



The Expanding Scope and Number of Retaliation Claims - How to Avoid Lawsuits and Minimize Risk

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Retaliation claims have increased dramatically in the last several years, rising for the first time to the largest category of claims filed with the Equal Employment Opportunity Commission (EEOC) in FY 2010. Such claims accounted for more than 36 percent of all EEOC charges filed in that year, compared to only about 29 percent of charges filed five years ago and 27 percent of charges filed a decade earlier. This significant increase in retaliation charges most likely is directly related to the United States Supreme Court's highly favorable treatment of retaliation claims in recent years. On January 24, 2011, the Supreme Court decided the latest of a number of retaliation cases in a manner favorable to employees asserting such claims. *Thompson v. North American Stainless*, No. 09-291, 2011 BL 17217 (U.S. Jan. 24, 2011).

Retaliation litigation derives most often from the provisions of Title VII of the Civil Rights Act of 1964. The statute makes it illegal for an employer "to discriminate against any of his employees ... because he has opposed any practice, made an unlawful employment practice by this subchapter, or because he has participated in any manner in an investigation, proceeding, or hearing under this title." 42 USC § 2000e-3(a). In addition to Title VII, numerous other statutes contain similar anti-retaliation provisions, including the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act, and the Occupational Safety and Health Act, as well as so-called "whistleblower" protections in the False Claims Act and the American Recovery and Reinvestment Act of 2009, among others.

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Attachments

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