



ECI WORKING GROUP PAPER

**RETALIATION IN THE
WORKPLACE**

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ABOUT ECI

The Ethics & Compliance Initiative (ECI) is a best practice community of organizations that are committed to creating and sustaining high-quality ethics & compliance programs. With a history dating back to 1922, ECI brings together ethics and compliance professionals and academics from all over the world to share techniques, research and, most of all, exciting new ideas.

ECI is the leading provider of independent research about workplace integrity, ethical standards, and compliance processes and practices in public and private institutions. Our research includes the long-standing National Business Ethics Survey® (NBES) of workplace conduct in the United States and the more recent Global Business Ethics Survey® (GBES) of workplaces in leading world economies.

ECI assists organizations in building strong cultures and developing High-Quality Ethics & Compliance Programs (HQPs) in line with the five pillars identified by an [ECI Blue Ribbon Panel](#). Embracing these pillars as our own operational standard, ECI provides organizations with tools and benchmarking services that enable them to assess the relative strength of their culture and program, identify areas for attention and stay abreast of new developments and best practices.

ECI also supports E&C officers, individual practitioners, academics and thought leaders with a full calendar of educational programming, networking and idea exchange opportunities and professional certification services. Ours is a vibrant and active community of professionals that shares knowledge, encourages thoughtful innovation and explores new ideas to help organizations and individuals meet key objectives.

For more information about ECI or to download our research reports, please visit www.ethics.org.

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ABOUT ECI'S WORKING GROUPS

In an effort to encourage networking and collaboration among ethics & compliance (E&C) professionals, ECI regularly convenes small groups of our members to network, share ideas, and address issues that are of particular interest. Working groups of 20 to 25 individuals meet to identify, research, and develop new resources to help practitioners prepare for a new or emerging E&C issue. They also learn from best practice with regard to an existing E&C program area.

EXECUTIVE SUMMARY

The potential beauty of human life is constantly made ugly by man's ever-recurring song of retaliation.

(Martin Luther King, Jr.)

Retaliation in the workplace is detrimental to a healthy work environment. Most companies recognize this and take steps to address this issue. Although retaliation is defined in a number of ways, two basic elements are always present: an issue is raised, and the person who raised it suffers as a result. The suffering can be overt or subtle and can be triggered by management or peers. Companies striving for excellence seek to curb retaliation.

Curbing retaliation in the workplace can be accomplished by raising awareness of retaliation; responding consistently and effectively to reports of retaliation; monitoring allegations of retaliation; and taking steps to actively prevent retaliation.

Best practices in an effective anti-retaliation program include creating an environment where individuals are valued and encouraged to speak up and where criticism for doing so is not tolerated.

