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Supreme Court Expands Employee Protection

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Originally Published in Security InfoWatch

October 2008

Supreme Court Expands Employee Protection

The United States Supreme Court recently ruled in *Burlington Northern & Santa Fe Railway Co. v. White* that employees have broad protection against retaliation after they have made complaints of discrimination — broader protection than previously understood.

In the case, a woman complained about sexual harassment and then filed a complaint with the Equal Employment Opportunity Commission. The railroad later suspended her without pay for 37 days for insubordination, although it later reinstated her with back pay.

Previously, many courts would have ruled that the suspension was not illegal retaliation under federal discrimination law because it did not involve an “ultimate” employment decision such as a termination or failure to hire. The Supreme Court indicated that an employer's action is retaliatory if it would have dissuaded a reasonable employee from making or supporting a charge of discrimination. Moreover, the retaliation is illegal even if it extends beyond workplace-related acts. Filing a criminal claim against the employee, for example, could also constitute illegal retaliation.

Given that security professionals often are involved in employee investigations, they must be aware of the new scope of retaliation law. Investigators analyzing retaliation claims now must review a broader range of adverse actions that could constitute retaliation.

Moreover, security leaders can play a proactive role in preventing retaliation claims by educating supervisors. Supervisors might understand that they should not fire an employee who complains about discrimination, but they might not appreciate that subtler responses — such as reassignments, relocations, delays in raises, poor performance reviews, shift changes, schedule changes and increases in work load — now can lead to retaliation lawsuits.

Security leaders should work with employment law counsel to protect their organizations against this new legal threat.

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