

# Retaliation: A predictable and costly consequence of reporting wrongdoing

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By Amy Block Joy

## Table of Contents

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## What is retaliation?

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The verb *retaliate* means “to repay in kind.”<sup>[1]</sup> Retaliation is revenge, reprisal, retribution, or getting even (e.g., an eye for an eye). The Ethics Resource Center defines retaliation as “...a negative consequence experienced by an employee for reporting observed misconduct.”<sup>[2]</sup> The Nolo Plain-English Law Dictionary uses a similar definition: “punishment of an employee by an employer for engaging in legally protected activity.”<sup>[3]</sup>

The negative consequence or punishment is typically an adverse employment action: getting fired, demoted, or laid off; reduced salary or reduced time; reassignment, relocation, or being transferred; and forced resignation. Other harmful results include reputation damage, property damage, and physical injury; exclusion from decision-making and meetings; and abuse, harassment, and/or humiliation from supervisors and coworkers. Many also suffer from failed advancement, negative evaluations, and heavy-handed monitoring.

My firsthand experience of retaliation was terrifying. After I reported allegations of workplace wrongdoing, my coworkers, colleagues, and supervisors had one goal: to keep me quiet.<sup>[4]</sup>

## Reporting wrongdoing

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In February 2006, while on the faculty at a major public institution where I'd been employed for 28 years, I discovered a questionable purchase.<sup>[5]</sup> Having no training on how to handle allegations of workplace wrongdoing, I relied on my own moral compass. I discovered this purchase in my office files. As the director of a \$14 million poverty program, I had a room full of file cabinets.

The document, found in a red folder, had all the hallmarks of wrongdoing. It was approved by a manager who didn't have approval authorization. Other red flags: a vague description (Canon Optura 600) and expensive. In addition, the vendor, Fry's Electronics, seemed out of place for my program. And more alarming was the manager's handwritten instructions: “Pick up from Vendor.”

I called the vendor and discovered that the item was a camcorder that produced DVDs. This was

an inappropriate purchase and appeared to be for personal use. Initially stunned by the manager's apparent dishonesty, I wasn't sure what to do. I did know that my responsibility was to follow policy and report the allegation to my supervisor.

I prepared a non-accusatory letter and arranged a meeting with her and my supervisor, the department chair. This way I was following policy and also allowing the manager to respond. Maybe there was a reasonable explanation.

I will never forget that March meeting. After I read my short letter out loud to the manager and the chair, I asked her one question: "Where's the camcorder?"

"It's in my garage," she answered.

Stunned by her confession, I stated, "Using program funds for personal benefit is considered misuse." After letting that message sink in, I reported that she must pay back the money and be monitored for eight months with a revised position description.

I reminded her that she lacked approval authority. Turning to the chair, I expected him to advise her about disciplinary action. He was silent. After the manager left, he became enraged and blew up: "This is no big deal. Happens all the time. You're too rigid. I thought she was your friend. People are complaining about you."

The next day, I gave the chair an incident report (my letter, the evidence, her confession, and a copy of her \$1,400 repayment check). When I requested that my report be distributed to the dean, he refused and told me to keep quiet.

"Everything about this incident," he snarled, "will go into my personal vault."

Things got better. The manager took full responsibility and begged me not to cash her check until she had the money. I believed she was stalling, hoping that the incident would blow over. When the chair suggested that I return her check and use his departmental funds to pay back the program, I prepared another letter. My second letter was a warning that embezzlement was grounds for termination. In June, I sent a draft to the chair for review. Suddenly, the funds were found. I deposited her check at the university's cashier office.

The manager worked hard to win me back. By finalizing our program plan early, I began to relax and took a short vacation. However, when I returned, she'd approved another purchase. Even though it was legitimate, I was shocked that no one, including the new department chair, had stopped her. I prepared a third warning letter, stripping her of all supervisory duties. That very evening, I heard from a staff member that she was falsifying travel, collecting \$800 a month for two years.

The next day, I conducted an audit at accounts payable and found evidence that her fabricated travel was approved by the former chair. I took copies to the new chair with documentation that she was on campus. Because most of her fraudulent travel included trips that I'd taken, I had

meeting minutes to back me up.

During our short meeting, he confided that many were suspicious. Stunned, I asked if he knew she was fabricating travel. He nodded, and we began to argue.

“This is serious,” I said. “We need to report the fraud to the dean immediately.”

