

Preventing Retaliation in the Workplace

Recognize. Respond. Resolve.

Preview Only

Participant Materials

These materials are intended for preview purposes only.

Use for training is strictly prohibited.

This product is fully protected by U.S. and International Copyright Law. All text, graphics, sound, code, design, arrangement and content are owned by VisionPoint® Productions, Inc.

Copyright © 2007 VisionPoint® Productions, Inc. All rights reserved.

VisionPoint® and **SMART-START**® are trademarks owned by VisionPoint® Productions, Inc.

These *Participant Materials* may be reproduced for training purposes.

These materials are intended for the personal use of the purchaser and/or end user. All other use, including, but not limited to, resale, rental or commercial use, is strictly prohibited, unless authorized in writing by VisionPoint®.

This product is provided **as is** without warranties of any kind. VisionPoint® and its agents and representatives do not render any legal or professional advice. This product, and any accompanying video, should not be used as a substitute for professional services. If legal or professional advice is needed, please consult with your attorney or professional advisor.

The following program was developed in cooperation with the Employment & Labor Law Practice Group at Dickinson, Mackaman, Tyler, & Hagen, P.C.

This program is educational in nature and should not be relied upon for legal advice.

These materials are intended for preview purposes only.
Use for training is strictly prohibited.

Table of Contents

Pre and Post-Assessment	1
Learning Objectives	2
Video Observation Form: Part 1 - What is Retaliation?	3
Responsibilities and Indicators for Preventing Retaliation in the Workplace.....	5
Video Observation Form: Part 2 - Video Case Study #1: "You're not a team player . . ." 6	
Video Observation Form: Part 2 - Video Case Study #2: "Life's not fair . . ."	8
Video Observation Form: Part 2 - Video Case Study #3: "Getting much sleep?"	10
Situations of Subtle Retaliation.....	11
Situations of Subtle Retaliation.....	12
Video Observation Form: Part 3 - Video Case Study: "The perfect storm . . ."	14
If the Answer is _____, What Is the Question?	16
Focus on the Future.....	18
Suggested Actions	19

These materials are intended for preview purposes only.
Use for training is strictly prohibited.

Pre and Post-Assessment

This workshop will provide you with a basic understanding of key legal concepts and definitions of retaliation, examples of situations that are or have the potential to be retaliation, responsibilities of managers in preventing retaliation and a process for recognizing, responding to and resolving situations before they escalate. Review the statements below to assess your current level of knowledge. For each statement, circle the number in the Pre-Assessment column that reflects your comfort level. At the conclusion of the workshop, you will complete the Post-Assessment column and compare your ratings.

	Pre-Assessment				Post-Assessment			
	Absolutely/ Yes	I think so/Yes	Not sure	No	Absolutely/ Yes	I think so/Yes	Not Sure	No
I can paraphrase a legal definition of retaliation.	1	2	3	4	1	2	3	4
I am able to summarize my organization's policies and procedures regarding retaliation.	1	2	3	4	1	2	3	4
I am able to recognize situations in the workplace that are or have the potential to become classified as retaliation.	1	2	3	4	1	2	3	4
I can articulate my responsibilities as a manager to prevent retaliation in my workplace.	1	2	3	4	1	2	3	4
I can identify common types of overt and subtle retaliatory behaviors.	1	2	3	4	1	2	3	4
I can cite the primary negative impacts of retaliation on organizations.	1	2	3	4	1	2	3	4
I can describe actions of the Recognize. Respond. Resolve. model to prevent situations of retaliation before they escalate.	1	2	3	4	1	2	3	4

Learning Objectives

After completing the program, you will be able to:

- Define retaliation in the workplace
- Recognize situations that are or have the potential to become retaliatory
- Identify common types of overt and subtle retaliatory behavior
- Identify the primary negative impacts of retaliation on the organization
- Prevent and/or stop retaliation using the model: Recognize. Respond. Resolve.

Video Observation Form: Part 1 – What is Retaliation?

Discussion Questions:

As you watch the video, make note of your thoughts concerning the following questions.

1. What are examples of “protected activities”?
2. What are examples of “adverse actions”?
3. What are potential consequences to organizations that fail to prevent retaliation?

4. Based on what you have learned from Part 1 of the video, which definition of retaliation (A , B or C) do you find most meaningful and why?

Preview Only

Key Points:

- ✓ Retaliation is illegal, and we all have a responsibility to make sure that it doesn't happen in our workplace.
- ✓ Retaliation is the fastest growing type of discrimination reported to the EEOC.

Bottom Line:

- ✓ Organizations that fail to prevent retaliation face the potential of millions of dollars in fees and damages awarded in administrative proceedings and lawsuits.

Responsibilities and Indicators for Preventing Retaliation in the Workplace

Listed below are responsibilities of managers in preventing retaliation in their workplaces. The statements do not include indicators that managers are meeting their responsibilities. For example, if you were to shadow a manager over time, what might you observe that would indicate to you that the manager “creates a safe environment and a culture of trust”? Sample indicators may include: employees speak freely with the manager about their concerns; they are constructive in discussions about the organization; they have positive working relationships with coworkers.

Directions for Exercise: Brainstorm two or three indicators that managers are meeting each responsibility listed below. Your facilitator will provide further directions.

