

# Employees Are Protected Even If They Don't Initiate Complaints

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## Situation #1

Employee A goes to John, the store manager, and complains about a co-worker or supervisor sexually harassing her. Since Employee A is not as productive as other employees and constantly complains, John decides he can avoid the time and effort required to deal with the potential problem by simply firing Employee A.

**Result:** Employee A can file a lawsuit against the store for retaliation.

## Situation #2

John, the store manager, hears rumors about a night manager sexually harassing Employee B. John decides to question some of the other employees to figure out if the rumors are true. John asks Employee C if she has seen any "inappropriate behavior" on the part of the night manager. In response, Employee C describes several times when she has been sexually harassed by the night manager. Shortly after John completes the investigation, he fires Employee C.

**Result:** Employee C can file a lawsuit against the store for retaliation.

## Law

Federal Law prohibits retaliating against an employee because the employee complained about discrimination or participated in an investigation concerning discrimination. The recent Supreme Court case of Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee makes it clear employers are prohibited from retaliating even if the employee didn't initiate the complaint and even if the investigation is not in response to a pending EEOC charge.

It is critical that you train managers and supervisors at all levels to:

- document employee conduct
- maintain records of the objective business reasons behind

every employment action, whether good (i.e. promoting an employee) or bad (i.e. cutting an employee's hours).

- **not take disciplinary action against an employee** (i.e. firing, cutting benefits, or even cutting the number of hours the employee is scheduled to work) **solely because the employee voices opposition to discrimination at work**, either by reporting it themselves or disclosing it when questioned by a manager or supervisor.

Employers have an obligation to both actively investigate allegations of discrimination and take appropriate measures to eliminate the discrimination. If it is reasonable to think Employee C may have relevant knowledge about alleged discrimination, because Employee C works at the same time as the alleged discriminatory conduct or previously worked with the individual alleged to have taken discriminatory action, the manager should question Employee C. However, if it is highly unlikely that Employee C has relevant knowledge, because Employee C has never worked or interacted with the individual alleged to have taken discriminatory action, the manager should think twice about questioning Employee C. The manager should especially think twice if Employee C's job is in jeopardy for other reasons, to avoid risking a retaliation claim if Employee C is fired soon after being questioned.

*The Employment Team at Collins and Lacy, P.C. strives to ensure you and your business avoids similar lawsuits. If you have any questions, whether related to retaliation claims, new legislation, or other employment matters, please call our office, 803-256-2660, or send an email to [cappleby@collinsandlacy.com](mailto:cappleby@collinsandlacy.com).*

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## Really BIG Expo Draws In New Members



Pictured above from left to right are Nerissa Barnett, Greg Kenrick, Leigh Faircloth, Jeff Leischner, Lisa Thomas, and David Jordan.

Pictured right are Brent Townsend, Jeff Ham, Chad Beck, and Steve Kirby.

Aloha from Myrtle Beach! SCACS was a big hit at the 2009 Southeastern Petro Show. Visitors to the SCACS booth were greeted with leis and smiles by board members and staff, who sported hawaiian style shirts to compliment the theme. Folks were invited to relax for a few minutes as they were treated to a massage in the booth. To top it all off, SCACS raffled off a brand new flat screen tv to one lucky member, Vera Taylor of B&B Convenience Stores in Florence. The efforts of the Board of Directors and staff brought in 10 new members to the association! Without their dedication and support, this would not have been possible.



Above, SCACS staff Nerissa Barnett recruits Wanda Johnson with Oakley Land Development as a new SCACS member.

Left, David Jordan and Kenneth Cosgrove enjoy relaxing massages in the SCACS booth.