On November 10, 2021, three federal agencies tasked with enforcing workplace laws announced a joint initiative to combat retaliation in the workplace. As a refresher, the EEOC protects a worker’s right under Title VII and other non-discrimination laws to enjoy a workplace free from harassment and discrimination. The DOL enforces federal labor standards per the Fair Labor Standards Act, as well as health and safety regulations through OSHA. The NLRB generally protects a worker’s right to organize to improve working conditions, among other rights guaranteed by National Labor Relations Act.
Each of these agencies enforce anti-retaliation laws within its scope of authority. However, Memoranda of Understanding between agencies allows the agencies to share information and investigate charges that implicate multiple areas of labor law.

Prior to this initiative, Memoranda of Understanding (MOU) existed between the DOL and EEOC and between the NLRB and EEOC, but no MOU connected all three agencies. In a press release published by the NRLB, DOL, and EEOC, NLRB’s General Counsel Jennifer Abruzzo explained that there was a need for a joint initiative, because “[retaliation] issues cut across multiple worker protection agencies, which is why it is so important to work collaboratively to effectively prevent and forcefully address retaliatory acts against workers.”

What can employers expect from this joint initiative? Though it is too soon to tell, employers can expect more education on preventing retaliation. One stated reason of the initiative is to improve awareness about prohibited retaliation.

Generally speaking, prohibited retaliation first requires that a worker engages in a statutorily-protected act. Retaliation generally means any action that would dissuade a worker in engaging in the protected act. Determining what conduct is protected, and relatedly, what conduct is retaliatory is not always straightforward.

Anti-discrimination and anti-retaliation laws like Title VII, the FLSA, and the NLRA provide different, but overlapping, rules. A joint initiative among the agencies may generate a more comprehensive guide to aid employers’ compliance with these statutes when setting workplace policies. However, employers are advised to consult with their labor and employment counsel as additional industry-specific anti-retaliation statutes may be applicable.

Can employers expect more robust enforcement activities? Maybe. With increased information sharing among agencies, a charge with one agency may trigger scrutiny by partner agencies. Employers should continue to monitor developments in the law regarding protected workplace conduct and partner with counsel, when appropriate, to prevent retaliation in the workplace.

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