



# Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

## FACT SHEET: Addressing Retaliation

### As a person with a disability, does the law protect me from retaliation?

**Yes.** Under the Americans with Disabilities Act (ADA), employers are not allowed to retaliate against employees or applicants with disabilities.

### What is retaliation?

Retaliation is when an employer takes a negative employment action against you because you are asserting your rights as an employee with a disability.

If you experience retaliation at work and want to file a legal complaint, you need to show that your employer took an **adverse employment action** against you **because** you engaged in **protected activity**. These terms are explained below.

### What is a negative (or adverse) employment action?

A negative employment action, usually called an adverse action, is anything that your employer might do to you to try to stop you from asserting your rights under the ADA.

You *may* be experiencing an adverse action if you are:

- Not hired or promoted
- Fired or demoted
- Suspended or disciplined
- Harassed or subject to increased scrutiny
- Transferred to a less desirable position
- Given a negative employment evaluation

There may be other examples, too.

### What is protected activity?

A protected activity is an activity where employees assert their rights to be free from disability discrimination.

You *may* be engaging in protected activity if you:

- Requested a reasonable accommodation

- Filed a charge of discrimination about disability discrimination with the Equal Employment Opportunity Commission (EEOC), Illinois Department of Human Rights (IDHR) or other government agency
- Filed a complaint to your human resources department or complained informally to your employer about disability discrimination
- Filed a lawsuit about disability discrimination
- Participated as a witness in a charge of discrimination, investigation or lawsuit about disability discrimination
- Refused to take actions that would cause disability discrimination

There may be other examples, too.

### **How do I show that my employer's adverse action was because of my protected activity?**

Proving that the adverse action was **because of your** protected activity is often referred to as **causation**. Showing causation is the most difficult part of a retaliation claim. Here are some ideas of how you might show causation:

- *Comments.* Did your employer make any comments, either directly or indirectly, suggesting that the negative action was because of your protected activity? Or expressing frustration with your protected activity?
- *Timing.* Did your employer take the negative action immediately or soon after you engaged in protected activity? Suspicious timing can help establish causation.
- *Knowledge.* Did your employer know that you engaged in protected activity? If not, it will be difficult to show causation.
- *No other explanation.* Does your employer have any other reasonable explanation for its negative action? If you can show that there was no other reason for your employer's negative action, you will have a stronger claim.
- *Different treatment.* If your employer does point to a specific reason for its negative action, do you know of other employees in similar jobs who were not disciplined for similar reasons? This is called showing that you are treated differently than someone who is similarly-situated.

### **Can I ever be disciplined or terminated after engaging in a protected activity?**

Yes. Even if you assert your ADA rights, your employer is still allowed to discipline or fire you if it would have done so anyway for reasons that are not retaliation or discrimination.

*Compare these examples:*

- You are having some trouble at work so your supervisor had a meeting with human resources to discuss your performance and they started working together on a performance improvement plan. Before they finished making this plan, you filed a

discrimination complaint with your human resources department. After you file your complaint, you are placed on a performance improvement plan. Most likely, your employer's decision to place you on a performance improvement plan was not retaliation because your employer was planning on doing it before you filed your complaint. In other words, your employer did not place you on the performance plan *because* you filed a complaint.

- You have a great performance record. However, right after you asked for a reasonable accommodation, your employer fired you and said it was because of your job performance. Most likely, your employer's decision to fire you was retaliation because your employer was not planning on doing so until you requested a reasonable accommodation. In other words, your employer fired you *because* you requested a reasonable accommodation.

### **What if I experience a negative employment action because I complained about an issue other than disability discrimination?**

**It depends.** While the ADA only covers issues about disability and disability discrimination, there are many other laws that protect employees from retaliation as well.

If there is a law that protects your conduct, then you may have a claim for retaliation under that different law. A couple of examples:

- If your complaint has to do with another protected class, like race, national origin, sex, gender, or religion, you may have a retaliation claim under Title VII of the Civil Rights Act.
- If your complaint has to do with an action protected by another law, such as the Federal Labor Relations Act, you may have a retaliation claim under that law.

If there is no law that protects your conduct, then you most likely do not have a claim for retaliation.

### **I think I am being retaliated against. What should I do?**

Keep a record of any action or behavior that you think is evidence of retaliation, including the date, time, place, and witnesses. See the Employment Rights Fact Sheet on [Best Practices for Documenting Discrimination](#).

### **I want to file a lawsuit or start legal action. What do I do?**

Your first step is to file a charge of discrimination with either the Equal Employment Opportunity Commission (EEOC) or the Illinois Department of Human Rights (IDHR). You must file this charge within 300 days of the date of the retaliation.

- Tip: If you filed a charge of discrimination and later experienced retaliation, you will want to either amend your charge or file a second charge about the retaliation.

See the Employment Rights Fact Sheet on [How to File a Charge of Discrimination](#).

**Where can I learn more?**

EEOC Documents:

- [Questions and Answers: Enforcement Guidance on Retaliation and Related Issues](#)
- [EEOC Enforcement Guidance on Retaliation and Related Issues](#)

**EMPLOYEE WORKSHEET: Addressing Retaliation**

Use this worksheet to help you brainstorm about your retaliation claim.

**Adverse Employment Action:** \_\_\_\_\_

**Protected Activity:** \_\_\_\_\_

**Causation:** \_\_\_\_\_

Employer comments: \_\_\_\_\_

Suspicious timing: \_\_\_\_\_

Employer knowledge of protected activity: \_\_\_\_\_

No other explanation: \_\_\_\_\_

Being treated differently from other employees: \_\_\_\_\_

Other evidence of causation: \_\_\_\_\_



## **DO YOU HAVE A QUESTION?**

Contact Equip for Equality's Employment Rights Helpline

**1-844-RIGHTS-9** (toll free) or (844) 744-4879

800-610-2779 (tty)

[employment@equipforequality.org](mailto:employment@equipforequality.org)

[www.equipforequality.org/employment](http://www.equipforequality.org/employment)

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Employment Rights Helpline seeks to empower individuals with disabilities to advocate effectively. This publication is made possible by funding support from The Chicago Community Trust, the U.S. Department of Health and Human Services, the Administration on Intellectual and Developmental Disabilities and the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration; the U.S. Department of Education, Rehabilitation Services Administration; and the Social Security Administration. The contents of this publication are solely the responsibility of Equip for Equality and do not necessarily represent the official views of any of these agencies.

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