

Retaliation Standard Under Title VII

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The U.S. Supreme Court recently made it easier for employees to claim retaliation under the Civil Rights Act of 1964. *Burlington Northern & Santa Fe Railway Co. v. White*, 2006 U.S. LEXIS 4895 (June 22, 2006). The Court stated that conduct may be considered retaliatory if a reasonable employee would consider the employer's actions to be materially adverse, even if those actions do not affect any terms or conditions of employment.

The plaintiff was hired as a track maintenance worker whose primary duty was driving a lift truck. Her boss repeatedly subjected her to insulting remarks. Although the company suspended the supervisor, it also reassigned the plaintiff from lift truck duties to heavier general maintenance tasks, which were part of her job description. A few months later she was suspended for insubordination, but was later made whole after an internal review concluded she had not been insubordinate. Plaintiff sued for discrimination and retaliation.

The justices held that while a finding of discrimination generally requires the plaintiff to suffer a material change in terms and conditions of employment; less is required to show retaliation. Specifically, plaintiffs need only show that a reasonable employee would find the retaliatory action to be materially adverse. Here the Court stated that reassignment to more difficult tasks and a suspension could reasonably be considered materially adverse even though the terms and conditions of employment were not affected because the reassignment fell within plaintiff's job description, and she was eventually made whole for all lost earnings during her suspension.

This new standard will make it easier for employees to bring retaliation claims, which have more than doubled over the past decade and now comprise over 30% of all EEOC charges. Employers must now make sure that actions affecting employees who have complained about discrimination cannot be characterized as materially adverse, even where there is no change in the terms and conditions of employment.

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