



U.S. Equal Employment Opportunity Commission

Retaliation - Making it Personal

Over the past decade, the Equal Employment Opportunity Commission (EEOC) has reported that retaliation is the most common issue alleged by federal employees and the most common discrimination finding in federal sector cases. Nearly half of all complaints filed during fiscal year (FY) 2013 were retaliation complaints, with 42 percent of findings of discrimination based on retaliation.

In fact, retaliation has been the most frequently alleged basis of discrimination in the federal sector since fiscal year 2008. In addition, the number of discrimination findings based on a retaliation claim has outpaced other bases of discrimination.

	Total Complaints Filed	% Complaints with Retaliation Allegation	% of Findings of Discrimination Based on Retaliation
FY 2009	16,947	44%	45%
FY 2010	17,583	44%	53%
FY 2011	16,974	44%	34%
FY 2012	15,837	47%	47%

FY 2013	15,226	48%	42%
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EEOC's Annual Report on the Federal Work Force 2009-2013 and EEOC No Fear Data for FY 2009-2013

In a large number of these cases, it is common for an original discrimination allegation (on a basis other than retaliation) fail to establish a violation of the law, but the subsequent retaliation allegation results in a discrimination finding.

Why is this so common? Why does a situation move from an unproven/unsubstantiated allegation to a later violation based on the manager's response to the employee initiating a complaint? The simple answer is that individuals often seek to avenge a perceived offense. The desire to retaliate is a common human reaction, but when done by a management official because employees assert their right to challenge a perceived wrong, the retaliation can establish legal liability.

What is Retaliation and Why It Matters?

A manager may not fire, demote, harass or otherwise "retaliate" against an individual for filing a complaint of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. The same laws that prohibit discrimination based on race, color, sex, religion, national origin, age, disability and genetic information also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

It is important to understand how retaliation manifests and to prevent it from occurring. If retaliation for such activities were permitted, it would have a chilling effect upon the willingness of individuals to speak out against employment discrimination or to participate in the EEOC's administrative process or other employment discrimination proceedings. Thus, EEO practitioners must work diligently with managers to ensure that retaliation is not permitted in the workplace.

It is obvious that the cause and effect of interpersonal conflicts can potentially implicate a legal process. This is particularly apparent with retaliation law because the legal standard requires an examination of the behavior after the allegation. The standard for proving a retaliation claim requires showing that the manager's action might deter a reasonable person from opposing discrimination or participating in the EEOC complaint process.

Examples from past cases provide instructive illustrations of typical retaliatory behavior:

In a recent case, an employee who had filed several unsuccessful EEO complaints, subsequently sought promotions within the organization. The employee learned that her manager had placed information about the previous EEO proceedings in her personnel file and communicated that the employee had filed several complaints when contacted for reference checks. The EEOC found that the statements made during the reference check were retaliatory and further that the EEO information placed in the employee's personnel file was unnecessary and hindered her promotional opportunities.

Similarly, another recent case involved an employee who claimed that she was discriminated against during the promotional interview process. Two of the three interview panelists were managers involved in current or previous EEO complaints by the employee and one of the panelists attempted to influence the selection process by asking a question that paralleled a previous conflict between the panelist and the employee. A witness reported that he had heard the manager make the statement, "I don't get mad, I get even" in reference to employees who make discrimination claims. EEOC found that the selection process was tainted by retaliatory conduct and ordered the agency to promote the employee.

In another example, EEOC found retaliation partly based on the fact that the employee was refused use of a government vehicle. In this case, the manager's reaction to the employee's EEO complaint was to take away a perk (i.e., use of the government car), while another coworker was allowed continued use of the vehicle. While the manager had the discretion to allocate the use of the vehicle and other "perks," retaliation can be established if it is shown to be more likely than not that the discretionary decision was based upon a retaliatory motive.

While close temporal proximity between the EEO allegation and the manager's action can be a key factor in establishing the retaliatory motive, there have been cases in

which years have passed and other evidence established that the employee's earlier EEO activities motivated the manager's action. Even absent suspicious timing, other relevant facts may include verbal or written statements; comparative evidence that a similarly situated employee was treated differently; falsity of the employer's proffered reason for the adverse action; or any other evidence from which an inference of retaliatory intent might be drawn.

