

## Employers should not retaliate against employees

When an employee files a discrimination claim against an employer, the employer should be very careful not to take any retaliatory actions against that employee. Many laws protect employees from retaliation. In fact, an employer can be found liable for retaliation even if the original discrimination complaint is found to be baseless.

The U.S. Equal Employment Opportunity Commission (EEOC) reports that retaliation claims are increasing. Retaliation claims now make up 27.9 percent of all EEOC charges filed, up from 15.3 percent in 1992.

The following laws prohibit employers from retaliating against prospective, current and former employees: Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act, the Equal Pay Act, the Fair Labor Standards Act, the Family Leave and Medical Act (FMLA), the National Labor Relations Act, and the Employee Retirement and Income Security Act (ERISA).

Protected activities include filing charges, testifying, or participating in an investigation against an employer. Prohibited retaliatory actions include threats, reprimands, negative evaluations, negative references, harassment, demotions, denials of promotion, and refusals to hire.

In February 2003, *HR Manager's Legal Reporter* published an article titled "Retaliation Danger Zone" which listed activities that were protected from retaliation. It said that employers who retaliated against their employees for any of the following activities were in danger of being sued:

- *Civic duties*—Employees performing civic duties, such as voting or performing jury duty, are protected.
- *Safe workplace*—Employees who report unsafe situations in the workplace are protected.

- *Illegal actions*—Employees who report illegal activities or refuse to perform an illegal act are protected.
- *Upholding the public interest*—In some states, workers who "do the right thing" are protected even if no specific law protects their actions.
- *Legal activities outside of work*—In some states, workers who engage in legal activities outside of work (such as smoking) are protected.
- *Garnishment*—Employees who have their pay garnished are protected.
- *Medical leave*—Employees who take leave under the FMLA are protected.
- *Disability accommodation*—Workers who request an accommodation under the ADA are protected.
- *Workers compensation*—Employees who file a workers' compensation claim are protected.
- *Harassment*—Employees who complain about harassment are protected.
- *Union activity*—Workers who participate in certain union activities or "concerted" non-union activities are protected.
- *Political activity*—Employees who engage in certain political activities are protected.
- *Compensation*—Workers who complain about wage and hour issues are protected.
- *Benefits*—Employees exercising certain pension and benefits rights under ERISA are protected.
- *Veterans' rights*—Employees who take leave for certain types of military service are protected.

For more information, contact CTSI at 303-861-0507.

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