

Frequently Asked Questions (FAQs) for www.whistleblowers.gov

Coverage

Q: What types of whistleblower complaints does OSHA investigate?

A: OSHA enforces more than 20 whistleblower laws protecting employees from retaliation for reporting violations of various workplace safety and health, airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health insurance reform, motor vehicle safety, nuclear, pipeline, public transportation agency, railroad, maritime, and securities laws and for engaging in activities related to those laws. The complete list of whistleblower laws administered by OSHA can be found [here](#).

Q: What activities are protected under the whistleblower laws enforced by OSHA?

A: Employees have the right to engage in “protected activity.” Different activities are protected under each whistleblower law. Generally, protected activities include reporting conduct that the employee reasonably believes violates a relevant federal law, filing a complaint about a violation, and testifying, assisting, or participating in a proceeding related to a violation. In general, these protected activities include internal reporting of concerns to the employer, as well as reporting issues to relevant federal, state, or local regulatory agencies or law enforcement.

In some instances, OSHA’s whistleblower laws may provide even broader protection. For example, Section 11(c) of the Occupational Safety and Health Act bans retaliation against employees for reporting injuries, illnesses, or unsafe conditions to their employers, participating in OSHA inspections, and, under certain conditions, refusing to work when there is reasonable fear of death or serious injury. Information about protected activity under specific laws can be found [here](#).

Q: Is an employee protected from retaliation for reporting conduct that the employee mistakenly believes is unlawful?

A: Yes. As long as the employee had a reasonable, good faith belief that a violation occurred or could occur, the reporting is generally considered protected activity.

Q: What is retaliation?

A: Retaliation is taking an adverse action against an employee for engaging in protected activity. Adverse action can include:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Reducing pay or hours
- Giving an employee a reassignment that affects his or her prospects for promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Blacklisting (intentionally interfering with an employee’s ability to obtain future employment)
- Intimidating/harassing

- Making threats

Q: What elements must OSHA find to determine that retaliation in violation of a whistleblower law took place?

A: To find that unlawful retaliation took place, OSHA must determine that:

- The employee engaged in protected activity under one of OSHA’s whistleblower laws; *and*
- The employer knew about or suspected the protected activity; *and*
- The employer took an adverse action; *and*
- The protected activity caused the adverse action.

The precise standard for determining causation that OSHA uses in a case varies depending on the specific whistleblower law that applies to an employee’s complaint. More information about the standards that OSHA applies for determining whether retaliation occurred can be found in OSHA’s [Whistleblower Investigations Manual](#).

Q: Do employees have any recourse under federal laws not enforced by OSHA for retaliation due to occupational safety or health activity?

A: Possibly. Depending on the facts of the case, laws enforced by other federal agencies may be applicable. For example, if the safety or health activity was undertaken with or on behalf of co-workers, including, but not limited to, the filing of a grievance under a collective bargaining agreement (“concerted activity”), the complainant may [file a charge with the National Labor Relations Board \(NLRB\)](#) within six months of the adverse action.

Q: Can public sector employees file whistleblower complaints with OSHA?

A: Under Section 11(c) of the OSH Act, public sector employees, with the exception of Postal Service, are not covered. Other OSHA whistleblower laws may protect federal, state, and/or local government employees depending on the circumstances. More information about employee coverage under the whistleblower statutes enforced by OSHA is available [here](#).

Investigations

Q: Who investigates whistleblower complaints?

A: Whistleblower complaints are investigated by Federal OSHA whistleblower investigators. Most cases are investigated in the region in which the protected activity allegedly occurred. Click [here](#) for a map of OSHA’s regions.

In cases that are filed with an OSHA-approved State Plan agency, the State Plan agency will conduct the investigation. In cases where the complainant timely files with *both* Federal OSHA and a State Plan agency or timely files with Federal OSHA in a State Plan State, Federal OSHA refers the case to the State Plan agency. In these cases, if the employee objects to the State Plan’s determination, he or she may seek review of the case by Federal OSHA. Information about State Plans can be found [here](#).