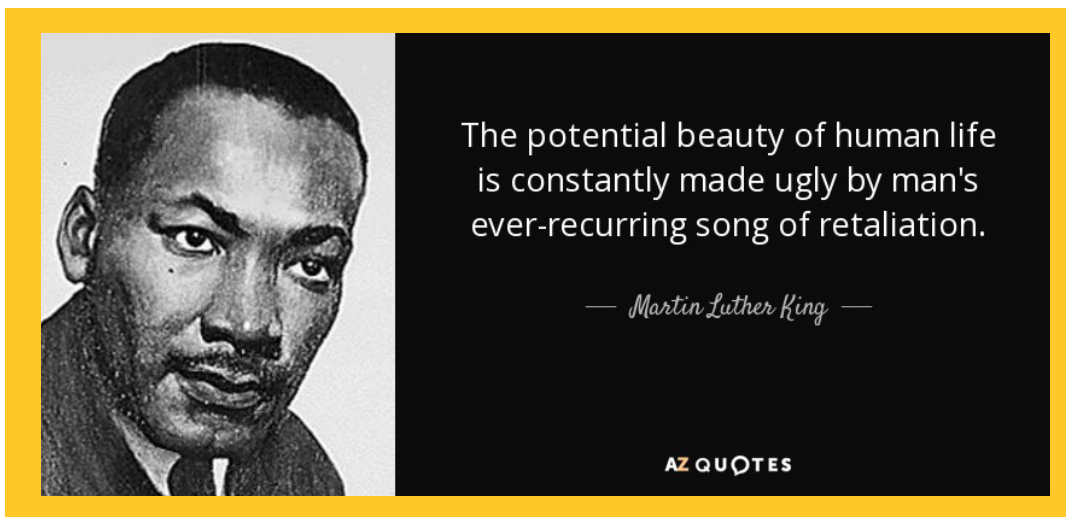


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I. DEFINING RETALIATION

The Cambridge Dictionary defines retaliation as “the act of hurting someone or doing something harmful to someone because they have done or said something harmful to you.” When examining retaliation in the workplace, the definition is tailored to that environment. The Equal Employment Opportunity Commission (EEOC) is of the view that “Retaliation occurs when an employer takes a materially adverse action because an individual has engaged in, or may engage in, activity in furtherance of the EEO laws the Commission enforces.” Some employers have been more specific in their definitions of retaliation, including describing retaliation as occurring when “adverse actions are taken by the employer (e.g., management, supervisors, peers and any other parties associated with the employer) against an employee for reporting any wrongdoing, whether the allegations are substantiated or not” or as “adverse impact to an employee directly related to that employee’s previous engagement in protected reporting activity.” The federal government prohibits officials from taking action against an employee who disclosed a believed violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

Oftentimes, employees do not like decisions or changes a company or management makes if those changes have a direct and personal impact. This does not, however, mean retaliation is occurring. Retaliation requires an element of a protected activity (often the disclosure of wrongdoing). Companies may include other activities, but the EEOC describes protected activity as “participating in an EEO process or opposing discrimination,” both of which come directly from federal law. Simply put, protected activity could include any reporting of discriminatory or harassing behavior, whether to an agency — such as the EEOC — or internally within your company, or participating in an investigation related to such a report. It could also include internal reporting of general misconduct, filing a complaint or assisting another in filing a complaint, participating in internal investigations, or making ethics-related inquiries.

Regardless of how your organization chooses to define retaliation, for example as a witness or investigator, it is crucial that the definition be general and broad so it encompasses all types of retaliation that may be experienced at your company, as well as covers retaliation as defined by federal laws. The definition should clearly state that there must have been some protected activity, or the likelihood of such activity, for actions to be considered retaliatory.

II. TYPES OF AND INVOLVEMENT IN RETALIATION

Just as definitions of retaliation can vary, retaliation can occur in different ways. Retaliation can be categorized into two main areas: retaliation type and party involvement. By looking at the type of retaliation, the activity can be broken into either overt or subtle retaliation. Then, by looking at the parties involved, retaliation can be further broken down into peer-to-peer or manager-to-employee retaliation.

RETALIATION TYPE: OVERT VS. SUBTLE

Retaliatory actions can be broken down into two main types: overt and subtle. Overt retaliation consists of behavior and actions that are clearly retaliatory. The person or entity engaging in the retaliatory behavior makes no effort to conceal or disguise the actions, and it is apparent that the actions are meant to be averse to the employee. Subtle retaliation, however, involves a more indirect way of engaging in actions that are averse to an employee. Subtle actions can be more difficult to recognize as retaliation, but these behaviors can still be retaliatory. Examples of overt and subtle retaliation are listed on the next page, but it is important to note that this list is not exhaustive and that the examples do not always rise to the level of retaliation. In some circumstances, these examples could be normal management decisions. If the employee on the receiving end of these actions has been or could be engaged in what your company and/or federal laws consider protected activity, then the experiences listed could be retaliation.

“Subtle actions can be more difficult to recognize as retaliation, but these behaviors can still be retaliatory.”

