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May 20, 2020

Re: FOIA No.: 820-2020-000371
Retaliation Best Practices

Your Freedom of Information Act (FOIA) request, received on April 06, 2020, is processed. Our search began on April 06, 2020. All agency records in creation as of April 06, 2020 are within the scope of EEOC's search for responsive records. The paragraph(s) checked below apply.

[X] Your request is granted.

[X] You may contact the EEOC FOIA Public Liaison, Stephanie D. Garner, for further assistance or to discuss any aspect of your request. In addition, you may contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer.

The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at (202) 741-5770; toll free 1-877-684-6448; or facsimile at (202)741-5769.

The contact information for the FOIA Public Liaison: (see contact information in the above letterhead or under signature line).

[X] See the attached Comments page for further information.

Sincerely,

/s/Sdgarner

Stephanie D. Garner
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Re: FOIA No.: 820-2020-000371

Comments

This is in response to your Freedom of information Act (FOIA), request. You request records from the RED Staff - Office of Federal Enforcement: Anti-Retaliation Best Practices guidance document and Annotated bibliographies of research supporting each practice for the fourth quarter of FY 2015.

Your request is granted. Attached for your review are two records: Best Practices for Preventing Retaliation (7 pages) and Retaliation Annotated Bibliographies (3 pages).

This response was prepared by Tracy L. Smalls, Government Information Specialist, who may be reached at 202-663-4331.

Best Practices for Preventing Retaliation

Executive Summary

Practice #1: Develop Positive Organizational Culture

Organizations can reduce the likelihood of retaliation by developing a positive culture and climate by: **Creating a culture where aggression is not tolerated** and **creating policies that promote workplace civility.**

Practice #2: Effective Management

Organizations can reduce the likelihood of retaliation through good management practices, such as: **Selecting and developing leadership Equity, Diversity, and Inclusion (EDI) competencies** and **eliminating Reward systems and structures that promote competition.**

Practice #3: Develop organizational procedures that discourage retaliation

Organizations can reduce the likelihood of retaliation through the development of relevant organizational programs and procedures, such as: **Training Managers and employees, implementing a well-developed internal EEO program with transparency, while providing resources (e.g., employee assistance program or omnibus) to support the accuser.**

Proven Organizational Practices to Prevent Retaliation

Practice #1: Develop Positive Organizational Culture

Organizations can reduce the likelihood of retaliation by developing a positive culture and climate by:

A. Creating a culture where aggression is not tolerated

Organizations that foster a climate of aggression and bullying are more likely have managers who abuse power and retaliate when claims are made.

Samnani, A. & Singh, P. (2012). 20 years of workplace bullying research: A review of the antecedents and consequences of bullying in the workplace. *Aggression and Violent Behavior*, 17, 581-589. Retrieved from <http://dx.doi.org/10.10.16/j.avb.2012.08.004>

Organizational civility can be predicted by the perceived levels of collegiality, satisfaction with direct supervisor, whether the workplace environment appeared judgmental, civility expressed in mission/vision statement, emotionality in coping strategies, and frequency of abused authority.

Clark, C.M., Landrum, R. E., & Nguyen, D. T. (2013). Development and description of the Organizational Civility Scale (OCS). *The Journal of Theory Construction & Testing*, 17 (1), 11-17.

Individual and “systemic” factors which contribute to incivility and workplace bullying (WPB) have been identified. Personality factors include: 1) Self-centeredness, immaturity, and/or defensiveness and 2) a lack of interpersonal, coping, and/or conflict management skills. Some systemic factors include: 1) Job with high productivity pressures; 2) embedded hierarchies; and 3) differences in the authority, autonomy, empowerment, roles and values of workers. It is suggested that following actions can help reduce the likelihood of WPB and incivility: 1) Educate all team members on appropriate professional, behavior as defined by the organization’s code of conduct; 2) provide basic business etiquette training (i.e., how interact with others); 3) hold all team members equally accountable for modeling desirable behaviors; and 4) develop and implement *WPB* policies and procedures appropriate for the organization.

