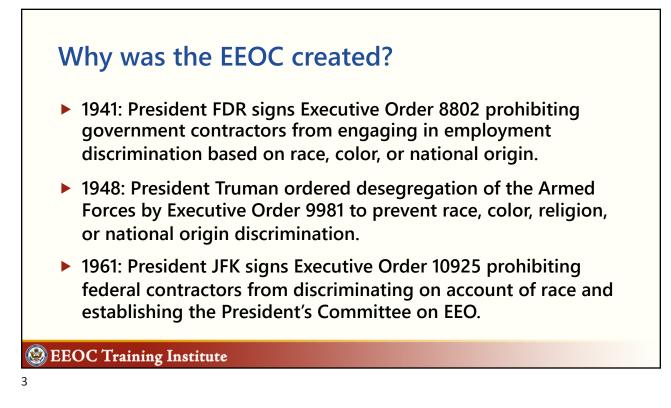
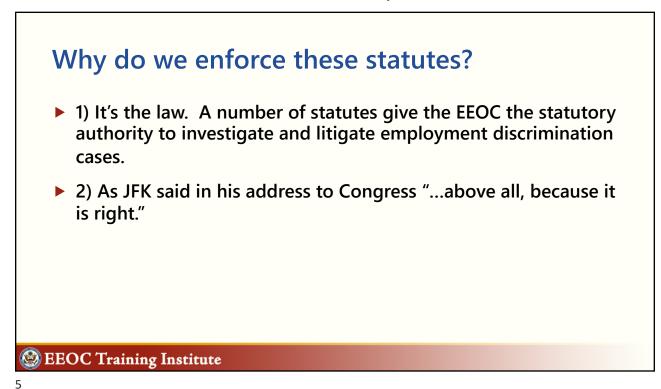


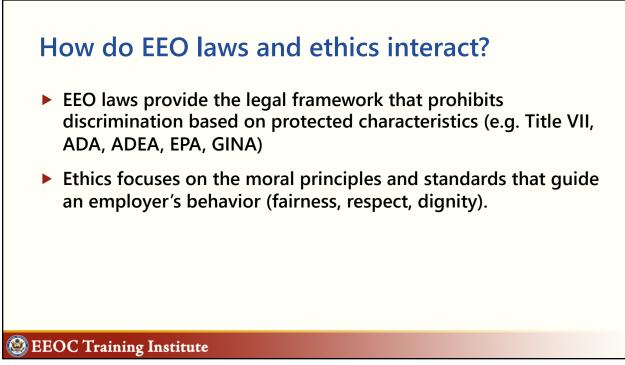
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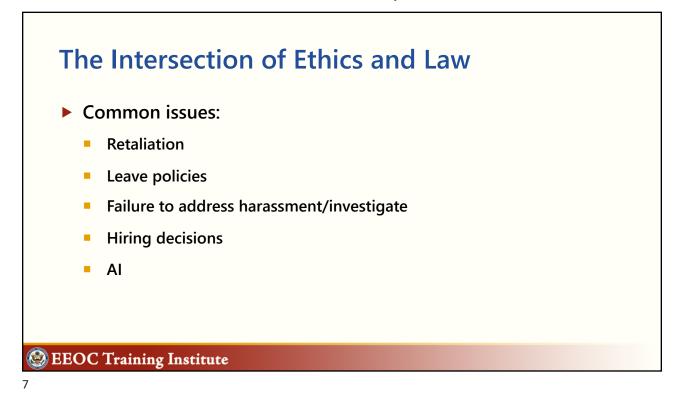


Continued

- 1963: Congress passes the Equal Pay Act protecting men and women who perform substantially equal work in the same establishment from sexbased wage discrimination.
- 1964: The Senate passes the Civil Rights Act of 1964- Title VII prohibits discrimination based on race, sex, color, religion, and national origin.
- ▶ 1972: The EEO Act of 1972 gives the agency litigation authority.
- ▶ 1990: GHWB signs into law the Americans with Disabilities Act of 1990.
- 1991: Civil Rights Act of 1991 expands Title VII- amendments include allowing parties request jury trials and allowing plaintiffs to recover compensatory and punitive damages.





