

University of Louisiana System

**Title: PREVENTING AND ADDRESSING
RETALIATION**

Effective Date: December 3, 2010
Cancellation: None
Chapter: Miscellaneous

Policy and Procedures Memorandum

The University of Louisiana System is committed to maintaining an educational and workplace environment, free of retaliation against persons who, in good faith, complain of discrimination and or harassment, or who assist or participate in the complaint process.

Each campus shall adopt a policy consistent with this and related UL System Memorandum and in accordance with the Equal Opportunity Employment Commission guidelines and submit such policy to the System Office.

I. DEFINITIONS

- A. **Complaint:** Allegations of discrimination, harassment and or retaliation, filed in good faith and in accordance with established procedures.
- B. **Discrimination:** Inequitable treatment of an individual based on protected characteristics or status rather than individual merit.
- C. **Harassment:** Unwelcome conduct directed against a person based on one or more of a person's protected characteristics or status which is so severe or pervasive that it creates an intimidating, hostile or offensive environment.
- D. **Protected Characteristic/Status:** race, color, gender, religion, sexual orientation, national origin, disability, genetic information, age, veteran status or retirement status.

- E. Retaliation: any adverse action taken against an individual as the result of a complaint of discrimination or harassment or who may participate in an investigation of discrimination or harassment. This includes overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or group exercising rights under this policy.

II. PROTECTED CONDUCT AND ACTIVITIES

- A. Protected individual conduct falls into three broad categories.
 - 1. Individuals are protected for conduct in their personal life.
 - 2. Individuals are protected for concerns they may raise about workplace issues.
 - 3. Individuals are protected for cooperating in an investigation, proceeding or hearing.
- B. Protected activity covers a wide spectrum of conduct. Generally, this involves taking some action that is permitted or protected by state and/or federal laws.
 - 1. Some common retaliation claims arise in situations where an individual has:
 - a) initiated an internal complaint of discrimination or harassment;
 - b) filed a claim of discrimination;
 - c) requested an accommodation for a disability;
 - d) filed a worker's compensation claim following a work-related injury;
 - e) requested leave under the Family and Medical Leave Act;
 - f) filed a safety or environmental related complaint with state and/or federal oversight agencies;
 - g) filed a "whistleblower's" claim alleging that the employer engaged in fraud corruption, or other suspected wrongful activity.
 - 2. Individuals may state their opposition to a specific practice or activity which they believe constitutes discrimination.
 - a) Such opposition must be based on reasonable and good faith belief.

Example: A female employee complains that she was not promoted because she believes that sex discrimination occurred. Protected opposition has occurred.

However, if the same female was not promoted because she lacked necessary qualifications that were clearly identified, she did not have a reasonable belief of sex discrimination and protected opposition has not occurred.

- b) Person claiming retaliation does not necessarily need to be the person engaged in the opposition.

Example: an individual who alleges retaliation under Title VII, the ADA or the ADEA, does not have to allege that he was personally treated differently because of race, religion sex, national origin, age or disability

- 3. Individuals may participate in an investigation, proceeding, hearing or litigation without fear of retaliation.

- a) Participation is protected regardless of whether the allegations in the original charges were valid or reasonable. So a violation of retaliation policy could be found whether or not the challenge is found to be unlawful.

- b) Person claiming retaliation may not necessarily be the one who participated in the original complaint.

Example: it would be unlawful to retaliate against a spouse or relative of an employee who filed an EEOC charge.

- c) Practices challenged in prior proceedings may not necessarily be engaged in by the entity charged with retaliation.

Example: a violation would be found if it were determined that an applicant was not hired because he/she had filed charges against a former employer.

III. ADVERSE ACTIONS

A. General Actions

The most obvious types of retaliation are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and termination. Other actions include threats, reprimands, negative evaluations, salary reductions, change in job assignments, harassment or hostile behavior or attitudes toward the complainant.

B. Actions affecting the terms, conditions or privileges of employment

Other adverse action that may or may not be intentionally motivated but which results in negative treatment of an individual can also be considered retaliatory. For example, changing the shift of a female employee who complains of sexual harassment by her supervisor could be considered retaliatory, even if the employee prefers the new shift.

C. Post Employment Actions

Actions that are designed to interfere with an individual's prospects for employment, such as negative job references and informing prospective employers of the individual's protected activity also constitutes retaliation. Negative job references do not constitute retaliation unless the reference was based on a retaliatory motive.

IV. ESTABLISHING AND INVESTIGATING COMPLAINTS

A. Evidence

1. Direct Evidence: In order to establish retaliation, there must be proof that the adverse actions were taken as a result of protected activities. Such evidence is any written or verbal statement by an official that he/she took actions against an individual for engaging in protected activity.
2. Circumstantial Evidence: Violations can also be established if there is circumstantial evidence of retaliation. Typically this link can be demonstrated if the adverse action took place shortly after the protected activity or if the entity undertaking the adverse action was aware of the individual's activity before taking action
3. Non Retaliatory Reason: Violations can be established if the entity fails to provide evidence of a legitimate and non retaliatory reason for the actions. Common non retaliatory reasons include poor job performance, inadequate qualifications for the position sought; and violation of work rules or insubordination.
4. Pretext to Motive: Even if an entity produces evidence of a legitimate reason for the adverse action, a violation can still be found if the reason is a pretext to hide actual motive. This can be proved through evidence that an individual was treated differently from similarly situated employees or subjected to heightened scrutiny after engaging in protected activities.

B. Investigation Process

A defined process shall be established which should include the specific steps for addressing informal and formal complaints. Such processes should include designated individuals for handling complaints, reasonable timeframes for processing the complaint and a written summary of the outcome of the investigation.

V. SANCTIONS

Anyone who violates the anti-retaliation policy is subject to disciplinary action. Following an appropriate investigation and subject to the procedures which are part of the policies governing the relevant type of appointment at the University, the faculty, student, or staff member may be subject to sanctions, including reprimand, probation, suspension, demotion, reassignment, termination, and expulsion.

Policy References:

ULS PPM Prohibiting Workplace and Sexual Harassment, Discrimination and Retaliation (M-11a)

U.S. Equal Employment Opportunity Commission

Review Process:

System Office Staff

Presidents

Vice Presidents for Business and Finance

Legal Counsel

Distribution:

University Presidents

Vice Presidents for Business and Finance