

Retaliation – Draft Language

- 12) **Retaliation prohibited.** Retaliation against any person who participates in a process described in this policy is prohibited. Retaliation can be an employer action that is work-related, or one that has no tangible effect on employment, or even an action that takes place exclusively outside of work, if it might dissuade a reasonable person from engaging in a protected activity. Retaliation may come in several forms.
- a) **Direct retaliation:** an action taken against an employee or witness with respect to a term or condition of employment for the reason that the employee has opposed conduct that is prohibited under this policy or participated in an Equal Employment Opportunity Commission (EEOC) investigatory process. Examples of direct retaliation are, but not limited to:
 - i) Termination.
 - ii) Suspension
 - iii) Demotion
 - b) **Materially adverse retaliation:** any action that might deter a reasonable person from engaging in a EEOC protected activity such as filing a complaint under this policy or participating in a workplace investigation. Examples of material adverse retaliation depend on the facts of the case and may include, but not limited to:
 - i) work-related threats, warnings, or reprimands;
 - ii) negative or lowered evaluations;
 - iii) transfers to less prestigious or desirable work or work locations;
 - iv) making false reports to government authorities or in the media;
 - v) filing a civil action;
 - vi) threatening reassignment; scrutinizing work or attendance more closely than that of other employees, without justification;
 - vii) removing supervisory responsibilities;
 - viii) engaging in abusive verbal or physical behavior that is reasonably likely to deter protected activity, even if it is not yet "severe or pervasive" as required for a hostile work environment;
 - ix) requiring re-verification of work status, making threats of deportation, or initiating other action with immigration authorities because of protected activity; or
 - x) taking (or threatening to take) a materially adverse action against a close family member (who would then also have a retaliation claim, even if not an employee).
 - c) **Anticipatory Retaliation:** The doctrine of anticipatory retaliation prohibits an employer from threatening adverse action against an employee who has not yet engaged in a protected activity for the purpose of discouraging the employee doing so.