EXAMPLES OF OVERT AND SUBTLE RETALIATION

OVERT	SUBTLE
Termination, discharge or suspension	Harassing management tactics, including creating unrealistic performance expectations, work overload, increased scrutiny or excessive monitoring, and micromanaging everything the employee does
Demotion — transfer to a less desirable position without long-standing history of documented performance problems	“Speech” harassment — demeanor, language and remarks made when the employee is within earshot
Exclusion from promotion, delaying promotion/selection or exclusion during company reorganization	“Just joking” harassment — sarcastic humor, inappropriate or offensive remarks disguised as jokes, snarky remarks/comments, giggling, slurs, laughing at the employee in a way that borders on verbal abuse
Reduction in salary or work hours	Nonverbal harassment — negative body language, hostility, gestures, cutting glances and grimaces, excessive eye contact/staring, frowning, rolling of eyes, crossed arms, finger pointing, shaking head, sudden silence when employee walks into the room or giving a cold shoulder; pinning images or offensive messages in a cubicle or office
Loss of bonus or cost-of-living salary increase	Purposeful exclusion from company events or meetings
Unexpected, unfair and poor performance evaluation — claiming the employee is not meeting company standards, resulting in a lower merit increase or bonus loss	Reprimands or warnings
Relocation of job, move of cubicle or desk onto the corridor or close to bathroom area, change of work schedule to intentionally inconvenience, transfer to another shift	Exclusion or denial of one’s input, not listening
Physical abuse or harassment — unwanted touching, getting too close physically, cornering, annoying or intimidating, invasion of personal space or work area	Spreading false rumors, gossiping, treating a family member negatively
Reassigning job duties to another project or team or removing favorite project or work	Forgetting to invite the employee to group or team outings, such as lunch
Public ridicule without intervention from employer	Playing pranks
Disciplinary action or failing to investigate a complaint	Exclusion from emails, meetings, training, conferences, company competitions, award ceremonies, travel
Negative reference or no reference post-employment	Taking credit for another’s work
Terminating or denying ability to telecommute	Intimidation, harsh words; listening to music with profane lyrics; displaying posters with polarizing political views

PARTY INVOLVEMENT: MANAGER-TO-EMPLOYEE OR PEER-TO-PEER

The other factor to consider is the parties involved in the suspected retaliation. When retaliatory actions are taken against an employee by the company or a manager, supervisor or other authoritative power, it is considered manager-to-employee retaliation. The EEOC definition of retaliation specifically says retaliation occurs when “an employer” takes actions; however, a different type of retaliation — peer-to-peer retaliation — can occur when the involved parties are two or more employees of the company and there is no management hierarchy between the parties. These two forms of retaliation can look different because peers and managers treat employees in different ways.

Manager-to-employee retaliation is the more recognizable form of retaliation. When an employee engages in, or seems as though he or she may soon engage in, an action that is considered protected, the manager or supervisor of the employee may take retaliatory action against the employee. The behavior could be overt or subtle because management has more ability to negatively impact the employee. Any actions taken by a manager or supervisor after an employee engages in protected activity must be carefully considered to ensure the behavior does not unnecessarily single out an employee for making a report, participating in an investigation, or filing a complaint about the manager, the team, or other another issue the employee was facing.

Retaliation between peers is often hard to recognize because the parties are on the same or similar employment levels. This form of retaliation occurs after one employee makes a report of alleged behavior that then upsets, angers or leads to changes for other employees who are peers of the reporter. If an employee or group of employees feels aggrieved by the protected actions of a peer, they may engage in retaliatory actions toward the reporting peer without even realizing the behavior is retaliatory. While peers do not have the ability to change an employee’s pay or work schedule, they do have the ability to retaliate in other ways. Peer-to-peer retaliation can show up as harassment or exclusion from team meetings. Further examples of peer-to-peer retaliation include spreading rumors about the reporting peer, ignoring the peer, or failing to invite him or her to team activities.

Learning to recognize the different forms retaliation can take and the various parties who can be involved will lead to a more comprehensive anti-retaliation policy and stance for your company. Identifying different types of overt and subtle retaliation and sharing those examples with employees will increase awareness of behaviors that could be considered retaliatory. Distinguishing between manager-to-employee retaliation and peer-to-peer retaliation will further show employees that retaliation can occur in different ways. Any retaliatory behavior, regardless of the parties involved, must be addressed.

“Retaliation between peers is often hard to recognize because the parties are on the same or similar employment levels.”

III. AWARENESS OF RETALIATION AND RAISING CONCERNS

After clearly defining what retaliation means at your company and ensuring the different types of retaliation can be identified, it is important to then raise awareness of how retaliation occurs and who it can involve. It's equally as important to ensure that employees know how to raise their concerns and feel confident that the concerns will be addressed. Every company has unique issues that are a result of its culture; however, when it comes to both awareness of and raising concerns about retaliation, most companies experience similar challenges.

CHALLENGES OF RAISING AWARENESS OF RETALIATION

One of the biggest challenges of raising awareness around retaliation is that employees do not necessarily know what is and is not retaliation. Defining retaliation in a clear manner is crucial, but it is even more crucial to ensure that the definition is shared repeatedly with all employees. Sharing information related to retaliation is another challenge as employees have varying access to, and preferences for, receiving corporate information. Not all employees may regularly check, or even have access to, email. At the same time, not all employees may be able to attend team or corporate meetings. It is important to ensure that there are multiple and diverse methods for communicating about retaliation and that the messaging remains consistent.