-
- Create a safe environment and a culture of trust
 - Take all reports seriously
 - Be observant for possible issues that may be going unreported
 - Respond appropriately and set the tone when a complaint is filed or retaliatory behaviors occur
 - Treat everyone consistently, fairly and respectfully
 - Manage your own emotions and actions
 - Coach others in how to respond and manage their feelings, so they don't retaliate
 - Seek help from HR and legal departments
 - Communicate as needed while maintaining confidentiality
 - Document appropriately; not too much or too little
 - Follow your organization's policies and procedures regarding retaliation

Video Observation Form: Part 2 – Video Case Study #1: “You’re not a team player . . .”

Characters:



Abe – Manager



Dennis – Employee

Discussion Questions:

As you watch the video, make note of your thoughts concerning the following questions.

1. What do you think?
2. Does Dennis have grounds for a claim of retaliation?

3. Or is he simply making an excuse for unsatisfactory job performance?

Preview Only

Key Points:

- ✓ There is a fuzzy line between a perception of retaliation and a reality of retaliation.
- ✓ To prevent claims of retaliation, there should be no surprises when it comes to performance appraisals.

Bottom Line:

- ✓ Make sure that performance review conclusions are based on clearly, appropriately documented facts.

Situations of Subtle Retaliation

Directions: Read the case studies. Your facilitator will lead a discussion of the questions posed. Remember that the purpose of our discussion is to explore the complexity of situations of retaliation and certainly not to suggest legal decisions.

Case Study #1: A new employee joins a group that has worked together for a long time. The work group has a good relationship with their manager, primarily because he allows the group to express opinions and comments that probably wouldn't be acceptable or politically correct anywhere else in the company. Because the behavior offends the new employee, he complains to the manager. The manager dismisses the complaint, telling the new employee that he's not going to change things and risk losing the good relationships that exist within the group. The employee then complains to HR, who begins an investigation into the manager's conduct. Employees in the work group learn of the complaint, figure out who filed it and begin to retaliate against the new employee with hazing, letting some of the air out of his automobile tires, making hang-up phone calls to his house late at night and so forth.

- What do you think? If you were an HR representative investigating the situation, how would you proceed in the investigation of the new employee's complaint? Does the new employee have grounds to make another complaint for retaliation?

Case Study #2: For more than a year, an employee has been covering for her boss's alcohol use on the job out of fear of losing her job. The employee finally uses the helpline to initiate a complaint. The manager finds out and retaliates with a number of subtle actions that make working conditions generally unpleasant for the employee (e.g., micro-manages the employee, denies her good assignments, strictly enforces a policy that was not enforced before, schedules meetings at times that are difficult for the employee to attend).

- If an employee has knowingly participated in a cover up of an act prohibited by the organization, but not by any law, does she still have a right to complain about the manager—and then also complain about the manager's retaliation?

Video Observation Form: Part 3 – Video Case Study: “The perfect storm . . .”

Characters:



Susan – Manager



Angie – Employee



Kahlil – HR Specialist

Discussion Questions:

As you watch the video, make note of your thoughts concerning the following questions.

1. What are indicators that signal the potential for a claim of retaliation?

2. What actions should be taken to prevent the situation from becoming a claim of retaliation?

3. What advice does Kahlil give Susan?

Preview Only

Key Points:

- ✓ Always get help from experts in the organization to investigate claims of retaliation.
- ✓ All actions and decisions must be based on sound business reasons.

Bottom Line:

- ✓ All decisions and actions with employees must be consistent with the organization's policies and procedures.

If the Answer is _____, What is the Question?

Directions: Write your questions to the answers below. Your facilitator will decide if your question is “close enough” to be considered correct. The correct question may be the same for more than one answer.

Example: The answer is: cooperate in an investigation of a complaint about retaliation. The question is: what is a protected activity?

1. The answer is: take all reports seriously
2. The answer is: denied opportunities for recognition or training
3. The answer is: manage their emotions and actions
4. The answer is: millions of dollars in fees and damages awarded in administrative proceedings or lawsuits
5. The answer is: create a safe environment and a culture of trust
6. The answer is: document appropriately: not too much or too little
7. The answer is: refusing to participate in something that is illegal, unethical or unsafe

Focus on the Future

The more immediately you use the knowledge and skills learned in this workshop, the more effective you will be at preventing retaliation in your workplace. Your commitment begins with a plan.

Keep your plan manageable. Begin with two actions. Once you have fulfilled those commitments, you can expand your plan incrementally. Take small steps that you can reasonably accomplish.

Write at least two actions you can take that will improve your understanding of legal concepts of retaliation and to communicate to employees the importance of preventing retaliation in the organization. If you need suggestions for actions, several are offered on the following page.

- Action #1:
- What I need to do to fulfill this action:

-
- Action #2:
 - What I need to do to fulfill this action:

Suggested Actions

- Meet with a representative from Human Resources to review the organization's policies and procedures regarding retaliation and other forms of illegal, unsafe and unethical behavior.
- Review a summary of the Supreme Court decision in the case of *Burlington Northern & Santa Fe Railway v. White* that makes it easier for employees to file and succeed on claims of retaliation.
- Attend available local area workshops and seminars regarding retaliation and other forms of illegal, unsafe and unethical workplace behaviors.
- Ask a representative from your HR or legal department for summaries of retaliation cases and their conclusions.
- Ensure that you are aware of your responsibilities in preventing retaliation in your workplace.
- Schedule meetings with employees several times each year, especially if situations of retaliation are increasing in the organization, to ensure that they:
 - Are knowledgeable of the organization's policies and procedures regarding retaliation.
 - Understand their responsibilities in upholding the organization's policies and procedures regarding retaliation.
- Include as part of the orientation of new employees the organization's anti-discrimination and anti-retaliation policies and procedures.