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FLSA & Retaliation and Discrimination

The FLSA specifically provides that it is *"unlawful for any person ... to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted any or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding."*

This statute has "teeth," and is interpreted broadly in favor of employees.

An employer who retaliates or discriminates against an employee in violation of this statute is potentially subject to fines or even criminal prosecution, and the affected employee is entitled to "legal or equitable relief ... including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount" plus attorneys' fees and court costs. Punitive damages are available in appropriate cases, and "anti-retaliation" cases may be brought against individuals as well as institutional employers.

Courts have ruled that the "anti-retaliation" FLSA provisions are designed "to foster an environment in which employees are unfettered in their decision to voice grievances without fear of economic retaliation or reprisal," and as a consequence the courts have interpreted the statute to apply to a wide variety of retaliatory employer actions. In addition to "firing" cases, retaliation has been found when employers blacklisted employees who made FLSA claims, refused to hire applicants who had made FLSA claims at other jobs, fired relatives, reduced job responsibilities, assigned employees to unpopular job duties or shifts, disciplined employees out of proportion to past disciplinary practices, reduced performance evaluations, and declined to recommend "normal" raises.

Of course, making an FLSA claim will not likely make an employee popular with management, and not all "adverse" employer reactions to an employee who makes an FLSA claim will "cross the line" into illegal retaliation or discrimination. "Nasty looks," "cold shoulder" treatment at work, and the like are not likely (in and of themselves) to be considered unlawful, even if they result from management displeasure about an employee's making an FLSA claim. And in the unlikely event that an employer actually discriminates or retaliates against an employee in violation of this statute, the remedies provided by the law may take time and aggravation to obtain. However, most often there is no real retaliation or discrimination, and "threats" can usually be dealt with summarily

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by a call to a "higher up" in the organization (or the employer's lawyer) who, in turn, will almost always advise the offending party to "knock it off" immediately.

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