



Supervisory comments that are likely to deter an employee from engaging in protected EEO activity constitute Reprisal *Per Se* and are a violation of Title VII.

The complainant, a Union Steward, had contacted an EEO Counselor regarding an allegation of sexual harassment. The EEO Counselor immediately contacted Mr. W (hereinafter "the RMO") and told him about the complainant's allegations. Several days later the RMO contacted the local Union President about the possibility of utilizing mediation to resolve the complainant's claim. The RMO, however, went one step further and told the Union President that if the complainant was not telling the truth, he could be subject to disciplinary action. The Union President relayed the RMO's message to the complainant. Although the RMO testified that his remarks were not intended as a threat against the complainant, OEDCA found that the RMO had engaged in Reprisal *Per Se*.

The Commission has held that the actions of a supervisor may be *per se* reprisal where the supervisor intimidates an employee and interferes with his or her EEO activity in any manner. Note that in the above instance the RMO did not take an ultimate or significant adverse action against the complainant involving the terms and conditions of his employment. However, we concluded that the complainant reasonably perceived the RMO's remarks as intimidation and a threat. Not only were the remarks ill advised as a matter of sound leadership practice, they also constituted reprisal in and of themselves, even though the remarks had no concrete effect on the complainant's employment. The test for *per se* reprisal is objective, not subjective, and regardless of the RMO's actual motives, his cautionary advice to the complainant clearly falls within the kind of conduct proscribed by the concept of *per se* reprisal.

The Commission has found violations of Title VII where managers have exerted pressure on complainants to drop EEO complaints or not to file them at all; complained about, criticized, or discredited EEO activity; and, where managers have threatened complainants with reassignment, termination or defamation suits because they have engaged in protected activity. Moreover, the complainant need not show that he, himself, was deterred from filing an EEO complaint due to the manager's conduct.

PRACTICE POINTER: Supervisors must never make statements that could be interpreted by subordinate employees as a warning against filing EEO complaints. Regardless of the degree or quality of harm to a particular complainant, retaliation harms the public interest by deterring others from filing a charge. The chilling effect of retaliatory activity carries with it the distinct risk that other employees will be deterred from protecting their rights under the EEO statues or providing testimony in EEO

proceedings. Supervisors would be well-advised not to mention the fact that an individual has filed an EEO complaint.

For further information, see EEOC Compliance Manual on Retaliation, No. 915.003 (May 20, 1998).