



# Temporary Worker Initiative

## Whistleblower Protection Rights: Protection from Retaliation for Using Rights under the OSH Act

This is part of a series of guidance documents developed under the Occupational Safety and Health Administration's (OSHA's) Temporary Worker Initiative (TWI). This Initiative focuses on compliance with safety and health requirements when **temporary workers** are employed under the joint employment of a **staffing agency** and a **host employer**.

Temporary workers are entitled to the same protections under the *Occupational Safety and Health Act of 1970* (the OSH Act) as all other covered workers. When a staffing agency supplies temporary workers to a business, the staffing agency and its client, commonly referred to as the **host employer**, are considered "joint employers" of those workers. Both employers are responsible for determining the conditions of employment and for complying with the law. Therefore, both may be held accountable for violations of the law, including exposing workers to hazards and retaliating against workers for reporting hazardous conditions. In this joint employment structure, questions regarding who is responsible for safety and health protections are common. This bulletin addresses whistleblower protection rights in a temporary work situation.

Section 11(c) of the OSH Act protects workers who report injuries and/or raise concerns to their employer, OSHA, or other government agencies about unsafe or unhealthful working conditions in the workplace. Temporary workers have the right to report injuries and/or raise concerns to their host employer, their staffing agency, or both. These actions are called "protected activity". Staffing agencies and host employers should promptly report to each other any protected activity by temporary workers, and appropriately investigate and respond to such activity.

The OSH Act explicitly states that employers shall not retaliate against employees for engaging in protected activity. Both the host employer and the staffing agency may be held liable for retaliating against workers who engage in protected activity. For example, if after a worker engages in protected activity, the host employer asks the staffing agency to remove the worker from the host's worksite, and the staffing agency complies, both employers may be investigated to determine if either one, or both, retaliated against the employee, even if the staffing agency places the worker at another worksite.

Retaliation can include:

- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Firing or laying off
- Intimidation
- Making threats
- Reassignment to a less desirable position, including one adversely affecting prospects for promotion
- Reducing pay

If a worker believes that his or her working conditions are unsafe or unhealthy, the worker has the right to bring his/her concerns to the

employer's attention. The worker also has the right to report such concerns directly to OSHA, if he/she chooses to do so.

**Therefore, temporary workers have the same rights and protections against retaliation as all other workers.** Based on the circumstances, temporary workers who are retaliated against for engaging in protected activity may file a complaint with OSHA against their host employer, the staffing agency, or both.

If workers have been punished or retaliated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged retaliation to preserve their rights under section 11(c). No form is required, but workers must contact OSHA to report the retaliation. Workers can call OSHA at 1-800-321-6742 or contacting their closest OSHA area office. A list of OSHA area offices may be found at [www.osha.gov/html/RAmap.html](http://www.osha.gov/html/RAmap.html). Workers may also file a complaint online at [www.osha.gov/whistleblower/WBComplaint.html](http://www.osha.gov/whistleblower/WBComplaint.html).

OSHA enforces the whistleblower provisions of the OSH Act and 21 other statutes protecting employees who report violations of various laws, including airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, healthcare reform, nuclear, pipeline, worker safety, public transportation, railroad, maritime, and securities laws. Additional information on OSHA's anti-retaliation program is available on OSHA's [Whistleblower Protection Program website \(www.whistleblowers.gov\)](http://www.whistleblowers.gov). Further information on protecting temporary workers is available at the [OSHA Temporary Worker web page \(www.osha.gov/temp\\_workers\)](http://www.osha.gov/temp_workers).

Twenty-seven states and U.S. territories have their own OSHA-approved occupational safety and health programs. These State Plans have and enforce their own occupational safety and health standards that must be at least as effective as OSHA's, but may have different or additional requirements. A list of the State Plans and more information are available at: [www.osha.gov/dcsp/osp](http://www.osha.gov/dcsp/osp). State Plans must have a provision identical or equivalent to section 11(c), and Federal OSHA also enforces section 11(c) in State Plan states. Workers may file a retaliation complaint with the State Plan or Federal OSHA or both.

## HOW CAN OSHA HELP?

OSHA has a great deal of information to assist employers in complying with their responsibilities under the law. Information on OSHA requirements and additional health and safety information is available on the OSHA website ([www.osha.gov](http://www.osha.gov)). For other valuable worker protection information, such as workers' rights, employer responsibilities and other services OSHA offers, visit OSHA's Workers' page ([www.osha.gov/workers](http://www.osha.gov/workers)). For information about whistleblower protection rights and responsibilities of employees and employers, visit OSHA's [Whistleblower Protection Program website \(www.whistleblowers.gov\)](http://www.whistleblowers.gov). For information about OSHA's Temporary Worker Initiative, visit [OSHA's Temporary Worker web page \(www.osha.gov/temp\\_workers\)](http://www.osha.gov/temp_workers).

OSHA can respond to questions or concerns from employers and workers. To reach your regional or area OSHA office, go to OSHA's [Regional and Area Offices webpage \(www.osha.gov/html/RAmap.html\)](http://www.osha.gov/html/RAmap.html) or call 1-800-321-OSHA (6742). OSHA also provides help to employers. OSHA's On-site Consultation Program offers free and confidential advice to small and medium-sized businesses in all states across the country, with priority given to high-hazard worksites. On-site consultation services are separate from enforcement activities and do not result in penalties or citations. To contact OSHA's free consultation program, or for additional compliance assistance, call OSHA at 1-800-321-OSHA (6742).

Workers may file a complaint to have OSHA inspect their workplace if they believe that their employer is not following OSHA standards or that there are serious workplace safety or health hazards. All workers, including temporary workers, can file a complaint with OSHA by calling 1-800-321-OSHA (6742) or by printing the complaint form from OSHA's website and mailing or faxing it to their local OSHA area office. Complaints that are signed by an employee are more likely to result in an OSHA inspection.

The OSH Act prohibits employers from retaliating against their employees for exercising their rights under that law. These rights include raising a workplace health or safety concern with the employer, reporting an injury or illness, filing an

OSHA complaint, and participating in an inspection or talking to an inspector. If workers have been retaliated or discriminated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action to

preserve their rights under section 11(c). For more information, please visit [www.whistleblowers.gov](http://www.whistleblowers.gov).

If you think that your job is unsafe or if you have workplace safety or health questions, contact OSHA at 1-800-321-OSHA (6742). It's confidential. We can help.

Disclaimer: This bulletin is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the OSH Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

For more information



[www.osha.gov](http://www.osha.gov) (800) 321-OSHA (6742)



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