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The Long Arm of FLSA Retaliation: Lessons from the Ninth Circuit's Decision in Hollis

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The Fair Labor Standards Act was one of the earliest American workplace laws to contain an explicit anti-retaliation provision. Modeled after the anti-retaliation provisions in other New Deal legislation, including the National Labor Relations Act enacted just three years prior, the FLSA's original text in 1938 made it unlawful "for any person … 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" the FLSA. That language, codified in 29 U.S.C. § 215(a)(3), remains unchanged today.

The plain language of the statute raises a few understandable questions: *Must the "person" that discharges or discriminates against the employee be the employer accused of the underlying FLSA violation? What if the "person" accused of retaliation never employed the plaintiff?* These were questions before the U.S. Court of Appeals for the Ninth Circuit in *Hollis v. R&R Restaurants, Inc.*, decided on November 18, 2025.

In *Hollis,* the plaintiff—an exotic dancer at a Portland club called Sassy's—sued the club's owners and managers under the FLSA for misclassifying its dancers as independent contractors to avoid paying them minimum wage and overtime pay. After Hollis filed the complaint, Frank Faillace—an owner and manager of both Sassy's and another club called Dante's—canceled an agreement for Hollis to perform at a weekly variety show at Dante's, noting in an email that Hollis's lawsuit against Sassy's "makes things complicated." Hollis then amended the complaint to allege that Faillace's decision to cancel the performance at Dante's constituted retaliation in violation of the FLSA, even though there were no underlying wage and hour violations against Dante's. The district court granted summary judgment in favor of Dante's on the retaliation claim on the ground that to state a cause of action for retaliation against Dante's, Hollis must have been employed at Dante's when Faillace canceled the scheduled performance. Hollis appealed the dismissal of the retaliation claim.

The Ninth Circuit held that the defendant in an FLSA retaliation action need not be the actual employer and the plaintiff need not have been employed by the actual employer or the alleged retaliator when the retaliation occurred. The Court began by looking to its 2017 decision in *Arias v. Raimondo*, in which it held that the plaintiff could bring an FLSA retaliation claim against his former employer's attorney for seeking to have him deported to thwart his wage and hour lawsuit against the employer. Emphasizing the FLSA's "remedial and humanitarian" purpose, the court noted that "while the FLSA retaliation provision only protects employees, *Arias* held that the employment relationship need not be current, the retaliator need not be the actual employer, and the retaliation need not take the form of an adverse employment action."

The court then applied the reasoning in *Hollis* to the facts before it, as follows:

- The FLSA defines "employer" broadly, as "to include "any person acting directly or indirectly in the interest of an employer in relation to an employee."
- Assuming Hollis was in fact an employee of Sassy's and not an independent contractor (an issue on remand), Faillace—as an owner and manager of Sassy's—is a "person acting directly or indirectly in the interest of an employer [Sassy's] in relation to an employee," and therefore an "employer" under the FLSA definition.
- The FLSA does not require that Faillace (the retaliator) *directly* benefit the actual employer (Sassy's) nor act under that employer's instructions to be considered an "employer" under the FLSA.
- Hollis only needed to show that Faillace acted *indirectly* in the interest of Sassy's via the allegedly retaliatory conduct. Hollis adequately alleged that Faillace did so by cancelling the agreement for Hollis to perform at Dante's because of Hollis's lawsuit against Sassy's: "This constituted an indirect effort to minimize any liability of Sassy's as well as Dante's. Moreover, Faillace's action allegedly penalized Hollis for filing the lawsuit and would dissuade a reasonable person in Hollis's position from filing a lawsuit in the first place."

The Court concluded that, "[i]n defining an employer to include 'any person acting directly or indirectly in the interest of the employer in relation to an employee' Congress ensured that a private right of action for retaliation under [the FLSA] would reach any defendant who violated the statute's prohibition on retaliating against an employee because of their protected activity."

As to whether or not the cancellation of Hollis's opportunity to dance at Dante's could be considered a retaliatory act, the Court pointed to Burlington Northern and Santa Fe Railway Co. v. White, in which the U.S. Supreme Court held, in the context of Title VII, that conduct constitutes retaliation if it is "harmful to the point that [it] could well dissuade a reasonable worker from making or supporting a charge of discrimination." The Court noted:

> Canceling a scheduled work agreement and barring a worker from future contract opportunities cuts the worker off from an income source. It deprives the worker of funds they would otherwise have been able to earn. Refusing to contract with a worker is not categorically less likely to dissuade that worker from making a complaint than termination or demotion. On this record, a trier of fact could reasonably find that Faillace's actions were sufficiently harmful to constitute retaliation.

The decision leaves open the question of whether Hollis would have stated a cause of action against Faillace if Faillace did not have a pre-existing relationship with Sassy's—for example, if he had simply read about Hollis's lawsuit against Sassy's in the newspaper and decided to cancel Hollis's engagement to perform at Dante's. On the one hand, it would certainly be difficult to argue that Faillace, in that example, was "acting directly or indirectly in the interest of" the employer accused of the underlying wage violation (Sassy's)—as the Ninth Circuit appears to require. As such, one can fairly read *Hollis* as rejecting—or at least stopping short of endorsing—the principle that any actor in the market can be sued simply because they retaliate. On the other hand, we can anticipate the policy argument carrying forward the *Arias* and *Hollis* reasoning—that if every employer refused to employ an individual because that individual had filed an FLSA lawsuit against another employer, would that not frustrate the statute's "remedial and humanitarian" purpose? Both employers and employees should be keeping their eyes on how this issue continues to develop in the courts.

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