

# SECOND CIRCUIT HOLDS THAT INTERNAL COMPLAINTS SUFFICE UNDER THE FLSA'S ANTI-RETALIATION PROVISION

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In a unanimous decision, the Second Circuit ruled on April 20 that internal complaints to an employer are protected from retaliation under the Fair Labor Standards Act (FLSA). Employers within the Second Circuit — New York, Vermont, and Connecticut — now face greater exposure for retaliation claims under the FLSA when an employee makes an internal complaint.

The FLSA provides that an employer cannot retaliate against an employee for making “any complaint” about a wage and hour issue under the FLSA. The U.S. Supreme Court’s 2011 ruling in *Kasten v. Saint-Gobain Performance Plastics Corp.* made clear that “any complaint” under the FLSA’s anti-retaliation provision included oral complaints. But the Second Circuit was the lone circuit court holding that internal complaints were not protected — an issue that the Supreme Court did not reach in *Kasten*.

Darnell Greathouse, a security guard, claimed that his supervisor at JHS Security Inc. retaliated against him after he complained internally about the nonpayment of his wages. While Greathouse prevailed on his wage claims, the district court, citing Second Circuit precedent, rejected his retaliation claim because he failed to formally notify the Department of Labor or an external agency.

In *Greathouse v. JHS Security Inc.*, the Second Circuit reversed on the FLSA retaliation claim, finding that the Supreme Court’s opinion in *Kasten* had “cast doubt” on the validity of its earlier decisions requiring a written complaint filed with a government agency. According to the Second Circuit:

An employee may premise a FLSA retaliation claim “on an oral complaint made to an employer, so long as – pursuant to *Kasten* – 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 statute and a call for their protection.’”

## **Best Practices Following *Greathouse***

*Greathouse* expands FLSA anti-retaliation provision to cover internal complaints. Many states, including New York, have long provided broad protection for internal complaints and even complaints to some third parties, such as labor unions. The potential for increased liability under the FLSA serves as an important reminder that employers should:

1. Update retaliation policies and complaint procedures;
2. Train supervisors and managers how to spot complaints;
3. Investigate and take remedial steps to address any issues;

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4. Protect the complaining party from retaliation; and
5. Consult with legal counsel as necessary.