



Investigator Roundtable: Understanding Retaliation Cases

Exploring Protected Activity,
Material Adversity, and Prevention

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What is Retaliation?



Retaliation occurs when an employer takes **adverse action** against an individual for engaging in a **protected activity**.

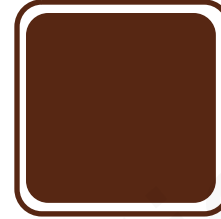


It is unlawful under laws such as **Title VII, Title IX, the False Claims Act, and the Whistleblower Protection Act**.

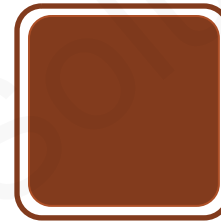


Retaliation can occur **even if the original complaint (discrimination, harassment, etc.) is unproven**, as long as the complaint was made in **good faith**.

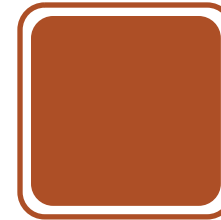
WHAT COUNTS AS A PROTECTED ACTIVITY?



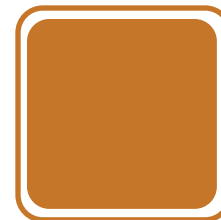
Opposing unlawful conduct: Complaining about discrimination, harassment, or unethical actions



Participating in an investigation: Serving as a witness or providing supporting evidence



Requesting accommodations: Based on disability, religion, or pregnancy



Reporting violations: Such as fraud, safety hazards, or other legal noncompliance

WHAT IS A “MATERIALLY ADVERSE” ACTION?

- An action is **materially adverse** if it **dissuades a reasonable person** from engaging in a protected activity.
- These actions often play a critical role in proving that retaliation occurred.
- **Examples of materially adverse actions:**
 - Termination, demotion, pay reduction
 - Unwarranted discipline or negative performance evaluations
 - Exclusion from meetings, projects, or career opportunities
 - Hostile treatment, threats, or intimidation

HOW DOES A RETALIATION INVESTIGATION DIFFER FROM HARASSMENT OR DISCRIMINATION?

Harassment/Discrimination Investigations:

Focus on whether the complainant experienced unfair treatment based on a **protected characteristic** (race, gender, age, etc.).

Retaliation Investigations

Focus on whether a **negative action** was taken because of **protected activity**.

The challenge is often **proving causal connection** between the complaint and the adverse action.

ACTIVITY: “PROTECTED ACTIVITY OR NOT?”

Understanding protected activity is crucial in determining whether a retaliation claim has merit.

Why is this important?

- Not every workplace or academic complaint qualifies as **protected under the law**.
- Investigators must correctly identify whether an employee, faculty member, or student was **engaging in a legally protected activity** before assessing if retaliation occurred.
- **Failing to recognize protected activity** can result in improper case assessments, flawed investigative findings, and potential legal exposure for the institution.

ACTIVITY #1: INSTRUCTIONS

You will be presented with a series of scenarios involving faculty, staff, and students in a university setting. Your task is to decide:



Is this a protected activity under retaliation laws?
(Yes or No)



Why or why not? Consider whether the complaint or action relates to **discrimination, harassment, whistleblowing, or other legal protections.**




How would you investigate further? What **documents, interviews, or contextual factors** would you need to review?

SCENARIO 1: FACULTY WHISTLEBLOWER

- A tenured professor reports to the university's compliance office that the department chair is **pressuring faculty to change grades** for student-athletes to maintain eligibility. Two months later, the professor's request for a **sabbatical is denied**, despite meeting all eligibility criteria.

 **Protected Activity?**

 **Discussion Question:** How would you investigate whether the **denial of sabbatical** was **retaliatory** or based on legitimate institutional needs?

SCENARIO 2: GRADUATE STUDENT VS. PRINCIPAL INVESTIGATOR

A Ph.D. candidate files a **Title IX complaint** against their **Principal Investigator (PI)**, alleging gender-based harassment in the lab. Three weeks later, the PI **removes them from a research grant project**, citing “performance concerns” without prior documentation.

✅ **Protected Activity?** → Yes or No?

⚠️ **Potential Retaliation?** →

🤔 **Discussion Question:** What type of **evidence** would be necessary to determine **whether this action was retaliation or a justified academic decision?**

SCENARIO 3: STAFF EMPLOYEE VS. UNIVERSITY LEADERSHIP

A university IT specialist **files a formal ethics complaint** alleging that a senior administrator has been **improperly awarding contracts to a relative**. Six months later, the IT specialist is **placed on a performance improvement plan (PIP)**, despite receiving **positive performance reviews** in prior years.

✓ **Protected Activity?** → Yes or No?

⚠ **Potential Retaliation?** →

🤔 **Discussion Question:** How would you **investigate whether the performance concerns are legitimate** or **pretext for retaliation?**

ACTIVITY #2: “MATERIALLY ADVERSE OR JUSTIFIED?”

In the following activities, we will explore scenarios where the line between **adverse action** and **retaliation** may seem unclear, and we'll work together to identify which actions could be **materially adverse**.

SCENARIO 1: FACULTY RESEARCH FUNDING CUT

- A professor **submits a complaint** to HR, alleging that their department chair is discriminating against women in research grant allocations. Two months later, the professor's **research funding is reduced**, while other faculty members in the department receive an increase. The university states that **budget constraints** were the reason for the reduction.

Discussion Questions:

- Does this action qualify as **materially adverse**?
- What evidence would help determine if this was a **budget-driven decision** or **retaliation**?

SCENARIO 2: STUDENT ORGANIZATION LEADERSHIP CHANGE

A student leader of an LGBTQ+ advocacy group **files a Title IX complaint** against a faculty advisor, alleging inappropriate comments. Weeks later, the student is **removed from their leadership position** in the organization, with administrators citing a policy violation unrelated to their complaint.

Discussion Questions:

- Would this removal discourage a reasonable person from engaging in a protected activity?
- How would you determine whether this action was pretext for retaliation?

SCENARIO 3: ADJUNCT PROFESSOR'S COURSE LOAD REDUCTION

An adjunct professor **participates in a campus-wide effort** to push for better working conditions. The next semester, they receive **fewer course assignments**, while other adjuncts with less experience are assigned additional sections. The department states that student enrollment numbers dictated course allocations.

Discussion Questions:

- How would you determine whether the **course reduction was retaliatory** or based on legitimate enrollment changes?
- What documentation would you request?

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