

# 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**

# 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

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# 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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