

Filing Whistleblower Complaints Related to COVID-19

Employees are protected from retaliation for raising workplace health and safety concerns relating to COVID-19, reporting cases of the illness to their employers under the Occupational Safety and Health Act, and engaging in certain other activities related to COVID-19.

COVID-19

Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, is highly infectious and can spread from person to person, including through aerosol transmission of particles produced when an infected person exhales, talks, vocalizes, sneezes, or coughs. The virus that causes COVID-19 is highly transmissible and can be spread by people who have no symptoms. Particles containing the virus can travel more than 6 feet, especially indoors and in dry conditions (relative humidity below 40%), and can be spread by individuals who do not know they are infected.

Protection from Retaliation

The Occupational Safety and Health Act (OSH Act) prohibits retaliation against employees for exercising a variety of rights guaranteed under the Act. Specifically, Section 11(c) of the OSH Act, as well as anti-retaliation provisions included in certain OSHA rules, protect employees from retaliation for exercising these rights.

Who Is Protected?

Section 11(c) protects employees of “a person engaged in a business affecting interstate commerce.” It does not cover employees of the U.S. government or State or local government employees.¹ However, it does cover U.S. Postal Service employees.

What Activities Are Protected?

A person may not discharge or in any manner retaliate against an employee because the employee exercised any right under the OSH Act. Here are some examples of COVID-19-related activities that are protected under Section 11(c):

- Requesting personal protective equipment which the employee reasonably believes is required by an OSHA standard.
- Wearing personal protective equipment required by an OSHA standard.
- Reporting a COVID-19 infection or exposure to COVID-19 to an employer or OSHA.
- Reporting an unsafe condition to an employer or OSHA.
- Requesting guidance on workplace safety from an employer, OSHA, or other government entity.
- Refusing to perform a work task if: the employee has a reasonable apprehension of death or serious injury, refuses in good faith to perform the task, there is no alternative assignment and there is insufficient time to have Federal or State OSHA or another agency conduct an inspection or where such an inspection has already taken place; and, where possible, the employee has asked their employer to correct the hazard and it was not corrected. For more information:

www.osha.gov/workers.

1. Federal employees are protected from retaliation for occupational safety or health activity under procedures established by their agencies pursuant to Executive Order 12196. See 29 CFR 1960.46-47. They are also protected from retaliation for whistleblowing under the Whistleblower Protection Act. For more information visit www.osc.gov. Similar protections are provided by State laws in States operating OSHA-approved State Plans. See below for more information on State Plans.

What Is Retaliation?

Retaliation is an adverse action against an employee because of activity protected by the OSH Act. Here are some examples of adverse actions:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failure to hire or rehire
- Intimidation or harassment
- Making threats
- Reassignment to a less desirable position or actions affecting promotion prospects
- Reducing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance
- Blacklisting (intentionally interfering with an employee's ability to obtain future employment)
- Constructive discharge (quitting when an employer makes working conditions intolerable due to the employee's protected activity)
- Reporting the employee to the police or immigration authorities

Deadline for Filing Retaliation Complaints

OSHA administers more than twenty whistleblower statutes with varying time limits for filing.

Complaints under Section 11(c) of the OSH Act must be filed within 30 days after the employee learns of the adverse action. The filing date is the date of the postmark, facsimile, electronic communication, telephone call, or delivery to a third-party commercial carrier.

How to File an 11(c) Complaint

If an employee believes they have been retaliated against in violation of Section 11(c), they, or their representative, may file a complaint with OSHA. Complaints may be filed verbally or in writing.

To file a complaint verbally: Visit a local area office or call OSHA at 1-800-321-OSHA (6742). Information on local area offices is available at www.osha.gov/contactus/bystate or can be obtained by calling OSHA at the above phone number.

To file a complaint in writing: Send a written complaint to the closest OSHA regional or area office by U.S. mail (confirmation services recommended), other third-party commercial carrier, facsimile, or electronically. Electronic complaints can be submitted at www.whistleblowers.gov/complaint_page.

No particular form is required and complaints may be submitted in any language.

In the 22 states with OSHA-approved State Plans which cover the private sector, employees may file a complaint under Section 11(c) of the OSH Act or a complaint under the State's analogous whistleblower provision or both. The complaint with Federal OSHA must be filed within 30 days of the unfavorable employment action. The complaint filed with the State agency must be filed within the time limit prescribed by State law. State and local government employees in these States, and in the six States with State Plans covering only State and local government employees, may only file occupational safety or health retaliation claims with the State agencies. For a list of State Plans, please visit: www.osha.gov/stateplans.

What Happens After Filing?

OSHA will review filed complaints to determine whether it is appropriate to conduct a fact-finding investigation. In making this decision, OSHA considers factors such as whether the complaint was timely filed and whether the allegation is covered by Section 11(c) or any other relevant OSHA whistleblower statute. All Section 11(c) complaints are investigated according to requirements in 29 CFR Part 1977.

What to Do about a Dangerous Situation at Work

If possible, OSHA recommends that employees notify their employers of any unsafe or unhealthful working conditions, e.g., potential exposure to COVID-19. Promptly alerting employers about safety and health issues may help avoid a situation where employees are faced with either refusing to perform a task or exposing themselves to a serious hazard.

Workers may file a complaint with OSHA concerning a hazardous working condition at any time. For information on occupational safety and health laws, standards, and regulations, visit OSHA's website: www.osha.gov.

Results of the Section 11(c) Investigation

If OSHA proceeds with an investigation and the evidence supports an employee's claim of retaliation and a voluntary settlement cannot be reached with the employer, the Secretary of Labor, through the Office of the Solicitor of Labor (SOL), may litigate the case in U.S. District Court. The Secretary may seek relief to make the employee whole, including:

- Reinstatement.
- Payment of back pay with interest.
- Compensation with interest for expenses the employee may have incurred as a result of the retaliation.
- Compensation for emotional distress.
- Punitive damages.
- Non-monetary relief.

If the OSHA Regional Administrator whose office investigated the case finds that the evidence does not support an employee's claim of retaliation, the Regional Administrator will dismiss the complaint. The employee may seek review of that dismissal by the Directorate of Whistleblower Protection Programs (DWPP) in Washington, D.C. by filing a request for such review within 15 calendar days of the employee's receipt of the dismissal letter. The employee must send a copy of this request to the Regional Administrator.

To Get Further Information

For a copy of Section 11(c) of the OSH Act (29 U.S.C. § 660(c)), the regulations (29 CFR Part 1977), and other information, go to www.whistleblowers.gov.

OSHA's Whistleblower Protection Program enforces the whistleblower provisions of more than twenty federal whistleblower laws. To learn more about the whistleblower statutes that OSHA enforces, view our "Whistleblower Statutes Summary Chart" at www.whistleblowers.gov/whistleblower_acts-desk_reference. You can also call OSHA at 1-800-321-OSHA (6742) if you have questions or need more information.

OSHA's COVID-19 resources can be found at www.osha.gov/coronavirus, HHS's COVID-19 resources can be found at www.hhs.gov, and the Centers for Disease Control and Prevention's COVID-19 resources can be found at www.cdc.gov/coronavirus/2019-ncov.

Under the OSH Act, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's workers by setting and enforcing standards, and providing training, education, and assistance. Employers must comply with all applicable OSHA standards. Where there are no applicable standards, employers must comply with the General Duty Clause of the OSH Act, which requires employers to keep their workplace free of serious recognized hazards. For more information, visit www.osha.gov.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: 1-877-889-5627.