Q: Does OSHA represent employees during the whistleblower investigation?

A: No. OSHA Whistleblower Investigators are neutral fact-finders who do not represent or advocate on behalf of either party. An Investigator's job is to impartially gather and analyze all relevant evidence to determine whether unlawful whistleblower retaliation has occurred.

Q: How does OSHA conduct its whistleblower investigations?

A: Procedures for conducting whistleblower investigations are found in OSHA's [Whistleblower Investigations Manual](#). Additional information on what to expect during an OSHA whistleblower investigation can be found [here](#).

Q: How long does OSHA take to investigate a case?

A: The whistleblower laws have timeframes for completion of investigations ranging from 30 to 90 days. However, failure to meet these timeframes does not bar OSHA from issuing findings at a later time as these timeframes are directory in nature. OSHA's whistleblower investigations may take a significant amount of time to complete as there are many whistleblower cases with varying levels of complexity.

Interactions between OSHA's Safety and Whistleblower Divisions

Q: What is the difference between filing a safety and health complaint with OSHA and filing a whistleblower complaint with OSHA?

A: A safety and health complaint relates to unsafe or unhealthful working conditions. A safety and health complaint filed with OSHA may prompt an inspection of a workplace. If a safety and health complaint is filed with OSHA that includes an allegation of retaliation, that portion of the complaint will be referred to the Whistleblower Protection Program for possible investigation.

A whistleblower complaint relates to alleged action taken against an employee in retaliation for engaging in activity protected by the whistleblower laws that OSHA enforces. For example, if an employer retaliates against an employee for making a safety and health complaint, such retaliation violates Section 11(c) of the Occupational Safety and Health Act of 1970 ("OSH Act"). A whistleblower complaint may prompt an investigation into whether an employer retaliated against an employee for engaging in protected activity under these whistleblower laws. If a whistleblower complaint is filed with OSHA that includes allegations of safety and health hazards, that portion of the complaint will be referred to the Safety and Health Enforcement Program for possible inspection.

Q: In addition to investigating retaliation, will OSHA take action to address the employee's health, safety, or regulatory concerns in a whistleblower case?

A: If an employee files a whistleblower complaint under Section 11(c) of the Occupational Safety and Health Act, OSHA will refer any underlying safety and health complaint to OSHA's Safety and Health Enforcement Program for review of any occupational safety or health issues raised in the complaint. Complaints filed under other whistleblower statutes will be referred to federal agencies that can take enforcement action related to the underlying violations of those statutes. For example, whistleblower complaints filed under the Sarbanes-Oxley Act will be referred to the Securities and Exchange Commission for review of any securities law concerns related to the complaint.

Filing Complaints

Q: Can whistleblowers file anonymous complaints with OSHA?

A: Unlike OSHA's safety and health complaints, whistleblower complaints cannot be filed anonymously.

Q: How can employees file whistleblower complaints with OSHA?

A: Employees may file whistleblower complaints online, through the mail/email, via fax, by telephone, or in person at a local OSHA Regional or Area Office. Whistleblower complaints do not need to be in a specific format. Detailed information about filing a whistleblower complaint can be found [here](#).

If the alleged violation of Section 11(c) occurred at an establishment covered by one of the OSHA-approved State Plans, the employee should file a whistleblower complaint with both the State Plan and Federal OSHA. These State Plans provide whistleblower protections similar to those provided under Section 11(c) of the OSH Act, but they may have different filing processes. Employees should check with the relevant State Plan for specifics on how to file. Most of these States require whistleblower complaints to be filed within 30 days of the adverse action. State Plan contact information can be found [here](#).

Q: How long do employees have to file a whistleblower complaint?

A: Timeframes for filing range from 30 calendar days from the time that the complainant learns of the adverse action (e.g., for claims under Section 11(c) of the OSH Act) to 180 calendar days, depending on the relevant law. Information on how long an employee has to file under each whistleblower law enforced by OSHA can be found [here](#).

