

## **Department of Labor Issues New Fact Sheets on Retaliation**

January 8, 2012 by [Adam Santucci](#)

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More and more employers are recognizing what employment attorneys have long known. The most prevalent type of employment discrimination claim is not one based on race, sex, religion, disability or age. Rather, it is one alleging unlawful retaliation. In fact, in 2010, for the first time ever, retaliation claims surpassed race discrimination claims to become the most common type of claim filed with the Equal Employment Opportunity Commission (EEOC). This trend is not expected to end anytime soon.

Just before the holidays, the [United States Department of Labor](#) released three new fact sheets offering further guidance to employers on the topic of retaliation under the Fair Labor Standards Act (FLSA), the Family Medical Leave Act (FMLA), and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Each of these statutes contain specific provisions prohibiting employers from taking adverse employment actions against employees for asserting rights covered under these laws.

[Fact Sheet #77A: Prohibiting Retaliation Under the FLSA](#), provides general information concerning the FLSA's prohibition of retaliating against any employee who has filed a complaint or cooperated in an investigation where an FLSA violation is alleged. The fact sheet also incorporates [last year's U.S. Supreme Court decision in \*Kasten v. Saint-Gobain\*](#). There, the Court held that an employee's verbal complaint about alleged wage and hour violations can be sufficient to trigger the anti-retaliation protections under the FLSA.

[Fact Sheet #77B: Protection for Individuals under the FMLA](#), reiterates that employers are prohibited from retaliating against employees who exercise their right to take FMLA leave or any other FMLA right, complain about or oppose any unlawful practices under the FMLA, or participate in proceeding concerning FMLA rights. In addition, the fact sheet provides specific examples of prohibited retaliatory conduct under the FMLA. Examples include: refusing to authorize FMLA leave for an eligible employee, discouraging an employee from using FMLA leave, manipulating an employee's work hours to avoid responsibilities under the FMLA, using an employee's request for or use of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, and counting FMLA leave under "no fault" attendance policies.

[Fact Sheet #77C: Prohibiting Retaliation Under the MSPA](#) articulates that certain agricultural employers may not “intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker” who files a complaint under the MSPA, participates in any proceeding under the Act, or exercises any MSPA right. The fact sheets also identifies what employers are subject to the statute and outlines the MSPA’s enforcement mechanisms.

As you can see, retaliation is hot topic, and retaliation claims are trendy. Now more than ever, employers, and more importantly supervisors and managers, must be aware of the risks of retaliation claims.

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