

**Treasury Documentation****Subject:** Employer Retaliation**For:** EMPLOYEE and  
SUPERVISOR HANDBOOKS**Also See:** ET-03161

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Fair employment laws cannot be effective if employees are afraid to report violations for fear of retaliation. Therefore, Civil Service and Departmental work rules prohibit retaliation to protect employees from reprisals for reporting violations or suspected violations of laws or work rules.

Section 37.2701 of the Elliott Larsen Civil Rights Act of 1976, as amended, states:

“Two or more persons shall not conspire to, or a person shall not:

Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act . . . Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, . . . any right granted or protected by this act.”

Civil Service Rule 2-10 prohibits reprisal against an employee for disclosing a (1) violation or suspected violation of a State or federal law, (2) lawful regulation or rule promulgated by a political subdivision of State of Michigan, or (3) Civil Service rule or regulation.

Department of Treasury (Treasury) Policy ET-03161 and Civil Service Regulation 1.03 prohibits retaliation against any employee reporting an incident of discriminatory harassment.

Treasury shall not discharge, threaten or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report a violation or suspected violation of a law or work rule.

### **What Is Retaliation?**

Retaliation is when an employer unfavorably responds to or takes action against a person because they made a charge, filed a complaint, testified, assisted in or participated in a reported violation against the employer.

The same actions that might bring on discrimination or other violations can also form the basis for retaliation charges. A charge of retaliation stands alone. An employer can be charged with retaliation even if the employee never files formal charges or institutes legal proceedings claiming discrimination. If an employee does file formal discrimination charges, an employer does not have to be found guilty of discrimination to be found guilty of retaliation.

## **Employee/Employer Rights**

**Employees** have the right to:

- Circumspectly gather evidence to prove a suspected violation.
- Ask to meet with management to discuss a violation.
- Complain to anyone about a violation or suspected violation.
- Advocate improved representation for covered classes in a union setting.
- Participate in public demonstrations about violations in the industry.
- Advise co-workers of workers' rights under Title VII or similar laws or work rules.
- Form a one-person picket to protest violations.

**Employers** have the right to:

- Discharge employees for poor job performance.
- Discipline or discharge employees for continually violating established rules, for an accumulation of incidents.
- Question witnesses regarding alleged violations.
- Discharge employees for criminal acts of protest (arson, blocking traffic, vandalism).
- Discharge employees whose lawful actions are excessively hostile (constant, disloyal complaints which cause subordinates to quit or which jeopardize the Department's mission).
- Refuse to meet with activists organizing for civil rights (but do not discipline them for requesting the meeting).

An employer is entitled to take appropriate disciplinary action against an employee for legitimate reasons even if that employee has complained of or reported a violation. The discipline must not result from the complaint. Both employees and supervisors must use care and prudence when dealing with these situations.

## **How to Prevent Charges of Retaliation**

**Supervisors** should:

- Maintain confidentiality in all aspects of the discriminatory harassment complaint process.
- Make sure there is substantiated evidence to justify treatment of employees. (Was a possible discharge of an employee being considered prior to the incidents of alleged reprisals?)
- Review work rules and policies. A seemingly neutral policy may affect employees adversely. (Employees shouldn't need permission, for instance, before they can cooperate with government investigations of discrimination; and nonsupervisory workers should be allowed to talk to attorneys seeking evidence for discrimination claims.)

**Supervisors** should **not** take the following actions against an employee who has reported or complained of a violation or suspected violation:

- Tell other workers to “keep an eye” on the employee.
- Keep attendance records differently on the employee than for other employees.
- Accelerate disciplinary action or dispense unusually harsh discipline on the employee.
- Increase criticism of employee’s work unless there is a substantiated reason.
- Treat employees adversely because of spouse’s or friends’ activities.
- Discharge employees for refusing to testify in supervisor’s favor during investigations.
- Discharge employees based on evidence obtained during retaliatory surveillances.
- Tell applicants not to call a department official to report a violation.
- Refuse to hire applicants on pretext, when the real reason was a reported violation against a former employer.

### **Circumstantial Evidence**

Even when the facts do not establish an open-and-shut case of reprisal, a court may infer it if a supervisor knew of the employee’s participation or opposition and evidence indicated that supervisor’s action:

- Differed from treatment of other employees.
- Changed from treatment of the employee prior to the complaint.
- Followed soon after the participation or opposition.

For example, a supervisor who fires an employee for poor attitude, abusive language or refusal to perform work shortly after that employee engaged in opposition activity should be prepared for intense scrutiny by administrative agencies and the courts. All actions taken by a supervisor should be well documented.

### **Burdens of Proof**

It is the employee’s responsibility to prove that the employer was aware of the employee’s participation or opposition, and that the employee was treated adversely because of it. The employer must give reasons for such treatment, and the employee must prove that these reasons were a pretense. The motives of both employer and employee, and the extent of damage resulting from the employee’s activities, are all crucial factors in proving a violation of the prohibition against retaliation.

**End**