Q: Can employees amend their complaints after filing if they believe they have suffered an additional adverse action?

A: Yes. After filing a whistleblower complaint with OSHA, a complainant may amend the complaint to add additional allegations and/or additional respondents. It is OSHA's policy to permit the liberal amendment of complaints, provided that the original complaint was timely, and the investigation has not yet concluded.

Alternative Dispute Resolution/Settlement

Q: Does OSHA offer alternative dispute resolution (ADR) for whistleblower investigations?

A: OSHA offers ADR in some regions. Both parties must agree to engage in ADR. Additional information about OSHA's ADR program can be found [here](#).

Q: Can parties settle without engaging in OSHA's ADR process?

A: Yes. Please note that, in general, any settlement of a whistleblower complaint reached between the parties (either during ADR or outside of ADR) while a complaint is pending with OSHA must be reviewed and approved by OSHA to ensure that the settlement is knowing and voluntary, provides appropriate relief to the complainant, and is consistent with public policy.

Merit and Non-Merit Cases

Q: If OSHA finds that a case has merit, what happens next?

A: Cases investigated under Section 11(c) of the Occupational Safety and Health Act, the Asbestos Hazard Emergency Response Act, or the International Safe Container Act may be litigated on behalf of the Secretary of Labor by a Department of Labor attorney in federal district court. If the court finds a violation, it may award reinstatement, back pay, compensatory damages, punitive damages, and other appropriate relief.

For all other cases, OSHA will issue merit Secretary's Findings and an order for relief, which may include reinstatement, back pay, attorney fees, and compensatory damages, as well as non-monetary relief, such as providing a neutral reference. Under some statutes, punitive damages may be awarded. Either party has the right to file objections to the Secretary's Findings and request a hearing before a Department of Labor administrative law judge (ALJ).

In cases under the Surface Transportation Assistance Act and the Seaman's Protection Act, OSHA will generally participate in the litigation before the ALJ in cases where OSHA has issued merit Secretary's Findings. In cases under the remaining whistleblower laws, OSHA has discretion to participate in litigation before an ALJ but does not generally do so.

See the [Whistleblower Investigations Manual](#) for more information about how OSHA proceeds in merit cases. More information about the process for administrative review after OSHA issues Secretary's Findings under whistleblower laws other than Section 11(c) of the Occupational Safety and Health Act, the Asbestos Hazard Emergency Response Act, or the International Safe Container Act, can be found [here](#).

Q: If OSHA does not find that a case has merit, what happens next?

A: Employees whose cases are investigated and dismissed as non-merit under Section 11(c) of the Occupational Safety and Health Act, the Asbestos Hazard Emergency Response Act, or the International Safe Container Act have the right to request that the Directorate of Whistleblower Protection Programs (DWPP) review their cases. They must request review in writing within 15 calendar days of receiving the Secretary's Findings notifying them of the decision to dismiss. Please note that DWPP's review is limited to determining whether the investigation was adequate and evidence contained in the file is sufficient to support the findings.

Employees whose cases are investigated under the other laws that OSHA administers can request review by an administrative law judge (ALJ). More information about ALJ review of whistleblower cases can be found [here](#).

Program Information

Q: What is the role of OSHA's Directorate of Whistleblower Protection Programs (DWPP)?

A: DWPP develops policy and provides guidance and support to the OSHA regional offices, which conduct investigations of whistleblower complaints. DWPP also reviews employees' requests for review of regional dismissal decisions under Section 11(c) of the Occupational

Safety and Health Act, the Asbestos Hazard Emergency Response Act, and the International Safe Container Act.

Resource Material

Q: How can employers prevent retaliation?

A: OSHA recommends that employers implement an anti-retaliation program. Recommended practices for such a program can be found [here](#).

Freedom of Information Act (FOIA) Requests

Q: How can I file a Freedom of Information Act (FOIA) request for a whistleblower case file?

A: Information on how to file a FOIA request with OSHA can be found [here](#).