

## **Workplace Retaliation: Rarely Effective, Often Costly**

Workplace retaliation claims have become increasingly prevalent in recent years. Most federal and state anti-discrimination laws contain retaliation provisions which protect employees when they complain about discrimination in the workplace or participate as witnesses in an investigation. In fiscal year 2007, the Equal Employment Opportunity Commission (EEOC) received 26,613 complaints of retaliation and recovered more than \$124 million in damages on behalf of retaliation plaintiffs. Retaliation claims represented 32.3% of all claims filed with the EEOC in 2007, second only to claims for race discrimination.

Recently, the United States Supreme Court reaffirmed its strong support of retaliation claims and extended protection against workplace retaliation to two more federal civil rights laws, neither of which explicitly protects employees from retaliation. In *Gomez-Perez v. Potter*, the Court held that the major anti-age discrimination law covering federal employees also protects them from retaliation after they complain about age discrimination. Similarly, in *CBOCS West, Inc. v. Humphries*, the Court said that Section 1981 of the Civil Rights Act of 1866 covers claims of retaliation that follow complaints about discrimination on the basis of race.

In light of the growing number of retaliation claims, employers should familiarize themselves with the fundamental requirements of state and federal retaliation laws. Here are some basic points to keep in mind:

- An employer may not fire, demote, harass or otherwise retaliate against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination based on sex, race, color, religion, age, national origin or disability.
- Retaliation occurs when an employer takes an adverse action against an individual because he/she alleged discrimination or participated in a discrimination investigation.
- "Adverse action" includes termination, refusal to hire, failing to promote, threats, unjustified negative evaluations, and unjustified negative references.
- An employer should be cautious to inform only those with a "need to know" when a discrimination complaint is made.
- Before any termination or adverse action is taken, a third party should evaluate whether there is a potential retaliation claim on the horizon.