

Retaliation in the Workplace Overview & Checklist

Retaliation in the workplace continues to be an issue embedded into the fabric of our workplace cultures and a primary reason employees do not report known or suspected wrongdoing. Yet most organizations don't see it as an issue that needs their attention. Data show that while instances of retaliation and reports of retaliation are on the rise, these reports are rarely brought to the attention of internal incident management programs, leading to a false sense of security. This leaves organizations in the dark, not being able to solve individual incidents of retaliation, as well as the larger potential culture of retaliation across an organization or team.

The **rate of retaliation** against employees for reporting wrongdoing has doubled since 2013.
ECI | The State of Ethics & Compliance in the Workplace

Retaliation is the **most frequently alleged basis of discrimination** received by the EEOC.
Equal Employment Opportunity Commission

Reports of retaliation consistently hover at or **below 1%** of all internal reports and are substantiated at a lower rate than all other reports.

NAVEX Global | Whistleblower Hotline & Incident Management Benchmark Report

WHAT IS RETALIATION?

Retaliation is "...**punishing [adverse action]** job applicants or employees for asserting **their rights [protected activity]** to be free from employment discrimination including harassment."¹



Adverse Action

- » Firing or laying off
- » Demoting
- » Denying overtime or promotion
- » Disciplining
- » Denying benefits
- » Failing to hire or rehire
- » Intimidation
- » Making threats
- » Blacklisting
- » Reassignment to a less desirable position
- » Reducing pay or hours
- » Isolating, ostracizing, etc

*These are examples and not an exhaustive list of adverse actions that constitute retaliation

[*OSHA | Recommended Practices for Anti-Retaliation Programs](#)

Protected Activities

- » Filing or being a witness to a complaint or investigation
- » Communicating with a manager about employment discrimination
- » Participating in an employer investigation
- » Refusing to follow discriminating directives
- » Resisting sexual advances
- » Requesting accommodation for disability or religious practice
- » Asking managers about salary information

*These are examples and not an exhaustive list of protected activities

[* EEOC | Facts About Retaliation](#)

The checklist below highlights some key focus areas and steps to organize anti-retaliation program efforts that ultimately create workplaces that detect and prevent retaliation against employees.

**This checklist is not legal advice or a substitute for consultation with knowledgeable and qualified legal counsel.*

Receive & Investigate Reports

- » Take all reports of retaliation seriously
- » Offer a multichannel reporting system (hotline/helpline; web reporting; open door; etc). Ensure channels are available so employees are not required to report to managers who they may believe retaliated against them
- » Allow for proper elevation channels when employees are not comfortable going to their direct managers
- » Protect confidentiality and anonymity of reporters and investigation witnesses
- » Communicate with reporters regularly throughout investigation processes. Follow up on all employee concerns
- » Bring in independent third-party investigators for particularly complex issues
- » Manage or oversee all reports received to closure; don't just forward on and close without further review

Raise Awareness

- » Include anti-retaliation standards in corporate code of conduct
- » Create and distribute anti-retaliation policies
- » Publicize clear steps for reporting and guidance on what to report on
- » Share *sanitized* retaliation cases and publicize that retaliators have been disciplined

Commitment from the CEO, Board & Senior Leaders

- » Embody a listen-up culture where internal reports are valued, investigated and resolved
- » Hold all levels of employees accountable for retaliatory behavior
- » Understand incentive programs that may undermine reporting. Accountability systems that reward management or employees for low reported numbers prevent issues from being addressed that could help organizational integrity, performance and safety²
- » Test and assess organizational culture and employee beliefs around speaking up and fear of retaliation

Ignored or delayed complaints are serious concerns for an organization and for the credibility of the compliance program.

Anti-Retaliation Training

- » **All employees should be trained on:**
 - Laws and regulations
 - Protected activities as an employee
 - How and what to report on
 - The effects and signs of peer-to-peer retaliation
 - Unconscious biases
- » **All managers should be trained on:**
 - Grey areas of retaliation so they do not accidentally stumble into it
 - Conflict resolution
 - Proper report handling procedures when receiving reports directly from employees
 - How to respond constructively and in a timely way to reports
 - Consequences for failing to properly handle retaliation claims as well as being the retaliatory party
 - Identifying and reporting peer-to-peer retaliation
 - What it means to be put on “notice” and what action is legally required

» **Include discussions on the role of bystanders at all levels:**

- What retaliation looks like so they know when they witness it, or could potentially contribute to it
- Why they have a responsibility to report any retaliatory behavior they witness
- How to report instances of retaliation that they see and how to elevate the concern to someone who can respond to it if necessary

» **Board members should be trained on:**

- Definitions of retaliation
- Legal obligations to prevent and respond to retaliation
- The internal controls and workplace culture requirements necessary to prevent retaliation

Uncover Instances of Retaliation

- » Use exit interviews and 360-degree manager reviews to get honest feedback on employees' experience with retaliation in the workplace
- » Ensure employment status changes such as demotions or denial of promotions are only made for legitimate non-retaliatory reasons and cannot be perceived as retaliatory³

Proactively Monitor High-risk Reporters & Investigation Witnesses

- » Implement processes that proactively monitor and follow-up with reporters and investigation witnesses to identify potential retaliation
- » Pay particular attention to the first 30 days after the report and/or investigation to keep pace with speed of retaliation⁴

Report to the Board

- » Make retaliation reporting and monitoring a regular board-level discussion

¹ [EEOC | Facts About Retaliation](#)

² [Whistleblower Protection Advisory Committee | Best Practices for Protecting Whistleblowers and Preventing and Addressing Retaliation](#)

³ [OSHA | Recommended Practices for Anti-Retaliation Programs](#)

⁴ [ECI | The State of Ethics & Compliance in the Workplace](#)

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