

OSHA FactSheet

Your Rights as a Whistleblower

You may file a complaint with OSHA if your employer retaliates against you because you are involved in workplace safety and health activities protected under the *Occupational Safety and Health Act of 1970* (OSH Act) or if you report violations of:

- Department of Transportation rules and regulations pertaining to commercial motor carriers and pipeline safety.
- Federal Aviation Administration rules and regulations pertaining to air carrier safety.
- The Energy Reorganization Act and the Atomic Energy Act.
- Environmental laws relating to air, water, solid waste, Superfund, and toxic substances, as well as asbestos in schools.
- Fraud statutes, SEC rules or regulations, or federal laws relating to fraud against shareholders.

Laws with Whistleblower Protections that OSHA Enforces

OSHA administers the whistleblower provisions of the following laws. Note that complaints must be reported to OSHA within set time periods following the alleged retaliation, as required by each law listed below.

Under the following laws, you may file your complaint by telephone or in writing:

- *Occupational Safety and Health Act* (30 days)
- *Surface Transportation Assistance Act* (180 days)
- *Asbestos Hazard Emergency Response Act* (90 days)
- *International Safe Container Act* (60 days)

Under the following laws, complaints must be filed in writing:

- *Clean Air Act* (30 days)
- *Comprehensive Environmental Response, Compensation and Liability Act* (30 days)
- *Energy Reorganization Act* (180 days)
- *Federal Water Pollution Control Act* (30 days)
- *Pipeline Safety Improvement Act* (180 days)
- *Safe Drinking Water Act* (30 days)

- *Sarbanes-Oxley Act* (90 days)
- *Solid Waste Disposal Act* (30 days)
- *Toxic Substances Control Act* (30 days)
- *Wendell H. Ford Aviation Investment and Reform Act for the 21st Century* (90 days)

What Constitutes Retaliation

Retaliation for protected activity takes place if adverse employment action is taken against an employee for engaging in activities protected by one or more of the laws listed above.

Retaliation may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denial of benefits
- Failure to hire or rehire
- Intimidation
- Reassignment affecting prospects for promotion
- Reducing pay or hours

Filing a Complaint

If you believe that your employer retaliated against you because you exercised your legal rights as an employee, contact your local OSHA office as soon as possible, because you must file your complaint within the legal time limits. You can telephone, fax, or mail your complaint to the OSHA office nearest you (see the OSHA website at www.osha.gov). OSHA conducts an in-depth interview with each complainant to determine whether to conduct an investigation.

If retaliation for protected activity relating to occupational safety and health issues takes place in a state that operates an OSHA-approved state plan, the complaint should be filed with the state agency, although persons in those states may file with Federal OSHA at the same time. In addition, although the *Occupational Safety and Health Act* covers only private sector employees, state plans also cover state and local government employees. For details, see <http://www.osha.gov/fso/osp/index.html>.

How OSHA Determines Whether Retaliation Took Place

The investigation must reveal that:

- The employee engaged in protected activity;
- The employer knew about the protected activity; and
- The protected activity was the motivating factor (or under some laws, a contributing factor) in the decision to take the adverse action against the employee.

If the evidence supports the employee's claim of retaliation, and a settlement cannot be reached, OSHA will issue an order requiring the employer to reinstate the employee, pay back wages, restore benefits, and other possible remedies to make the employee whole.

Limited Protections for Employees Who Refuse to Work

You have a limited right under the OSH Act to refuse to do a job because conditions are hazardous. You may do so under the OSH

Act only when (1) you believe that you face death or serious injury (and the situation is so clearly hazardous that any reasonable person would believe the same thing); (2) you have tried to get your employer to correct the condition, and there is no other way to do the job safely; and (3) the situation is so urgent that you do not have time to eliminate the hazard through regulatory channels such as calling OSHA.

Even though your union contract or state law may give employees the right to refuse work, OSHA cannot enforce those contracts or state laws. Regardless of the unsafe condition, you are not protected if you simply walk off the job. For details, see <http://www.osha.gov/as/opa/worker/refuse.html>.

Whistleblower Protections in the Transportation Industry

Employees whose jobs directly affect commercial motor vehicle safety are protected from retaliation by their employers for refusing to violate or for reporting violations of Department of Transportation (DOT) motor carrier safety standards or regulations, or refusing to operate a vehicle because of such violations or because they have a reasonable apprehension of death or serious injury.

A commercial motor vehicle is one that:

- Has a gross vehicle weight or GVW rating of 10,001 pounds or more;
- Is designed to carry ten or more passengers, including the driver; or
- Is used to transport materials required by DOT to be placarded.

Similarly, employees of air carriers, their contractors or subcontractors who raise safety concerns or report violations of FAA rules and regulations are protected from retaliation, as are employees of owners and operators of pipelines, their contractors and subcontractors, who report violations of pipeline safety rules and regulations. Employees involved in international shipping who report unsafe shipping containers are also protected.

Whistleblower Protections for Voicing Environmental Concerns

A number of laws protect employees who report violations of environmental laws related to drinking water and water pollution, toxic substances, solid waste disposal, air quality and air pollution, asbestos in schools, and hazardous waste disposal sites. *The Energy Reorganization Act* protects employees in the nuclear power industry and in nuclear medicine who raise safety concerns.

Whistleblower Protections When Reporting Corporate Fraud

Employees who work for publicly traded

companies or companies required to file certain reports to the Securities and Exchange Commission are protected from retaliation for reporting alleged violations of mail fraud, wire fraud, bank fraud, or securities fraud laws, or for reporting violations of rules or regulations of the SEC, or federal laws relating to fraud against shareholders.

More Information

To get more information on whistleblower statutes, go to www.osha.gov, click on W in the site index, then click on Whistleblowers.

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.

For more complete information:



U.S. Department of Labor

www.osha.gov

(800) 321-OSHA

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