

DID BOSS RETALIATE AGAINST EMPLOYEE SUBPOENAED TO TESTIFY?



A recent case questioned an employer's alleged retaliation involving testimony given in a civil rights lawsuit – testimony that painted the employer in a rather unflattering color. A woman was working as the Confidential Administrative Assistant to the Chief of Police at the City of Mountlake Terrace Police Department in Washington. She'd been employed for around five years, handling mostly clerical work, when she was subpoenaed for a civil rights suit filed by a former employee of the Police Department against the City and others – including the woman's boss. The charges alleged violations of the rights to due process and free speech, the sergeant who filed claiming that he was discharged without due process and in retaliation for his criticism of the "War on Drugs." In her deposition, the woman confirmed the sergeant's frank views on the need for drug policy reform, but also noted that both the Chief of Police and the Assistant Chief of Police "disapproved" of the man's public comments and involvement with an anti-prohibition organization. She further stated that the Assistant Chief had urged the Chief to fire the sergeant and that, while the sergeant had a reputation for honesty, the reputations for the Chief and Assistant Chief were decidedly less respectable – the latter deemed a "back stabber." Following the testimony, the Assistant Chief reportedly made comments regarding the need to "get rid of" the woman. A couple of months later, a new Chief of Police was hired. The Assistant Chief allegedly expressed concerns over the woman's job performance, and she was transferred to a part-time records specialist position. The job entailed data entry of records, citations and warrant information, a position for which she had never been trained. Two more months later, the woman was placed on administrative leave for a verbal altercation with another employee – but only the woman was disciplined. The Chief, having learned of the woman's criticism of the records specialist training program from the Assistant Chief, recommended to the City Manager – with the authority to hire/fire – that the woman be



terminated, and she was subsequently fired.

The resultant lawsuit alleged retaliation. The Assistant Chief, named in the suit, made a motion for partial summary judgment. It was granted only in part, as the district court determined that the woman's deposition was a matter of public concern, given as a private citizen and not as a public employee. This would make her testimony protected activity, and any adverse action against it would be classified as retaliation. The Assistant Chief's second motion was also denied in part, affirming the deposition as protected activity and finding a "triable issue of fact" – noting the possibility of prejudice for the woman's testimony, as well as the Assistant Chief initiating a "series of actions" leading to her termination. The Assistant Chief filed an interlocutory appeal – one that's made before the trial is complete. He challenged the denial of his claim for qualified immunity, typically granted to federal officials to protect them from liability in cases of alleged violations of constitutional rights. The appeals court, however, affirmed the district court's ruling, seeing the potential for retaliation.