



STATE OF NEW JERSEY
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June 29, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since May 25, 2006

Other Cases

In Burlington Northern and Santa Fe Railroad Co. v. White, ___ U.S. ___ (2006), the United State Supreme Court held that the anti-retaliation section of Title VII of the Civil Rights Act of 1964 does not confine the actions and harms it forbids to adverse employment actions. Instead, that provision, in contrast to the anti-discrimination provision of Title VII, also covers employer actions that could well dissuade a reasonable worker from making or supporting a charge of discrimination. In making this distinction, the Court relied on comparable discrimination and retaliation provisions in the National Labor Relations Act. In applying this standard, the Court concluded that an unpaid 37 day suspension (later rescinded) and a reassignment to more onerous and less prestigious duties, albeit within an employer's job description, constituted retaliatory acts.

Judge Alito filed a concurring opinion in which he argued that no violation should be found under either the discrimination or the retaliation provisions unless a materially adverse employment action is involved. However, he found that both this particular reassignment and the suspension met that standard.

REA:aat