

# EMPLOYMENT LAW

## A L E R T

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## Title VII's Anti-Retaliation Provision Protects Relatives and Co-Workers

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The 6th Circuit recently issued an opinion holding that Title VII prohibits an employer from taking adverse employment action against third-party employees who are related to or closely associated with an employee who engaged in protected activity under Title VII. *Thompson v. North Am. Stainless LP*, 6th Cir., No. 07-5040, 3/31/08. There is a split of authority among courts on this issue and the 6th Circuit's decision takes the minority position.

In this case, the plaintiff and his fiancé worked for the same employer. The plaintiff's fiancé engaged in protected activity under Title VII by filing an EEOC charge based on sexual discrimination in September 2002. The employer was notified of the fiancé's charge on February 13, 2003, and it terminated the plaintiff within one month of receiving notice of the charge, allegedly for poor performance. The plaintiff filed an EEOC charge alleging that he was retaliated against for his fiancé's EEOC charge. After the commission found reasonable cause to believe that the plaintiff's termination violated Title VII, the plaintiff filed suit in the United States District Court for the Eastern District of Kentucky.

The District Court ruled in favor of the employer on the grounds that the plaintiff's relationship with his fiancé did not support a cause of action under Title VII. On appeal, the 6th Circuit reversed the District Court's decision and held that the plaintiff's relationship with his fiancé was sufficient to state a cause of action for retaliation under Title VII, even though he did not directly engage in protected activity. The framing of the issue by the 6th Circuit immediately communicated what its holding would be: "[D]oes Title VII prohibit employers from taking retaliatory action against employees not directly involved in protected activity, but who are so closely related to or associated with those who are directly involved, that it is clear that the protected activity motivated the employer's action?" In answering that question in the affirmative, the 6th Circuit noted that it was departing from the plain text of Title VII's anti-retaliation provision, which suggests that it only applies to an employee who actually engages in protected activity. The 6th Circuit held, however, that it would undermine the purposes of Title VII if it were to hold that an employer may lawfully retaliate against an employee who engages in protected conduct indirectly by taking an

adverse employment action against another employee who is “related to or associated with” the employee who engaged in the protected conduct. The 6th Circuit’s opinion appears to be in tension with recent opinions in which the Supreme Court has taken a dim view of implied rights of action. Nevertheless, for now, such a cause of action exists for employees closely related to or associated with an employee who engages in protected conduct. The parameters of that “close association” have yet to be tested, but despite the 6th Circuit’s assurances to the contrary, one can imagine a flood of cases being filed by discharged employees who fondly recall their close friendship with an employee who complained of discrimination.

Under this new holding, employers should be aware of potential exposure for taking adverse employment action against an employee who is related to or closely associated with an employee who has engaged in protected conduct under any of the various employment statutes.

If you have questions about this Alert, please call one of our labor attorneys listed below.

### Bass, Berry & Sims Labor and Employment Attorneys

**Karen L.C. Ellis**  
(615) 742-6226  
kellis@bassberry.com

**Robert W. Horton**  
(615) 742-7708  
rhorton@bassberry.com

**Michael S. Moschel**  
(615) 742-6297  
mmoschel@bassberry.com

**Leslie G. Sanders**  
(615) 742-7711  
lsanders@bassberry.com

**Davidson French**  
(615) 742-6240  
dfrench@bassberry.com

**Alonda W. McCutcheon**  
(615) 742-7717  
amccutcheon@bassberry.com

**William N. Ozier**  
(615) 742-6232  
bozier@bassberry.com

**Matthew M. Scoggins III**  
(865) 521-2025  
mscoggins@bassberry.com

**Tim K. Garrett**  
(615) 742-6270  
tgarrett@bassberry.com

**Carolyn V. Moore**  
(615) 742-7944  
cmoore@bassberry.com

**Justin A. Page**  
(615) 742-7786  
jpage@bassberry.com

**Annie M. Warnock**  
(615) 742-6517  
awarnock@bassberry.com

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315 Deaderick Street • Suite 2700 • Nashville, TN 37238-3001 • (615) 742-6200  
The Tower at Peabody Place • 100 Peabody Place, Suite 900 • Memphis, TN 38103-3672 • (901) 543-5900  
1700 Riverview Tower • 900 S. Gay Street • Knoxville, TN 37902 • (865) 521-6200