Florida employers who terminate internal grievance procedures or investigations when an employee files a formal charge of discrimination may be liable for unlawful retaliation under a new decision issued by the Florida Fourth District Court of Appeal. On January 23, 2008, the court held that Broward County, Florida, unlawfully retaliated against a county bus driver, in violation of the Florida Civil Rights Act, when it terminated an internal grievance procedure upon learning that the bus driver had filed a formal charge of discrimination with the Equal Employment Opportunity Commission (EEOC). Donovan v. Broward Bd. of Comm’rs., No. 4D07-52, Florida Fourth District Court of Appeal (January 23, 2008).

Richard Donovan, a white bus driver, filed an internal complaint of race discrimination with the county’s Office of Equal Opportunity (OEO) after he was passed over for a promotion in favor of an African-American employee. While the internal complaint was pending and being investigated, Donovan and another bus operator filed charges of discrimination with the EEOC concerning a separate promotional opportunity. Upon learning of Donovan’s EEOC charge, the county OEO terminated its internal investigation of Donovan’s complaint pursuant to a written county policy requiring that internal grievances and investigations be terminated once an employee files a formal complaint with the EEOC (or similar state agency).

Although recognizing that the county’s policy obviously was intended to promote administrative efficiency and economy, the Court of Appeal nevertheless found the policy retaliatory based on the U.S. Supreme Court’s 2006 opinion in Burlington Northern & Santa Fe Railway Co. v. White. In Burlington Northern, the high court held that a retaliatory personnel action could include any action that “a reasonable employee would have found … materially adverse.”

Practical Impact

This is an important ruling for Florida employers. Employers who routinely terminate internal grievance procedures once an employee files a formal charge of discrimination with the EEOC or similar state anti-discrimination agency may now face liability for unlawful retaliation – even when the employer’s intent is clearly not to retaliate.

“Many private and public sector employers terminate internal grievance procedures once the employee takes the matter outside the internal process,” said David M. DeMaio, managing shareholder of Ogletree Deakins’ Miami office. “Retaliation is usually the farthest thing from their mind. They do so because the internal procedure is now largely irrelevant or redundant. This decision completely changes
that calculus," said DeMaio. "Employers need to recognize that the seemingly
innocent act of terminating an internal inquiry may itself be viewed as a retaliatory
job action."

Additional Information

For more information on this case and its ramifications, contact David M. DeMaio
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Note: This article was published in the January 26, 2008 issue of the Florida
Law Authority.