He flatfootedly refused, indicating he wanted to talk with her and the former chair. He then threatened me: “You could get in big trouble should you act on your own.”

That evening I used the university’s whistleblower and protection from retaliation forms to report my allegations of wrongdoing. I sent my report to the new chair, the dean, the human resources director, the provost, and the chancellor. I’d no idea that I was unleashing a firestorm of retaliation. I was following my institution’s policy to report serious wrongdoing.

On August 25, 2006, I became a whistleblower.

## Retaliation begins

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Retaliation began within hours after blowing the whistle. No one at the dean’s office replied to my urgent request to put the manager on leave. I was on my own and concerned that she might destroy evidence.

So two witnesses and I conducted an investigatory leave. During the notification, she tried to take office files. I noticed a red folder—I recalled the embezzlement—and took the file, flipping it open. Forgery! In that red file was evidence of her practicing my signature. Terrified, I sent the evidence to the dean, leaving a frantic voicemail requesting the evidence be secured.

After no response, I visited the dean’s office without success. Boxing up the evidence, I placed it in my car’s trunk, documenting every step. Would a rookie mistake allow her to escape discipline?

That very night, my office was broken into and ransacked.<sup>[6]</sup> I reported the break in to the dean expecting him to call the police. He didn’t even reply. The dean’s response, like that of the former chair, was silence. At the time, I believed that the manager was acting alone. I was completely wrong.

## Policy concerns

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When I reported the wrongdoing, I followed policy by reporting it to my supervisor. But what does one do if the supervisor doesn’t take action? And if the supervisor or other higher-ups are involved, tipping them off isn’t a good strategy. For an institution to protect reporters of wrongdoing, I believe employees should report to the experts: internal auditors or investigative officials inside the organization.

After I blew the whistle, I waited patiently for the investigation to begin. Three days later, I received a call from the dean wanting to visit me at my home. I thought he was going to thank me. He arrived and handed me a letter. I was under investigation for misuse of government funds and prohibited from talking to anyone. The chair took over my poverty program, telling me that the manager filed a false whistleblower report against me. She provided zero evidence.

Shocked that her claims of wrongdoing received more official attention than mine, I believed this retaliation was done to keep me quiet. When higher-ups are involved in the misuse, they can use their high-level position and status to deflect the wrongdoing, escape detection, and intimidate the reporter with claims of wrongdoing.

It didn't work.

## Internal auditing

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Everything changed when I met with internal auditing. Turning over my evidence, I discussed what happened. Confident that my allegations would be taken seriously, I finally found a safe haven.

Internal auditing, campus authorities, and agents from the Office of the Inspector General worked together, and two months later, on Halloween 2006, a warrant was issued, and the manager's home was searched. \$160,000 of goods were found in her garage! She spent 60 days of investigatory leave trying to sell the goods on eBay.

In November, officially cleared, I returned to direct my program. Her false accusations weren't substantiated.

## Retaliation continues

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Even after I was cleared, coworkers, supervisors, and colleagues I worked with for decades were shunning me. I hunkered down and ignored the onslaught, hoping over time they would return.

But instead, in January 2007, the wrongdoing became front-page news, and things got dicey. My esteemed colleagues, under the direction of the dean, prepared and distributed a petition to remove me from office. I was devastated by their malicious smear campaign to destroy my career.

I fought back. Working hard to get my program back on track, I prepared a new proposal, and the federal government approved it in July. Elated and vindicated, I emailed the dean with my good news. I expected he'd be pleased to know that the fraud hadn't ended my program. The dean asked for a meeting.<sup>[7]</sup> When I arrived, four high-level officials were in the room. When the meeting began, the dean accused me of workplace violence. This was when I understood retaliation: The dean was falsely accusing me to terminate my employment.

Adamant that the allegation was fabricated, I was given the accuser's identity. Convinced that

this was a trick, I reported the accuser, a staff member working for the dean, was in hot water for a policy violation. When I asked if the dean received my email documenting her breach, he became silent.

The next day, I received a letter accusing me of workplace violence. I responded with a retaliation complaint, asking the university to protect me. The vice-chancellor replied promptly. The university's protection would be to investigate my complaint using an outside attorney. My retaliation complaint, whether or not I'd been violent, as well as the staff member's policy breach were all under investigation.

