What Schools Can Do, Aside From The Obvious, To Protect Themselves From Retaliation Claims



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Overview of Employment Retaliation

Retaliation Claims Are on the Rise

- Retaliation claims are already the most common type of claim filed with the EEOC and Texas Workforce Commission. They are included in 45% of charges filed nationally, and that number continues to rise over the last several years.
- Retaliation claims are popular because the basic elements of a claim are easy to make out, and easy for jurors to understand and sympathize with.
- They are costly to defend, and even more costly to lose. Potential damages, when considering future lost wages and attorneys' fees, can easily eclipse a million dollars.

Retaliation Defined

Employment retaliation occurs when an employer takes an ***adverse employment action*** against an employee ***because*** that employee has engaged in a ***protected activity***.

Key Terms

- **Protected Activity** – Will be defined by each of the various statutes, and will usually include the broad "opposition" to a discriminatory or unlawful practice.
- **Adverse Employment Action** – Means actions that are "materially adverse" and which might dissuade a reasonable employee from engaging in protected activity. This is ***broader*** for retaliation claims than it is for discrimination.
- **Causation** –Most retaliation statutes apply the "but for" standard of causation, as opposed to the less stringent "motivating factor" standard applicable to discrimination claims.

Anti-Retaliation Statutes

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