Joint Commission. (2008). Behaviors that undermine a culture of safety. *Sentinel Event Alert*, (40). Retrieved from http://www.jointcommission.org/assets/1/18/SEA_40.PDF on August 14, 2015.

B. Creating policies that promote workplace civility

Make certain that organizational policies about discrimination and retaliation are clearly written; when employers neglected to consider how employer harassment policies influence employees' perceptions and responses.

Brake, D. L. (2014). Retaliation in an EEO world. *Indiana Law Journal*, 89, 115-169.

Reducing harassment and retaliation is as easy as P.I.E.: An effective *policy* (P), the *implementation* of that policy (I), and the *enforcement* of that policy (E). Supervisors must report or take action upon learning of harassment, even if the complaint is informal. However, there should be multiple avenues of filing complaints, so that a harassing supervisor can be bypassed. The policy should be properly disseminated, training on the policy delivered, and employees should be required to sign for receipt of the policy. The policy should include an anti-retaliation statement. Enforcement begins with objective investigations and swift correction of the supervisor's behavior is necessary; the intervention should end the harassment.

Jackson, B. T. & Bhatheja, K. (2014). Easy as P.I.E.: Avoiding and preventing vicarious liability for sexual harassment by supervisors. *Drake Law Review*, 62, 653-688.

Establish an organizational climate that encourages civility, while condemning retaliatory behavior. Reinforce the commitment to a civil workplace by stating a summary of the organizational climate in job announcements, realistic job previews, and orientation efforts.

Vodanovich, S. J & Piotrowski, C. (2014). Workplace retaliation: A review of emerging case law. *The Psychologist-Manager Journal*, 17 (2), 71-78.

Practice #2: Effective Management

Organizations can reduce the likelihood of retaliation through good management practices, such as:

A. Selecting and developing leadership Equity, Diversity, and Inclusion (EDI) competencies

Select leaders that do not have a sense of entitlement, as research suggests that those with a sense of entitlement will experience offenses much more emotionally than others and take them much more personally.

Lee, K. & Ashton, M.C. (2012). Getting mad and getting even: Agreeableness and honest-humility as predictors of revenge intention. *Personality and Individual Differences*, 52, 596-600.

Similarly, authoritarian personalities, people who place a high value on status in group settings, are predisposed to retaliation when offended, particularly if that offense is from someone of a "subordinate" status.

Samnani, A. & Singh, P. (2012). 20 years of workplace bullying research: A review of the antecedents and consequences of bullying in the workplace. *Aggression and Violent Behavior*, 17, 581-589.

Coaching leaders to be aware of their own attitudes toward others and their understanding of the concept of bullying and mobbing can help prevent bullying and mobbing as most bullying is perpetrated by managers.

Ferris, P. A. (2009). The role of the consulting psychologist in the prevention, detection, and correction of bullying and mobbing in the workplace. *Consulting Psychology Journal: Practice and Research*, 61 (3), 169-189.

B. Eliminating reward systems and structures that promote competition

In hierarchical organizations, when the victim was of a higher status than the person they perceived had personally offended them (e.g., by an accusation of discrimination), then that victim was more likely to seek revenge. Also, when the victim was of lower status in the general hierarchy of the organization, then the victim was more likely to seek revenge.

Aquino, K., Tripp, T. M., & Bies, R.J. (2001). How employees respond to personal offense: The effects of blame, attribution, victim status, and offender status on revenge and reconciliation in the workplace. *Journal of Applied Psychology*, 86 (1), 52-59.

Highly competitive reward systems may lead to micropolitical/aggressive behavior.

Salin, D. (2003). *Workplace bullying among business professionals: Prevalence, organizational antecedents, gender differences*. Helsinki, Finland: Swedish School of Economics and Business Administration.

Practice #3: Develop organizational procedures that discourage retaliation

Organizations can reduce the likelihood of retaliation through the development of relevant organizational programs and procedures, such as:

A. Training Managers and Employees

Supervisors should be trained on what constitutes retaliatory behavior under the law with special emphasis on issuing poor performance appraisals, providing negative job references, and retaliating against witnesses.

Vodanovich, S. J & Piotrowski, C. (2014). Workplace retaliation: A review of emerging case law. *The Psychologist-Manager Journal*, 17 (2), 71-78.