In a final example, EEOC found that management was openly hostile towards an employee's protected EEO activity. Specifically, the employee's manager described the employee's discrimination allegations as "unprofessional," and his higher level manager found them "highly offensive" and "bad for morale." During the subsequent EEO proceeding, coworkers revealed an overall feeling of distrust and concern about the employee after his initial complaint. EEOC noted that the first-level manager saw this growing tension, but failed to ensure that coworkers understood and respected the employee's right to file a complaint.

Why Do Managers Retaliate?

From a legal perspective, the typical concern is with the act of retaliation and whether an employer is engaging in unlawful behavior. Unlike the legal definition of retaliation, behavioral science focuses on retaliation as an intra- and interpersonal experience that encompasses subjective definitions of "harm" and "offense", with the act of retaliation being a mechanism for addressing transgression. ⁽¹⁾ In this sense, it is important to understand the problem from a human perspective. Social psychology has provided a broader understanding of the underlying causes of retaliatory behavior.

The act of retaliation is equivalent to revenge where a person perceives unfair treatment and attempts to restore equilibrium by taking the matter into his or her own hands. Research has consistently demonstrated that the desire for retaliation is common upon experiencing an offensive interpersonal encounter, particularly if the encounter threatens one's self image. Interestingly, while the desire to retaliate is common, acting on this inclination is not, as doing so can be quite costly in social settings.

Unlike other animals, humans are unique in their ability to weigh consequences and make decisions based on what is most beneficial within a given socio-cultural

context. In this respect, they have the ability to override more basic inclinations and behave based on what is socially (or legally) acceptable. Cognitive, emotional, and social processes can override "instinct" and guide behavioral choices. Ultimately, the decision to retaliate is a consequence of an interaction of these factors.

The process of retaliation begins with a perceived offense (e.g., initiating a discrimination claim). If those accused sincerely believe that they have done nothing wrong, or if they believe that their offensive behavior was somehow justified, they may begin to ruminate and desire retaliation. In this regard, retaliation is a coping mechanism - a way of alleviating the psychological discomfort associated with perceived injustice.

How can this person make a false allegation without repercussions?

To address retaliation, organizations must recognize both the potential for retaliation and the interaction of psychological and organizational characteristics that contribute to the likelihood of retaliation. Several factors ultimately affect whether a manager will engage in retaliation. These include the manager's psychological traits, perceptions of the organizational culture, and organizational opportunities.

At the psychological level, researchers have found that a variety of personality traits are associated with retaliation. For example, researchers have suggested that those with a sense of entitlement will experience offenses much more emotionally than others and take them much more personally. ⁽²⁾ As such, these individuals are more likely to ruminate over the offense, ultimately seeking retaliation. Similarly, authoritarian personalities, people who place a high value on status in group settings, are predisposed to retaliation when offended, particularly if that offense is from someone of a "subordinate" status. ⁽³⁾ Extraverts, on the other hand, are much more likely to seek non-aggressive resolution in conflict situations, forgiving offenders in an attempt to salvage the relationship. ⁽⁴⁾ Such individuals are less likely to ruminate and seek retaliation.

Researchers have also concluded that people seek retaliation when they feel the workplace is not fair and that they cannot depend on formal channels for fair or just treatment. ⁽⁵⁾ Individuals will also retaliate if they perceive the perpetrator as

behaving in a way that is intentionally malicious. Individuals are also more likely to retaliate, if:

- The accusation is very serious;
- The accusation will negatively impact future relationships with others at work;
- The accused feels that he or she is being judged;
- The accused believes that his or her job is in jeopardy; and/or
- There is reason to believe that the accusation will harm perceived employability.

In addition to the various personality factors mentioned above, organizational structures impact retaliation. Rigid bureaucratic structures promote retaliatory behavior among managers. Organizations that do not foster a procedurally just climate also encourage retaliation. Organizations that foster a climate of aggression and bullying are more likely have managers who abuse power and retaliate when claims are made. ⁽⁶⁾

Other organizational factors that influence retaliation are:

- A lack of administrative policies discouraging retaliation;
- An authoritarian management culture;
- Overly hierarchical organizations, where rank or organizational level is prized;
- High levels of task-related conflicts;
- Reward systems and structures that promote competition; and
- The ability of the accused to isolate the accuser.

