

JAN

Job Accommodation Network

Practical Solutions • Workplace Success

Accommodation and Compliance Series

Accommodation and Compliance Series: Retaliation

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Introduction

According to the Equal Employment Opportunity Commission (EEOC) in the following publication, retaliation occurs when an employer takes a materially adverse action because an individual has engaged, or may engage, in activity in furtherance of the EEO laws the Commission enforces.

These laws prohibit government or private employers, employment agencies, and labor organizations from retaliating because an individual engaged in "protected activity." Generally, protected activity consists of either participating in an EEO process or opposing conduct made unlawful by an EEO law. A "materially adverse action" covers any employer action that "might well deter a reasonable employee from complaining about discrimination."

Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

After his supervisor denied his accommodation request, an employee went to human resources and made the same accommodation request.

Human resources overrode the supervisor's decision and granted the accommodation request. The supervisor became angry and verbally attacked the employee in front of co-workers. The supervisor was reprimanded for retaliation.

After an employee disclosed her disability and requested an accommodation related to fatigue, her supervisor started scrutinizing her work more than other employees.

He also reprimanded her for conduct that other employees were not reprimanded for. The supervisor's actions resulted in a retaliation charge.

An employee helped a co-worker with a disability report harassment to human resources.

The person doing the harassing was the supervisor of both employees. After the supervisor was reprimanded, she demoted the employee who had helped the co-worker. The supervisor was terminated for retaliating against the employee.

An employee with a disability asked to telework full time, but the request was denied.

The employer stated that the employee's job could not be done effectively if she worked at home full time, but allowed the employee to telework two times a week. The employee disagreed with the employer's decision and filed a complaint for failure to accommodate. In response, the employer discontinued allowing the employee to telework at all. This action constituted retaliation for filing a complaint.

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