



U.S. DEPARTMENT OF LABOR

# Best Practices to Prevent & Address Retaliation

---

April 14, 2023



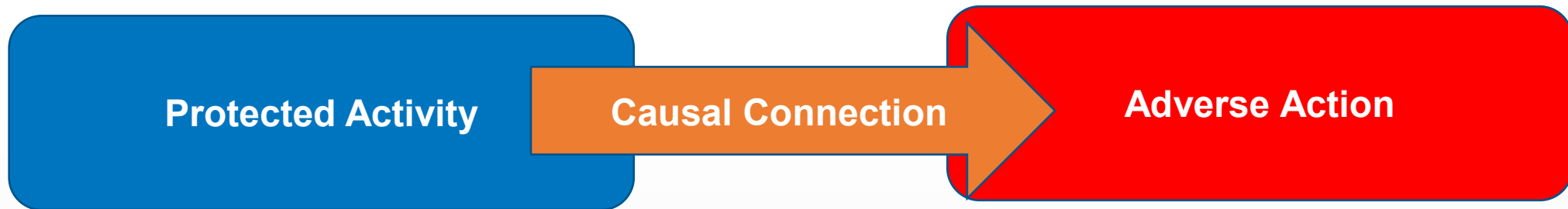
## Best Practices to Prevent & Address Retaliation

Our webinar today will cover the following:

1. What is retaliation and how is each agency addressing it?
2. Preventing retaliation in the workplace
3. Addressing retaliation in the workplace
4. Compliance resources



## What is Retaliation?





## How Do Our Agencies Address Retaliation?

Perspectives from:

- Wage and Hour Division (WHD)
- Occupational Safety and Health Administration (OSHA)
- Office of the Solicitor (SOL)
- Equal Employment Opportunity Commission (EEOC)
- National Labor Relations Board (NLRB)



# U.S. DEPARTMENT OF LABOR

## Preventing Retaliation is a Win-Win for Businesses, Workers, and Consumers

Preventing retaliation is a win-win because it means:

- Abiding by the law
- Proactively resolving disputes in the workplace
- Protecting workers
- Encouraging a positive workplace culture
- Improving employee satisfaction and engagement
- Protecting consumers/the public
- Avoiding costly penalties and bad publicity



## A Note on the Content of This Webinar

- The recommendations and best practices shared in this presentation are general in nature. These best practices are not mandatory for employers and do not interpret or create legal obligations. Many of the recommendations presented in this presentation are derived from the recommendations crafted by the Whistleblower Protection Advisory Committee.
- The suggestions presented in this webinar are scalable. You may consider as you adapt and implement the suggested practices:
  - The size of the workplace
  - The type of work that employees are doing
  - The makeup of the workforce



## Developing Anti-Retaliation Programs & Policies

### Preventing Retaliation

- Training
- Accountability
- Complaint Process
- Program Oversight
- Evaluating policy and culture

### Addressing Retaliation

- Addressing Complaints
- Remedies



## Preventing Retaliation: Training for All Staff

Employers are encouraged to consider trainings for all staff that include discussion of:

- Relevant laws and regulations
- Actions that constitute retaliation
- Employees' rights and obligations
- The elements of the retaliation program







## Preventing Retaliation: Training for Managers

Employers are encouraged to provide managers and supervisors with trainings that address:

- What actions constitute retaliation
- How to deal with reports of retaliation and harassment
- Strengthening Skills: de-escalation, conflict-resolution, effective communication, and problem solving
- Consequences of retaliation



## Preventing Retaliation: Management Leadership, Commitment and Accountability

Employers are encouraged to:

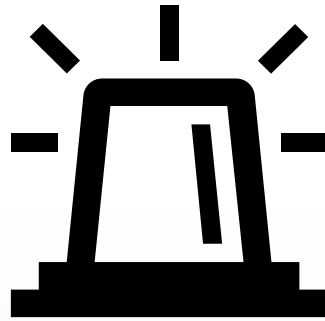
- Set the tone
- Lead by example
- Hold management accountable
- Empower workers



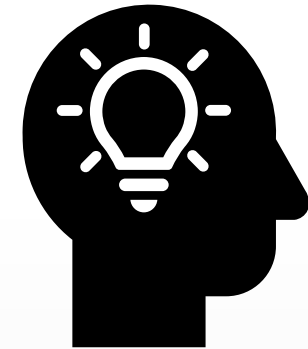
## Preventing Retaliation: Assessing Policies and Culture



