

Whistleblower Protection for Workers Concerned About Asbestos in Elementary and Secondary Schools

The Asbestos Hazard Emergency Response Act (AHERA) protects employees from retaliation for reporting potential asbestos violations in elementary and secondary schools.

Covered Entities

Under AHERA, the following entities are prohibited from retaliating against employees for engaging in protected activity, as explained in the next section:

- Any public authority controlling a public elementary or secondary school
- Educational service agencies
- Certain primary and secondary schools funded by the Bureau of Indian Education
- Owners of any private, non-profit elementary or secondary school building
- Any school operated under the Defense Dependents' Education Act of 1978

Protected Activity

A covered entity may not fire or otherwise retaliate against any employee, whether or not employed by a covered entity, for providing information to any person, including a State or federal agency, about a violation of AHERA. Such violations involve:

- Management and handling of asbestos-containing material in the covered schools
- Transportation and storage of asbestos-containing waste material
- Accreditation of a contractor or laboratory to do asbestos work

What Is Retaliation?

Retaliation is an adverse action against an employee because of activity protected by AHERA. Retaliation can include several types of actions, such as:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation or harassment
- Making threats
- Reassignment to a less desirable position or actions affecting promotion prospects
- Reducing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance
- Blacklisting (intentionally interfering with an employee's ability to obtain future employment)
- Constructive discharge (quitting when an employer makes working conditions intolerable due to the employee's protected activity)
- Reporting the employee to the police or immigration authorities

Deadline for Filing a Complaint

Complaints must be filed within 90 days after the employee learns of the adverse action.

How to File an AHERA Complaint

An employee, or his or her representative, can file an AHERA 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.

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/contactus/bystate 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 15 U.S.C. § 2651.

Results of the Investigation

If the evidence supports an employee's claim of retaliation and a voluntary settlement cannot be reached, the Secretary of Labor, through the Office of the Solicitor of Labor (SOL), may litigate the case in U.S. District Court. The Secretary may seek relief to make the employee whole, including:

- Reinstatement
- Payment of back pay with interest

- Compensation for expenses the employee may have incurred as a result of the retaliation, with interest; and for emotional distress
- Punitive damages
- Non-monetary relief

If the OSHA Regional Administrator whose office investigated the case finds that the evidence does not support an employee's claim of retaliation, the employee may seek review by the Directorate of Whistleblower Protection Programs (DWPP) in Washington, D.C. by filling a request for such review, within 15 days of the employee's receipt of the dismissal letter and sending a copy to the Regional Administrator.

To Get Further Information

For a copy of the AHERA whistleblower provision, 15 U.S.C. § 2651, and other information, go to www.whistleblowers.gov.

OSHA's Whistleblower Protection Programs enforce the whistleblower provisions of more than twenty federal whistleblower laws. To learn more about the whistleblower statutes that OSHA enforces, view our "Whistleblower Statutes Summary Chart" at www.whistleblowers.gov/whistleblower_acts-desk_reference.

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: 1-877-889-5627.

