

Retaliation for Protected EEO Activity is Unlawful



Equal employment opportunity (EEO) statutes that prohibit federal agencies, including the Department of Labor, from discriminating against employees on the basis of race, color, religion, sex, national origin, age, disability, and genetic information, 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. As a result, an agency may not fire, demote, harass or otherwise take adverse action against an employee or applicant for employment for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

What activity is protected by the prohibition against retaliation?

An individual engages in protected activity when s/he: (1) opposes a practice s/he considers to be discriminatory; (2) participates in an employment discrimination proceeding; or (3) engages in other protected activity.

Opposing Discrimination: Opposing a discriminatory practice consists of communicating to the agency a reasonable, good-faith belief that the agency is engaging in prohibited discrimination. Examples of opposition include complaining to anyone about alleged discrimination against oneself or others; threatening to file a complaint alleging discrimination; picketing in opposition to discrimination; or refusing to obey an order reasonably believed to be discriminatory. Examples of employee activities that are not protected as 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.

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

Other Protected Activity: Additional protected activity includes requests for an accommodation based on disability or religion.

Which individuals are covered by this protection?

Covered individuals are persons who have requested accommodations, opposed unlawful practices, or participated in proceedings related to employment discrimination based on race, color, religion, sex (including gender identity and pregnancy), national origin, age, disability, or genetic information. Protections are also extended to individuals based on sexual orientation and

parental status pursuant to Executive Order and Department of Labor policy. 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 take adverse action against an employee because his spouse participated in employment discrimination proceedings. Individuals who have brought attention to violations of law other than employment discrimination are not covered individuals for purposes of anti-discrimination retaliation laws. Individuals may have recourse under the anti-retaliation provisions of those other laws, but not under the laws enforced through the federal sector EEO process. For example, "whistleblowers" who raise ethical, financial, or other concerns unrelated to employment discrimination are not protected by laws applicable to federal employees and applicants.

What is an adverse action prohibited by EEO statutes, regulations and/or policies?

An adverse action is an action taken to penalize someone for or prevent someone from opposing a discriminatory employment practice, participating in an employment discrimination proceeding, or requesting an accommodation based on disability or religion. Such an action could form the basis of a new EEO complaint. Examples of adverse actions include: (1) denial of promotion; (2) non-selection/refusal to hire; (3) denial of job benefits; (4) demotion; (5) suspension; (6) discharge; (7) threats; (8) reprimands; (9) negative evaluations; (10) harassment; or (11) other adverse treatment that is likely to deter reasonable people from pursuing their rights.

What should I do if I think I have been retaliated against based on my protected activity?

If at any time you think that you have been subjected to retaliatory action, contact an EEO Counselor (or the Civil Rights Center) within forty-five (45) days of the alleged discriminatory event in order to preserve your right to file an EEO complaint.