



*National Council for
Occupational Safety and Health
Leading the fight for safe and healthy workplaces*

Whistleblower Protection

Protection from Retaliation for Reporting Safety Hazards

("Whistleblower Protections")

Under OSHA law, workers are supposed to be able to file complaints with OSHA and take other safety-related actions without fear of losing their jobs. But it's not always so simple as the information below explains.

Be aware that the "Whistleblower" provisions of the OSH Act are currently (Sept. 2010) being reconsidered by the U.S. Congress and may be strengthened.

If you want to do something about danger on the job, it is essential to know your rights and know what you may need to do to protect yourself in case of retaliation. In the U.S., it is against the law for an employer to retaliate against a worker who demands a safe and healthful workplace. Under the federal Occupational Safety and Health Act (OSHA) and other federal laws, you have the right to raise safety-related questions and complaints on the job. You can discuss safety with other workers, ask your employer for information about hazards, and complain about hazards to your employer or to a government agency.

Section 11(c) of the federal Occupational Safety and Health Act is supposed to protect workers who ask questions or complain about safety or take action to protect themselves from dangerous conditions. But the law doesn't work very well. Unfortunately, employers do sometimes discriminate against workers for challenging unsafe working conditions. Employers know that there is only a small chance of being punished for breaking the law protecting health and safety whistleblowers. And even when employers are caught, the penalty is usually light. So, even though your rights to a safe and healthful workplace are protected by law, your employer may try to retaliate against you for exercising them.

Don't forget: You can discourage illegal retaliation and defend against it, if necessary, by familiarizing yourself with your rights and specific ways to protect yourself.

Things to Remember Before You File an 11(c) Complaint

Strength in Numbers: Union members are in a much better position to enforce their rights than individual workers. Even if you are not in a union, you will be on firmer legal ground to fight retaliation if you join with at least one co-worker in raising questions or complaints about safety. Under the National Labor Relations Act, actions taken by more than one worker may be eligible for protection because they are “concerted activity.”

Chart Your Course Carefully: If you have a union at your workplace, always raise health and safety questions with them first. If you don’t have a union, is your employer likely to respond positively to a question or suggestion about safety? If so, you might be able to resolve the problem without conflict. But you should prepare in advance for a hostile response, no matter how unlikely it might seem.

You may give yourself some protection by making your safety complaint to a government agency, such as OSHA or your local Fire Department or Health Department, instead of to your employer. An employer who first learns about a safety complaint from an official investigation may hesitate to retaliate because the government is already investigating.

However, complaining to the government first is no guarantee against retaliation.

Keep Good Records: Keep dated notes of details, and the names of witnesses. If your employer responds orally, make a note of what is said, when and by whom, and the names of any witnesses. It is a good practice to keep your notes on consecutive pages in a bound notebook. Keep copies of any documents.

Keep records away from the workplace. If your employer retaliates against you, you could be prevented from retrieving anything from the job.

Don’t miss deadlines. If you have been retaliated against for exercising an OSHA right, you have only 30 days to file an 11(c) complaint with OSHA. If your 30-day deadline is about to expire, you can file your initial complaint by telephoning any OSHA office and saying that you want to file an 11(c) complaint. An OSHA investigator should contact you. Complaints about retaliation can be filed orally with OSHA, but it is best to file by certified mail, because you will have a record that the complaint was received. There is no official form for an 11(c) complaint, which should be a brief letter, stating that you have been retaliated against because you exercised a right relating to safety and health. A OSHA investigator will contact you for details, so you do not need to include them in your complaint.

You can file an 11(c) complaint yourself, or you can authorize a representative (such as your union, a COSH group or anyone who you designate) to do it for you. An 11(c) complaint can be filed with any OSHA official or at any OSHA office. You can find an OSHA office in the telephone book, under U.S. Labor Department – Occupational Safety and Health Administration.

What You Can Expect After You File an 11(c) Complaint

In response to your complaint, an OSHA investigator will interview you about what happened, which will be written down as a statement for you to sign. You should give the investigator the names of any witnesses who can confirm your allegations.

After the investigator obtains your signed statement, he or she will prepare a letter informing your employer that OSHA is investigating your 11(c) complaint. In most cases the investigator will deliver the letter to your employer by hand, and will immediately interview any witnesses who are in the workplace.

The investigator will interview your employer, too. Your employer might claim you were punished for another reason, such as lateness. In that case, the inspector will ask to see records that document the accuracy of such charges. Your employer cannot use something you've done as an excuse for punishing you when you exercise an OSHA right.

The investigator will meet with you when the investigation is over. If OSHA believes there is not enough evidence to prove your complaint, OSHA will close the case and send you a letter stating why. You then have 15 days to send an appeal to: Office of Investigative Assistance, U.S. D.O.L. – OSHA, Room N3603, 200 Constitution Ave., NW, Washington, D.C. 20210.

If the OSHA investigation determines that you were punished for exercising an OSHA right, OSHA may begin to negotiate a settlement with your employer immediately. In that case, OSHA may ask your employer to restore to you whatever was illegally taken away, such as rescinding a demotion, transfer or dismissal, including payment of lost wages and fringe benefits.

If OSHA comes to an agreement with your employer for a settlement, OSHA will ask if you will join in the agreement. If you will, then the case is settled. If you will not agree to the terms that OSHA and your employer agree on, OSHA has the power to settle the case unilaterally, without your agreement.

When OSHA negotiates with the employer for a settlement, its policy is to seek to “make the victim whole,” that is, to recover everything a worker lost because of the retaliation, including all wages, benefits, seniority and leave time (plus interest). OSHA is also able to seek “punitive damages” — monies a worker could receive above and beyond lost wages and benefits — but OSHA rarely pursues this option. If you believe you have suffered blatant illegal retaliation for your health and safety activities, encourage OSHA to pursue punitive damages. Punitive damages are important to deter employers from becoming repeat offenders.

If OSHA decides you have a valid case and it cannot reach a settlement agreement with your employer, OSHA will refer the case to prosecutors at the Labor Department. The Labor Department can (and often does) send the case back to OSHA for more negotiations with your employer; or it can sue your employer in federal court, asking for a court order that will force your employer to make restitution.

For more information, contact your local COSH group (email coshnatl@gmail.com for a list of COSH groups) or your local OSHA office, which you may reach by dialing 1-800-321-OSHA.

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