

Retaliation: Still the Most Attractive Claim for Plaintiffs and Most Complicated for Defendants

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Retaliation is the most prevalent claim

1997 – 22% of charges

2021 – 56% of charges

2022 – 51.6% of charges

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Why?

Easy to “tack on”

Increases odds

Does not generally increase cost

Separate path to success

“Logically and factually distinct claims”

May bolster underlying claims of discrimination

The standard was easier to satisfy

3

What standard?

Discrimination:

(1) he/she is a member of a protected group; (2) was qualified for the position at issue; (3) **was discharged or suffered some adverse employment action by the employer**; and (4) was replaced by someone outside [his/her] protected group or was treated less favorably than other similarly situated employees outside the protected group

Retaliation:

(1) he/she engaged in protected activity, (2) **he/she suffered an adverse employment action**, and (3) a causal link exists between the protected activity and the adverse employment action

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“Adverse Employment Action”

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So, what's adverse?

...it depends.

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