

Retaliation

Specimen Policy *

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I. Purpose and Application

The [*Name of entity or agency*] is committed to maintaining a work environment free from any form of harassment or unlawful discrimination. This directive applies to all *employees*, whether a commissioned officer or civilian staff member of the [*Name of entity or agency*], whether on or off-duty, and whether full or part-time. It also applies to pre-service trainees, contractual workers, interns, special officers, reserve officers and unpaid volunteers.

II. Definitions

Retaliation is defined as adverse action or conduct directed against an employee or other person for engaging in a protected activity. Adverse employment action includes that which:

1. Is calculated to deter or punish an employee or other person from engaging in a protected activity or
2. Is in response to an employee or other person who has engaged or is engaging in a protected activity.

III. Policy Statement

The [*Name of entity or agency*] strictly prohibits any form of retaliation against

1. An employee who, in good faith, files a complaint or otherwise reports conduct that is a violation of law or is prohibited by [*Name of entity or agency*] policies, procedures, regulations, rules of conduct.
2. A non employee who complains about the conduct of an employee.

Management also recognizes that

1. An employee might initiate an unfounded complaint in an effort to escape disciplinary action for conduct that is unrelated to the alleged retaliation.
2. A citizen might knowingly make an unfounded complaint against an employee.

IV. Disciplinary Action and Litigation

Any employee found to have retaliated against coworker or other person in violation of this policy is subject to discipline, up to and including termination from employment. They also may face civil litigation that is initiated by a victim of retaliation.

V. Internal Investigations

The [*Name of entity or agency*] requires all employees to fully cooperate in an internal investigation and to provide honest, truthful and complete information to the best of the one's ability. Any employee who participates in an internal investigation is protected from retaliation under this policy.

VI. External Investigations

Federal, state or local offices or agencies may have an occasion to investigate or examine the conduct or activities of our employees. For example, the U.S. Attorney's Office and the FBI are empowered to investigate federal civil rights violations. Alternatively, the [*Chief/Sheriff*] or [*Professional Standards Division*] might request another agency to conduct, to participate in or to lead an investigation, especially when criminal action is alleged or suspected.

Requests for an interview of an employee from an outside source should be directed to the [*Chief/Sheriff*] or the [*Professional Standards Division*]. In most cases, the employee will be instructed to fully cooperate in the outside investigation or inquiry.

If the outside investigation or inquiry involves conduct that implicates the Fifth Amendment, the concerned employee is entitled to assert his or her Constitutional rights against self-incrimination. **

Any employee who participates in an external investigation or inquiry is protected from retaliation under this policy, provided that he or she has notified the [Chief/Sheriff] or the [Professional Standards Division] of the interview request in a timely manner.

VII. Media Inquiries

This policy is not intended to insulate an employee who reports conduct or activities to the news media. Although employees enjoy limited First Amendment rights, the [Name of entity or agency] has [a policy and procedures] specifically applicable to media contacts. See [list directive(s) here].

VIII. Good Faith

The [Name of entity or agency] encourages its employees to make good faith disclosures of any misconduct or violation of a policy, procedure or rule of conduct to the appropriate officials. A disclosure or report is made in good faith whenever the person holds a “reasonable” belief that a violation of [Name of entity or agency] policy, procedure or rule of conduct has occurred, or holds a reasonable belief that an action taken is prohibited by law or regulation.

IX. False Reports

A report is not made in good faith if it is based on information that:

1. Is known or is reasonably believed to be false, or
2. Intentionally or negligently ignores exculpatory information that could disprove the violation, or
3. Is made with the purpose of harassing or falsely maligning another employee, or
4. Is otherwise made for an improper purpose.

X. Types of Retaliation

Retaliation occurs when *action* is taken against

1. A person who made the initial complaint or

2. Against a person who participated in or cooperated with an investigation or inquiry into whether a violation occurred.

The “action” that forms the basis for retaliation can take many forms, and includes, but is not limited to:

1. Any action or conduct that deprives an individual of employment opportunities or
2. Otherwise adversely affects an individual’s status as an employee or his or her work environment.

XI. Past Examples (from other agencies)

1. *Supervisory* or *managerial* retaliation has included:
 - a. Giving an unfair evaluation,
 - b. Subjecting an employee to an unjustified internal investigation, ^[1]
 - d. Initiating unwarranted disciplinary action or imposing discipline for petty violations that are routinely ignored,
 - c. Recommending or assessing excessive punishment for a disciplinary offense,
 - e. Imposing an unfavorable assignment or split-shift work-periods, ^[2]
 - f. Ordering an unnecessary fitness-for-duty evaluation,
 - g. Arbitrary rejection of voluntary overtime assignments, or
 - h. Unreasonably interfering with an individual’s outside business or secondary employment.
2. Examples of *coworker* retaliation have included one or more of the following:
 - a. Clicking car microphones or otherwise impairing transmissions, ^[3]
 - b. Defacing a locker or equipment, ^[4]
 - c. Delaying response time to backup and assistance requests, ^[5]
 - d. Giving someone the cold-shoulder, i.e., the “silent treatment,” ^[6]
 - e. Speaking to a coworker in a denigrating way or using exaggerated or disrespectful vocal intonations, ^[7]
 - f. Spreading rumors or suggestions impugning a person’s character or reputation.

3. Examples of retaliation against *citizens* ^[8] have included:
 - a. Overzealous enforcement of minor traffic violations, such as unsignaled lane changes,
 - b. Enforcement of petty ordinance violations that are routinely ignored,
 - c. Displaying an unwarranted show of force or presence.

