

Filing Whistleblower Complaints under Section 11(c) of the OSH Act of 1970

Employees are protected from retaliation for raising workplace health and safety concerns and for reporting work-related injuries and illnesses.

Covered Employees

Section 11(c) of the *Occupational Safety and Health Act of 1970* (OSH Act) prohibits employers from retaliating against employees for exercising a variety of rights guaranteed under the OSH Act, such as filing a safety or health complaint with OSHA, raising a health and safety concern with their employers, participating in an OSHA inspection, or reporting a work-related injury or illness.

A covered employee is any employee of a person engaged in a business affecting interstate commerce, except employees of the United States, States, or political subdivisions of States.¹ However, employees of the United States Postal Service are also covered employees.

Protected Activity

A person may not discharge or in any manner retaliate against an employee because the employee:

Filed any complaint or instituted or caused to be instituted any proceeding under or related to the OSH Act.

Exercised any right afforded by the OSH Act. Examples include, but are not limited to:

- communicating orally or in writing with management personnel about occupational safety or health matters, including asking questions or expressing concerns, requesting safety data sheets, reporting a work-related injury or illness, or requesting copies of OSHA standards or regulations;

- filing a safety/health complaint with OSHA;
- or participating in an OSHA on-site inspection.

Unfavorable Employment Actions

A person taking an unfavorable employment action against an employee may be found to have violated Section 11(c) of the OSH Act if the employee would not have experienced the unfavorable employment action(s) but for their protected activity. Unfavorable employment actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failure to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting prospects for promotion
- Reducing pay or hours

Deadline for Filing Complaints

Complaints must be filed within 30 days after the alleged unfavorable employment action occurs (that is, when the employee is notified of the retaliatory action).

Employees filing untimely retaliation complaints with OSHA may be referred to the National Labor Relations Board (NLRB) for possible further action.

How to File an 11(c) Complaint

An employee, or representative of an employee, who believes he or she has been retaliated against in violation of Section 11(c), may file a complaint with OSHA within 30 days of the unfavorable employment action (see above). Complaints may be filed verbally with OSHA

¹ Federal employees are protected from retaliation for occupational safety or health activity under procedures established by their agencies pursuant to Executive Order 12196. See 29 CFR 1960.46-47. They are also protected from retaliation for whistleblowing under the Whistleblower Protection Act. For more information visit www.osc.gov.

by visiting or calling the local OSHA office at 1-800- 321-OSHA (6742), or may be filed in writing by sending a written complaint to the closest OSHA regional or area office, or by filing a complaint online at www.whistleblowers.gov/complaint_page.html.

Written complaints may be filed by facsimile, electronic communication, hand delivery during normal business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

The date of the postmark, facsimile, 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. No particular form is required and complaints may be submitted in any language.

To file a complaint electronically, please visit: www.whistleblowers.gov/complaint_page.html.

To contact OSHA to file a complaint, please call 1-800-321-OSHA (6742) and they will connect you to the closest office; or visit www.osha.gov/html/RAmap.html.

Upon receipt, OSHA will review the complaint to determine whether it is appropriate to conduct

a fact-finding investigation (e.g., whether the complaint was filed within 30 days; whether the allegation is covered by Section 11(c)). All complaints are investigated according to requirements in 29 CFR Part 1977.

In the 22 states with OSHA-approved state plans which cover the private sector, employees may file a complaint under Section 11(c) of the OSH Act or a complaint under the State's analogous whistleblower provision or both. The complaint with Federal OSHA must be filed within 30 days of the unfavorable employment action. The complaint filed with the State agency must be filed within the time limit prescribed by State law. State and local government employees in these States, and in six States with plans covering only State and local government employees, may only file occupational safety or health retaliation claims with the State agencies. For a list of state plans, please visit: www.osha.gov/dcsp/osp.

What to do about a Dangerous Situation at Work

If workers believe working conditions are unsafe or unhealthful, it is recommended that they bring the conditions to their employer's attention, if possible, and before they are faced with either refusing to perform a task or exposing themselves to a serious hazard.

Workers may file a complaint with OSHA concerning a hazardous working condition at any time. For information on occupational safety and health laws, standards, and regulations, visit OSHA's website: www.osha.gov.

Not all work refusals due to unsafe or unhealthful conditions are protected by section 11(c). A worker would be protected from subsequent retaliation when the worker has a reasonable apprehension of death or serious injury; and refuses in good faith to perform the task; and has no alternative assignment; and there is insufficient time to have Federal or State OSHA conduct an inspection or where such an inspection has already taken place; and where possible the employee has sought from the employer but was unable to obtain correction of the dangerous condition. For more information: www.osha.gov/workers.

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 filing a request for such review, within 15 days of the employee's receipt of the dismissal letter, with a copy to the Regional Administrator.

To Get Further Information

For a copy of Section 11(c) of the *Occupational Safety and Health Act* (29 U.S.C. §660(c)), the regulations (29 CFR 1977), and other information, go to www.whistleblowers.gov.

OSHA's Whistleblower Protection Program enforces the whistleblower provisions of more than twenty 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. You can also call OSHA at 1-800-321-OSHA (6742) if you have questions or need more information.

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.



U.S. Department of Labor



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