

# Retaliation

## The High Cost of Getting Even



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# Retaliation

All enforced by EEOC make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).



# Retaliation

➤ The law forbids retaliation when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

✓ For example, it is illegal for an employer to refuse to promote an employee because s/he filed a charge of discrimination with the EEOC, even if EEOC later determined no discrimination occurred.



# Olympia: \$100,000

## March 2014-Selma, Alabama

- EEOC lawsuit alleged Olympia Construction subjected three employees to racial slurs and intimidation and terminated them because they complained to EEOC.
- In addition to \$100,000, Olympia is required to take steps to prevent future harassment or retaliation, including:
  - ✓ training for all employees and management
  - ✓ report any complaints and company's responses to EEOC
  - ✓ post a notice for all its employees about the settlement as well as contact information for reporting harassment, discrimination or retaliation.



# Facts about Retaliation

The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, and disability, as well as wage differences between men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.



# Basta Pasta: \$200,000

May 2014-Baltimore, Maryland

- EEOC lawsuit alleged Basta Pasta's owner repeatedly subjected female employees, including at least one in her teens, to rampant sexual harassment.
- According to EEOC, the sexual harassment was so intolerable that two employees were forced to quit their jobs. Jane Doe was 18 years old when she started working for the company and 21 when she was forced to quit her job due to the harassment.



# Basta Pasta: \$200,000

- EEOC also alleges the restaurant retaliated against a manager who complained to upper management about the owner's offensive behavior to no avail.
  - ✓ The restaurant warned the manager to "keep her mouth shut"
  - ✓ Fired her in retaliation for her opposition to the abuse.
  - ✓ Threatened the manager when she participated in EEOC investigation, including pressuring her to recant her testimony.
- Company will hire an independent monitor to promptly investigate any sexual harassment or retaliation complaints, implement and disseminate policy prohibiting sexual harassment or retaliation will provide training. Post a remedial notice.



# Facts about Retaliation

In addition to the protections against retaliation that are included in all of the laws enforced by EEOC, the Americans with Disabilities Act (ADA) also protects individuals from coercion, intimidation, threat, harassment, or interference in their exercise of their own rights or their encouragement of someone else's exercise of rights granted by the ADA.



# Facts about Retaliation

There are three main terms used to describe retaliation

Retaliation occurs when an employer, employment agency, or labor organization takes an **adverse action** against a **covered individual** because he or she engaged in a **protected activity**.



# Adverse Action

- An action to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding.
  - ✓ employment actions (termination, refusal to hire, and denial of promotion)
  - ✓ other actions affecting employment (threats, unjustified negative evaluations, unjustified negative references, or increased surveillance) and
  - ✓ any other action (an assault or unfounded civil or criminal charges) that are likely to deter reasonable people from pursuing their rights.



# Adverse Action

Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, or negative comments that are justified by an employee's poor work performance or history.



# Adverse Action

Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against them for pursuing an EEO charge against a former employer.



# Wal-Mart: \$87,500

January 2014 – Albuquerque, NM

- EEOC's lawsuit alleged Walmart refused to hire Complainant's adult son and daughter for entry-level positions because Complainant filed sex discrimination charge against Wal-Mart with the EEOC.
- In addition to monetary relief, consent decree included an injunction prohibiting retaliatory practices; training for managerial employees on retaliation; and the posting of a notice advising employees of their rights under Title VII.



# Covered Individuals

People who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability. Individuals who have a close association with someone who has engaged in such protected activity also are covered individuals. For example, it is illegal to terminate an employee because spouse participated in employment discrimination litigation.



# Covered Individuals

Individuals who have brought attention to violations of law other than employment discrimination are **NOT** covered individuals for purposes of anti-discrimination retaliation laws. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by the EEOC enforced laws.



# Protected Activity

Opposition to a practice believed to be unlawful discrimination. For example, informing an employer that you believe that it is engaging in prohibited discrimination. Opposition is protected from retaliation as long as it is based on a reasonable, good-faith belief that the complained of practice violates anti-discrimination law; and the manner of the opposition is reasonable.



# Judicy: \$150,000

February 2014-Atlanta, Georgia

- EEOC lawsuit alleged Judicy, Inc. (dba as Labor Finders) unlawfully terminated a female office administrator in retaliation for reporting sexual harassment.
  - ✓ Employee reported she received sexually harassing phone calls from her supervisor.
  - ✓ The company fired her 3 days after her complaint--citing 6 separate reasons for termination.
  - ✓ She was escorted off the premises by police officers.
- In addition to monetary relief, settlement also included provisions for training, reporting and posting of anti-discrimination notices.



# Protected Activity

Examples of protected opposition include

- Complaining to anyone about alleged discrimination against oneself or others;
- Threatening to file a charge of discrimination;
- Picketing in opposition to discrimination; or
- Refusing to obey an order reasonably believed to be discriminatory.



# Protected Activity

Examples of activities that are NOT protected opposition include

- Actions that interfere with job performance so as to render the employee ineffective; or
- Unlawful activities such as acts or threats of violence.



# Protected Activity

## Participation in employment discrimination proceeding

- Participation means taking part in an employment discrimination proceeding.
- Participation is protected activity even if the proceeding involved claims that are ultimately found to be invalid.



# Protected Activity

Examples of participation include

- Filing a charge of employment discrimination;
- Cooperating with an internal investigation of alleged discriminatory practices; or
- Serving as a witness in an EEO investigation or litigation.



