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Supreme Court Gives Employees Broader Protection Against Retaliation in Workplace

By LINDA GREENHOUSE

WASHINGTON, June 22 - The Supreme Court substantially enhanced legal protection against retaliation for employees who complain about discrimination or harassment on the job, in a ruling on Thursday.

The 9-to-0 decision adopted a broadly worded and employee-friendly definition of the type of retaliation that is prohibited by the basic federal law against discrimination in employment.

That law, Title VII of the Civil Rights Act of 1964, prohibits discrimination and prohibits employers from retaliating against workers who complain about discrimination. But the statute does not define retaliation, leading to disarray among the federal appeals courts and uncertainty for employers and employees alike. Under the standard applied by many courts, it has been almost impossible to win a retaliation case unless the retaliation resulted in dismissal.

By contrast, under the standard the justices adopted on Thursday in an opinion by Justice Stephen G. Breyer, any "materially adverse" employment action that "might have dissuaded a reasonable worker" from complaining about discrimination will count as prohibited retaliation. Depending on the context, retaliation might be found in an unfavorable annual evaluation, an unwelcome schedule change, or other action well short of losing a job.

Retaliation claims make up an important and rapidly growing part of employment law. Some 20,000 retaliation cases were filed with the Equal Employment Opportunity Commission in 2004, a number that has doubled since 1992. The cases now account for more than one-quarter of the federal agency's docket.

"This is an exceptionally important decision that changes the law in most of the country," Eric Schnapper, a law professor at the University of Washington who helped represent the plaintiff in the case, said in an interview .

Lawyers representing employers agreed about the decision's significance, but with considerably less enthusiasm. Karen Harned, executive director of the National Federation of Independent Business Legal Foundation, said the ruling would lead to "burdensome" litigation and was "particularly disappointing to small employers."

Daniel P. Westman, an employment lawyer with the firm Morrison & Foerster who advises management, said he expected a "huge effect" from the ruling. Mr. Westman said employers would have to take special care to make sure that an employee who lodges a discrimination complaint does not suffer adverse consequences.

The decision upheld a finding of retaliation by a railroad company against a female maintenance worker who was transferred to less desirable duties within her job category and placed on an unpaid leave for 37 days after she complained about sexual harassment. She was reinstated with back pay after a grievance by her union.

A jury awarded $43,500 to the woman, Sheila White, and the United States Court of Appeals for the Sixth Circuit, in Cincinnati, upheld the judgment. The employer, Burlington Northern & Santa Fe Railway Company, appealed to the Supreme Court, arguing that Ms. White had not suffered the type of "tangible employment action" that met the definition of retaliation.

The Bush administration, rejecting the broader standard used by the Equal Employment Opportunity Commission, argued on behalf of the railroad that only those actions that affect an employee's "compensation, terms, conditions, or privileges of employment" should count as retaliation.

Writing for the court on Thursday, Justice Breyer said this argument reflected a misreading of the two relevant sections of Title VII, the one that defines discrimination and the one that prohibits retaliation. The wording of the two is not the same.

While Title VII bars discrimination on the basis of race, sex and religion in the "terms" and "conditions" of employment, "no such limiting words appear in the anti-retaliation provision," Justice Breyer said. He said there was "strong reason to believe" that Congress intended the protection against retaliation to be broader than the protection against discrimination because it wanted to "deter the many forms that effective retaliation can take," in the workplace and beyond.

Consequently, Justice Breyer said, "the anti-retaliation provision, unlike the substantive provision, is not limited to discriminatory actions that affect the terms and conditions of employment."

While agreeing with the other eight justices to uphold the judgment for Ms. White, Justice Samuel A. Alito Jr. disagreed with the standard, which he said was "unclear" and could lead to "topsy-turvy results." He said the retaliation definition should be limited to "only those discriminatory practices" that Title VII forbids. Ms. White suffered from "adverse" and "tangible" employment actions that met that test, he said.

In the majority opinion, Burlington Northern & Santa Fe Railway Company v. White, No. 05-259, Justice Breyer said the standard the court was adopting would not impose a "general civility code" on the workplace. Rather, he said, it would serve to "screen out trivial conduct while effectively capturing those acts that are likely to dissuade employees from complaining."

Context and common sense mattered, Justice Breyer said, offering as an example a refusal by an employer to take an employee to lunch. That would usually be nothing more than a "petty slight," he said. But he added: "But to retaliate by excluding an employee from a weekly training lunch that contributes significantly to the employee's professional advancement might well deter a reasonable employee from complaining about discrimination."

The plaintiff, Ms. White, was the only woman working in the railroad's Tennessee Yard in Memphis. Because she had previous experience, she was assigned to operate a forklift, a desirable task among the jobs that "track laborers" performed. After she complained that her immediate supervisor was making inappropriate remarks, she was taken off the forklift.