

# Court clears way for employees to file new retaliation lawsuits

BY JENNIFER CURRY

The next time supervisors make a schedule or set up a training session, they should be careful of which employees get assigned where, according to local labor lawyers.

That's because a Supreme Court ruling last year has opened the door to retaliatory lawsuits for a variety of new reasons.

The July decision in the case of Burlington Northern v. White expanded the definition of retaliation resulting from a discrimination or harassment claim. While in the past defined as a termination or demotion, the definition now has been expanded to include claims such as schedule changes, negative evaluations or disciplinary action. For example, a young female employee who has filed a discrimination charge and whose schedule is subsequently changed so it interferes with her child care arrangements, could file a retaliation claim citing the Burlington Northern decision.

"Burlington Northern made a fairly expansive definition of what constitutes an adverse effect," said Patrick Abramowich, a partner with Philadelphia-based Fox Rothschild LLP, which has offices Downtown. "In a practical sense, it's a lot of things short of a termination."

This change has also led to a rise in the number of retaliation claims, Abramowich and other lawyers said. About 22,000 retaliation claims have been filed each of the past two years, and that number is expected to rise as the impact of Burlington Northern trickles down.

"We are seeing more of them," said Anne Lavelle, a lawyer in the labor and employment practice group at Downtown-based Cohen & Grigsby PC. "It absolutely is a tremendous threat on the horizon."

Retaliation verdicts can be in the millions of dollars with lawyers' fees in the hundreds of thousands of dollars, and the decision could ultimately lead to increased litigation costs, Lavelle said.

To avoid retaliation claims, Lavelle suggests re-examining current anti-harassment or anti-discrimination policies to ensure they address retaliation, providing training every couple of years with

## New interpretation

A recent Supreme Court ruling expanded the definition of a retaliation claim. Previously, employees could only file a claim for a termination or demotion. Here's a look at new items that can be considered retaliation:

- Schedule changes
- Negative evaluations
- Suspension
- Being reassigned to a lesser job
- Not being invited to training luncheons or meetings

SOURCE: Anne Lavelle, Cohen & Grigsby; Patrick Abramowich, Fox Rothschild

separate training for employees and managers, and explaining to employees what retaliation is and how to report it.

Kurt Miller, a partner and head of the labor and employment law section at Thorp Reed & Armstrong LLP, suggests having the human resources manager notify the employee to contact human resources directly if there are any signs of retaliation.

"In some cases, it makes sense to remove the supervisor or manager or at least to eliminate the direct reporting relationship with them," he said. "If the supervisor is not moved to a different area, the employer needs to take a close look at any employment decisions that that supervisor makes that are adverse to the charging party."

It's also important to make sure managers are keeping on top of these types of issues at all times, Lavelle said.

"One of the biggest problems with employers is they are great operational guys or gals and not (always) great managers," Lavelle said. "They don't recognize HR issues, and they don't recognize the severity of those issues. Sometimes, those supervisors miss things that places the whole company in jeopardy — mistakes that can have huge jury verdicts associated with them."

jeurry@bizjournals.com | (412) 208-3820

# Clarity.

Our purpose is clear — we represent clients on all employment and labor law matters.

At Littler, we are attuned to the legal challenges you are facing today. And our vigilant watch over regulatory decisions and legislation prepares us to help you address new issues right away. This is why we have been named:

Best Employment Litigation\*

Best Wage and Hour Litigation\*

Best Law Firm for In-House  
Departments at the Top 500 Companies  
and Employment\*\*

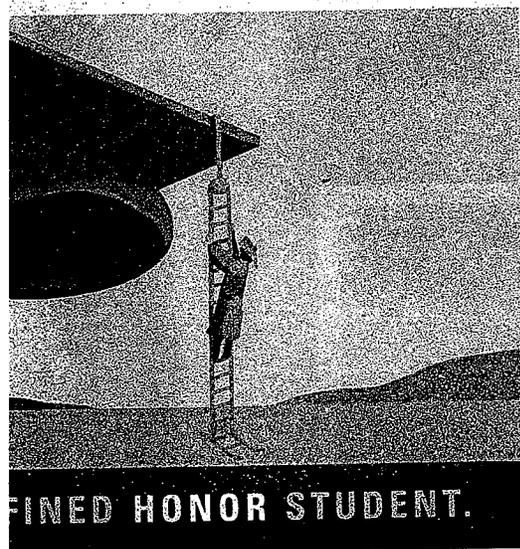
Based on a Law 360 survey of law firms most frequently retained in the area of employment and labor / wage and hour matters. \*Corporate Counsel In-House Law Departments at the Top 500 Guide, based upon a survey of general counsel attorneys in which outside law firms they select for assistance in practice areas.

## LITTLER, P.C.

EMPLOYMENT & LABOR LAW FIRM®

Offices = One Integrated Solution  
littler.com

1000 North Dearborn, Pittsburgh, PA 15222 • PH: 412.201.7600



Education that encompasses more than academic achievement. It demonstrates the ability to do the right thing.