

Warn bosses: Keep snide comments to yourself

Employees who file discrimination complaints with the EEOC or the Pennsylvania Human Rights Commission may worry about their employer's reaction.

However, they probably know that any adverse action their employer takes could amount to illegal retaliation. If they have a lawyer, they have probably been advised to document any negative supervisor comments or changing work conditions.

Remember, any supervisor comments about a worker's complaint can end up supporting a retaliation claim.

Recent case: Orlando, who is of Colombian heritage, worked as a mechanic for SEPTA, the Philadelphia-area transit agency. He quit following what he claimed was a hostile work environment and his employer's response to an EEOC complaint Orlando filed.

He claimed that as soon as his supervisor found out about the complaint, he lost overtime hours and was assigned to heavy jobs that were made especially difficult because of a pre-existing back problem.

The court dismissed Orlando's hostile work environment claims. However, it did allow two re-taliation counts to proceed. The court reasoned that because Orlando's supervisor allegedly said that he "got what he deserved" for filing the EEOC complaint, there was evidence that the reduced overtime and heavy work might be retaliation. The case now goes to trial. (*Gaitan v. SEPTA*, ED PA, 2017)

Final note: Even if an original discrimination complaint proves to be without merit, punishing an employee who complained can create liability for retaliation. The worker does not have to prove he was discriminated against to prove he was retaliated against.