

Health Privacy and OSHA Whistleblower Complaints

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, requires “covered entities” to protect the privacy of individuals’ health information.

Protected Health Information

The HIPAA privacy regulation provides that individually identifiable information about a person’s physical or mental health or health care (in any written or oral form) — including computer records — is protected from unauthorized disclosure.

Keeping Health Information Private

The privacy regulation requires “covered entities” (which, for the purposes of this fact sheet, means health care providers who transmit any health information in electronic form in connection with carrying out health care-related financial or administrative activities) to establish policies and procedures addressing the use and disclosure of protected health information. “Disclosure” means revealing information to someone outside the entity holding the information. Thus, HIPAA does not ban an employee of a covered entity from revealing information to his or her supervisor or to another management official.

When Health Information Can Be Disclosed

Under normal circumstances, an individual must give written consent to disclose his or her health information. However, a covered entity’s employees or business associates may disclose protected health information to a public health authority (such as federal OSHA or a state agency operating under a federal OSHA-approved state plan, both of which are hereinafter referred to as “OSHA”) that is authorized to investigate a covered entity’s conduct, to an attorney retained to deal with a case involving such conduct, or to a health care accrediting organization. These disclosures are permitted as long as the employee believes in good faith that the conditions he is reporting

are unlawful or endanger employees, among other things. Employees who are crime victims may also disclose protected health information to a law enforcement official if the information is about the suspected perpetrator and the information is limited to that listed in the privacy regulation at 45 CFR § 164.512(f)(2)(i). Also, an employee may report a serious and imminent threat to the health and safety of a person if the recipient of the report is reasonably able to prevent or diminish the threat. Such recipients include law enforcement officials, OSHA, and union officials.

Employees are protected from retaliation for making disclosures authorized by HIPAA in connection with an occupational safety or health complaint. They may file whistleblower complaints with OSHA under Section 11(c) of the *Occupational Safety and Health Act* (OSH Act). The whistleblower complaint must be filed within 30 days of the retaliation.

OSHA’s Role

OSHA is charged with regulating health and safety in the workplace, and is considered both a public health authority and a health oversight agency under HIPAA. The agency sometimes has to use and disclose protected health information to conduct investigations, litigate cases, and engage in other activities. Although OSHA is not a “covered entity” under HIPAA and is not bound by the use and disclosure requirements included in the privacy regulation, it complies with applicable laws and regulations protecting privacy, such as the Privacy Act, 5 U.S.C. § 552a.

How to File a Complaint

An employee can file a complaint with OSHA by visiting or calling his or her local OSHA office, sending a written complaint to the closest OSHA office, or filing a complaint online. 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) to be connected to the closest area office. Or visit our website at www.osha.gov/html/RAmap.html and click on your state to find your local OSHA office address and contact information.

When OSHA receives a complaint, the agency 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 29 CFR Part 1977.

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, 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.

To Get Further Information

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

OSHA's Whistleblower Protection Programs enforces the whistleblower provisions of more than 20 federal whistleblower laws. To learn more about the whistleblower statutes which OSHA enforces, view our "Whistleblower Statutes Desk Aid" at www.whistleblowers.gov/whistleblower_acts-desk_reference.pdf.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education, and assistance. 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: (877) 889-5627.



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