

# Independent CAP

## Client Assistance Program



CAP AT EQUIP FOR EQUALITY

## ADA Employment Rights Series

# How to Deal With Retaliation

This fact sheet answers:

- What Is Retaliation?
- What Is Protected Activity?
- What Should I Do if I Think I Am Being Retaliated Against?
- And More

## Does the Law Protect People with Disabilities 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 your employer takes an **adverse employment action** against you **because** you engaged in **protected activity**. These terms are explained below.

## What Is an Adverse Employment Action?

An adverse (negative) action is anything your employer does to try to stop you from using ADA rights. Examples:

- Not getting hired or promoted
- Being fired or demoted
- Getting suspended or disciplined
- Being harassed or put under more scrutiny
- Being moved to a less desirable position
- Getting a negative performance evaluation

## What Is Protected Activity?

Protected activity is anything you do to use your ADA rights to be free from disability discrimination. Examples:

- Asking for a reasonable accommodation
- Filing a charge of discrimination
- Filing a complaint with human resources
- Complaining informally to your employer
- Filing a discrimination lawsuit
- Acting as a witness in a charge of discrimination
- Refusing to do something that would be disability discrimination

## How Do I Show My Employer's Adverse Action Was Because of My Protected Activity?

Proving an adverse action was because of a protected activity is called causation. This is the most difficult part of a retaliation claim. Here are some ways to show causation:

**Comments.** Did your employer make any comments suggesting that the negative action was because of your protected activity? Did your employer say anything about being frustrated with your protected activity?

**Timing.** Did your employer take the negative action right after you did a protected activity?

**Knowledge.** Did your employer know that you engaged in protected activity? If not, it will be hard 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 doing the same thing? 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 use 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.

Think about these examples:

You are having trouble at work. Your supervisor had a meeting with human resources to talk about your performance and they started working together on a performance improvement plan (PIP). 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 PIP. Most likely, your employer's decision to place you on a PIP was not retaliation because your employer was planning on doing it before you filed your charge. In other words, your employer did not place you on the PIP *because* you filed a complaint.

You have a great performance record. But 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 asked for 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 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. Think of these 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.

## What Do I Do if I Think I Am Being Retaliated Against?

Keep a record of any action or behavior that you think is evidence of retaliation, including the date, time, place, and witnesses. See CAP's "[Best Practices for Documenting Discrimination](#)" fact sheet to learn more.

## How Do I File a Lawsuit or Start Legal Action?

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.**

If you filed a charge of discrimination and later experienced retaliation, you should amend your charge to include a claim of retaliation or file a second charge about retaliation.

See CAP's "[How to File a Charge of Discrimination](#)" fact sheet to learn more.

## Where Can I Learn More?

EEOC Documents:

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

## Employee Worksheet Addressing Retaliation

Use this worksheet to plan 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: \_\_\_\_\_



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## Have More Questions?

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