“Defining retaliation in a clear manner is crucial, but it is even more crucial to ensure that the definition is shared repeatedly with all employees.”

Another challenge of raising awareness of retaliation and what it means includes the content of the messaging. Finding a balance between supporting the cultural messaging on retaliation without creating alarm can be difficult. A company needs to determine if the approach to awareness needs to be bold, stand-alone messaging; if it can be more subtle and embedded with other topics; or if it is best to follow a hybrid approach. The messaging should be personalized and specific to the roles of the employees. It may also be beneficial, depending on company culture, to address the seriousness of retaliation frequently to eliminate confusion or assumptions that the messaging is a reaction to a specific event or large-scale problem.

A final challenge many companies face with raising awareness of retaliation is that management does not always believe retaliation is an issue within their respective teams. Some managers have the mentality that “nothing goes wrong on my watch.” Companies should regularly emphasize manager expectations in setting the tone and example for their teams. Managers should also be held accountable for occurrences of retaliation within their teams.

CHALLENGES OF RAISING CONCERNS OF RETALIATION

Just as there are challenges with raising awareness of retaliation, companies also face challenges with employees raising concerns. Challenges such as multiple methods of reporting, resources needed to address reports, and expectations of those making reports can create difficulties for a company as it tries to bring awareness to retaliation while empowering employees to raise concerns.

Multiple and varying channels for reporting can create issues for both companies and employees. Companies may use human resources, an anonymous hotline, supervisors, a complaint process, or a combination of these and other methods to encourage employees to report concerns. While it may be necessary to have multiple methods, employers must ensure their employees know all the available channels for speaking up and when to use each.

Manager-level reporting is one method companies typically use for employees to report their concerns. This method of reporting has its own unique challenges. As discussed previously, managers sometimes have the attitude that their employees are all happy and content, and that nothing ever goes wrong on their teams. Given this, managers may not take the time, or know how, to create an environment of trust within their teams and for their employees. Furthermore, because of the constant hiring and promoting of staff and the many responsibilities of leaders, managers may not know how to properly address or escalate issues.

Another challenge connected with raising concerns is the resources needed to address them. When employees make reports of retaliation, those reports must be evaluated and may require investigations. When awareness of retaliation has been raised, it may increase the number of reports, which will then lead to the need for more resources to evaluate, investigate and address the allegations.

Finally, employees who report retaliation may have unrealistic expectations. It is important to make sure employees understand the process from reporting through evaluation and from investigations through potential disciplinary actions. Help employees understand that just because a report is made, it does not mean certain or specific actions will be taken. Employees who make reports may have heightened degrees of sensitivity in their interactions with their peers and managers. They should also be made aware of what is and is not retaliation so they know how to manage any heightened sensitivity while awaiting a response to their report and thereafter.

ADDRESSING THESE CHALLENGES THROUGH AN AWARENESS PROGRAM

A successful anti-retaliation awareness program uses multiple avenues to maximize the potential for reaching the largest number of employees. Below is a list of ideas to address the challenges described above and to assist with interweaving the message regarding retaliation and speaking up into organizational conversations.

- Diversify the organizational voices discussing retaliation to help create unity in the message from all levels and to set expectations of employees and the company, while maintaining interest in the issue.
- Include the company's definition of retaliation with clarifying, relevant examples in organization-wide trainings, leader trainings and one-on-one conversations.

- Specifically address retaliation in the company’s code of conduct, employee handbook or a stand-alone policy.
- Incorporate the topic of retaliation into new-manager training and as a standing resource for all managers.
- Include expectations regarding retaliation in messaging from top leadership, along with encouragement from top leaders to report instances of retaliation.
- Highlight the topic in the organization’s ethics and compliance intranet portal, company e-bulletin or newsletters, and other printed or electronic materials (e.g., brochures, guidebooks, posters, wallet cards or table tents).
- Incorporate the topic of retaliation and speaking up into existing training modules and make retaliation a required annual training topic.
- Feature retaliation and speaking up as a topic in an internal ethics and compliance (E&C) “roadshow” or as a site visit topic and training, making sure to include real-life examples of retaliation in the workplace.

Challenges with awareness and reporting will exist to some degree regardless of what is done to mitigate them. If a company recognizes the challenges and continually does what it can to address them, employees will, in turn, recognize that the company takes retaliation seriously and is making distinct efforts to rid the company of all retaliation. Then, the culture around retaliation will begin to change.

