

Filing Whistleblower Complaints under the *Affordable Care Act*

Employees are protected from retaliation for reporting alleged violations of the *Affordable Care Act's* health coverage reforms (Title I of the Act) and for receiving a premium tax credit or a cost sharing reduction for enrolling in a qualified health plan.

Summary of Title I of the *Affordable Care Act*

The *Affordable Care Act* offers new rights and protections. Title I of the *Affordable Care Act* reduces health coverage costs for millions of families who don't get coverage from an employer by providing tax credits to make coverage affordable. The law created the Health Insurance Marketplace, where people can shop for coverage and see what financial assistance is available to them. The law also includes protections for people who do get their coverage through an employer: it reduces what families will have to pay for health care by eliminating dollar limits on essential health benefits, capping out-of-pocket expenses, and requiring preventive care to be fully covered without copays or deductibles. Title I also prohibits health plans and insurance companies from denying coverage because of a person's pre-existing medical conditions. In addition, it gives consumers the right to appeal plan or insurance company decisions that deny doctor-ordered treatments covered under a plan. Title I includes many other reforms to health insurance. To read Title I and learn more about how the law affects you, visit www.healthcare.gov.

Protected Activity

In addition to health insurance reforms, Section 1558 of Title I also protects employees from retaliation for:

- reporting violations of the various reforms found in Title I; and
- receiving a premium tax credit or a cost sharing reduction for enrolling in a qualified health plan.

Employees who believe they have been retaliated against in violation of Title I of the Act may file a complaint with OSHA. See "How to File A Whistleblower Complaint" on page 2 for details.

What is Retaliation?

Retaliation is not limited to firing an employee. Retaliation can include several types of actions, such as:

- Firing or laying off
- Reducing pay or hours
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidating
- Making threats
- Reassigning affecting prospects for promotion

What is NOT covered by the *Affordable Care Act's* Whistleblower Provision?

OSHA generally does not have jurisdiction over the following types of complaints:

• Medicare and Medicaid Fraud.

To report Medicare fraud or Medicaid fraud, contact the Department of Health and Human Services' Office of the Inspector General. Visit www.stopmedicarefraud.gov for more information. If you have already reported Medicare or Medicaid fraud and you believe your employer is retaliating against you as a result, you may wish to contact an attorney for advice on any state or federal law protections.

• Patient abuse.

To report patient abuse, you may contact your State Survey Agency. Visit www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/ContactInformation.html for more information. If you have already reported patient abuse and you believe your employer is retaliating against you as a result,

you may wish to contact an attorney or your State Attorney General's office for information on any state law protections. You may also contact the Department of Health and Human Services' Office of the Inspector General.

Time Limits for Filing Complaints

An employee, or representative of an employee, who believes that he or she has been retaliated against in violation of Title I of the Act may file a complaint with OSHA. Complaints must be filed within 180 days after the retaliation.

How to File a Whistleblower Complaint

An employee can file an *Affordable Care Act* whistleblower complaint with OSHA by visiting or calling the local OSHA office or sending a written complaint to the closest OSHA office. No particular form is required and complaints may be submitted in any language.

Written complaints may be filed by fax, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

The date of the postmark, fax, electronic communication, telephone call, hand delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office is considered the date filed.

To file a complaint electronically, please visit www.osha.gov/whistleblower/WBComplaint.html.

To contact an OSHA area office, please call 1-800-321-OSHA (6742) and they will connect you to the closest area office. Or visit our website at www.osha.gov/html/oshdir.html and click on Regional/Area offices to find your local office address and contact information.

When OSHA receives a complaint, OSHA will first review it to determine whether certain basic requirements are met, such as whether the complaint was filed on time. If so, the complaint will then be investigated according to the procedures required by the Act. See 29 C.F.R. 1984.104.

Results of the Investigation

If the evidence supports an employee's complaint of retaliation, OSHA will issue an order requiring the employer to, as appropriate, put the employee back to work, pay lost wages, restore benefits, and other possible relief. The exact requirements will depend on the facts of the case. If the evidence does not support the employee's complaint, OSHA will dismiss the complaint.

After OSHA issues a decision, the employer and/or the employee may request a full hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision may be appealed to the Department's Administrative Review Board.

The employee may also file a complaint in federal court if the agency does not issue a final decision within certain time limits. Details on this provision can be found in OSHA's regulations, at 29 CFR 1984.114.

To Get Further Information

For a copy of the *Affordable Care Act's* whistleblower provision, the regulations (29 CFR 1984), and other information, go to www.whistleblowers.gov.

For information on the Office of Administrative Law Judges procedures and case law research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

For more specific information on the *Affordable Care Act*, go to www.healthcare.gov.

This is one of 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 and regulations, refer to Title 29 of the Code of Federal Regulations (visit www.archives.gov/federal-register/cfr). This information will be made available to sensory-impaired individuals upon request. Voice phone number: (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



**Occupational
Safety and Health
Administration**

www.osha.gov (800) 321-OSHA (6742)



U.S. Department of Labor

DWPP FS-3641 01/2014