

New York State Department of Labor

Retaliation Against Employees Prohibited

Employers

As of April 9, 2011, a change in New York State Labor Law strengthens the law prohibiting retaliation against employees who have complained about or reported violations.

Section 215 of the New York State Labor Law makes it illegal for employers to discharge, penalize, or in any manner discriminate or retaliate against an employee for:

- Making a complaint about a possible labor law violation to the employer
- Making a complaint to the Labor Department
- Providing information to the Labor Department
- Testifying in an investigation or other proceeding under Labor Law
- Exercising any rights that are protected under Labor Law

Or because the employer has received an adverse determination from the Labor Department that involves the employee.

If an employer violates this law, the New York State Department of Labor can:

- Assess a penalty from \$1,000 to \$20,000. The maximum penalty was increased from \$10,000 to \$20,000.
- Order payment of lost compensation to the employee
- Order payment of liquidated damages

The employee also can bring a private civil action in court. The employee has two years to start such a legal action.

If the employee wins, the court may order:

- Reinstatement of the employee to his or her former position
- Restoration of seniority
- Payment of lost compensation
- Damages up to \$20,000 per employee
- Payment of reasonable attorneys' fees

What is retaliation?

Retaliation can be any unfavorable action against an employee for complaining about labor law violations or reporting them to the authorities. It can take many forms. These actions could be considered retaliatory under certain circumstances:

- Dismissal from employment
- Cut in work hours
- Reschedule for less desired hours

- Reassign to less desired work location
- Cut in pay
- Failure to give promised or customary raise
- Disciplinary action
- More intensive or critical supervision
- Demotion or transfer
- Withdrawal of previously-allowed privileges
- Assignment to more difficult duties
- Demanding increased production

This list does not cover all possibilities.

What are the best practices an employer can engage in?

If an employee makes a complaint to you, find out what the Labor Law requires. If you are already in compliance, you are on solid ground in explaining that to the employee. If you are not in compliance, change your practices. If you owe some back pay or overtime, calculate how much and pay it. All of this can happen without any involvement by the Labor Department.

If your business is the subject of an inspection or audit by the Labor Department, cooperate fully and promptly. Provide the requested records. Answer questions truthfully. Allow the investigator to interview any employees privately on work time.

Do not demand that the investigator tell you who complained. It really doesn't matter. It won't change the outcome.

Do not create an atmosphere of tension among your employees about the inspection. Let your employees see that you are relaxed about the private interviews. They are free to answer questions truthfully without fearing retaliation. You are willing to fix any problems that might be found.

View the inspection as an opportunity to learn about the Labor Law.

For more information, contact the NYS Department of Labor, Division of Labor Standards:

Phone: **1-888-52-LABOR**

E-mail: **LSAsk@labor.ny.gov**