

Maddin Hauser's
Employment Law
Symposium



“DON'T GO AWAY MAD, GIRL, JUST GO AWAY.”
— MÖTLEY CRÜE

WORKPLACE RETALIATION

Rita M. Lauer, Esq.

 **Maddin Hauser**
Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076
p (248) 354-4030 f (248) 354-1422 maddinhauser.com





Rita M. Lauer, Esq.

Shareholder

(248) 827-1889

(248) 208-0738 Fax

rlauer@maddinhauser.com



Maddin Hauser
Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076

p (248) 354-4030 f (248) 354-1422 maddinhauser.com



Overview

- Retaliation – what it is and how to do it successfully.
 - What if it wasn't retaliation, the employee had performance issues?
- We've disciplined, ostracized and fired the employee. What is the worst that could happen?
- Assuming your organization has successfully retaliated, how much will this possibly cost?

RETALIATION - WHAT IS IT?

Retaliation happens when an employer takes adverse action against an employee because they engaged or threatened to engage in a **protected activity**, like reporting discrimination, harassment, or safety concerns, essentially punishing them for exercising their right to speak up against wrongdoing within the company.

“Protected Activity” – Worker’s Compensation, Protected Leave (FMLA/ADA/Pregnancy), Discrimination/Harassment charges, MIOSHA or DOL complaints or investigations.

RETALIATION - WHAT IS IT

Temporal proximity – there can be an inference of retaliation based on certain actions being taken within 90 days of the protected activity.

Family members – Family members of the person who has engaged in the protected conduct also have protection.



RETALIATION - HOW TO DO IT

There has to be “causal connection” between the protected activity and retaliation.

- Discipline,
- Making the person’s work-life more difficult,
 - Changing schedule, verbal abuse, altering job responsibilities,
- Threatening transfer,
- Intentionally giving lower performance evaluations,
- Threatening to call authorities on employee, or
- Termination.

THE REAL-WORLD PROBLEMS

When employee is out on leave, employee performance issues may become evident.

- Normally, cause for PIP or discipline,
- Unable to discipline or address performance issues due to employee being out on leave.

If employee is not terminated/disciplined for leave, but for performance, that is not retaliation.



REAL WORLD

Scenario 1 = Employee is out on FMLA. Work product left evidence of significant performance issues.

Scenario 2 = Employee out on worker's compensation. While out, find out employee had others punch in/out for him, engaging in fraud.

Scenario 3 = Employee is on PIP/last chance. Performance is getting worse. You meet employee to terminate. Next day, MIOSHA changed that employee filed a report two days ago.

WHERE DISCIPLINE IS NOT RELATED

Document performance problems, even where performance problems show up while employee is on leave.

Make sure the performance problems are not related to disability or other protected status.



WHAT IS THE WORST THAT COULD HAPPEN?

Employee can/will be awarded:
Front pay, back pay, attorney
fees and emotional distress.



Maddin Hauser's
Employment Law
Symposium

QUESTIONS

 **Maddin Hauser**
Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076
p (248) 354-4030 f (248) 354-1422 maddinhauser.com



Maddin Hauser's
Employment Law
Symposium

THANK YOU



Rita M. Lauer, Esq.

Shareholder

(248) 827-1889

(248) 208-0738 Fax

rlauer@maddinhauser.com



Maddin Hauser

Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076

p (248) 354-4030 f (248) 354-1422 maddinhauser.com

