

Tell managers: Don't retaliate against those who complain

One of the easiest ways to land the company in legal hot water is for a manager to punish someone who complains that she's being discriminated against.

It may turn out—and it often does—that no discrimination took place. Yet even in those cases, some supervisors can't resist punishing the messenger, thereby turning a minor matter into a major retaliation case.

Make sure everyone knows: Any action that would discourage a reasonable employee from coming forward with a complaint is retaliation, and retaliation is illegal.

Note: Retaliation isn't limited to individual employees who complain about alleged discrimination. Employees who report that their supervisors wanted them to engage in illegal discrimination may be protected from retaliation, too.

Recent case: Marija Stone worked for Geico Insurance and became concerned that her supervisor wanted to discriminate based on age. But the supervisor wasn't targeting Stone. Instead, Stone felt that her supervisor wanted her to get rid of three employees who were older than 55.

Stone went to the HR department and reported her suspicions. She told HR that her supervisor indicated she wanted Marie Walters (one of the older employees) "gone" because she was "too slow." Stone also told the HR office that when she objected to the order to push Walters and the others out the door, and that Walters might sue, the supervisor said, "Tell Marie Walters I'm not afraid and tell her to bring it on."

Shortly after, Stone found herself being criticized for her appearance and demeanor. Then she was fired.

She sued, alleging retaliation for engaging in protected activity—her report to HR of what she suspected was illegal age discrimination.

A lower court dismissed the case, but the 11th Circuit Court of Appeals reversed. It said Stone had a good-faith, reasonable belief that her supervisor wanted her to discriminate based on age, and therefore her report to the HR office was protected activity. While the appearance and demeanor comments weren't retaliation—the court said they were more akin to "petty slights" that wouldn't make a reasonable employee refrain from reporting possible discrimination—the firing was possible retaliation. The court sent the case back for a jury trial. (*Stone v. Geico General Insurance Company*, No. 06-15470, 11th Cir., 2008)

Avoiding retaliation claims

HR plays a crucial role in preventing retaliation. Here are three steps you can take to protect your organization:

1. **Warn all supervisors and managers about retaliation.** Explain that even if the underlying complaint

is unfounded, as long as it was made in good faith, punishing the person who made the report is illegal retaliation.

2. **Retain the right to review and possibly veto any disciplinary action** or significant job changes such as shift adjustments, demotions or major changes in job duties.
3. **Follow up regularly with employees who have made complaints** to make sure they aren't being punished. Let them know the results of their original complaints. Tell them to report any retaliation right away. Document and date all such conversations.