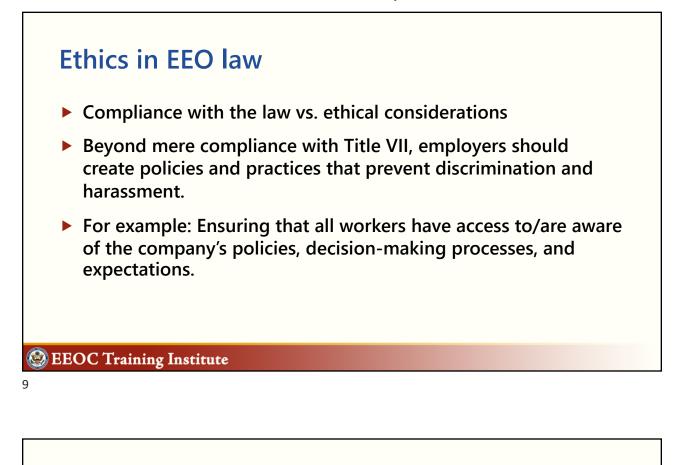


EEOC Cases Breakdown

January 1, 2022- November 21, 2024, the EEOC has filed 366 cases in Court.

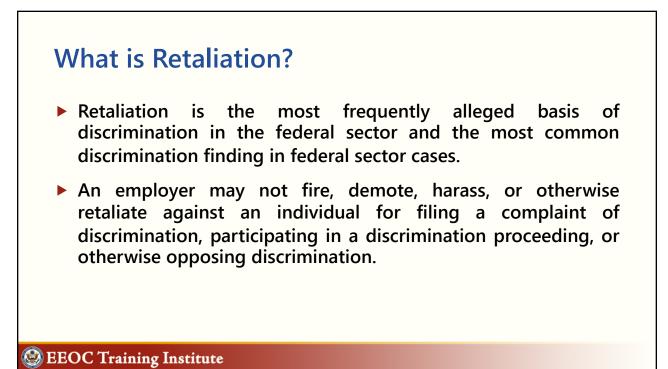
- ▶ 127 involved a claim of retaliation.
- ▶ 124 involved a claim under the ADA.
- 142 involved a sex-based claim (this can include sex, sexual orientation, pregnancy, gender identity)

Law 360- EEOC Litigation Tracker



Title VII- Retaliation

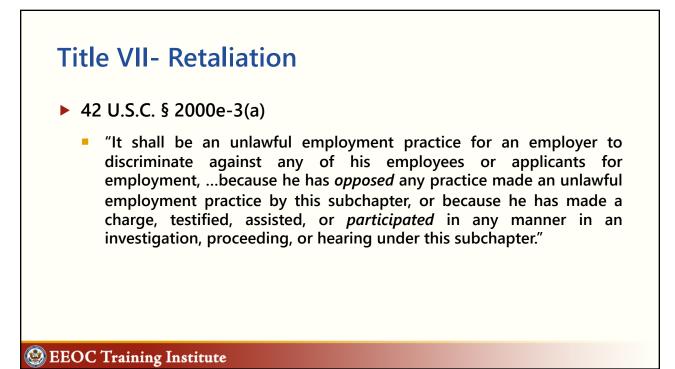
- Retaliation may occur when an applicant or employee reports unethical and/or unlawful employment actions.
- Retaliation may occur when an applicant or an employee complains on behalf of someone else or opposes a discriminatory practice.
- Retaliation may not be termination but may include lesser adverse employment actions.

