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Retaliation Claim Cannot Be Based Solely on an Association with a Complaining Employee Under Michigan Law

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Michigan's Elliot-Larsen Civil Rights Act ("ELCRA") protects employees who complain about alleged unlawful activity from retaliation. In the recent Michigan Court of Appeals decision, *Miller v. Michigan Department of Corrections*, the Court of Appeals held that under ELCRA a retaliation claim cannot be based solely on an employee's association with the complaining employee.

In *Miller*, employee Cedric Griffey complained to Michigan Department of Corrections ("MDOC") management about his wife, who was also an MDOC employee, being harassed in the workplace. The Plaintiffs (not Griffey) were terminated by the MDOC, allegedly because they were close friends with Griffey. The Plaintiffs argued that they had a viable claim of retaliation under ELCRA because the MDOC's decision to terminate them was an act of retaliation against their close friend for submitting the complaint.

The Court held that the Plaintiffs' retaliation claim could not be solely based on their close friendship with the complaining employee under Michigan's ELCRA. The Court reasoned that ELCRA provides an explicit provision for addressing claims brought by plaintiffs who were not the actual complaining employee. The provision requires that such plaintiffs show that they "aided or encouraged" the complaining employee to engage in activity protected by ELCRA (i.e., file a complaint or participate in an investigation). Thus, because the Plaintiffs only argued that their termination was part of the MDOC's attempt to retaliate against Cedric Griffey, their complaint was dismissed. It should be noted, however, that under federal law (Title VII of the Civil Rights Act of 1964), a close relationship to a complaining individual alone can support a cause of action for retaliation. See *Thompson v. North American Stainless, LP*, 562 US 170 (2011).

The lesson of this case is that employers need to ensure that there is no retaliation when civil rights violations are raised. This applies to both the complaining employee and any other employee who supports the complaining employee. Periodic supervisor training on non-harassment, non-discrimination, and non-retaliation can help reduce liability for such claims.

If you have questions regarding your obligations relating to non-harassment, non-discrimination, or non-retaliation, contact a member of **Bodman's Workplace Law Group**. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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