

FOCUS ON EEOC

Updated EEOC Guidance on Retaliation Examines Materially Adverse Actions

The Equal Employment Opportunity Commission (EEOC) recently updated its Guidance on workplace retaliation for employers. The Enforcement Guidance on Retaliation and Related Issues is the first revision to EEOC Retaliation guidelines since 1998. The EEOC's update had been greatly anticipated after numerous cases, including several from the U.S. Supreme Court, interpreted federal retaliation provisions.

The updated Guidance addresses various areas of concern for employers, including what constitutes a materially adverse action against an employee. Citing *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), the Guidance notes that "materially adverse" action encompasses a broad range of employer activity. For example, a materially adverse action includes any action that might dissuade a reasonable person from participating in a protected activity, even if the action has no tangible effect on employment or takes place entirely outside of work. Threatening reassignment, requiring re-verification of work status, or disparaging the person to others are all listed as materially adverse actions. The Guidance also contains several examples of opposition to protected activity, facts that may support the causal connection required to find retaliation, and facts that may defeat a claim of retaliation.

Retaliation claims have more than doubled since 1998, becoming the most frequently alleged discrimination charge against employers. Further, many federal laws contain a retaliation provision, including Title VII, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Genetic Nondiscrimination Act (GINA). Given the expansive protection federal law gives employees and the regularity of retaliation charges, employers should be aware of the law and their responsibilities. The EEOC Enforcement Guidance on Retaliation and Related Issues is both comprehensive and instructive.

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