

March 07, 2012

How to Prevent Retaliation Lawsuits

Special from SHRM Employment Law and Legislative Conference Washington DC

Almost all lawsuits are preventable, says attorney Jody Katz Pritikin, and retaliation lawsuits are among the easiest to prevent. Katz, a featured speaker at SHRM's Employment Law and Legislative Conference, going on this week in Washington, DC, is a trainer and investigator at proactivelawsuitsrevention.com.

The "Put a ring on it" refers to the new aspect of retaliation that prohibits employers from taking adverse action against spouses or others in the "zone of interest" of the employee who took a protected action.

Retaliation Policy Must-Haves

Pritikin suggest that employers include the following in their anti-retaliation policies:

- Make a standalone commitment against retaliation—it's the number one EEOC claim!
- Define retaliation
- Give a specific examples including zone of interest
- Set forth a complaint procedure with more than one avenue of complaint
- Include your hotline, ethics officers, ombudsman (but centralize all complaints to HR for investigation)
- Don't promise confidentiality
- Set forth the consequences for violations

Proactive Retaliation Prevention Strategies

- Make a commitment and show it
- Train managers and employees
- Make a list of the "protected" (those in the zone of interest, the parties, witnesses)
- Timing is everything. Involve HR when making any decisions that affect those on the list (including routine warnings and appraisals)
- Reevaluate chain of command—is the accused reviewing the complainant?
- Remind employees to come to HR is they think they are being retaliated against
- Keep the investigation as confidential as possible and instruct participants to keep it confidential
- Follow company policy for a post complaint references
- Follow up with the complainant
- Watch out for:
 - Protective measures (that might disadvantage the complainant)
 - Hazing of the complaint
 - Anti-fraternization
 - Selective enforcement

Pritikin's Final Tip

When a complainant tells you that she wants to go home to avoid retaliation, get it in writing that this was her idea, and she does not consider it a suspension or disciplinary action for making a complaint.