

OSHA Enforces Federal Whistleblower Protections

The Occupational Safety and Health Act of 1970 (the Act) requires that employers provide their employees with safe and healthful workplaces, and the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor sets and enforces health and safety standards and provides training, education and assistance. General industry matters covered by OSHA run the gamut from hazard communication to respiratory protection to lockout/tagout to machine guarding. Additional requirements apply to the construction, maritime and agriculture industries.

Not only does OSHA enforce its own standards, OSHA gives employees the means to ensure their workplaces comply with health and safety requirements. Workers have the right to: Receive information and training (in a language the worker understands) about hazards, harm prevention methods and applicable OSHA standards; obtain hazard testing results; review records of work-related injuries and illnesses; and obtain copies of medical records. Also, employees can ask OSHA to inspect their workplace and cannot be the subject of retaliation or discrimination for exercising their legal rights. ([OSHA We Can Help.](#))

Although OSHA recommends that employees first report issues to their supervisor, manager, and/or safety and health committee, "[e]mployees or their representatives have a right to request an inspection of a workplace if they believe there is a violation of a safety or health standard, or if there is any danger that threatens physical harm, or if an 'imminent danger' exists." An "employee representative" is an authorized representative of an employee bargaining unit, an attorney acting for an employee, or any other person acting in a bona fide representative capacity. In addition to allowing employees to request inspections, the Act (see, e.g., section 11(c)) protects employee whistleblowers who complain about unhealthy or unsafe working conditions; employees who exercise their OSHA rights cannot be fired, transferred, denied a raise or punished in any other way, including having their hours reduced. ([How to File a Complaint with OSHA.](#))

In addition to enforcing whistleblower protections for those workers who exercise their OSHA right to a healthy and safe workplace, OSHA protects employees who report violations of securities, trucking, airline, nuclear, pipeline, environmental, railroad, public transportation, consumer product safety, health care reform, financial reform, food safety, and seaman's protection and coast guard authorization laws. Information about various federal whistleblower protection

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laws, including links to several fact sheets, is provided in OSHA's 200+ page Whistleblower Investigations Manual.

For example, employers cannot discharge or retaliate against employees who provide information (to the employer, the federal government or the attorney general of a state) relating to any violation (or reasonable belief of violation) of Affordable Care Act (ACA) Title I (containing insurance company accountability requirements and requirements for certain employers, many of which are not effective until 2014). Moreover, employers cannot discharge or retaliate against employees who: Testify, assist or participate (or are about to do so) in a proceeding concerning a Title I violation; object to or refuse to participate in any activity that the employee reasonably believes to violate Title I; or receive a credit under section 36B of the Internal Revenue Code of 1986 or a cost sharing reduction under section 1402 of the ACA. ([OSHA Fact Sheet: Filing Whistleblower Complaints under the Affordable Care Act.](#)) OSHA's interim final rule governing whistleblower complaints filed under Section 1558 of the ACA was [published](#) in February 2013.

If an employer takes retaliatory action against an employee because he or she engages in a protected activity, the employee can file a complaint with OSHA by the applicable deadline. If an employee's protected activity contributes to an employer taking adverse action against the employee (for example: Firing, laying off, blacklisting, demoting, denying overtime or promotion, disciplining, denying benefits, failing to hire or rehire, intimidation, making threats, reassignment affecting prospects for promotion and/or reducing pay or hours), then OSHA may issue an order requiring the employer to reinstate the employee, pay back wages, restore benefits, and/or grant other relief to make the employee whole. Employers can contest such OSHA orders. ([OSHA Fact Sheet: Your Rights as a Whistleblower.](#))

Employers that do not comply with OSHA and other federal requirements may find themselves the target of enforcement actions or whistleblower complaints. OSHA initiates thousands of enforcement activities every year. For example, in FY 2010, OSHA conducted almost 41,000 inspections and found over 96,000 violations of its standards and regulations. Moreover, hundreds of whistleblower complaints are filed each year. Two recent examples involve violations of the Federal Railroad Safety Act: OSHA ordered a railroad company to immediately reinstate an employee who was terminated for reporting a work-related injury and to pay the employee more than \$350,000 in back wages with interest, compensatory and punitive damages; and, OSHA ordered another railroad



company to pay \$1,121,099 to three employees who were wrongfully terminated for reporting workplace injuries and to reinstate the employee to their proper seniority levels, with vacation and sick days that they would otherwise have earned. In addition to damages, the company has been ordered to pay reasonable attorneys' fees.

For more information on OSHA requirements or federal whistleblower protections, please contact your Reinhart attorney.

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