

Protection From Retaliation for Engaging in Safety and Health Activity under the OSH Act

All employees have the right to file a whistleblower complaint with OSHA if they believe they have been retaliated against for raising workplace health and safety concerns or for reporting work-related injuries and illnesses.

It is illegal for an employer to retaliate against an employee who exercises their right to file a safety or health complaint with OSHA, raise a health and safety concern with their manager or employer, participate in an OSHA inspection, or report a work-related injury or illness. These rights are guaranteed under section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act).

Employee Protections

The OSH Act protects employees from retaliation for exercising their rights under the Act. Examples of protected actions include, but are not limited to:

- Communicating about safety or health matters to management personnel
- Asking questions, expressing concerns, or requesting copies of safety data sheets
- Reporting a work-related injury or illness
- Requesting copies of OSHA standards or regulations
- Filing a safety/health complaint with OSHA
- Participating in an OSHA inspection
- Refusing or complaining about requirements to reimburse an employer for OSHA penalties

Adverse Actions

An employer may not take an “adverse action” against an employee because the employee exercised a right under the OSH Act. Adverse actions include:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation, threats, or harassment

- Reassignment to a less desirable position
- Obstructing promotion prospects
- Reducing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance
- Interfering with future employment
- Constructive discharge (quitting when an employer makes working conditions intolerable)
- Reporting an employee to police or immigration authorities
- Application of an employer policy which discourages injury reporting, such as certain incentive programs

Deadline for Filing Complaints

Complaints must be filed within 30 days after the alleged retaliation occurs (when the employee is notified of the retaliatory action).

Complaints filed with OSHA after 30 days may be referred to the National Labor Relations Board (NLRB) for possible further action.

Complaints regarding retaliation for reporting an injury or illness to an employer may also be considered for OSHA safety and health enforcement action.

Filing a Whistleblower Complaint

Any employee or their representative who believes they have been retaliated against, may file a complaint with OSHA.

Complaints can be filed verbally in any language by visiting the nearest OSHA office, calling 1-800-321-6742, mailing a written complaint to the closest OSHA office, or by filing a complaint online at www.whistleblowers.gov/complaint_page.html.

Once received, OSHA will review the complaint to determine whether it is appropriate to conduct an investigation. All complaints are investigated according to requirements in 29 CFR Part 1977.

Complaints can also be filed in states and territories that operate an OSHA-approved state plan. A complaint filed with a state program must be filed within the time limit set by the state law. In these states, employees can also file a complaint with federal OSHA, as long as it is filed within 30 days of the adverse action. State and local government employees located in states with state programs can only file a whistleblower complaint with the state. For a list of state plans, please visit: www.osha.gov/stateplans.

What to do about an Unsafe Workplace

If an employee believes working conditions are unsafe or unhealthful, they should bring their concerns to their employer or management's attention. If possible, this should be done before they have to refuse to perform a task or expose themselves to a serious hazard.

Employees 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.

Not all work refusals because of unsafe or unhealthful conditions are protected by the OSH Act. The employee is protected from retaliation if they have a reasonable concern of death or serious injury; refuse in good faith to perform the task; have no alternative assignment; there is not enough time for a federal or state OSHA inspection or where such an inspection has already taken place; and, where possible, the employee requested from the employer but was unable to obtain correction of the dangerous condition. For more information: www.osha.gov/workers/right-to-refuse.

Investigation Results

If the evidence supports an employee's claim of retaliation and a voluntary settlement cannot be reached, the Department of Labor may litigate the case in U.S. District Court. The Department may seek relief to make the employee whole, including:

- Getting their job back
- Back pay with interest
- Payment for expenses that resulted from the retaliation with interest, and 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 employee may seek review by the Directorate of Whistleblower Protection Programs (DWPP) in Washington, D.C. by filing a request for review, within 15 days of the employee's receipt of the dismissal letter, with a copy to the Regional Administrator.

For More Information

For a copy of Section 11(c) of the *Occupational Safety and Health Act* (29 U.S.C. §660(c)), the regulations (29 CFR 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 which OSHA enforces, view our "Whistleblower Statutes Summary Chart" at www.whistleblowers.gov/whistleblower_acts-desk_reference.pdf. You can also call OSHA at 1-800-321-OSHA (6742) if you have questions or need more information.

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: (877) 889-5627.