**Transparency of  
working conditions**



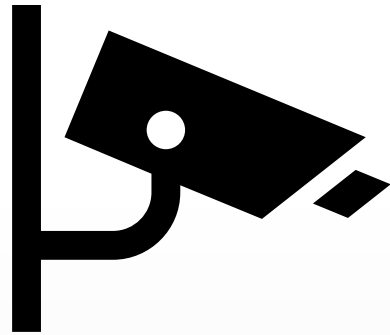
**Complaint Systems**



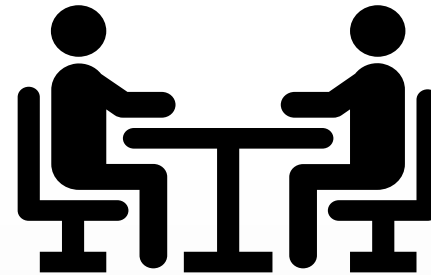
**Value of raising  
concerns**



## Preventing Retaliation: Assessing Policies and Culture



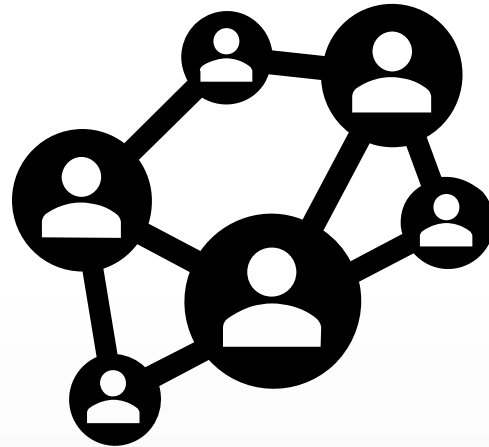
**How workers are monitored**



**Consequences and Disciplinary Actions**



## Preventing Retaliation: Assessing Policies and Culture



**Policies on job mobility**



**Policies on information sharing**

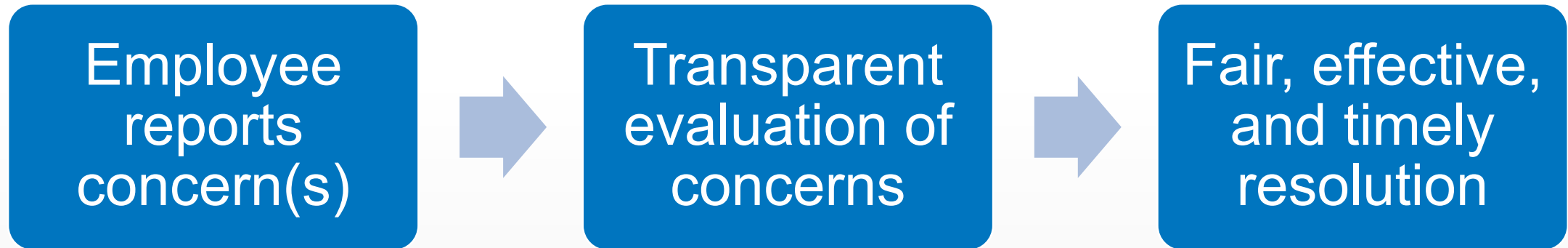


## Compliance Programs & Substantive Law

- Any compliance program or policies on retaliation will be closely intertwined with compliance with the substantive law at issue.
- Best practices include acting on worker concerns and properly addressing them as part of an employer's overall operations system.
- Employers may also consider establishing and/or reinvigorating labor-management occupational health and safety committees with full union participation and anti-retaliation protections.



## Preventing Retaliation: Establishing An Internal Complaint Process





## Preventing Retaliation: Program Oversight



**Monitoring**



**Audits**





## Addressing Retaliation: System for Receiving and Responding to Reports of Retaliation

Employers may want to consider:

- Developing independent reporting channels
- Keeping reports confidential
- Investigating retaliation



## Addressing Retaliation: Remedies for Employees Who Have Experienced Retaliation

Employers are encouraged to consider how to make employees whole. This may include:

- Reinstating the employee if they have been fired
- Paying lost wages owed and other compensatory damages to the affected employee(s)
- Firing a manager who has not followed the organization's policies on retaliation
- Promoting a worker who missed out on a promotion due to retaliation



## Best Practices When Being Investigated for Retaliation

- Maintain and provide all requested information
- Avoid witness interference
- Before communicating with non-managerial employees about the investigation, discuss it with the investigators



## RESOURCES

- Department of Labor: [dol.gov/general/topics/whistleblower](https://dol.gov/general/topics/whistleblower)
- Wage and Hour Division: [dol.gov/agencies/whd/retaliation](https://dol.gov/agencies/whd/retaliation)
- OSHA: [whistleblowers.gov](https://www.osha-slc.gov/whistleblowers.gov)
- EEOC: [eeoc.gov/retaliation](https://www.eeoc.gov/retaliation)
- NLRB: [nlrb.gov](https://www.nlr.gov) ; <https://www.nlr.gov/about-nlr/rights-we-protect/whats-law/employers>
- DOL, NLRB, and U.S. Small business Administration collaboration on digital toolkit for employers seeking guidance on responding to employee interest in exercising their right to form or join a union [here](#)



Questions?

---