

Employer Retaliation - #1 EEOC Complaint

In recent statistics released by the US Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH), for the fiscal year 2016, retaliation was the number one charge against employers on both the state and national levels.

- **Nationally, retaliation took the No. 1 spot with 42,018 charges (45.9% of all charges filed).**
- **In California, retaliation (all statutes) also took the number one spot with 2,937 charges filed (7% of total U.S. retaliation charges).**

Employers must remember that the same laws protect employees from discrimination and harassment also protect them from retaliation.



Under California law, workplace retaliation is unlawful if an employer punishes an employee for protected activities which include: reporting illegal conduct, refusing to engage in illegal conduct, reporting fraud, filing a wage claim with the California Labor Commissioner, filing discrimination lawsuits, complaining of workplace discrimination or harassment and assisting other employees in filing a lawsuit or complaint of illegal activity in the workplace.

Federal law also protects employees from workplace retaliation if they file a discrimination or harassment complaint at work. An employer also cannot lawfully punish an employee for cooperating with EEOC investigations or if they decide to serve as a witness against the business. This is also true of whistleblower activities such as complaining of unsafe working conditions.

Savvy HR Departments must keep a lookout. It may be easy to identify a manager's retaliatory activity when they want to immediately terminate an employee shortly after they file a harassment complaint. However other times it's not as clear. Remember that only those changes that have an adverse effect on employment are considered retaliatory. Here are some examples of activity that can be considered retaliation:

- Unfair disciplinary action
- Negative performance reviews
- Micromanagement shortly after filing a complaint
- Exclusion from project meetings that you've been working on
- Denial of ongoing training
- Denial of promotions
- Denial of raises
- Increased workload
- Termination

How can you ensure that your company is not charged with retaliation?

HR must have an open door and empower employees to report complaints and must communicate to both employees and managers that there is a zero tolerance policy on retaliation.

HR can help deter retaliation by incorporating best practices that will help employers prevent or reduce the likelihood of a retaliation charge or lawsuit. To prevent retaliation, employers should take the following steps:

- Create an anti-retaliation policy.
- Communicate with employees about the process for reporting alleged retaliation.
- Train managers and employees.
- Remind supervisors under investigation of the organization's anti-retaliation policy that they will be subjected to disciplinary action if they retaliate against individuals who complain of discrimination or who provide information related to a discrimination complaint.
- Monitor the treatment of employees who file a workplace complaint or who provide information related to a complaint.
- Investigate allegations of retaliation and take prompt corrective action when warranted.

Internal complaint procedures are an important component of any initiative to prevent retaliation claims. Ensuring that employees have an avenue to report concerns isn't just helpful; in many cases it is required by law. Communicating and training your managers to identify protected activity and to ensure they moderate their own actions toward employees is also crucial in preventing retaliation.

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