IV. RESPONDING TO RETALIATION

Unfortunately, despite all efforts to raise awareness, retaliation will likely still occur. Organizations should endeavor to create and maintain a program and policy for how they will respond to all types of retaliation. The program should address management response, evaluation and investigation procedures, and disciplinary guidelines.

Management response is one of the most important elements of a strong, consistent organizational response to allegations of retaliation. Managers are those closest to the employees and to the incidents, so managers should know what to do and what not to do when an employee makes an allegation of retaliation. Companies should develop specific, relevant trainings for management-level employees and continually address the topic so no manager is caught off guard if a situation arises. A reference guide can also be created so a manager can quickly refer to the guide as necessary. General guidance for management best practices are listed below.

MANAGEMENT DO'S	MANAGEMENT DON'TS
Listen calmly to any allegation of retaliation without judging the situation and take notes on what is reported	Don't ignore allegations as general complaints or unhappiness or decide independently, without consulting policy or designated areas, that retaliation has not occurred
Address allegations according to policy and report allegations to the proper area/channel for investigation	Don't participate in behaviors that could be deemed harassment or discrimination (teasing, poor performance review, gossiping)
Treat employees consistently throughout the investigation process	Don't change how you interact with an employee who has made an allegation during the investigation or after the investigation has concluded
Check in with all employees regularly, but especially with an employee who has made a claim of retaliation	Don't discuss allegations with other employees or team members without a "need to know"
Follow up with employees involved in an investigation or claim to make sure they understood what happened and the outcome	Don't assume all retaliation has ended without checking with the employee involved

Just as important as management response is having a standard procedure for how an allegation of retaliation will be handled from the corporate standpoint. The procedure followed will depend on how the allegation is made and what it involves. Employees should be aware of the general protocol that will be followed when an allegation is made. If there will be a formal investigation, employees should know that and should have an idea of how long that process could take. While it is not necessary or feasible for employees to be made aware of every step of the formal process, it is important for them to know there is a process and generally what it entails so they will feel confident that something is being done and that their allegations are being taken seriously.

Finally, companies should develop general disciplinary guidelines for retaliation matters. Disciplinary guidelines for retaliation matters do not typically differ materially from disciplinary guidelines for other types of E&C violations. A standard should be set, however, to determine what mitigating factors will be considered, what aggravating factors will be considered and how. Having a well-developed set of disciplinary guidelines will help employees see that the process is fair and consistent.

Some companies have a general belief that termination is the presumed discipline for verified retaliation allegations. Whether that is the position of your company or not, a standard procedure for viewing the specific circumstances and the context of the allegations is vital to determining the appropriate discipline in each individual situation. Despite the variance in the circumstances, it is important to be aware of the potential mitigating and aggravating factors that may offset the situation at hand and result in lesser or more discipline. If the employee engaging in the retaliatory actions participated in and was cooperative during the investigation, for example, it may help mitigate the situation; if the employee was not participatory and cooperative, however, that may aggravate the situation. Another example of a mitigating factor may be if there has been insufficient training or education on retaliation and it is found that the employee did not reasonably understand that the actions constituted retaliation. Another example of an aggravating factor may be if it is found that the retaliatory actions violated the law or a contract requirement. Once an organization develops guidelines for discipline and then determines what other factors will be considered, it is important that the company stands by and enforces the guidelines.

How the organization and its managers respond to retaliation will be vital to how employees view retaliation at your company. When it comes to allegations of retaliation, consistency is the key. Managers should be equipped to handle and address allegations of retaliation in consistent, meaningful ways, working with all employees involved. Allegations of retaliation should be investigated and addressed thoroughly and in line with corporate policy. Finally, standards of discipline, including the consideration of any mitigating or aggravating factors, should remain consistent for substantiated allegations. If an organization strives for and practices consistency with how it addresses allegations of retaliation, its employees will learn that retaliation in any form is not tolerated. Company culture will only change if there is a significant, consistent response to allegations of retaliation regardless of title or position in the company.

“Once an organization develops guidelines for discipline and then determines what other factors will be considered, it is important that the company stands by and enforces the guidelines.”

