Avoiding Retaliation Claims in the Workplace

2013 EEOC EXCEL CONFERENCE

AUGUST 29, 2013

1:30 PM – 3:00 PM

Presenter:

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Introduction

- Retaliation claims most filed charge with the EEOC
- 37,836 retaliation complaints (38% of all charges)
- $177.4 million dollars in monetary benefits paid out

What is Prohibited Retaliation?

An adverse action taken in response to a person who has:

- Made a harassment or discrimination complaint
- Participated in an investigation of a harassment or discrimination complaint
- Otherwise opposed harassment or discrimination in the workplace

Adverse Action

- Any action that may reasonably likely to deter or dissuade protected activity
- Can include subtle behaviors that have a “chilling effect” on future protected activity
- Does not include “petty slights” or “annoyances”

Is this Retaliation?

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Addressing Employee Performance

- Can a supervisor or manager discipline an employee after he or she has filed a complaint?
- Does an employee gets a “free pass” for performance problems after they filed a complaint?
- When do the handcuffs come off?

Is this Retaliation?

Is this Retaliation?

Strategies

The following are strategies for avoiding retaliation claims while addressing employee performance:

- Deal with performance issues consistently <u>before</u> a complaint
- Use performance evaluations.
- Document performance concerns.
- After a complaint avoid putting the employee under a magnifying glass.

Strategies

The following are strategies for avoiding retaliation claims while addressing employee performance:

- After a complaint maintain the status quo or sufficiently explain legitimate changes
- Follow procedures for handling disciplinary issues
- If unsure, talk to appropriate personnel to evaluate any planned disciplinary or other course of action

Preventing Retaliation

The following are proactive steps to prevent retaliation in the workplace:

- Make sure retaliation is properly addressed in policies.
- Supervisory staff should be trained on how to identify potential protected activity.

Preventing Retaliation

The following are proactive steps to prevent retaliation in the workplace:

- All employees should attend training wherein retaliation is sufficiently discussed and understood.
- Promptly respond to complaints of retaliation.

Preventing Retaliation

The following are proactive steps to prevent retaliation in the workplace:

- During investigations the issue of prohibited retaliation should be discussed with those interviewed
- Use manager and supervisor performance reviews to encourage leadership behaviors that mitigate potential for retaliation

Preventing Retaliation

The following are proactive steps to prevent retaliation in the workplace:

- "Walk the talk"
- Consider what can be done to demonstrate complaining party is still viewed as a valuable member of the team/department

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