What Can Be Done?

While it may be difficult not to take an EEO allegation personally, managers should take a step back to consider their reactions in these situations. As seen in the earlier case examples, a negative change of behavior toward an employee after an EEO allegation can be perceived as retaliatory. To prevent retaliation from occurring, managers should take the following actions:

- Avoid publicly discussing the allegation;
- Do not share information about the EEO activity with any other managers or subordinates;
- Be mindful not to isolate the employee;
- Avoid reactive behavior such as denying the employee information/equipment/benefits provided to others performing similar duties;
- Do not interfere with the EEO process;
- Provide clear and accurate information to the EEO staff, EEO Investigator, or Judge; and
- Do not threaten the employee, witnesses or anyone else involved in the processing of a complaint.

It is also important for federal agencies to help their managers understand the behaviors associated with retaliation by incorporating this information into organizational training. Training efforts should be organic to the agency's culture with a particular focus on management training. Often, managers are not prepared for the inevitable conflicts associated with managing human relations within the work setting. These preventive training efforts will assist in the reduction of both EEO and non-EEO (e.g., grievances and whistleblower) complaints.

In addition to training, EEO and civil rights programs within the agency should explore ways to provide information to managers at the outset of the complaint process. This information should acknowledge the potential emotional response involved with being accused of a discriminatory action, as well as the problematic implications of seeking to avenge any perceived offense. By acknowledging the potential negative reactions managers may experience when faced with a discrimination allegation, and reviewing examples of both constructive and problematic responses, these education efforts should help managers to focus on the continued work interaction and relationship with employees.

The EEO complaint process can be a stressful and an emotional experience for both the employee and manager. Notwithstanding this reality, with strategic education and self-analysis, organizations can take the necessary proactive steps to diminish the likelihood of retaliation.

For more information about retaliation, please visit www.eeoc.gov ([\(https://www.eeoc.gov/\)](https://www.eeoc.gov/)) and www.eeoc.gov/laws/types/facts-retal.cfm (<https://www.eeoc.gov/facts-about-retaliation>).

Bios:

Dr. Romella Janene El Kharzazi holds a Ph.D. in Industrial-Organizational Psychology and B.A. in Economics. She has worked in the Federal, Educational, and Private sectors, holding several leadership roles in Strategic Planning, Talent Management, and Research. Currently, she is a Psychologist in Research and Analytic Services in the Office of General Counsel at the EEOC and the Producer/Host of Culture NOW.

Dr. Mxolisi Siwatu holds a Ph.D. in Sociology and is a Social Science Research Analyst in the EEOC's Office of Federal Operations. He works in the Reports and Evaluations Division which provides support for agency oversight activities ranging from the formulation of data requests to the development of statistical evidence and government-wide reports.

Dexter R. Brooks, a member of the Senior Executive Service, is the Associate Director of EEOC's Office of Federal Operations. He is responsible for Federal Sector Programs within the office which assists federal administrative agencies in the development of strategies designed to prevent discrimination and to ensure equal access to opportunities.

FOOTNOTES:

(1) Tripp, T.M., Bies, R.J., & Aquino, K. (2007). A vigilante model of justice: Revenge, reconciliation, forgiveness, and avoidance. *Social Justice Research*, 20(1), 10-34. doi: 10.1007/s11211-007-0030-3

(2) Lee, K. & Ashton, M.C. (2012). Getting mad and getting even: Agreeableness and honest-humility as predictors of revenge intention. *Personality and Individual Differences*, 52, 596-600. doi: 10.1016/j.paid.2011.12.004

(3) Samnani, A. & Singh, P. (2012). 20 years of workplace bullying research: A review of the antecedents and consequences of bullying in the workplace. *Aggression and*

Violent Behavior, 17, 581-589. Retrieved from
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(4) Berry, J.W., Worthington, E.L., O'Connor, L.E., Parrot, Les, & Wade, N.G. (2005). Forgiveness, vengeful rumination, and affective traits. *Journal of Personality*, 73(1). doi: 10.1111/j.1467-6494.2004.00308.x

(5) See Footnote #3.

(6) See Footnotes #3 and #5.