

RISKY BUSINESS: LITIGATING RETALIATION CLAIMS

Presented By:

Honorable Mark W. Bennett

- U.S. District Court for the Northern District of Iowa

David W. Long-Daniels

- Greenberg Traurig, LLP

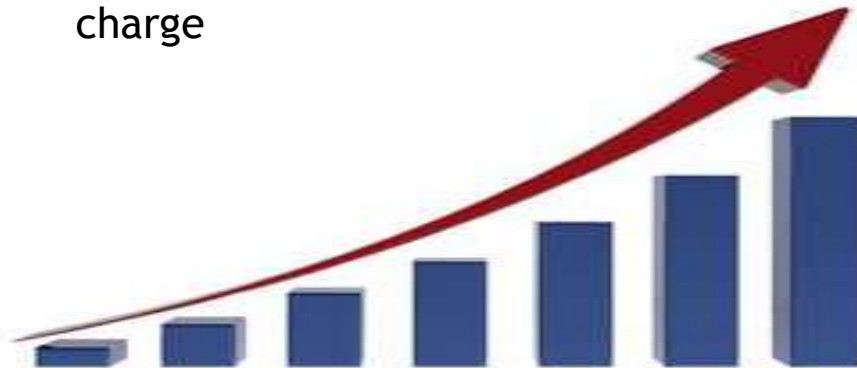
Ty Hyderally

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RETALIATION CLAIMS GENERALLY

■ Retaliation Claims on the Rise

- Statistics EEOC charges of retaliation:
 - 1997: Just over 18,000
 - 2011: More than doubled to over 37,000
 - 2011: Makes up 37.4% of all EEOC charges filed
 - Has surpassed race discrimination to become most common charge



ELEMENTS OF A RETALIATION CLAIM

- Employee engages in protected activity
- Employee suffers material adverse action
- Material adverse action is causally related to protected activity

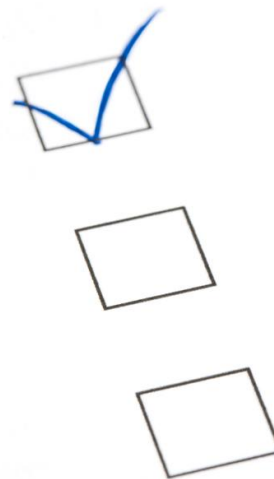


RECENT RETALIATION CASES

- ***Burlington Northern v. White* (2006) (Title VII)**
 - Held that a material adverse action is any action that might dissuade a reasonable worker from making or supporting a complaint
- ***Crawford v. Metropolitan Gov't of Nashville* (2009) (Title VII)**
 - Held that “opposition” to any unlawful employment practice means not just the employee making initial complaint, but others who also complain during the course of any investigation
- ***Thompson v. North American Stainless* (2011)(Title VII)**
 - Held that fiancé of employee who complained of discrimination was protected from adverse action/retaliation [associational retaliation]

OTHER ISSUES

- **Voir Dire**
- **Jury Instructions**
- **Temporal Proximity**
- **Other issues you should think about**



QUESTIONS

