

## **Supreme Court Hears Oral Arguments in FLSA Retaliation Case**

On October 13, the U.S. Supreme Court heard oral arguments in the case *Kevin Kasten v. Saint-Gobain Performance Plastics Corp* (09-834) in which the justices are expected to decide whether or not an employee can bring a claim of retaliation under the Fair Labor Standards Act (FLSA) if the original complaint was oral and not written.

The Seventh Circuit Court of Appeals upheld a lower court ruling that while Kasten's internal complaints to supervisors about the location of a time clock were sufficient, he could not bring a retaliation suit because his time clock complaints were oral and not written.

FLSA § 15(a)(3) makes it unlawful for an employer "to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter ...". The Seventh Circuit said that an oral complaint cannot be "filed" under the FLSA, and therefore, Kasten does not have a retaliation claim.

Kasten was fired after repeated time clock violations. He complained that the clocks were too far away necessitating workers to don and doff gear before clocking in and out. As a result he did not get paid for putting on or taking off his safety gear. The clocks were not near the entrance to the plant and he also claims that he forgot to clock in on several occasions because of this.

A decision is expected before June 2011.