# Global Horizons: \$2.4 million

## June 2014-Hawaii

- Three years after filing suit against farm labor contractor Global Horizons and six farms in Hawaii, EEOC settled its discrimination case with four farms – Mac Farms of Hawaii, LLC [nka MF Nut Co., LLC (“Mac Farms”)], Kauai Coffee Company, Inc., [nka McBryde Resources, Inc. (“Kauai Coffee”)], Kelena Farms, Inc. and Captain Cook Coffee Company, Ltd.
  - ✓ Settlement encompassed monetary relief, options for jobs and benefits, housing, other reimbursements of expenses, and sweeping injunctive relief remedies benefitting about 500 Thai victims in the EEOC’s case.
  - ✓ This included nearly 50 potential job offers.



# Global Horizons: \$2.4 million

- In March 2014, U.S. District Judge Leslie E. Kobayashi in Hawaii ruled Global Horizons was liable for the pattern or practice of harassing, discriminating, and retaliating against hundreds of Thai farm workers.
- EEOC alleged Thai farm workers were contracted through Global Horizons to work at the farms sometime between 2003 and 2007 under the H2-A temporary visa program which required the farm workers to be provided food and housing aside from pay for work performed.



# Global Horizons: \$2.4 million

- Exorbitant recruitment fees placed Thai workers into a situation of debt bondage early on.
- Workers were then subjected to varying degrees of the denial or delay of pay, monitoring movements and confiscating passports, production quotas that non-Thai workers need not adhere to, denial of adequate food and water, and unsanitary, overcrowded living conditions.
- **Those who complained of the pattern or practice of discrimination and harassment were retaliated against, with many forced to quit or flee as a result.**



# Global Horizons: \$2.4 million

- As part of the four consent decrees, Mac Farms will pay \$1.6 million, Kauai Coffee will pay \$425,000, Kelena Farms will pay \$275,000 and Captain Cook Coffee will pay \$100,000 directly to the victims.
  - ✓ As such, total direct monetary relief recovered is \$2.4 million.
  - ✓ In addition, Kelena Farms offered full-time jobs with generous benefits, profit-sharing & 401K plan options.
  - ✓ Captain Cook Coffee offered seasonal jobs, benefits, housing and transportation for workers during term of their decrees.
- Offers extended by Kelena and Captain Cook, valued at nearly \$4.9 million, add to the direct monetary settlements over the duration of the consent decrees.



# Protected Activity

A protected activity can also include requesting a reasonable accommodation based on religion or disability.



# Annapolis Internal Medicine: \$22,500

April 2014-Baltimore, Maryland

- EEOC lawsuit alleged newly hired medical receptionist at Annapolis Internal Medicine, disclosed pregnancy when receiving an influenza vaccination.
  - ✓ She asked pregnancy be kept confidential.
  - ✓ Management failed to honor request and began subjecting her to unequal treatment.
  - ✓ When she complained, was given a counseling report about "the value of being honest."
  - ✓ Final complaint came 3 days before she was fired.
- Company will provide anti-discrimination training and post a notice regarding settlement.



# EEOC Stats

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
<b>Receipts</b>	22,278	22,555	26,663	32,690	33,613	36,258	37,334	37,836	38,539
<b>Resolutions</b>	22,514	22,006	22,265	25,999	30,571	37,970	41,743	42,025	38,831
<b>Resolutions By Type</b>									
<b>Settlements</b>	2,160	2,426	2,624	2,777	2,891	3,268	3,547	3,484	3,272
	9.6%	11.0%	11.8%	10.7%	9.5%	8.6%	8.5%	8.3%	8.4%
<b>Withdrawals w/Benefits</b>	1,268	1,275	1,322	1,673	1,806	2,043	2,213	2,138	2,288
	5.6%	5.8%	5.9%	6.4%	5.9%	5.4%	5.3%	5.1%	5.9%
<b>Administrative Closures</b>	4,424	4,206	4,604	2,777	2,891	7,578	8,115	7,526	7,206
	19.6%	19.1%	20.7%	10.7%	9.5%	20.0%	19.4%	17.9%	18.6%
<b>No Reasonable Cause</b>	13,157	12,674	12,443	14,905	17,468	22,803	26,161	27,077	24,611
	58.4%	57.6%	55.9%	57.3%	57.1%	60.1%	62.7%	64.4%	63.4%
<b>Reasonable Cause</b>	1,505	1,425	1,272	1,330	1,519	2,278	1,707	1,800	1,454
	6.7%	6.5%	5.7%	5.1%	5.0%	6.0%	4.1%	4.3%	3.7%
<b>Successful Conciliations</b>	375	396	368	356	463	498	471	589	538
	1.7%	1.8%	1.7%	1.4%	1.5%	1.3%	1.1%	1.4%	1.4%
<b>Unsuccessful Conciliations</b>	1,130	1,029	904	974	1,056	1,780	1,236	1,211	916
	5.0%	4.7%	4.1%	3.7%	3.5%	4.7%	3.0%	2.9%	2.4%
<b>Merit Resolutions</b>	4,933	5,126	5,218	5,780	6,216	7,589	7,467	7,422	7,014
	21.9%	23.3%	23.4%	22.2%	20.3%	20.0%	17.9%	17.7%	18.1%
<b>Monetary Benefits (Millions)*</b>	\$88.8	\$96.9	\$124.8	\$110.7	\$133.8	\$150.8	\$147.3	\$177.4	\$169.4

*\* Does not include monetary benefits obtained through litigation. The total of individual percentages may not always sum to 100% due to rounding.*

# Questions?



# For More Information



[www.eeoc.gov](http://www.eeoc.gov)

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