## **EEO Reprisal**

Description: This is a review of and update on EEO Reprisal. Among others, the topics addressed include the definition of reprisal, the two kinds of EEO reprisal, the distinction between EEO and other kinds of reprisal (e.g., whistleblower, union, etc.), the way that reprisal is proven, the defenses to reprisal, relief for proven reprisal, Dos and Don'ts to avoid reprisal, and an analysis of recent case law, to include recent Supreme Court decisions.

Length: 2 or 4 hours.

## EEO Reprisal and Update

## **Table of Contents**

PART 1:	INTRODUCTION	1
	Bases Of Discrimination 2	,
PART 2:	THE EEO LAWS	3
	A. The Four EEO Laws	3
	1. Title VII (race, color, sex, religion, national origin	.) 3
	2. The Rehabilitation Act (disability)	4
	3. Age Discrimination in Employment Act (age)	4
	4. Equal Pay Act (equal pay for equal work) 4	ļ
	B. Two Family Leave Laws (and an Executive Order)	5
	1. The Family and Medical Leave Act 5	5
	2. The Federal Employees Family Friendly Leave Ac	et 6

	3. Executive Order (an extra 24 hours of LWOP)	7
	4. Executive Order (No Discrimination Against Parents)	7
	5. Executive Order (No Genetic Testing Discrimination)	7
PART 3:	THE THEORIES	8
	I. The Theories	8
	A. Title VII	8
	1. Disparate Treatment	8
	2. Accommodation (religion)	11
	3. Retaliation a. Proving retaliation	13 13
	4. Disparate Impact	15
PART 4:	5. National Origin a. Speak English only b. Foreign accent RETALIATION	15 15 16 17
	Overview	17
	I. What is EEO-Based Retaliation	18
	A. Participation Retaliation	19
	1. The federal sector EEO process	19
	2. Participation in the EEO process	20
	B. Opposition Retaliation	21
	1. Only a "good-faith" belief is required	21
	2. The manner of opposition must be reasonable	22

	C. Retaliatory Harassment	23
	D. Representation and Official Time	24
	1. Official time for complainants	24
	2. Official time for representatives	25
	II. What Supervisors Must Do	26
PART 5:	FEDERAL SECTOR DISCIPLINARY ACTIONS	30
	I. DISCIPLINARY ACTIONS	30
	A. Adverse Actions	30
	B. Process for Taking an Adverse Action	30
	The Douglas Penalty Factors	31
PART 6:	EEO COUNSELING – AN OVERVIEW	33
	• The Six Duties of an EEO Counselor	33
	I. Contacting the EEO Counselor	34
PART 7:	II. EEO Counseling WHISTLEBLOWER REPRISAL	34 35
PART 8:	OTHER FEDERAL AGENCIES AND PROCESSES	36
	I. Introduction	36
	II. The Merit Systems Protection Board (MSPB)	36
	III. Federal Labor Relations Authority (FLRA)	36
	IV. Grievance Arbitration	36

	V. The Office of Personnel Management (OPM)	37
	VI. Office Of Special Counsel (OSC)	37
PART 9:	SEXUAL ORIENTATION DISCRIMINATION	38
PART 10:	PREVENTING AND RESPONDING TO RETALIATION COMPLAINTS	39
PART 11:	EXERCISES AND NEW LAW	41
	Retaliation Exercise	41
	Workplace issues Discussions	44
	NO FEAR	46