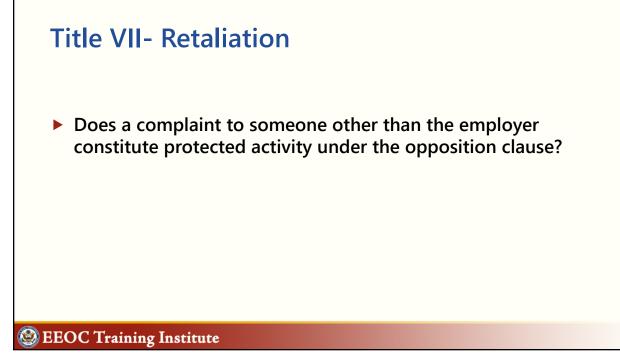


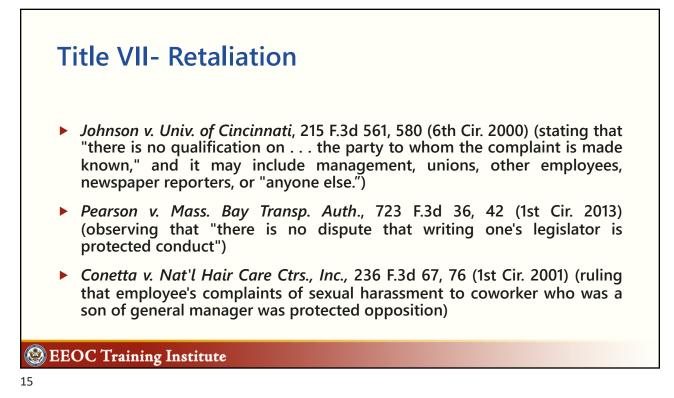
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Elements of a Retaliation Claim

- ► 1) Protected Activity
 - Participation in an EEO process or "opposition" to discrimination
- > 2) Materially Adverse Action
- 3) Causal Connection between protected activity and the materially adverse action

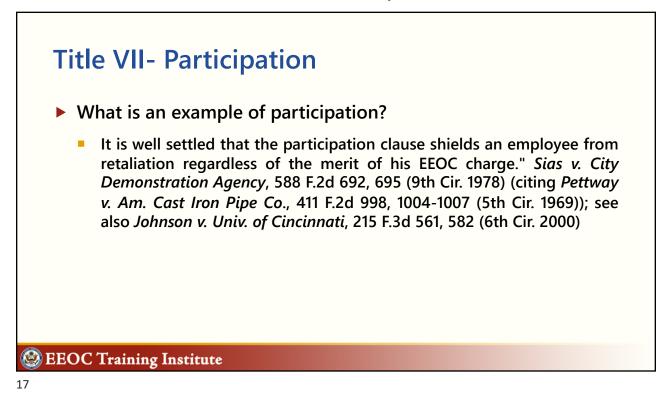


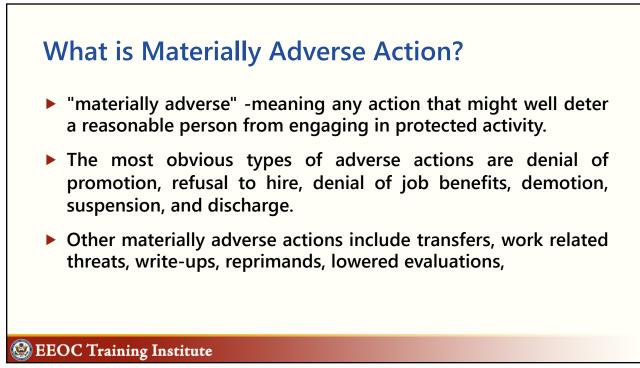


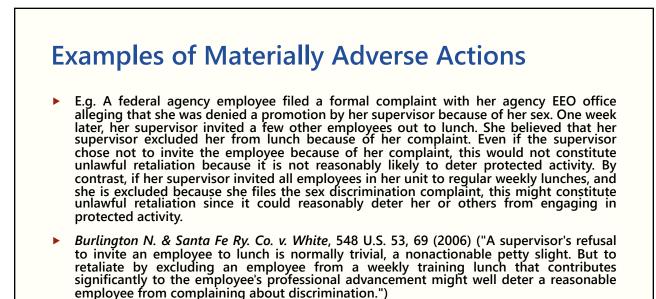


Other Examples of Opposition

- E.g. Plaintiff, who works for an employment agency referring individuals to fill temporary and permanent positions with corporate clients, is instructed by his manager not to refer any African Americans to a particular client per the client's request. Plaintiff tells the manager this would be discriminatory and proceeds instead to refer employees to this client on an equal opportunity basis. Plaintiff's refusal to obey the order constitutes "opposition" to an unlawful employment practice.
- Johnson v. Univ. of Cincinnati, 215 F.3d 561, 581 (6th Cir. 2000) (concluding that action taken by a university vice president, in his capacity as an affirmative action official, to respond to hiring decisions that he believed discriminated against women and minorities, constituted protected opposition under Title VII).