These examples are not of equal gravity. Some may be prompted by a “mixed-motive” of promoting efficiency while dispensing a penalty to a disliked employee or citizen.

XII. Complaints of Retaliation

[*Name of entity or agency*] urges any employee who believes that any employment action is based in whole or in part on the reporting of conduct prohibited by law, regulations, policies, procedures or rules of conduct to notify the [*Professional Standards Division*].

An employee who believes that he or she has received retaliation for complaining about unlawful discrimination or harassment, or for participating in an internal or external investigation, may also file a complaint with the Office of the [*Chief/Sheriff/Sheriff*].

XIII. Whistleblower Policy

Employees who, in good faith,

1. Provide information concerning possible wrongdoing to the [*County Prosecutor or State Police*] or to the U.S. Attorney or a federal entity or agency are protected against retaliation, or
2. File a lawsuit or initiate an administrative complaint with a governmental office or entity or agency, unless that action is in bad faith, or constitutes a reckless or malicious abuse of legal process.

This directive was adopted on [*date*] by Order of [*name of official and title*].

Notes:

1. In an action accusing FBI management of discrimination and retaliation, a “mere investigation” may constitute a material, adverse personnel action. [Rattigan](#)

[v. Holder](#), #04-2009, 604 F. Supp.2d 33 (D.D.C. 2009); [Rattigan v. Gonzales](#) at 503 F. Supp.2d 56 (D.D.C. 2007).

2. Case example: “Plaintiff further alleges that, throughout the period from 1989 to 1991, she also suffered retaliatory assignment changes and inappropriate posts, which did not adequately reflect her seniority.” *White-Ruiz v. City of New York*, #93 Civ. 7233, 1996 U.S. Dist. Lexis 15571 (S.D.N.Y. 1996). Also see, [Betton v. St. Louis County](#), #07-1634, 2009 U.S. App. Lexis 957 (Unpub. 8th Cir.).

3. Case examples:

- “Plaintiff testified that on the same evening as the keying-down incidents in December 1988, she approached a vehicle in which several males were riding who appeared to be potentially dangerous. ... It is also clear that throughout several encounters ... one or more officers repeatedly and deliberately interfered with her radio transmissions, with the evident goal of disrupting her ability to perform her work on her patrol.” *White-Ruiz v. City of New York*, #93 Civ. 7233, 983 F.Supp. 365 at 369 (S.D.N.Y. 1997).

- Plaintiff’s communication was disrupted by a person “clicking mikes” in a way to prevent the messages from going through. *Blair v. City of Pomona*, #98-55548, 223 F.3d 1074 (9th Cir. 2000).

4. Case examples:

- The epithets “black bitch,” “rat” and “cheese eater” were written on the plaintiff’s precinct locker. *White-Ruiz*, 983 F.Supp. at 368, 383.

- Plaintiff found “rat” scrawled on his police locker, and two days later “asshole” was written on the locker. *Blair*, 223 F.3d 1074.

5. Case example: “According to plaintiff, she requested assistance from fellow officers, but all of the officers reached by radio declined to come to her assistance, thus subjecting her to danger from the automobile occupants.” *White-Ruiz*, 983 F.Supp. at 369.

6. Case example: “Within the week three officers turned their backs on [the plaintiff] as he walked down the center hallway of the first floor of the offices of the Department. He experienced this treatment again and then again.” *Blair*, 223 F.3d 1074.

Also see, *The Silent Treatment: Perceptions of its Behaviors and Associated Feelings*, K. Williams & W. Shore. 1 (2) Group Processes & Intergroup Relations (Sage) 117-141 (1998). [Abstract](#)

7. “Unwelcome statements that are degrading, including name-calling, demeaning remarks, teasing, innuendoes, suggestive comments or statements, slurs, epithets, jokes, offensive, suggestive or insulting sounds, whistling, propositions or threats including sexually suggestive conduct.” [Harassment and Discrimination Policy](#), Charlotte-Mecklenburg [NC] Police Directives Manual, No. 300-017, part IV-A-3-a.

8. “Citizen(s)” includes non U.S. citizens, even if they are undocumented or are in the U.S. illegally.

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* This policy was drafted by the AELE Law Enforcement Legal Center staff. It is labeled as a “Specimen” rather than “Model,” because one size does not fit all. Agencies should tailor a policy to conform to its written directive structure and to reflect entity or agency needs. It has not been formally approved by the AELE Board of Directors. It was sent to the *AELE Monthly Law Journal* [Review Board](#) for informal comments and suggestions.

This directive is subject to amendment and revision; this version was written on June 4, 2009.

While an entity (such as a city or county) should have an anti-retaliation policy, an office or department within that entity can independently adopt one if the entity lacks one. It also may augment an entity-wide policy to address particular concerns. An agency’s directive should refer to any entity-wide policies or directives.

In some states, a “Peace Officer’s Bill of Rights” law has been enacted, which might provide additional protections. See, [An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights](#), by Kevin M. Keenan & Samuel Walker, 14 Boston Public Interest Law Journal 185-245 (Spring, 2005).

** With respect to the types of warnings given to employees who are interviewed, see [Interviews and Interrogations of Public Employees: Beckwith, Garrity, Miranda and Weingarten Rights](#), an article appearing in the *Law Enforcement Executive Forum* (Nov. 2004).

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