



### Retaliation continued

relationship with a spouse's company could both constitute adverse actions.

#### 3. 'Causal connection'

Perhaps the biggest — and most troublesome — change for employers in the guidance is its attempt to expand what constitutes a "causal connection" between a protected activity and adverse action.

It says the EEOC wants to adopt the position that retaliation can be established by creating "a 'convincing mosaic' of circumstantial evidence" that would support the inference of retaliation. Think of this as the "where there's smoke, there's fire" approach. The EEOC even said to create a convincing mosaic it could go back years

into a person's employment history to find evidence of either a protected activity or an adverse action.

**Example:** The EEOC gave an example of a termination that occurred five years after an employee filed a discrimination lawsuit. It said even if a lengthy amount of time had passed between a protected activity and an adverse action, evidence other than temporal proximity could be revealed to establish a causal connection.

#### Best practices for employers

Thankfully, the news isn't all bad for employers. The guidance also offered some best practices employers can employ to minimize the likelihood of retaliation violations.

#### Examples:

- Write an anti-retaliation policy that not only outlines what retaliation is, but also provides specific examples of retaliation that managers and supervisors may not have otherwise realized were legally actionable.
- Provide regular training to executives, managers, supervisors and employees on your anti-retaliation policy.
- Create a mechanism through which employees can report concerns and instances of retaliation.
- Provide a clear explanation that retaliation will be subject to discipline, up to and including termination.
- Preach civility, which can help reduce incidents of retaliatory behavior.

## The Federal Government is Making It Easier For Employees to File Claims

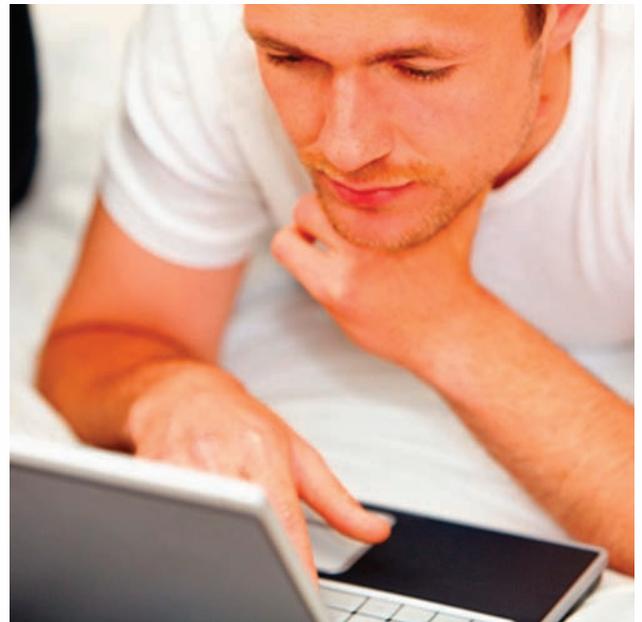
**Reporting you to the feds?** Yup, there's an app for that now. It stands to reason that the easier it is to report wage or civil rights violations, the more people there would be doing it, right? Well, that's exactly the kind of thinking that's driving the development of a new app employers aren't going to like.

The app doesn't have a name yet, but it's being developed by SeeClickFix, a tech company that has already built an app that allows citizens to report non-emergency issues — like potholes and power outages — to the appropriate government officials. So far the app has helped individuals file nearly 2.5 million complaints.

**SeeClickFix** is planning to use that same technology to help employees report violations of workplace law to the appropriate government agencies. Early indications are the app's primary

purpose may be reporting safety violations to the Occupational Safety and Health Administration (OSHA), but it'll likely also be used for reporting other workplace violations — like wage-and-hour abuse.

The app would work something like this: If an employee believes his or her employer is withholding wages from them, the person could input their location and the type of complaint he or she has, and the app would direct the individual to the different agencies that could handle the complaint. Someone from one of those agencies could then review the complaint and, if it's deemed le-



gitimate, the employee may then be guided through the official complaint process. The app is still in the planning phases, so it's not clear when it'll be released to the public.

