

Employee Retaliation Claims: Your Worst Nightmare

David E. Hart, Esq.

Employer Retaliation

- Nature of Claims
 - What is at stake?
 - Why protect employee action?



Employer Retaliation

- Michigan Statutory Protections:
 - General Whistleblower Protection
 - Discrimination and Civil Rights
 - Health Care Workers
 - Occupational Safety and Health Violations

Employer Retaliation

- Michigan Statutory Protections Continued:
 - Minimum Wage Laws
 - Payment of Wages and Fringe Benefits
 - Persons with Disabilities
 - Worker's Compensation Claims
 - Using Entitlement (FMLA)



What Can an Employer Do?

1. Discharge employees for poor job performance
2. Discipline or discharge employees for continually violating established rules, or for an accumulation of incidents
3. Question witnesses regarding alleged violations
4. Discharge employees for criminal acts of protest (arson, blocking traffic, vandalism)

What Can an Employer Do?

5. Discharge employees whose lawful actions are excessively hostile (constant, disloyal complaints which cause subordinates to quit or which jeopardize the employer's mission)
6. Refuse to meet with activists organizing for civil rights (but do not discipline employees for requesting a meeting)

What Can an Employer Do?

- 7. Bottom line:** Employers are entitled to take appropriate disciplinary action against an employee for legitimate reasons even if that employee has complained of or reported a violation. The discipline must not result from the complaint. Both employees and supervisors must use care and prudence when dealing with these situations.

How to Prevent Claims

- a) Maintain confidentiality in all aspects of the discriminatory harassment complaint process
- b) Make sure there is substantiated evidence to justify treatment of employees
- c) Review work rules and policies – a seemingly neutral policy may affect employees adversely

Handbook Provisions

- Policy Against Retaliation
- Open Door Policy
- Claim Limitation Policy

