



*Residential Services Association of Wisconsin, Inc. advocates and educates  
for excellence in community residential and related support services*

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## Issue 2 – 2011

# RSA Wisconsin at the Capitol

*by Mary Robertson, RSA Legislative Chair  
Agape of Appleton, Inc.*

**R**SA Wisconsin held its 2011 Legislative Day on a surprisingly snowy Wednesday in March. While traveling conditions were questionable, members commitment to conveying their message to legislators was not! Over 30 people made the trip to our state Capitol to join forces in advocating for our residents and agencies.

For two hours participants were briefed on the issues and provided tips for having effective visits with their Senators and Representatives. They also had the opportunity to hear from Mr. Brett Davis, who was appointed by Governor Walker as Wisconsin's Medicaid Director earlier this year. Mr. Davis oversees the administration of Wisconsin Medicaid, and provided insight as to what the DHS process is going to be with respect to Wisconsin's Medicaid System.

Our gracious host, Mr. Thomas P. Godar of Whyte Hirschboeck Dudek, S.C. provided not only state-of-the-art meeting space on the Square, he also made sure that the participants started the day right by donating breakfast and beverages.

After the presentation the attendees walked over to the State Capitol building for their individual appointments with legislators and their staff. Many had scheduled ap-



## How Do I Find My Legislators?

Call the toll-free  
Legislative Hotline  
**800-362-9472**

or visit  
[www.legis.wisconsin.gov](http://www.legis.wisconsin.gov)  
and click on  
"Who Represents Me?"  
(center of screen)

# Title VII Protects Third Party From Retaliation

by Thomas P. Godar, RSA Wisconsin Advisory Board Member & Jonathan D. Bundy  
Whyte, Hirschboeck & Dudek S.C.

On January 24, 2011, the U.S. Supreme Court (Court) ruled unanimously that the fiancé of an employee who filed a sex discrimination charge is protected under Title VII of the Civil Rights Act from retaliatory action by that same employer, North American Stainless (NAS). In 2003, Miriam Regalado filed an EEOC complaint against NAS alleging sex discrimination. Three weeks later NAS fired Eric Thompson, Regalado's fiancé, who then filed a separate EEOC complaint claiming protection under Title VII for third-party retaliation. A federal district court and the Sixth Circuit Court of Appeals dismissed Thompson's retaliation claim, reasoning that third parties are not included in the class of persons Congress intended to protect from unlawful retaliation.

The Court reversed the lower court decisions and determined that the employee's action would impede an employee's right to file a charge. "We think it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." *Thompson v. North American Stainless LP*, 562 U.S. \_\_\_ (2011).

Counsel for NAS argued that the Court should not allow third-party claims under Title VII because it would result in arbitrary line drawing regarding which third-party relationships deserve protection. For instance, if fiancés were protected third parties, would boyfriends, close friends or trusted co-workers also be protected? The Court was wary of creating a fixed standard that might sweep too broad a category of those who would be protected from thirdparty retaliation. It declined "to identify a fixed class of relationships for which thirdparty reprisals are unlawful. We expect that firing a close family member will almost always meet the *Burlington [N. & S.F.R. Co. v. White]*, 548 US 53 2006, establishing that Title VII's anti-retaliation provision prohibits a broad range of employer conduct] standard, and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize."

After concluding that firing an employee's fiancé was retaliation deserving Title VII protection, the Court turned to the question of whether Title VII allowed Thompson to file a lawsuit separate from Regalado's original sex discrimination claim. The Court found Thompson within the protected "zone of interest" based on the fact that he was an employee of the employer against whom the discrimination claim was brought and the employer had the opportunity to harm him directly in order to punish his fiancée. As a result, Thompson was entitled to file his own discrimination claim.



Employers now face the prospect of a significantly broader group of employees who may claim protection from retaliatory action based on the Thompson decision. Employers who have hired family members and spouses of their employees must be particularly sensitive to this new rule—that family members, husband or wife, son or daughter, mother or father, or even other familylike relationships—are protected against retaliation. A new question must be posed each time an employer is contemplating disciplinary action or other activities that would negatively alter the terms and conditions of employment for the employee: Has the employee's family member claimed discrimination, and will this job action potentially open the door for a claim of retaliation?

Certainly, over the next several years, courts will struggle to answer how direct a relationship must be before one can bring a claim of retaliation. Employers facing potential third-party retaliation claims should consult with counsel to determine how the latest Supreme Court ruling may affect the employer's liability under Title VII.

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