

Retaliation

Do you believe that you have been retaliated against? Did you report discrimination and shortly after were you denied a raise? Did you raise concerns of apparent impropriety and were then demoted? If so, we can assist you.

Retaliation occurs when an employer punishes an employee for engaging in legally protected activity. What is legally protected activity? Some examples include: filing a complaint of discrimination, participating in a workplace investigation, reporting misconduct of a colleague or superior.

Retaliation can include any negative (adverse) job action, including, without limitation, a demotion, discipline, a poor performance review, being placed on a performance improvement plan, receiving a warning, salary reduction, or firing. Retaliation can be overt. For example, you make a complaint of discrimination on Monday and on Friday you are fired. It can also occur in more subtle ways – i.e., a change in demeanor or attitude by your superior towards you after you file a complaint against his/her. Retaliation occurs if there is an adverse effect on the terms or conditions of your employment.

If the employer's adverse action would deter a reasonable person from making a complaint, it constitutes illegal retaliation.

It is important to understand that to prove a retaliation claim it is not necessary to prove the underlying discrimination or impropriety that was reported. Rather, you must have a good faith basis for reporting the conduct. For instance, if you report gender discrimination to HR and shortly thereafter you are fired, it is not necessary to show that the gender discrimination did in fact occur. Instead, it is sufficient to prove that you were fired because you reported gender discrimination.

Most employers maintain an anti-retaliation provision in their employee handbook that sets forth what is prohibited conduct and what an employee is to do if such conduct transpires. Some employers maintain a process that employees must undergo if they feel they have been retaliated against. The employer requires that its process be exhausted prior to your filing claims with an administrative agency and/or with a court. While your employer's process should be followed, you may want to consult with a knowledgeable attorney prior to initiating this process as any items submitted through this process may be used by the employer in any administrative or court proceeding brought at a later date. Also, there are time periods in which you need to initiate a legal action against your employer which we must be followed. We can assist you in this process.

You may have a claim of retaliation if the terms of your employment have been changed after you (i) reported or filed a claim of discrimination internally or to an outside administrative agency; (ii) took a protected FMLA leave of absence; (iii) raised claims of overtime violations; (iv) reported apparent impropriety and/or wrongdoing internally or to an outside administrative agency— what may also be known as acting as a whistleblower; and/or (v) filed claims of an unsafe work environment internally or to an outside administrative agency then your rights may have been violated, etc. [This is not an exclusive list].

If you believe your rights have been violated and you have been retaliated against we can assist you. We understand what you need to prove a case of retaliation. We are prepared to counsel you on your rights. With our help you may be able to resolve your claims through a negotiated resolution with your employer. If that does not transpire then we can assist you by bringing your claims through your employer's resolution process; to an administrative agency like the EEOC, New York State Division of Human Rights, New York City Commission on

Human Rights; Department of Labor, IRS, etc. and/or initiating a lawsuit against your current/former employer.

If you think your rights have been violated our firm is available to assist you in resolving your retaliation claims.

If you are interested in these services, please contact our office to schedule a time to speak.