



Retaliation Awareness Training (Civilian Members)

Introduction

Over the past decade, the EEOC has reported that retaliation is the most common issue alleged by federal employees and the most common discrimination finding in federal sector cases.

Introduction

The EEO laws prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination including harassment.

Asserting these EEO rights is called "protected activity," and it can take many forms.

Objectives

- Describe retaliation
- Discuss laws protecting against retaliation
- Review examples of retaliation
- Recognize potential impacts of retaliation
- Describe different prevention strategies
- Summary

Retaliation

A manager may not fire, demote, harass or otherwise "retaliate" against an individual for filing a complaint of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

Retaliation Laws

Laws protecting against retaliation:

- Title VII of the Civil Rights Act of 1964
- The Pregnancy Discrimination Act
- The Equal Pay Act of 1963
- The Age Discrimination in Employment Act of 1967

Retaliation Laws

Laws protecting against retaliation (cont.):

- Title I of the Americans with Disabilities Act of 1990
- Sections 501 and 505 of the Rehabilitation Act of 1973
- The Genetic Information Nondiscrimination Act of 2008

Retaliation Laws

Title VII of the Civil Rights Act of 1964

This law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex.

Retaliation Laws

The Pregnancy Discrimination Act

This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Retaliation Laws

The Equal Pay Act of 1963

This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace.

Retaliation Laws

The Age Discrimination in Employment Act of 1967

This law protects people who are 40 or older from discrimination because of age.

Retaliation Laws

Title I of the Americans with Disabilities Act of 1990

This law makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments.

Retaliation Laws

Sections 501 and 505 of the Rehabilitation Act of 1973

This law makes it illegal to discriminate against a qualified person with a disability in the federal government.

Retaliation Laws

Genetic Information Nondiscrimination Act of 2008

This law makes it illegal to discriminate against employees or applicants because of genetic information.

Examples of Retaliation

For retaliation to be considered, someone must have been previously involved in EEO activity.

The following slide depicts examples of how an individual might receive retaliation.

Examples of Retaliation

- Reprimanding or threatening an employee
- Giving a lower-than-deserved performance evaluation
- Transferring an employee to a less desirable position
- Engaging in verbal or physical abuse
- Increase scrutiny
- Spreading false rumors
- Making the employee's work more difficult

Examples of Retaliation

Situation: A complainant injured herself and requested reasonable accommodation for her disability while simultaneously providing Agency management with medical documentation which outlined her restrictions.

After the request, management accused the Complainant of lying about her injury and potentially harming herself to support her claims.

Examples of Retaliation

Situation (cont.): Agency officials also pressured the Complainant to accept an assignment that violated her medical restrictions and charged her with AWOL when she had to undergo surgery.

Eventually the Complainant was terminated due to unsatisfactory work.

Examples of Retaliation

Situation (cont.): Following a hearing, the Administrative Judge (AJ) found, among other things, that the Complainant failed to establish a prima facie case of reprisal and did not show that she was subjected to harassment.

Examples of Retaliation

Results: The Commission found that the AJ erred as a matter of law with regard to the basis of reprisal, noting that a request for reasonable accommodation constituted protected activity under the Rehabilitation Act, and that management officials were aware of the Complainant's request.

Examples of Retaliation

Results (*cont.*): Therefore, Complainant had established a prima facie case of reprisal.

The Commission also found the Agency liable for the hostile work environment based on retaliation since the actions were directly related to Complainant's request for accommodation, and the management officials' actions resulted in Complainant's termination, a tangible employment action.

Impacts of Retaliation

- Poor work performance
- Increased complaints
- High turnover
- Lawsuits
- Compensatory (monetary and non-monetary) measures to correct employment practices (e.g. pay/back-pay, training)

Prevention Strategies

Harassing behaviors: in instances where a coworker harasses an individual for participating in the complaint process, contact your:

- Supervisor/Manager
- Human Relations Department
- Follow your organization's policy for filing grievances against coworkers

Prevention Strategies

To prevent retaliation from occurring:

- Don't interfere with the EEO process
- Avoid publicly discussing allegations
- Don't share information about EEO activities with any other managers or subordinates
- Avoid reactive behavior such as withholding resources needed to execute duties, denying privileges, discussing employee information/benefits provided, etc.

Prevention Strategies

- Be mindful to not isolate employees
- Provide clear and accurate information to the EEO staff, EEO Investigator, or Judge
- Don't threaten an employee, a witnesses, or anyone involved in the processing of an EEO complaint

Prevention Strategies

Conduct training discussing and educating managers on the:

- Definition of retaliation
- Retaliation examples (e.g. opportunities for hiring, reassignment, promotion, etc.)
- Impacts on applicants, current employees (full-time, part-time, probationary, seasonal, and temporary), and former employees

Summary

- Describe retaliation
- Discuss laws protecting against retaliation
- Review examples of retaliation
- List the potential impacts of retaliation
- Describe the various prevention strategies