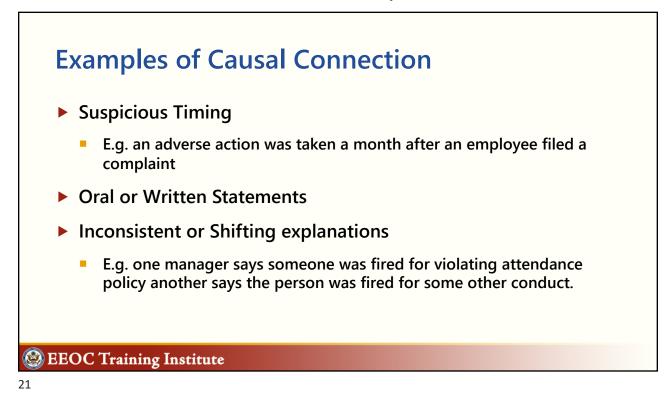
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Causal Connections

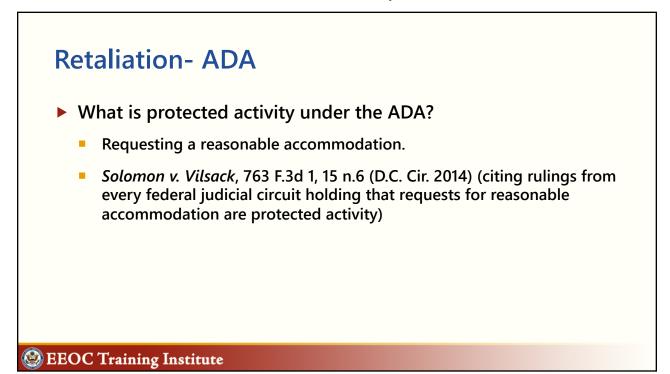
- Unlawful retaliation is established when a causal connection is established between a materially adverse action and the individual's protected activity.
- Univ. of Tex. Sw. Med. Ctr. v. Nassar, 133 S. Ct. 2517, 2534 (2013) (holding that "but-for" causation is required to prove Title VII retaliation claims raised under 42 U.S.C. § 2000e-3(a), even though claims raised under other provisions of Title VII only require "motivating factor" causation)

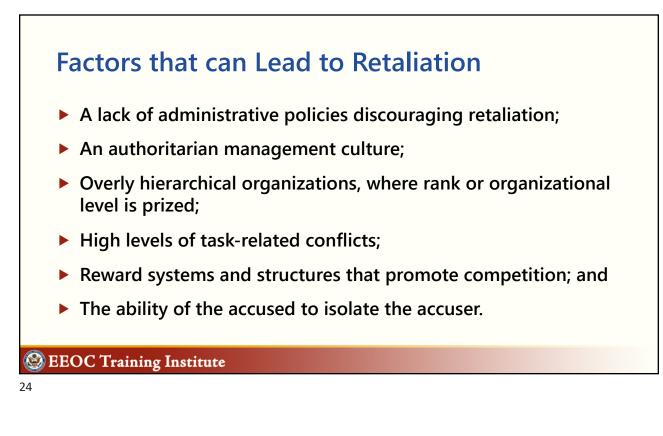
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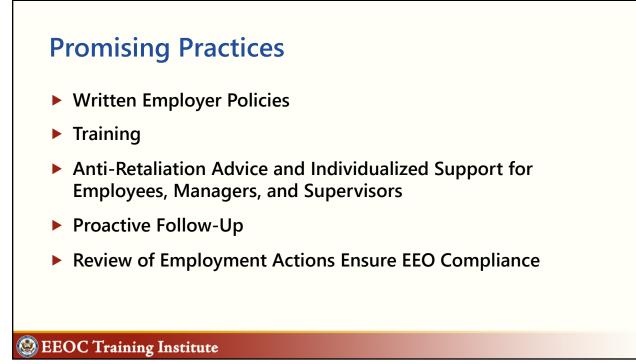


ADA- Retaliation

- 42 U.S.C. § 12203(a)
 - "No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter."





