'Mixed-motive' retaliation case: Who pays attorneys' fees?

In some rare cases, employers can win a case in which they disciplined or terminated an employee for illegal reasons. However, they’ll have to show that they could have done the same thing for legitimate reasons. Usually, the employer has to pay the employee’s legal costs.

But it’s been an open question whether that’s true in “mixed-motive” retaliation cases—that is, when an employee was disciplined in retaliation for protected activity, but could have been disciplined for legitimate reasons.

Now the 5th Circuit Court of Appeals has clarified that the employer isn’t on the hook for employee attorneys’ fees.

**Recent case:** Anthony complained about discrimination and was disciplined, in part, for doing so. A jury concluded that the employer would have disciplined Anthony for other, legitimate reasons anyway.

Anthony’s attorneys argued the employer should pay the legal fees. The 5th Circuit Court of Appeals disagreed. It ruled that while a so-called mixed-motive decision based on discrimination means the employer pays legal fees, that’s not the case for mixed-motive retaliation cases. (*Carter v. Luminant Power Services*, No. 12-10642, 5th Cir., 2013)

**Final note:** This decision will make it harder for employees to tack on retaliation claims to discrimination lawsuits in hopes of making a better case for having the employer pick up the legal fees. It should discourage at least some frivolous lawsuits pursued by hungry lawyers who take cases they know they might lose just for the chance to collect hefty attorneys’ fees.