There can often be confusion between discrimination and general unfairness, so employers should make certain that all employees are aware of the policies and what is required to bring a claim.

Brake, D. L. (2014). Retaliation in an EEO world. *Indiana Law Journal*, 89, 115-169.

A study published in 2014, found that while 67% of employees surveyed reported that their employee rights had not been violated on the job, 76% had actually experienced some form of wage or hour law violation. Likewise, 59% of workers did not know their minimum wage and overtime work rights. Further, only 22% of the sample knew where to file a government complaint. Forty-three percent of employees who filed a justifiable claim had experienced some form of retaliation after the claim was filed; fear of retaliation was the top reason for being afraid to report workplace violations. The researchers suggested that a bottom up approach to EEO law enforcement is inadequate when disadvantaged populations are unaware of their rights, unaware of the EEO process, or desensitized to social inequality. Employees will not file complaints, even if substantiated, when they perceive the benefits of filing to outweigh the gains. Employees should be educated about their rights and the EEO process should be as swift, efficient, and fair as possible in order to increase employee confidence.

Alexander, C. and Prasad, A. (2014) *Bottom-up workplace law enforcement: An empirical analysis*, Indiana Law Journal, 89(3): 1069-1131.

A psychological intervention known as Social Motivational Training (SMT) was developed to promote forgiveness among coworkers, as forgiveness is negatively related to the retaliation likelihood. SMT is rooted in social cognitive theoretical frameworks that address the automatic and effortful aspect of making attributions (i.e., decisions about why things happen). Participants in the training read about how individuals have a tendency to make quick decisions about others' behaviors. Next, participants were asked to recall and write about one of their own personal work events in which they had judged a coworker. Then, the training participants were instructed to think about the original scenario and to generate alternate judgments. Social motivational training enhanced participants' forgiveness of a hypothetical and actual coworker, thus reducing the desire to retaliate.

Struthers, C. W., DUPUIS, R., & Eaton, J. (2005) . Promoting Forgiveness Among Co-Workers Following a Workplace Transgression: The Effects of Social Motivation Training Canadian Journal of Behavioural Science, 2005, 37(4), 299-308.

CREW (Civility, Respect, and Engagement in the Workplace) was an initiative by the VHA's National Center for Organization Development. The initiative featured biweekly 15 to 20 minute CREW meetings on the day, evening, and night shifts were implemented for 6 months with trained facilitators guiding work-group-level dialogue about civility and respect. A pre-training/intervention survey was administered and a post-training/intervention survey was also administered. The results showed that perceived respect, cooperation, conflict resolution, coworker personal interest, coworker reliability, antidiscrimination, value differences, and supervisor diversity acceptance ratings all increased post-training/intervention. Furthermore, Overall perceived civility by the staff nurses in the emergency department scored 4 out of 5 on the Likert-type scale.

Mather, M. (2011). Creating a healthy work environment with civility and respect. *Critical Care Nurse*, 31 (2), 21-22.

CREW is a training intervention designed to increase civility among coworkers. CREW stands for Civility, Respect, and Engagement in the Workplace. The intervention's procedures require employees to meet with colleagues about their work on a weekly or biweekly basis to improve effective interpersonal interactions at work. Trained facilitators provide guidance during these meetings. CREW can reduce incivility from both supervisors and coworkers; the intervention encouraged positive social behavior and discouraged acts that conveyed rudeness and lack of consideration.

Leiter, M. P., Spence Lachinger, H. K., Day, A., & Gilin Oore, D. (2011). *Journal of Applied Psychology*, 96 (6), 1258-1274.

An off-site intervention that brings together employees involved in a conflict together for a dialogue to identify the source of the conflict and to develop strategies to address these problems is effective method of resolving conflicts. The implementation of any resolutions which result from such an intervention should be the responsibility of leadership. Successful implementation of conflict resolution strategies that employees are involved in formulating can lead to increased employee morale and engagement, improved teamwork, and a positive attitude among the workforce.

Ahuja, J. & Marshall, P. (2003). Conflict in the emergency department: Retreat in order to advance. *Canadian Journal of Medicine*, 5(6), 429-433.