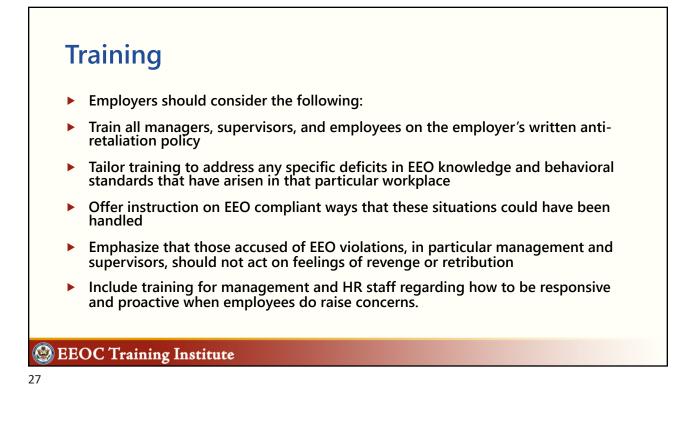


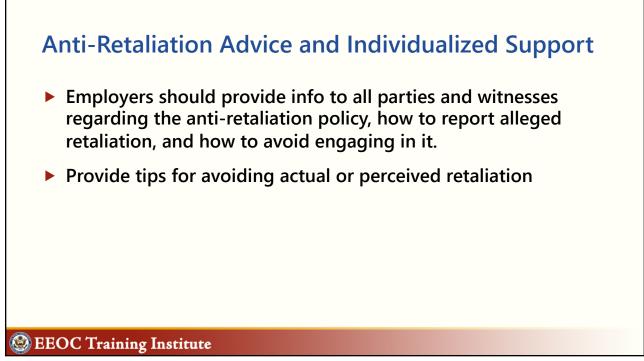
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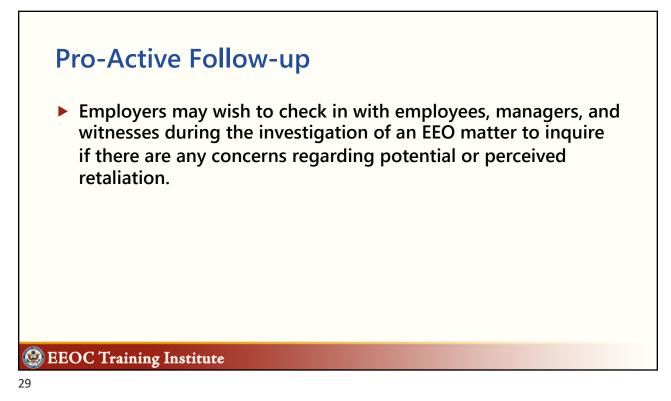
Written Employer Policies

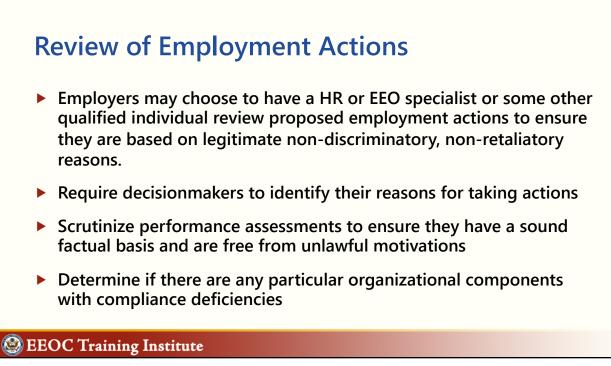
- Employers should maintain a written, plain-language anti-retaliation policy and provide practical guidance on the employer's expectations
- Examples of retaliation that managers may not realize are actionable
- Proactive steps for avoiding actual or perceived retaliation
- A reporting mechanism for employee concerns about retaliation
- A clear explanation that retaliation can be subject to discipline, up to and including termination

