

Beware retaliation if worker has been involved in government inquiry

In order for an employee to claim he or she suffered retaliation, some form of protected activity has to have occurred to precipitate the unlawful punishment—a demotion, pay cut, termination, adverse shift change or something similar. What constitutes protected activity depends on the specific law under which the employee claims protection.

It's not enough to merely complain about working conditions, as this recent case shows.

Recent case: Richard worked in the energy industry. His employer launched an internal investigation into alleged improper per diem practices and unauthorized travel expenditures. Richard was implicated in the investigation, and was fired.

He sued, alleging that he had been retaliated against in violation of the Energy Reorganization Act, a federal law that “protects energy workers who report or otherwise act upon safety concerns.”

The court tossed out his claim, reasoning that an investigation into travel expenses wasn't safety-related. That meant his participation in the investigation wasn't a covered protected activity. (*Nelson v. DOL*, 9th Cir., 2017)

Final note: Many laws include anti-retaliation provisions. For example, Title VII makes it illegal for employers to retaliate against an employee who files an internal discrimination complaint or who cooperates with an EEOC investigation of another employee's complaint. The Fair Labor Standards Act and other federal workplace laws include similar provisions, as do many state laws and ordinances.