

# Inequitably reducing or denying bonus may be retaliation

As employers, we would like to think employees would be grateful for bonuses no matter the amount. But employees may perceive a smaller than expected bonus (or a bonus denied) as retaliation for engaging in protected activity. If a supervisor who knows an employee complained about alleged discrimination withholds a bonus or authorizes a smaller bonus than the one recommended by an immediate supervisor, that may be grounds for a lawsuit.

Simply put, anything that looks like retaliation may lead to a lawsuit, and reducing or eliminating a bonus—unless done across the board—looks suspect.

**Recent case:** Wilma Vialpando complained that she was the victim of sex and national origin discrimination. When a project she had worked on with a colleague became the basis for a bonus, she expected to get the amount her immediate supervisor recommended: \$5,000. When she got \$2,000, she said it was retaliation and sued.

A jury agreed, awarding her \$7,000 in damages. Vialpando's employer asked the judge to throw out the award, arguing that a reduced bonus, even if it were "punishment" for complaining, simply wasn't an adverse employment action. The court disagreed. It said any action that would dissuade a reasonable person from complaining about discrimination could be retaliation.

It didn't help matters that Vialpando's co-worker got the full \$5,000. Plus, the supervisor who reduced the bonus had never before second-guessed a recommended bonus amount. The judge then made the reduced bonus even more expensive when he ordered the employer to pay Vialpando's attorneys \$40,000 for their services. (*Vialpando v. Johanns*, No. 05-CV-01904, DC CO, 2008)