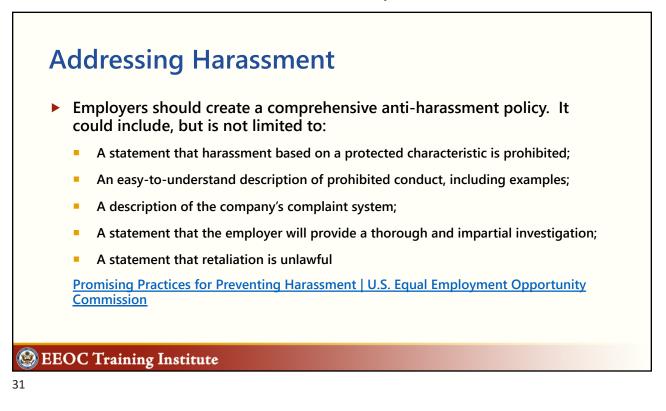
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Examples of Ineffective Policies

- Lamarr–Arruz v. CVS Pharm., Inc., 271 F. Supp. 3d 646, 661 (S.D.N.Y. 2017) (the employee's testimony that complaints to the ethics hotline were ignored raises questions regarding the reasonableness of the employer's purported available corrective measures)
- Wilborn v. S. Union State Cmty. Coll., 720 F. Supp. 2d 1274, 1300 (M.D. Ala. 2010) (criticizing the employer's complaint reporting procedure where employees were directed to file complaints with one person at an address located in a different city, the point of contact never visited the location where the harassed employee worked, and the harassed employee was not provided with any other contact information for the point of contact.)

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Examples of Ineffective Policies

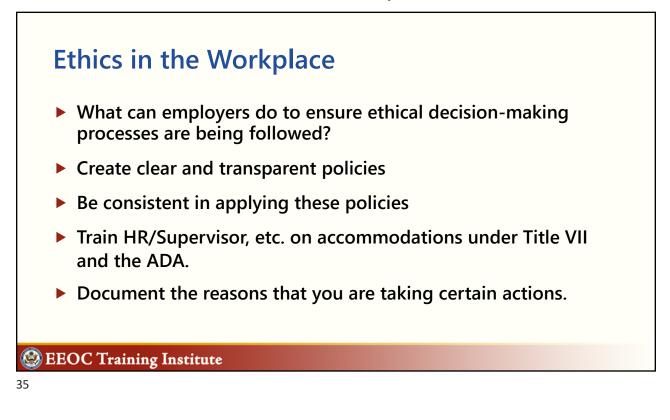
Escalante v. IBP, Inc., 199 F. Supp. 2d 1093, 1103 (D. Kan. 2002) (determining the employer failed to show it exercised reasonable care by promulgating and implementing an anti-harassment policy where it "has a confusing number of contradicting policies, each stating a different reporting mechanism, the specific policy dealing with discrimination claims only provides the employee one person to report such claims to[, and] [t]his person is located in another state, is only accessible by telephone, and the policy does not state the hours or days in which this person may be reached")

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Recruitment and Hiring

- EEO laws such as Title VII and the ADA require employers to provide equal opportunities in hiring. For example, under the ADA this includes providing applicants with disabilities a reasonable accommodation.
- An employer could meet its legal obligations by ensuring all qualified applicants are considered.
- Employers could take a step above and beyond by ensuring that recruitment efforts reach a broad and diverse pool of applicants.



Ethical AI Practices?

- A complaint in the N.D. of California alleges that Workday's Alpowered applicant screening tools discriminate based on race, age, and disability.
- The Plaintiff alleges that the AI could infer his race from graduation from a historically Black college, determine his age from his graduation year, and identify mental disabilities through personality tests.
- The Court found that Workday falls under the definition of "an employer" under Title VII, the ADEA, and the ADA.
- Mobley v. Workday Inc., 2024 WL 3409146 (N.D. Cal. Jul. 12, 2024)

