

CLIENT ALERT

Supreme Court Affirms Broad Reach of Title VII's Retaliation Ban

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The U.S. Supreme Court unanimously affirmed in *Burlington Northern & Santa Fe Railway Co. v. White*, No. 05-259 (U.S. June 22, 2006), that Title VII's retaliation protections extend beyond workplace or employment-related retaliatory acts to conduct that might dissuade a reasonable employee from making or supporting a charge of discrimination. The Court found this expansive reading compelled by the anti-retaliation provision's "primary purpose" -- to maintain unfettered access to statutory remedial mechanisms.

The Court's decision is not without its limits. "Petty slights, minor annoyances, and simple lack of good manners" will not be actionable under the objective standard delineated by the Court. That said, the Court was clear that "[c]ontext matters" and that determinations as to whether conduct constitutes actionable retaliation will depend on "a constellation of surrounding circumstances, expectations, and relationships." The Court suggested, for example, that a schedule change may not be actionable as to many employees, but could in fact be as to a young mother with school-age children.

Burlington Northern is interesting in two key respects. *First*, the breadth of the Court's discussion of the scope and reach of Title VII's retaliation provision was not driven by the facts before it. Indeed, the Court readily affirmed that, on the heels of an employee's complaint that her supervisor made inappropriate gender-based comments, a 37-day suspension without pay and a reassignment from forklift operator to more arduous track laborer tasks constituted retaliation. *Second*, and more important, the Court's focus on context and its admonition that an "act that would be immaterial in some situations is material in others," raised the bar yet again for employers seeking to dispose of such claims at summary judgment.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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