIATION CLAIMS

On May 27, 2008, the United States Supreme Court decided two cases allowing employees to assert retaliation claims under anti-discrimination statutes that do not explicitly permit retaliation claims.

In *CBOCS West, Inc. v. Humphries*, 2008 LEXIS 4516, No. 06-1434 (May 27, 2008), the Supreme Court addressed the issue of whether §1981 encompasses retaliation claims. Section 1981 provides that "all persons within the jurisdiction of the United States [will] have the same right to make and enforce contracts . . . as is enjoyed by white citizens." There is, however, no language in §1981 that explicitly provides for a retaliation claim.

Humphries was an African-American employee at CBOCS, who brought claims against CBOCS under Title VII of the Civil Rights Act and §1981 alleging that he was terminated because of his race and because he complained to managers that an African-American co-worker had also been terminated because of her race. The Court reviewed the prior cases that addressed the issue of whether §1981 encompasses retaliation claims and the 1991 amendment to §1981. The Court found that the proposition that §1981 encompasses retaliation claims was well embedded in the law and that *stare decisis* (meaning "to stand by things decided") demanded respect for prior decisions. Based on this, the Court held in a 7-2 vote that §1981 encompasses retaliation claims.

In *Gomez-Perez v. Potter*, 2008 LEXIS 4518, No. 06-1321 (May 27, 2008), the Supreme Court addressed the issue of whether the phrase "discrimination based on age" found in the federal sector provision of the Age Discrimination in Employment Act (ADEA) encompassed retaliation claims. Gomez-Perez was a United States Postal worker at the postal office located in Dorado, Puerto Rico. She requested a transfer to another site and was granted the transfer. Thereafter, Gomez-Perez requested a transfer back to her original site, which was denied. Gomez-Perez filed an unsuccessful union grievance and later an age discrimination claim under the ADEA that included a claim for retaliation based on her age discrimination claim.

As in the *CBOCS* case, the Court reviewed the prior decisions interpreting anti-discrimination statutes that did not explicitly provide an anti-retaliation provision and found that the ADEA federal sector provision prohibiting discrimination based on age encompasses retaliation claims.

These recent Supreme Court decisions reflect the growing trend of retaliation claims asserted by employees. Employers should be mindful of such claims when interacting with employees who have alleged claims of discrimination or harassment.

**For more information about these decisions, contact Leslie A. Lajewski or Steven J. Luckner.**

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