

HUMAN RESOURCES

HOW TO AVOID EMPLOYEE RETALIATION CLAIMS

RETALIATION IS the most common employment-related claim filed with the U.S. Equal Employment Opportunity Commission and OSHA and often accompanies discrimination, harassment complaints, workplace injury and work safety whistleblower complaints.

These claims can be more difficult to defend than the underlying allegation because courts interpret retaliation broadly and juries closely scrutinize timing and intent. As a result, these cases can be costly to defend even if the complaint is found to be meritless.

Retaliation occurs when an employer takes an adverse employment action against a worker because that individual engaged in protected activity, including termination, demotion, suspension, denial of promotion, reduced hours or reassignment to a less desirable shift.

It can also involve more subtle conduct such as heightened scrutiny, exclusion from meetings or workplace ostracism if it would dissuade a reasonable person from raising concerns.

Urgent: New Notice Requirement

IF YOU have not yet distributed the state's new required "Workplace Know Your Rights" notice to your workers, you've missed the Feb. 1 deadline to do so and need to get on it immediately.

California's Workplace Know Your Rights Act (SB 294) mandates that employers provide all employees with an annual, stand-alone written notice detailing key workplace rights, including immigration protections, union organizing, workers' compensation and law enforcement interactions. Under the law, notices must be distributed by Feb. 1, 2026, and to new employees upon hiring.

One more deadline: The law also requires employers, by March 30, 2026, to give employees the opportunity to designate an emergency contact and indicate whether that contact should be notified if they are arrested or detained at work.

The Labor Commissioner has issued downloadable templates in [English](#) and [Spanish](#).

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Protected activities

- Filing or threatening to file a discrimination charge.
- Reporting harassment to a supervisor or human resources.
- Participating in an investigation or testifying in a proceeding.
- Requesting a reasonable accommodation for a disability or religious practice.
- Taking leave under the Family and Medical Leave Act.
- Reporting a workplace injury or filing a workers' compensation claim.
- Raising workplace safety concerns under the Occupational Safety and Health Act.

How employers can reduce their risk

- Publish and regularly communicate a clear anti-retaliation policy.
- Train managers and supervisors on what constitutes protected activity and prohibited conduct.
- Promptly investigate complaints. Document the process thoroughly.
- Keep knowledge of complaints on a need-to-know basis.
- Conduct follow-up check-ins after investigations close.
- Ensure discipline is consistent with past practice.
- Review the timing of employment decisions if they occur after a worker raises issues.
- Use documentation that is factual.



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