B. Implementing a well-developed internal EEO program with transparency.

Establish a methodology for determining the extent of the problem by conducting a confidential survey on counterproductive work behaviors (e.g., bullying, mobbing, and harassment).

Ferris, P. A. (2009). The role of the consulting psychologist in the prevention, detection, and correction of bullying and mobbing in the workplace. *Consulting Psychology Journal: Practice and Research*, 61 (3), 169-189.

Establish an investigative process that involves trained personnel to examine complaints and take proper action based on investigatory data.

Vodanovich, S. J & Piotrowski, C. (2014). Workplace retaliation: A review of emerging case law. *The Psychologist-Manager Journal*, 17 (2), 71-78.

Researchers have also concluded that people seek retaliation when they feel the workplace is not fair and that they cannot depend on formal channels for fair or just treatment

Samnani, A. & Singh, P. (2012). 20 years of workplace bullying research: A review of the antecedents and consequences of bullying in the workplace. *Aggression and Violent Behavior*, 17, 581-589. Retrieved from <http://dx.doi.org/10.1016/j.avb.2012.08.004>

There is a relationship between organizational justice and *organizational retaliation behavior (i.e., adverse reactions to perceived unfairness by employees)*. Organizational

justice consists of distributive justice (the fairness of the distribution of rewards -or punishment), procedural justice (the inherent fairness of the process or procedures of deciding how to distribute organizational resources or punishments) and interactional justice (the opportunity for employees to have a “voice” in the process). A relation between distributive justice and retaliation was found only when there was low interactional and procedural justice.

Skarlicki, D. P. & Folger, R. (1997). Retaliation in the workplace: the roles of distributive, procedural, and interactional justice. *Journal of Applied Psychology*, 82 (3), 434-443.

Avoid including employee complaints in personnel files and ensure the confidentiality of complaints.

Vodanovich, S. J & Piotrowski, C. (2014). Workplace retaliation: A review of emerging case law. *The Psychologist-Manager Journal*, 17 (2), 71–78.

The perceptions of the mediator’s credibility are important and can influence the conflicting parties’ reactions to mediation and their willingness to participate. Mediators who are procedurally strong are viewed favorably. Also, mediators who are perceived to be neutral are viewed being capable of helping resolve conflicts.

Arnold, J. (2007). Influence of third party expertise on disputants’ reactions to mediation. *Psychological Reports*, 101, 407-418.

C. Providing resources (e.g., employee assistance program or omnibus) to support the accuser

Social support structures will eliminate the ability of the accused to isolate the accuser. Victims of abuse face a Catch-22 dilemma because speaking out about the discrimination because voicing concerns about being treated unfairly could trigger social isolation, professional devaluation, and perhaps even demotion, especially if the mistreatment came from powerful others.

Cortina, L. M. & Magley, V. J. (2003). Raising voice, risking retaliation: Events following mistreatment in the workplace. *Journal of Occupational Health Psychology*, 8 (4), 247-265.

Avoid taking any actions that could be as “adverse” (e.g., reassignment to a job with a lower salary, failing to promote a worker after a harassment complaint has been made, etc.) and seek to investigate and rectify any inequities identified by an employee who believes that they have been harassed quickly.

Valenti, A. & Burke, L. A. (2010). Post-Burlington: What employers and employees need to know about retaliation. *Employee Responsibilities and Rights Journal*, 22, 235-251.

Best Practices for Preventing Retaliation

Alexander, C. and Prasad, A. (2014) *Bottom-up workplace law enforcement: An empirical analysis*, Indiana Law Journal, 89(3): 1069-1131.

