

Fighting fire with fire: Is it wise to countersue?

"Can't we sue him for this?"

That's what many employers say after being hit with what they believe is a frivolous employee lawsuit.

The First Amendment protects the rights of companies to seek such redress in court. Employers can sometimes prevail but, in most cases, a counterclaim is not a smart move. Three reasons:

First, your efforts are unlikely to be successful unless there is a strong factual basis for the counterclaim. (The fact that the employer wins the original case doesn't necessarily mean the employee's case was frivolous.)

Second, a decision to sue an employee may detract from your otherwise strong defense—and add to your legal costs.

Finally, and maybe most important, a countersuit filed out of sheer anger against the employee may actually be considered retaliation, which would add additional liability.

Tip: Just the mention of a counterclaim could make employees think twice about pursuing a weak case. Some management attorneys ask employees during depositions whether they realize that they could be ordered to pay the employer's costs and attorneys' fees if the case is deemed frivolous.

Online resource: Read an attorney's [full analysis](#) of the countersuit strategy.