**10.10 Civil Rights—Title VII—“Adverse Employment Action” In Retaliation Cases**

An action is an adverse employment action if a reasonable employee would have found the action materially adverse, which means it might have dissuaded a reasonable worker from making or supporting a charge of discrimination.

**Comment**

In *Burlington Northern and Santa Fe Railway Co. v. White*, 548 U.S. 53, 68 (2006), the Supreme Court settled the definition of what is an adverse employment action in the retaliation context. This definition introduces the objective standard of a “reasonable employee” but includes the concept of “materially adverse.”

Actions such as firing and demoting are adverse employment actions for purposes of a retaliation claim. In addition, other actions that do not rise to the level of ultimate employment actions, such as a lateral transfer, an unfavorable reference that had no effect on a prospective employer’s hiring decision, and the imposition of a more burdensome work schedule, may also be considered adverse employment actions in this context. These actions may dissuade a reasonable worker from making or supporting a charge of discrimination. *See* *White*, 548 U.S. at 68; *Ray v. Henderson*, 217 F.3d 1234, 1242-43 (9th Cir. 2000)*.*

Adverse employment actions take many forms. *See, e.g.*, *Dodge v. Evergreen School District*, 56 F.4th 767, 774 (9th Cir. 2022) (in action brought under 42 U.S.C. § 1983, concluding statement that employee would “need to have [your] union rep” if he persisted in engaging in speech on matter of public concern made as private citizen); *Dahlia v. Rodriguez*, 735 F.3d 1060, 1078 (9th Cir. 2013)(en banc) (considering employee’s placement on administrative leave, deprivation of ability to take promotional exam, and loss of pay and opportunities for investigative or other job experience); *Manatt v. Bank of Am., NA,* 339 F.3d 792, 802 (9th Cir. 2003) (discussing denial of transfer); *Little v. Windermere Relocation, Inc.,* 301 F.3d 958, 970 (9th Cir. 2002) (considering cut in monthly base salary); *Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 500-01, 506 (9th Cir. 2000) (considering low rating on job performance review, decreased job responsibilities, and failure to receive promotions); *Hashimoto v. Dalton*, 118 F.3d 671, 674 (9th Cir. 1997) (considering negative job reference); *Miller v. Fairchild Indus., Inc.*, 885 F.2d 498, 505 (9th Cir. 1989) (discussing layoff); *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987) (considering transfer of job duties and “undeserved” performance ratings); *Ruggles v. Cal. Poly. State Univ.*, 797 F.2d 782, 785 (9th Cir. 1986) (discussing failure to hire); *E.E.O.C. v. Crown Zellerbach Corp.*, 720 F.2d 1008, 1012 (9th Cir. 1983)(discussing four-month disciplinary suspension).

Other conduct, however, may not constitute an adverse employment action. *See, e.g., Lyons v. England,* 307 F.3d 1092, 1118 (9th Cir. 2002) (giving “mediocre” performance evaluation not made available to other potential employers and unaccompanied by any meaningful change in work assignments); *Brooks v. City of San Mateo*, 229 F.3d 917, 929 (9th Cir. 2000) (ostracizing by co-workers); *McAlindin v. County of San Diego*, 192 F.3d 1226, 1238-39 (9th Cir. 1999) (refusing to hold job open beyond period dictated by company’s leave policy), *amended by* 201 F.3d 1211; *Nunez v. City of Los Angeles*, 147 F.3d 867, 875 (9th Cir. 1998) ( “badmouthing” of employee); *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 919 (9th Cir. 1996) (transferring with no effect on salary).

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