



Retaliation in the Workplace: I Didn't Know You Couldn't Do That!

Developments in the Law of Employment Retaliation

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I CAN'T DO WHAT??

- Recent Trends in Employment Retaliation Law
- An employer cannot retaliate against someone just because that employee has some kind of relationship with a person who is complains about discriminatory treatment
- An employer cannot retaliate against an employee by making the employee feel he or she does not have the same status as before the retaliation began.
- An employer cannot retaliate against a former employee (you're going to love this one!)



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INTRODUCTION

- The employment laws such as . . .
 - Title VII of the 1964 Civil Rights Act,
 - the Americans with Disabilities Act,
 - the Age Discrimination in Employment Act, and
 - the Fair Labor Standards Act
 - the Family Medical Leave Act
- . . . all contain provisions prohibiting not only a “substantive” violation of the law but also retaliating against someone who is entitled to the protections offered by the law.



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APPLICABLE LAW: Title VII of the 1964 Civil Rights Act

- **42 U.S.C. § 2000e-3. Other unlawful employment practices**
- (a) It shall be an unlawful employment practice for an employer to discriminate . . . ***because he has opposed any practice*** made unlawful, or ***because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing*** under this subchapter.



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APPLICABLE LAW : Title VII of the 1964 Civil Rights Act

- The statute permits “a person ***claiming to be aggrieved***” to file a charge with the EEOC alleging an unlawful employment practice, and a civil action to “be brought ... by the person ***claiming to be aggrieved.***”



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APPLICABLE LAW: Americans with Disabilities Act

- **The ADA Says in 42 U.S.C. § 12203. Prohibition against retaliation and coercion**
- (a) Retaliation — No person shall discriminate because an individual ***has opposed any act or practice*** made unlawful by this chapter or because such individual ***made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing*** under this chapter.
- (b) Interference, coercion, or intimidation — It shall be ***unlawful to coerce, intimidate, threaten, or interfere with any individual*** in the exercise of, or on account of having ***aided or encouraged any other individual*** in the exercise or enjoyment of any right granted or protected by this chapter.



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APPLICABLE LAW: Age Discrimination in Employment Act

- By contrast, the Age Discrimination in Employment Act states that a person is protected from retaliation for “opposing any unlawful practice.”
- **29 U.S.C. § 623(d).**
- ***Opposition to unlawful practices; participation in investigations, proceedings, or litigation*** — It shall be unlawful for an employer to discriminate against any of employees or applicants because such individual or applicant has opposed any unlawful practice, or because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation.



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APPLICABLE LAW: Family Medical Leave Act

- **29 U.S.C. § 2615. Prohibited acts**
- (a) Interference with rights
- (1) Exercise of rights — It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.
- (2) Discrimination — It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.



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