

## Friend Or Foe?: Terminated HR Director Can Bring Retaliation Case, Court Says

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Most readers are aware that an employee who complains – internally or externally – about wage/hour law violations, or virtually any violation of an employment law, has the statutory right not to have an adverse job action taken against him/her because he/she made that complaint. We have discussed such claims before in the Currents blog, including [here](#).

It is the protected class of “People Who Have Asserted Their Legal Rights,” and asserting retaliation claims has long been a [growth area](#). But what about an HR manager who tells the company there are violations of the law and is subsequently terminated, allegedly because the manager made such reports? Does the HR manager have a retaliation case? Yes, according to the Ninth Circuit federal court of appeals.

In [Rosenfield v. GlobalTranz Enterprises](#), HR Director Alla Rosenfield had told the company repeatedly that it was violating the Fair Labor Standards Act. She was subsequently terminated and alleged it was in retaliation for telling the company that. The legal question before the court was whether this constitutes a “complaint.” For an employee to complain, she needs to put herself in a position adverse to the company, and an HR Director is working for the company and presumably involved in legal compliance.

So, is she complaining, or just doing her job? The court held that a jury could reasonably find that Rosenfield’s reports were complaints for purposes of anti-retaliation provisions of the FLSA and the company was not entitled to summary judgment. The court seemed to suggest a possible distinction for future cases by suggesting that FLSA compliance was not part of Rosenfield’s job (which seems odd for an HR Director, but anyway ...), so the fact that she was repeatedly raising the issue meant she was stepping out of her job responsibilities and making a complaint.

The bottom line for employers is that, while this case may be distinguishable and not followed by courts in all jurisdictions, the termination of any employee who has made complaints that the company has violated the law warrants special scrutiny and consultation of counsel to ensure the company is taking steps to minimize its liability prior to termination.

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