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## **AVOIDING EMPLOYMENT LAW TRAPS: RETALIATION CLAIMS**

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## **Retaliation Claims Are The Most Dangerous and Common Claims:**

- **Title VII**
- **First Amendment**
- **Texas Whistleblower Act**
- **Texas Workers' Compensation Act**

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**Title VII**  
(Paper pgs. 1-8)

**BNSF v. White**

**United States Supreme Court**  
(2006)

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

**First Amendment Retaliation**

**Garcetti v. Ceballos**

**United States Supreme Court**  
(2006)

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**Texas Whistleblowers Statute**  
(Paper pgs. 16-20)

**Montgomery County v. Park**

**Texas Supreme Court**  
(2007)

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

**Texas Supreme Court**  
(1996-2006)

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## 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**

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## Some Tips

**Complete Investigation of Retaliation Claim  
(Independent Review Helpful)**


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## Some Tips

**Minimize Role of Person Who is Subject of Retaliation Allegation**

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## Some Tips

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

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## Some Tips


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

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## Some Tips

**Control the Remarks of Decisionmakers**

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## Some Tips

Always Remember:

# You Must be Able to Persuade a Jury

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## Some Tips

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