Using the 2008 “Unregulated Work Survey” dataset of 4,387 low-wage, front line employees in New York, Chicago, and Los Angeles these researchers found that the current bottom-up approach to equal employment opportunity law enforcement is inadequate for vulnerable populations including non-whites, women, immigrant, and undocumented workers. The researchers argue that the current system assumes the individual has the legal competencies to identify discrimination and initiate the process to remedy discrimination. However, the survey data provided in this study suggested that low-wage, front-line employees are not only unaware of their legal rights as employees and the legal processes involved in defending their rights, but these populations may also be desensitized to exploitation and thus unable to recognize mistreatment when it occurs. These researchers found that while 67% of workers reported their employee rights had not been violated on the job, 76% had actually experienced some form of wage or hour law violation. Likewise, 59% of workers did not know their minimum wage and overtime work rights. Further, only 22% of the sample knew where to file a government complaint. Finally, the researchers found that 43% of workers who filed a justifiable claim had experienced some form of retaliation after the claim was filed and that fear of retaliation was the top reason for being afraid to report workplace violations. The researchers suggested that a bottom up approach to EEO law enforcement is inadequate when disadvantaged populations are unaware of their rights, unaware of the EEO process, or desensitized to social inequality. The bottom up approach must be supplemented by third party intervention.

Practice #1: Increase gains and reduce losses associated with filing EEO complaints. Employees will not file complaints, even if substantiated, when they perceive the benefits of filing to outweigh the gains. The EEO process should be as swift, efficient, and fair as possible in order to increase employee confidence.

Practice #2: Develop both “Bottom Up” and “Top Down” interventions. EEO laws should be revised to allow claims to be filed by both the aggrieved and outside parties on behalf of the aggrieved. Many employees are unaware of their rights and when they are being treated unfairly in comparison to other groups. Therefore, they are often ill-equipped to serve as the sole initiator in the complaint process.

Ahuja, J. and Marshall, P. (2003). *Conflict in the emergency department: Retreat in order to advance*, Canadian Journal of Medicine, 5(6): 429-33.

These researchers argue that having conflicting parties invested in an agreed upon conflict resolution strategy increases commitment to the resolution and reduces retaliation. The researchers tested this theory by using a Canadian medical emergency department (ED) in which conflict was pervasive among Nurses, Physicians, and administrative staff. The researchers developed a custom intervention in the form of a retreat that involved bringing physicians, nurses, and administrators together in a dialogue to identify the source of the conflict between the groups and developed strategies to address these problems. The resulting resolutions strategy was then turned over to the ED Chief and Nurse Manager for implementation. It was found that in the six months following the intervention the ED Chief and Nurse Manager reported increased employee morale and engagement, improved teamwork, and a positive attitude among the workforce. The authors surmised that reduced conflict was due to consensus on the source of the conflict and the proposed intervention to address the conflict. This dialogue helped promote buy-in among the conflicting parties and commitment to the proposed solution strategy.

Practice 3: Get conflicting parties invested in the definition of the problem and the terms of the resolution.

Retaliation can be reduced by using neutral third parties to facilitate a dialogue between conflicting parties. This dialogue should work towards an agreed upon understanding of the problem and resolution strategy in which both parties are invested. People are less likely to retaliate when they are invested in the terms of the resolution.

Arnold, J. (2007). *Influence of third party expertise on disputants' reactions to mediation*, *Psychological Reports*, 101: 407-418.

This study opens by highlighting the increased utilization of mediation as conflict resolution tool. The author argues that perceptions of the mediator's credibility are important and may influence the conflicting parties' reactions to mediation and their willingness to participate. The researcher argues that two mediator characteristics are of particular importance in the conflict resolution process: process expertise (ability to demonstrate fairness and impartiality) and content expertise (level of experience and ability to demonstrate knowledge of the details of the conflict). Using a sample of 179 undergraduate students enrolled in a management course the researcher developed an experiment design in which students' perceptions of fictional mediators were manipulated through vignettes designed to describe mediators as having either strong process or content expertise. The results suggested that student perceptions of the mediator expertise influenced their attitudes towards the mediator. Mediators presented as being procedurally stronger were rated more favorable than mediators perceived as being stronger with respect to content expertise. Mediators who were perceived as being neutral were favored by students over mediators perceived as being more knowledgeable.

Practice 4: Recruit mediators with strong interpersonal skills.

While education and knowledge is undoubtedly important, the social ability of the mediators should not be underappreciated. Mediators must be assessed for their ability to present a comforting persona that communicates sensitivity and impartiality. Mediators skilled in both content and procedure may increase the chances of a resolution that is satisfying to both conflicting parties.