



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, D.C.

LABOR AND EMPLOYMENT BULLETIN

June 23, 2006

SUPREME COURT EXPANDS RETALIATION CLAIMS

In *Burlington Northern and Santa Fe Railway Co. v. White*, No. 05-259 (June 22, 2006), the United States Supreme Court expanded the circumstances under which employees can maintain retaliation claims under Title VII.

Previously, some federal appellate courts required a close relationship between the alleged retaliatory action and employment and would not recognize a retaliation claim unless the employee suffered an “adverse employment action,” which is defined as a “materially adverse change in the terms and conditions of employment.” In *White*, the Supreme Court rejected this standard and held that the “anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace.” The Supreme Court interpreted Title VII’s anti-retaliation provision expansively, to cover any “employer actions that would have been materially adverse to a reasonable employee or job applicant,” which means a retaliation claim may be based on employer actions that are “harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination.”

As a result of this decision, employers may experience more retaliation claims. Accordingly, employers should tighten their anti-retaliation policies to ensure that they forbid conduct or actions that may be the basis of a retaliation claim under the Supreme Court’s more liberal standard, and be prepared to address alleged retaliation that may not be connected to or occur in the workplace.



OFCCP RELEASES SYSTEMIC COMPENSATION DISCRIMINATION AND SELF-EVALUATION GUIDELINES

On June 16, 2006, the Office of Federal Contract Compliance Programs released its final standards for evaluating systemic compensation discrimination, as well as guidelines for federal contractors to self-audit their compensation systems.

The final standards incorporate four principal components for assessing compensation discrimination: (1) a “similarly situated employee groupings” method permitting comparisons of employees who perform similar work and occupy positions involving similar responsibility skills and qualifications; (2) for employers of 500 or more employees, the use of multiple regression analysis to analyze an employer’s pay system for potential discrimination; (3) recordkeeping requirements; and (4) reliance on anecdotal evidence of discrimination, as well as statistical evidence, in assessing whether systemic compensation discrimination is present. The self-audit compensation guidelines are voluntary, but if federal contractors and subcontractors meet the standards set out by the OFCCP, the agency will consider the compensation practices to be in compliance with Executive Order 11246.

The guidelines may be located at 71 Federal Register 35124-01 and 71 Federal Register 35114-01.

LEARN MORE
at Balch & Bingham’s 2006 Labor
and Employment Seminars:
Birmingham, AL: September 28-29
Biloxi, MS: October 26-27



L A B O R A N D E M P L O Y M E N T C O N T A C T S

BIRMINGHAM, AL

Leslie M. Allen
205.226.3484
lallen@balch.com

David R. Boyd
205.226.3485
dboyd@balch.com

Aaron L. Dettling
205.226.8723
adettling@balch.com

Douglas B. Kauffman
205.226.8758
dkauffman@balch.com

Lisa J. Sharp
205.226.8714
lsharp@balch.com

M. Jefferson Starling, III
205.226.3406
jstarling@balch.com

Christopher T. Terrell
205.226.8734
cterrell@balch.com

HUNTSVILLE, AL

David B. Block
256.512.0105
dblock@balch.com

JACKSON, MS

R. Pepper Crutcher, Jr.
601.965.8158
pcrutcher@balch.com

Armin J. Moeller, Jr.
601.965.8156
amoeller@balch.com

David M. Thomas, II
601.965.8157
dthomas@balch.com

E. Russell Turner
601.965.8159
rturner@balch.com

ATLANTA, GA

T. Joshua R. Archer
404.962.3556
jarcher@balch.com

Michelle Rothenberg-Williams
404.962.5349
mrothenberg-williams@balch.com

MONTGOMERY, AL

David R. Boyd
334.269.3132
dboyd@balch.com

W. Pete Cobb, II
334.269.3128
pcobb@balch.com

Charles B. Paterson
334.269.3143
cpateroso@balch.com

John G. Smith
334.269.3150
jgsmith@balch.com

Dorman Walker
334.269.3138
dwalker@balch.com

The Labor & Employment Bulletin is published as an informational resource for clients and friends of Balch & Bingham, LLP. It does not contain legal advice, and is not a solicitation to perform legal services. No representation is made that the quality of legal services performed by Balch & Bingham LLP is greater than the quality of legal services performed by other lawyers. Design, logo, and content © 2006, Balch & Bingham LLP.