# Romance is in the Air

Many of you have experienced issues of workplace romance and how that may affect claims of sexual harassment, and rightfully so. Employers must be vigilant when it comes to workplace romance.

In a recent survey, 59% of respondents have participated in some form of office romance — whether it was a one-night stand, a casual relationship, a long-term commitment or all of the above.

In a CareerBuilder poll, 38% of workers said they have dated a co-worker at least once over the course of their career; 17% percent reported dating co-workers at least twice. And 31% percent said they ended up marrying their office amour.

What can companies do to prevent romantic relationships between employees? Although some firms have strict anti-fraternization policies, the real-world answer is – not much.

As long as people spend time together at work, romance is a distinct likelihood. As we mentioned above, a significant number of married people meet their spouses on the job – probably not surprising, considering how much time people spend at work.

Many employers realize a blanket ban on employee dating is unnecessary and unworkable. And more and more organizations have a framework or policy for managing those relationships these days — almost three in four (72%), according to recent research from the Employment Law Alliance.

But it seems many employers steer clear of legislating workplace relationships until they present some kind of problem for individual, team or orga-



nizational productivity.

No doubt, employee dating can carry some undesired consequences: If a relationship goes sour, the breakup can lead to charges of sexual harassment, retaliation and hostile work environment claims.

Other times it's just a matter of hard feelings, and people take sides, further polarizing the workplace. Even if the pairing goes well, it could lead to charges of favoritism from other employees.

Here's the latest thinking on workplace dating policies:

## **Supervisor/subordinate relationships**

Not too tough to spot the pitfalls here: The boss and a direct report begin a relationship. From the moment the pair is exposed as a couple, every move the manager makes is suspect in the eyes of other department workers. Our advice is to never permit a manager and their subordinate to engage in a romantic relationship; the risks are too high for the employer.

## **Manager training**

Addressing a situation when two employees start seeing each other isn't often a manager's favorite issue to deal with. It can feel like an invasion of privacy – after all, aren't two grown-

ups entitled to conduct their romantic lives however they choose?

Office relationships are often the focus of intense discussion – which can lead to workplace distractions and even unprofessional conduct on the part of co-workers. Better to get everything out in the open. Managers must make sure both the romantic partners and their co-workers understand that cooperation and productivity expectations remain unchanged, no matter how personal relationships may develop.

## **Employee training**

Managers aren't the only ones who need to be aware of the rules surrounding workplace romance – employees do, too. Organizations that don't provide guidance about employee relationships do so at their own risk.

While it may not warrant formal training, smart companies give employees a heads up on the kind of conduct that's acceptable.

Employers with 50 or more employees are required by State law to conduct harassment prevention training for all managers every two years. Many employers conduct employee training as well.

***If you are in need of training, please contact us.***

# Medical Marijuana in the Workplace

We are seeing more issues of employees using marijuana for medical purposes. Employers aren't letting the spreading legalization of marijuana at the state level prevent them from creating and enforcing zero-tolerance anti-pot policies — and they have courts in their corner.

A new Society for Human Resource Management (SHRM) survey found that 94% of organizations with operations in states in which marijuana use is legal for either medical or recreational purposes have a formal, written substance abuse policy. On top of that, 82% of organizations that operate in states where both recreational and medical use are legal said they have zero-tolerance for pot use while working.

The consequences for violating the policy? Termination was the most frequent action taken for a first-time violation, cited by 50% of HR pros in states where medical marijuana is legal and 41% of those who work in states where both medical and recreational use is legal.

## What the courts have to say about it

How do these strict anti-pot poli-



cies jibe with laws that say medical and recreational usage is legal? It's actually not as complicated as it would seem.

Courts have routinely said that marijuana is an illegal narcotic on the federal level. As a result, employers have a right to enforce their anti-marijuana policies as they see fit. Pot smokers who come to work high aren't protected by state law. The court said marijuana is an illegal controlled substance under federal law and Safeway "was un-

der no legal obligation to make an exception to its policy for Plaintiff, regardless of his medical marijuana prescription." Case dismissed.

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