V. MONITORING AND PREVENTION

Once an organization has clearly defined the elements of a retaliation claim, it must do what it can to ensure retaliation is not occurring within the work environment. Determining how to monitor for retaliation and establishing means to prevent any actions that may be deemed retaliatory are necessary for any size organization. In order to monitor for retaliation, the company must periodically revisit the professional environment of reporting parties or witnesses who have engaged in protected reporting activity. Monitoring for retaliation is closely followed by working to prevent retaliation, which would demand a continued effort to raise awareness and provide training and resources to prevent and/or mitigate negative employment-related consequences to those who engage in protected reporting activity.

MONITORING FOR RETALIATION WITH A MONITORING PROGRAM

Monitoring for retaliation can be the most difficult part of working to prevent retaliation in your workplace. E&C professionals face many procedural challenges in establishing an effective program to monitor for actions or behaviors that could be found to be retaliatory. Most companies have multiple custodians of information that would be relevant and necessary. For a monitoring program, it is necessary to collect any information related to reporters or witnesses involved in protected reporting activity.

When planning to monitor for retaliation or any other behavior, you first must understand all the sources of data within your company and ensure you have the proper tools to gather, sort and evaluate the data once it is obtained. A procedure then needs to be established to determine the context of data obtained, as well as an evaluation of subjective and objective data. After determining how to collect and evaluate the different types of claims data, E&C must determine which claims have a higher likelihood of leading to retaliation. By comparing objective and subjective data, the information can be evaluated for anomalies that signal possible retaliation or high potential for retaliation. These are the matters that should be part of the monitoring program.

Once the data has been analyzed and matters have been flagged for the monitoring program, E&C should communicate with those involved in the flagged matters to monitor for retaliation. The monitoring program should be a well-developed plan describing that communication with the involved parties. For example, the plan should specify how soon after an investigation or case closure parties should be contacted, as well as the method of contact. E&C may choose to use a direct manner of contact, such as calling or emailing the individual, or an indirect method such as a survey. Standards for the communication must also be decided. Will you ask overt questions specific to retaliation or will you ask questions in a broader, more general manner to determine if the employee feels he or she is being treated fairly after the closure of his or her case? E&C must determine whether it will contact both reporting parties and witnesses or only reporting parties as part of the monitoring program. Finally, a plan must be put into place for what E&C will do if it learns there is possible retaliation occurring.

MONITORING PROGRAM SUGGESTED PRACTICES

While establishing a basic monitoring program is beneficial, there are ways to increase the effectiveness of such a program. Suggested practices to make your organization's retaliation monitoring program more successful include a thorough communication plan, a defined monitoring time frame and a detailed review of objective information. By developing and implementing these practices, your organization's monitoring program will likely be more successful.

Initial communication with the reporting party and any witnesses involved in the initial matter is the first step in monitoring. A preliminary survey, completed in the days following a closed investigation, will provide the first insights into whether the parties have any concerns about their work environment immediately following the case closure. An ethics officer should contact any reporting party who articulated concerns in the survey to obtain details and determine if any steps need to be taken to address the situation. Further and additional communication through a later survey or through more direct conversations, as discussed previously, could occur after more time has passed since the case closed.

Another suggested practice is to monitor closed cases for a specified, reasonable time period. Retaliation is not always evident immediately and can develop and occur months after the initial protected reporting activity. Because of this, an ideal monitoring program would review matters for at least six months and up to two years. During this time, the case should be periodically reviewed, with E&C being cognizant of the initial report and remaining attuned to any developments in the work environment of the reporting party or witnesses.

An ideal practice is to combine subjective information, such as the investigator flagging a record or E&C deciding certain parties may be more likely to retaliate, with objective data. Objective data could include human resources information such as grade-level changes, department reassignments, performance improvement plans, or other personnel action and information. E&C should establish criteria to determine if subsequent contact is needed with the reporting party. For example, if objective data is evaluated and the individual's performance rating drops significantly after the case is closed, or the reporting party's position is downgraded, communication through the monitoring program may be prudent.

These suggested practices will require more resources from E&C; however, their implementation will strengthen an organization's retaliation monitoring program. Whatever methods are chosen, it is crucial for the program itself to be continually evaluated. E&C must be willing to change and adapt the monitoring program as the company culture changes. Ultimately, the goal of a successful monitoring program should be to afford a reporting party or witness the opportunity to raise any concerns or reassure E&C that there is no urgent need to reengage.

PREVENTION OF RETALIATION THROUGH A PREVENTION PROGRAM

Prevention of retaliation requires that employees at all levels are aware of what the company views as retaliation. This highlights the importance of an awareness program. Messaging around retaliation and the measures against it must be consistent with company culture for the message to take hold. Ensuring retaliation is clearly defined, offering consistent messaging, developing relevant education and discussing retaliation as early as an initial investigation are ways in which an organization can work to prevent retaliation.

