focus: retaliation

What the law says

Just about every workplace discrimination law, including the Civil Rights Act, the ADA, the Age Discrimination in Employment Act and the Equal Pay Act, has at least one section designed to protect workers who engage in so-called protected activities.

For obvious reasons, the government wants to safeguard workers who could be retaliated against because they complained about potentially illegal activities.

That's why retaliation has become the most frequently alleged basis in workplace discrimination claims.

Fact: The percentage of EEOC charges alleging retaliation has effectively doubled since 1998.

How to spot it

For a worker to prevail on a claim of retaliation, he or she has to prove three things:

1. The crew member engaged in a protected activity by, for instance, alleging that he or she was discriminated against.

2. The employer took a materially adverse action against the worker, which could include a decrease in pay, for instance, or more often, a termination.

3. The worker can show a connection between the protected activity and the adverse action.

What to do about it

While there are many situations in which a worker has obviously engaged in a protected activity, e.g., filing a discrimination complaint with the EEOC, there are other cases in which the protected activity isn't so obvious.

For example, if a worker is interviewed during an investigation of a coworker's claims of harassment and is fired a short time after the interview, he or she probably has a pretty good retaliation lawsuit.

Another example: A woman asks to wear a religious headscarf. Her boss says it's not allowed. She appeals to upper management, which says she can wear the headscarf.

A short time later, the woman receives her first negative performance appraisal from her supervisor. Chances are, she'd have a strong argument that she was retaliated against for engaging in a protected activity.