

<p>If a poorly performing employee who was being considered for termination files a sexual harassment claim, what is the best way to handle it?</p>	<p>Again, it's going to depend a bit on how well documented the performance issues are; you should always promptly and effectively investigate but if the deficiencies are real and documented, merely complaining of sexual harassment does not wrap an employee in an impenetrable bubble.</p>
<p>Are there any tips on terminating an employee who has made a claim that has been fully investigated and determined to be false, in a manner to avoid a retaliation claim?</p>	<p>Document, document, document. If you have a solid record of poor performance before the complaint is made, you are on much firmer grounds to terminate if the individual offends again. If you have no documentation, it is risky terminating someone who makes a complaint shortly after completing the investigation.</p>
<p>If it's anonymous how can we follow up? I'm worried they think we didn't do anything with it and will take it further...no way to prevent if anonymous?</p>	<p>Addressed a little earlier, but ensure that you have and are able to communicate through an intake system with an anonymous reporter. And ensure reporters know how to follow up and their obligations to do so. This can be done through training, policies, awareness, etc.</p>
<p>What if your retaliation complaints are against your Ethics Officer and HR?</p>	<p>I would recommend here that outside counsel be brought in to independently investigate this. You may also want to coordinate with the board and/or CEO.</p>
<p>How do you deal with trying to monitor retaliation when the whistleblower remains anonymous?</p>	<p>In a properly structured system, even anonymous reporters are given an ID number so they can check back in. When an anonymous report comes in make sure to tell that person about retaliation and how to check back in. Also, you will generally have a target, and can check in with him or her.</p>
<p>Can adverse action include increased performance scrutiny? What are the parameters here that indicate crossing a line of reasonable action?</p>	<p>It can; the key is to ask whether you can show you have engaged in increased performance scrutiny with others in similar circumstances on prior occasions. That will negate an inference of retaliation.</p>
<p>How do you prove "good faith" in a report that may turn out to be incorrect or false?</p>	<p>It is a fairly low bar but in the US Supreme Court Breeden case, the Court held no good faith when an individual reading over submissions in a conference room jokingly noted aloud an off-color sexist comment.</p>
<p>One of the comments in the previous sessions stating that employees may go to the SEC or other WB channels because they felt their voice was not heard. Any suggestions/guidance on best practices in responding to callers while balancing the confidentiality of the investigation process?</p>	<p>It is important to stay in contact with the reporter throughout the process, even if the update is "we are still working on it." It is also helpful to set the expectations of the program with employees as you roll it out. Help employees understand even before they make a claim that the company may not be able to share some information and that if the situation was reversed, the company would not share information about them. That said, it is important to also close out the matter with the employee and to let them know that the issue was reported and appropriate action was taken.</p>
<p>What data points should be included in the monitoring programs?</p>	<p>Some examples include changes in pay, job level, work hours, project assignments, department, performance ratings/rankings, denial of vacation requests, etc.</p>
<p>Any comments on the upcoming EU Directive on whistleblower protection?</p>	<p>We've just posted a blog on this topic on www.navexglobal.com/blog. Overall, we think it is positive, and benefits those companies with strong internal reporting processes.</p>
<p>What does an unprotected (maliciously) false harassment claim look like?</p>	<p>Where an individual clearly fabricates information; e.g., stating that an email was sent saying x when in fact it is clear that the email in question did not.</p>
<p>Can the non-retaliation policy be part of the Whistle Blower policy?</p>	<p>Yes, absolutely.</p>

<p>Our policy says we should report wrongdoing to our supervisors. Wouldn't it be better to report wrongdoing to compliance experts? I believe internal auditors can protect the reporter better than the supervisor!</p>	<p>As Greg mentioned, you should ideally have multiple reporting channels so if the person is not comfortable reporting to their supervisor they can go elsewhere.</p>
<p>Retaliation is technically defined as actions by the employer (management), however, how do we handle "retaliation" from the co-worker complained of? For example, following a "harassment" compliant, disciplinary action was taken but this was not a dismissal, and now the accused is making the complainant "feel uncomfortable" What's the best way to handle that? Is that technically "retaliation"?</p>	<p>That is most definitely a form of retaliation. Some refer to it as retaliatory harassment. Employers should take steps to guard against it by instructing managers, coworkers that the company welcomes good faith complaints and will not tolerate any reprisals.</p>
<p>How do you measure the effectiveness of efforts made to address the fear of retaliation in a workplace?</p>	<p>Many organizations use culture surveys and small, confidential focus groups to gather feedback on fear of retaliation. When asking these questions, it is also useful to ask who employee groups specifically fear (e.g., managers, peers, HR, etc.).</p>
<p>How often do you recommend providing retaliation training? Is once a year enough, or have you found that increased frequency is better?</p>	<p>With the amount of training that employees are asked to complete, once a year as a stand-alone training would be enough. (You may even chose to use microlearning for this once in a while.) But make sure retaliation concepts are also included in tactical ways in key training courses such as code of conduct, harassment, bribery, etc.).</p>
<p>Can someone file a retaliation claim on behalf of someone else?</p>	<p>If this question is about whether it should be allowed internally – yes, I would definitely allow it. You want to encourage employees to speak up when they see misconduct, and we know that targets of retaliatory behavior may be reluctant to report.</p>
<p>Regarding the whistleblower hotline, who would be the best person/department to be the point of contact? Is it usually one person or more than one?</p>	<p>Best practice is that the ethics and compliance team is the primary point of contact. In some cases, other departments are asked to conduct or participate in the investigation, but the primary responsibility for oversight of the report should be with the ethics and compliance team.</p>
<p>Would you recommend not having a policy that requires employees to report concerns first to their supervisor? Is it a precursor to a retaliation claim if the company acts against the employee for failing to report to the supervisor/company first?</p>	<p>Your policy should not require reporting first to a manager; this is actually inappropriate under many laws. Employers are expected to provide reasonable options, which can include options other than the employee's direct manager. If the manager is the one engaging in the misconduct or has been ineffective in the past, or the employee is not comfortable making a report to the manager, the employee should have other options.</p>
<p>I'd like to launch a new training program to our employees. Do you have a sample training session to leverage? Or, what sources should I look at to build a training session?</p>	<p>NAVEX Global does offer training on reporting in the form of three micro-learning courses. We also include retaliation content in virtually all of our full-length courses. Click on the green box in your console to view our course library.</p>
<p>We continually see reports where the term "retaliation" is used loosely (e.g., "My boss retaliated against me by yelling at me in a meeting because he didn't like my comment"). Even though the reporter selected the primary issue for their report as retaliation, our company's definition of retaliation is much different than what some employees report. Thoughts?</p>	<p>This is a good example of why training on this topic is needed at all levels, defining what is and what is not retaliation? What does it look like? In this example, it is also worth noting that "yelling" is not an appropriate behavior in the workplace and that the yelling or abusive behavior should still be reported.</p>