

SAMPLE POLICY

Retaliation Prohibited

DISCLAIMER

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

Seyfarth Shaw assumes no responsibility or liability for the contents of this generic policy, the only purpose of which is to illustrate some of the issues pertaining to employee retaliation policies in the U.S.

Retaliation laws may vary based on jurisdiction. Federal, state, and/or local law may apply depending on the location of the company, its operations, and its employees. While these laws are often similar, their differences can be material. The following sample policy does not account for the differences in applicable federal, state, and/or local law. This sample policy also does not account for changes in legislation, judicial and administrative precedent, or other developments and/or interpretations of applicable law.

Additionally, what are considered "best practices" for Company A may not be "best practices" for Company B. To be effective, a retaliation policy should not be a "cookie cutter" or a "one size fits all" policy. It should be tailored to the organization, and account for the company's specific workforce, operations, and industry.

THIS SAMPLE POLICY SHOULD NOT BE RELIED ON OR IMPLEMENTED AS A LEGALLY-COMPLIANT POLICY WITHOUT CONSULTATION FROM LEGAL COUNSEL.

RETALIATION PROHIBITED

The Company is committed to respecting employee rights and abiding by federal, state, and local laws designed to protect employees. One way that Company leaders help promote this commitment is by maintaining and enforcing a non-retaliation policy. This policy prohibits Company management and supervisors of employees from retaliating against any employee simply because he or she engages in a protected activity.

Understanding what constitutes a protected activity is essential for employees to know their rights and for supervisors to understand how to avoid prohibited retaliation. Protected activity includes, without limitation, such activities as:

- reporting harassment or discrimination to the Company, whether that report takes the form of a formal complaint to Human Resources, describing concerns to a supervisor, making a hotline complaint, or any other method of complaint the Company recognizes through our policies, such as our open door policy or our anti-discrimination/harassment policy;
- making a formal complaint to a governmental entity, such as an EEOC charge, or filing a lawsuit in court;
- making a request for an accommodation of a disability or for a religious practice;
- applying for, inquiring about, or receiving FMLA leave or workers' compensation benefits;
- seeking to enforce rights under the FLSA, OSHA, or workers' compensation laws;

- reporting a potential securities law violation to the SEC, or assisting in any SEC investigation or judicial or administrative action of the SEC related to a securities law violation;
- making a disclosure required or protected under the Sarbanes-Oxley Act of 2002, the Securities Exchange Act of 1934, and any other law, rule, or regulation subject to the jurisdiction of the SEC;
- providing information related to a complaint, investigation, or lawsuit related to a protected activity;
- intervening when witnessing a co-worker experiencing discrimination or harassment; or,
- making a disclosure protected under state or local whistleblower statutes.

In addition to prohibiting retaliation against anyone directly engaging in a protected activity, the Company also prohibits retaliation against any employee involved in or cooperating with an investigation of alleged discrimination, harassment, or whistleblower disclosures. This would include employees who cooperate either with a formal external investigation, lawsuit, or administrative action involving a governmental entity, or an informal or internal Company investigation.

Examples of acts of retaliation considered a violation of this policy include, without limitation, termination, demotion, failure to promote, poor performance reviews, adverse compensation decisions, disciplinary actions, or denial of discretionary opportunities that are made because an employee engaged in a protected activity.

Although retaliation necessarily involves an adverse employment action or decision, not every adverse employment action is considered retaliatory, even if the employee has at some point engaged in a protected activity. Retaliation presumes a certain chronology and it assumes that the adverse action is not taken for other, legitimate reasons. For example, if a final decision to include an employee in a reduction in force or to provide a poor performance review is made before an employee engages in a protected activity, executing that decision or presenting the review would not necessarily constitute retaliation. Similarly, if legitimate, independent grounds exist for an adverse action, that action would not necessarily constitute retaliation. Further, employees who attempt to avoid an adverse action by making unsupported or frivolous claims may be found to not have engaged in a good faith protected activity, and thus are not protected under this policy.

As noted above, this policy is supported at the highest levels of the Company. Accordingly, individuals who violate this policy can expect that corrective action will be taken. Depending on the circumstances, corrective action may include anything from counseling to possible termination of any individual who retaliates against any employee who has engaged in a protected activity. To the extent that the Company has other anti-retaliation provisions as part of other policies, this policy supplements those other policies.

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