## Proving retaliation

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In order to substantiate a retaliation complaint, I had to prove:

1. I engaged in a protected activity.
2. My employer took adverse action against me.
3. There is a causal link between my activity and my employer's action.<sup>[8]</sup>

In other words, I had to show that my disclosure (whistleblower report) was a protected activity; that the dean, my employer, falsely accused me of violence to end my employment (took adverse action); and that the link between the activity and the action wasn't random: The adverse action was *caused* by reporting wrongdoing.

## Retaliation intensifies

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I believed the retaliation would cease after my complaint. It didn't. I was surprised those involved in the smear campaign (the dean and my colleagues) felt that what they were doing was just fine. And no one stepped in to stop them.

Retaliation intensified. My car was vandalized in the parking lot. A lug nut in a back tire was tampered with, causing a freeway accident. I escaped injury but was profoundly fearful. How far would individuals go to silence me?

## Investigative findings

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University of California, Davis had to repay the United States Department of Agriculture \$2.3 million dollars.<sup>[9]</sup> The manager was indicted by the US attorney on federal charges of misuse of government funds. After agreeing to a plea deal and admitting her wrongdoing, she served one year of prison. Her \$160,000 embezzlement included 300 invoices. Her travel fraud of \$24,952 included 259 fictitious and personal trips approved by the former chair, who misappropriated \$500,000. Collusion was uncovered. While the manager was hiring staff to conduct his unallowable research and approving expensive equipment for his department, the chair was approving her fake travel.<sup>[10]</sup>

In December 2007, my retaliation complaint was substantiated. The dean had retaliated against me for reporting wrongdoing. I was cleared of violence in the workplace. The dean's staff member accuser had committed a policy breach, giving motive for her fabricated allegation. I negotiated with the university and secured a new position, \$25,000 in research funding, \$89,600 in lost wages, and a new office located far away from the fraud. Unfortunately, colleagues remained angry at being questioned by authorities, and most haven't forgiven me for reporting wrongdoing.

## Preventing retaliation saves money

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Retaliation must be prevented. Stopping it once it has begun will only occur if the institution steps in and enforces the law that prohibits it. Until then, retaliation will be a costly part (in institutional legal costs, expensive investigative time and auditing resources, and settlement costs) of reporting. Having a policy prohibiting retaliation won't deter it.

In 2013, the National Business Ethics Survey (NBES) reported that 41% of employees observed misconduct, and 24% incidents involved senior managers. Of those observers, 63% reported the misconduct, of which 21% reported retaliation for doing so. This rate translates to 6.2 million workers.<sup>[11]</sup>

According to the U.S. Equal Employment Opportunity Commission fact sheet on retaliation, "Retaliation is the most frequently alleged basis for discrimination...and the most common discrimination finding."<sup>[12]</sup> In 2017, there were 41,097 retaliation claims (48.8% of all charges filed). The number of claims was an increase from claims in 2014 (38,000 claims), costing more than \$140.8 million in monetary benefits (not including additional money awarded in lawsuits).

Fear of retaliation will keep the workforce silent until institutions are able to protect reporters. Companies with a strong ethical culture have significantly reduced wrongdoing. In the 2013 NBES survey, 20% of employees reported seeing misconduct in companies with a strong ethical culture, compared to 80% who witnessed misconduct in companies with a weak ethical culture. A strong ethical culture was defined as those providing training, using ethical conduct as an evaluation performance measure, and communicating disciplinary action after wrongdoing. The company's commitment to ethics is also important: 72% of employees who believed their company was ethical reported wrongdoing.<sup>[13]</sup>

Institutions save money, promote integrity, and improve employee morale when they prevent retaliation from becoming a second form of misconduct. Preventing retaliation is good public policy.

## Takeaways

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- Retaliation is a negative consequence experienced by an employee after reporting wrongdoing.

- I used the university's whistleblower and protection from retaliation forms to report wrongdoing, but a firestorm of retaliation was unleashed.
- When I reported the wrongdoing, I followed policy by reporting it to my supervisor—but what does one do if their supervisor is involved?
- Preventing retaliation saves money—the cost of protracted institutional legal fees, investigative time and auditing resources, and settlement money.
- Retaliation is an expensive and an unnecessary second form of misconduct.

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3 Nolo Plain-English Law Dictionary, "Retaliation," <http://bit.ly/2HXddJ2>

4 Amy Block Joy, *Retaliation* (CreateSpace, 2013), <https://amzn.to/2DgHjBZ>

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6 Amy Block Joy, *Whistleblower*

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11 Ethics Resource Center, "National Business Ethics Survey of the U.S. Workforce," 2013, <http://bit.ly/2lgArcZ>

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