AVOIDING EMPLOYMENT LAW TRAPS: RETALIATION CLAIMS

Frank Waite
Micah R. Prude

Thompson & Knight
Attorneys and Counselors
214.969.2122

Retaliation Claims Are The Most Dangerous and Common Claims:

- Title VII
- First Amendment
- Texas Whistleblower Act
- Texas Workers’ Compensation Act
Title VII
(Paper pgs. 1-8)

BNSF v. White

United States Supreme Court
(2006)

White Applied to Other Federal Statutes
(paper pgs. 9-15)

First Amendment Retaliation

Garcetti v. Ceballos

United States Supreme Court
(2006)
Texas Whistleblowers Statute
(Paper pgs. 16-20)

Montgomery County v. Park

Texas Supreme Court
(2007)

Texas Workers’ Compensation Act
(Paper pgs. 20-23)

Texas Supreme Court
(1996-2006)
Common Traps in Retaliation Cases

- Failing to Recognize Potential Claims
- Overconfidence Based on Technical Defenses
- Failure to Take Necessary Steps to Establish a Record on Nonretaliation
  - Rush to Action
  - Biased Decisionmakers
  - Lack of Documentation to Support Adverse Action
  - Disparate Treatment
  - Failure to Establish “Good Cause” in the Face of Retaliation Claim

Some Tips

Complete Investigation of Retaliation Claim
(Independent Review Helpful)
Some Tips

Minimize Role of Person Who is Subject of Retaliation Allegation

Establish a Record of Objectivity to the Claim (Even if all agree it is groundless from the start)
Some Tips

Explain to Decisionmakers that a Successful Retaliation Claim can Result in Liability and Undermine Credibility of Organization

Some Tips

Control the Remarks of Decisionmakers
Some Tips

Always Remember:

You Must be Able to Persuade a Jury

Some Tips

COUNSEL PATIENCE