

Serial complainer? She probably can't show retaliation

Employees who file discrimination complaints—whether internally, with a state or local anti-discrimination agency or with the EEOC—can claim retaliation if they can show that their employers took actions that would dissuade reasonable employees from complaining in the first place.

But employees who constantly file complaints probably won't be able to show retaliation for all but the most egregious punishments.

Here's why: A reasonable judge will look at the employee's complaint history. If she obviously has no trouble filing complaints, the court will likely conclude that whatever the employer is alleged to have done, it certainly didn't dissuade this particular employee from complaining—again, and again.

Recent case: Angela Sykes, who is black, works as a police communications officer. She is the only black female employee at her station and the only black communications officer on the force. She alleged that she worked in a racially hostile environment and filed numerous complaints with state agencies, the EEOC, her union representatives and the internal Bureau of Integrity and Professional Standards.

Finally, Sykes got to court with one of her complaints, which alleged that her latest evaluation was lower than she deserved because she was being punished for complaining. But the court dismissed her case. It reasoned that whatever a reasonable employee might think, it was obvious that nothing kept this particular employee from filing multiple discrimination complaints. (*Sykes v. Pennsylvania State Police, et al.*, No. 07-1494, 3rd Cir., 2008)

Final note: The court also said that a lowered performance evaluation isn't enough to constitute retaliation. It has to be accompanied by a lost promotion, bonus or other tangible result. Sykes would have to show that she lost out on transfers or other opportunities because of the lowered evaluation *after* she showed a connection between her complaints and the evaluation.