

Evaluating a Workplace Incident for Retaliation

4 Required Elements to Establish Retaliation	Fact Finding Questions to Evaluate a Workplace Incident for Retaliation
<p>Protected Activity To be protected from retaliation, a worker must exercise a right provided by law.</p>	<p>Who: Who engaged in the protected activity? What: What specific protected activity was involved? Where: Where did the protected activity take place? When: When did the protected activity occur? When was concern raised? Why: Why did the individual engage in this activity? What prompted it? Why did the Complainant believe their concern was a protected activity? How: How was concern raised? (Email, In-person, Text message) Immigration Threat: Did the workers or a coworker report any unlawful employment practices (wage theft, safety violations, etc.) before the immigration threat was made? Was the worker involved in any organizing, participating in any investigations or filing complaints with any agencies?</p>
<p>Employer Knowledge The employer must have knowledge directly or through a representative of the employer of the worker's protected activity.</p>	<p>Who: Who knew about protected activity? What: What evidence exists that someone was aware of the protected activity? Where: Where does the evidence exist? (employee or employer possession, email, someone's phone) When: When did employer become aware of the protected activity? Why: Why would they be aware of the protected activity? (Is it their responsibility to know that information?) How: How did the employer become aware of the protected activity? Immigration Threat: Did the employer know of the immigration status of the worker or assume their status or that of their family member? Were any comments made about the worker or their family member's immigration status or documents?</p>
<p>Adverse Action A negative action taken by an employer against a worker for engaging in a protected activity.</p>	<p>Who: Who made the decision to take the adverse action? (name and job title) What: What was the adverse action(s) taken? Where: Where did the adverse action occur? (Office building, private office, in-person meeting, in a virtual meeting or phone conversation) When: When did the adverse action(s) take place? When in the timeline of events did the adverse action occur relative to the protected activity? How: How was the adverse action communicated? (Phone call, email, text, letter, in-person or virtual meeting) Immigration Threat: Did the employer threaten to contact or actually contact immigration authorities? Did the employer request or reverify immigration documents at a time or in a way not required?</p>
<p>Causal Relationship A causal link between the protected activity and the adverse action must be established.</p>	<p>Who: Who knew about the protected activity? Who took the adverse action? What: What reasons would the employer give to justify the adverse action? When: When did the adverse action occur? How: How much time has passed between protected activity and adverse action? Immigration Threat: Did the employer threaten to contact or contact immigration authorities? Did the employer request or reverify immigration documents at a time or in a way not required?</p>