An effective prevention program begins with a well-defined issue. An organization's definition of retaliation should be derived from a consensus of internal stakeholders, including E&C and the legal department. Not only should retaliation be defined, but a stand-alone anti-retaliation policy should be created. This policy should be easily and readily accessible, should address retaliation, and should explain the measures the company takes to prevent retaliation, as well as the consequences and disciplinary guidelines for those found to be engaging in retaliatory activities or behaviors. Ideally, the policy should include relevant examples of retaliation and possibly real scenarios from your company so employees can understand what retaliation looks like. If it is not feasible to have a stand-alone anti-retaliation policy, including the definition of retaliation and any existing policy in the code of conduct or other relevant policy is also a sound practice. If it is necessary to include retaliation in multiple policies, ensure the messaging is consistent across all resources.

Anti-retaliation measures should exist in more than just policy. An effective prevention program includes messaging from leaders at all levels, from the chief executive officer to the department head to the supervisor. E&C officers should support and collaborate with these leaders to ensure that the message is repeated and consistent at all levels. A suggested practice to ensure the message on anti-retaliation occurs is for E&C to create a calendar where messaging on topics of interest, including anti-retaliation, are scheduled for certain dates. Scheduling different leaders at varying levels within the company to relay the messages will help ensure a consistent message is shared yet still provide variety to keep the interest of employees.

It is important to educate employees about the company's policy and stance on retaliation. A best practice is to reiterate the company's policy through multiple platforms. Examples of different platforms that may be used for sharing the policy include internal articles, intranet messages, leader blogs and training modules in a layered learning approach. For example, employees could receive retaliation training in a dedicated, annual course, and the material could be reiterated in other compliance training courses within the organization.

Leaders or managers may require additional, targeted trainings on retaliation. A focused retaliation awareness training for leaders may assist them in recognizing potential retaliatory actions and prevent them from engaging in such behaviors. Training of leaders underscores the company's commitment to protecting and valuing the report and the reporter, which will, in turn, improve company culture around anti-retaliation.

Prevention measures can begin as early as the investigation into the initial claim. Reassuring the reporting party and witnesses during the investigation about the company's stance on retaliation is the first step in preventing retaliation as doing so only increases awareness. The investigator's opening and closing remarks with reporting parties and witnesses could include a standard reminder statement of the company's anti-retaliation policy and the ways to report concerns of retaliation after the investigation's closure. Similarly, the subjects of the investigation should also be reminded of the company's anti-retaliation policy. Notifying employees that the organization monitors reports of misconduct for any potential retaliatory behavior could act as a further deterrent.

It is not likely that all retaliation will be prevented, but strong E&C organizations take active steps toward prevention through messaging and education. By clearly defining retaliation and sharing specific examples of it, companies can provide employees with an understanding of what retaliation looks like and how it occurs. Through consistent messages from leaders at the top of the company on down, employees learn that the organization takes retaliation seriously. Employees are reminded of the company's stance on retaliation and behaviors to avoid through repeated and updated education and trainings. Multiple small steps toward prevention will improve awareness of retaliation, and that awareness will lead to culture change.

BEST PRACTICES HIGHLIGHTS

BEST PRACTICES

- Clearly articulate your company's retaliation policy
- Address both subtle and overt retaliation
- Address retaliation by both managers and peers
- Build awareness of the company's retaliation policy
- Identify the means of reporting retaliation
- Investigate allegations of retaliation
- Address the expectations of parties involved in retaliation complaints (employees, witnesses, subjects, management)
- Publicize the retaliation policy and means of reporting via multiple avenues to increase awareness
- Articulate the expected response by management: investigation, discipline
- Provide training on the policy, such as how to receive complaints and how to react to complaints
- Establish clear disciplinary guidelines that include consideration of both mitigating and aggravating factors
- Monitor data on factors that contribute to retaliation and review the data regularly to identify anomalies and patterns
- Follow up with employees who have reported retaliation
- Establish a culture that does not tolerate retaliation

SUMMARY

Retaliation in the workplace is clearly behavior that cannot be tolerated. Defining retaliation, describing the forms it can take and communicating how the company will respond are key to a healthy company policy. Companies striving for excellence recognize this and implement policies accordingly.



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