



Management's Responsibilities: Identifying and Preventing Retaliation

Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Rehabilitation Act, GINA and the Equal Pay Act prohibit retaliation by an agency because an employee or applicant for employment or a former employee engaged in protected activity.



RETALIATION

Treatment that is reasonably likely to deter protected activity is illegal.

Adverse treatment that would likely dissuade a reasonable person from making or supporting a complaint of discrimination.

No requirement that the adverse action be a tangible personnel action.



PROTECTED ACTIVITY: PARTICIPATION

The anti-retaliation provisions make it unlawful to discriminate against an individual because he/she has filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under the governing EEOC statutes.

In the federal sector, once someone initiates contact with an EEO Counselor, he/she has participated in the EEO process.

PROTECTED ACTIVITY: OPPOSITION

The anti-retaliation provisions also make it unlawful to discriminate against an individual because she or he opposed any policy or practice made unlawful under the employment anti-discrimination statutes.

“REASONABLE “ AND “GOOD FAITH” BELIEF

WHAT IS “UN-REASONABLE?”

Participating in work stoppages that violate CBA provisions.
Badgering employees to give supporting witness statements.
Searching for, copying and disseminating confidential documents relating to discrimination.

Unlawful activities or threats of violence...



RETALIATORY ACTION

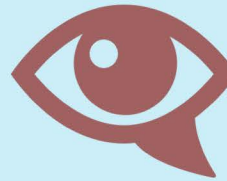
Actions need not materially affect the terms or conditions of employment to constitute retaliation.

The Commission has taken the position that the statutory anti-retaliation provisions prohibit any action that is based on a retaliatory motive and is likely to deter the employee or others from engaging in protected EEO activity.

In general, protected activity comes in one of two forms: participation or opposition.

EXAMPLES OF PARTICIPATION

1. Filing an EEO complaint.
2. Serving as a witness in an EEO matter.
3. Representing an individual in an EEO matter.
4. Requesting a reasonable accommodation.



EXAMPLES OF OPPOSITION

Complaining to a management official about being denied a request for reasonable accommodation.

Picketing.

Signing a petition to be presented to the administration about a perceived discriminatory practice at the agency.



HOW TO PROTECT AGAINST RETALIATION CLAIMS

EVALUATE all adverse employment actions prior to implementation.

IMPLEMENT and enforce clear “no-retaliation” policies.

COMMUNICATE with the complaining employee.



FOR ADDITIONAL INFORMATION

Compliance Manual Section 8: Retaliation

<http://www.eeoc.gov/policy/docs/retal.pdf>