

# 'Cold shoulder' doesn't add up to retaliation

An employee who can't prove she actually suffered discrimination can still win a retaliation lawsuit—if she can show that her employer retaliated against her for complaining about alleged discrimination. All the employee has to show is that whatever the employer did to retaliate would have dissuaded a reasonable person from making the discrimination complaint in the first place.

That doesn't mean, however, that *anything* negative that happens to the employee adds up to retaliation.

After all, supervisors naturally become a little more guarded and careful around an employee who has charged them with discrimination. And courts aren't likely to view the "cold shoulder" treatment as an act of retaliation.

**Recent case:** Accountant Margee Johnson had to tell her supervisors she had multiple sclerosis after a substance on her Christmas tree triggered a flare-up of her condition. Later, she applied for a promotion to fiscal officer, but was passed over in favor of a male applicant. She immediately suspected that the real reason was her disability or that she was a woman.

Johnson complained to her employer about possible sex and disability discrimination. She claimed her supervisors then started ignoring her questions about work, sitting further away from her at staff meetings, avoiding eye contact and no longer saying hello. She sued, alleging retaliation.

The court dismissed her retaliation claim, reasoning that the sort of treatment she was describing wasn't serious enough to dissuade a reasonable person from complaining. It said "the silent treatment" or other forms of passive behavior aren't serious enough to warrant a lawsuit. (*Johnson v. Weld County*, No. 06-CV-02362, DC CO, 2008)