

# OSHA Recommends Best Practices to Prevent Whistleblower Retaliation

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The laws that the Occupational Safety and Health Administration (OSHA) enforces govern workplace safety and health at construction sites and prohibits employers from retaliating against employees who engage in protected activities, such as reporting workplace hazards, injuries, illnesses, or potential violations of the law. They also protect employees who refuse to violate a law or cause a workplace hazard.

OSHA enforces 22 different laws that provide whistleblower protection. These include those governing workplace safety and health at construction sites and regulate hazards and prohibited activities specific to other industries.

While employees may report violations to their employers, they may also go directly to OSHA. Employers are prohibited from preventing an employee from doing the latter, even if the employee declines to notify a manager or the company's Human Resources department.

## Recommended Practices for Anti-Retaliation Programs

When an employee complains to OSHA, the employer may not take an adverse action that might intimidate or dissuade employees from exercising their right to report suspected wrongdoing. Adverse actions may include termination, layoff, demotion, discipline, threats, blacklisting, reassignment to a less desirable position, reduction of hours, isolation, poor performance reviews, or denial of overtime, promotion, or benefits.

In its "Recommended Practices for Anti-Retaliation Programs," OSHA advises employers to design and implement programs that:

1. Receive and respond to employee reports of noncompliance with safety and health or other laws; and
2. Prevent and address retaliation against employees who voice concern. This extends not only to regular employees, but also to temporary employees, leased workers, and contractors, especially those who are controlled by the host employer.

A key best practice OSHA suggests is training employees about their right to report issues without delay to OSHA or an appropriate agency. The agency may understand a report was filed by a disgruntled current or former employee, but OSHA must follow up on a complaint without regard to the aims of the complaining employee. Showing the agency the employer has a training regimen that reinforces employee rights can send a positive signal to an investigator who may be unsure of the workplace culture.

OSHA suggests an anti-retaliation program that includes five elements:

1. Committed managers who lead by example, encourage employees to report concerns and respect confidentiality;
2. A clearly communicated system for resolving employees' reported concerns;
3. A system for receiving and responding to reports of retaliation;
4. Promotion of anti-retaliation against employees and managers; and
5. Program oversight, which may include regular monitoring or audits that identify the program's strengths and weaknesses.

OSHA offers ways to accomplish these objectives, such as multiple confidential or anonymous channels for complaints, follow-up interviews with complaining employees, and anonymous surveys of

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employees assessing the program. OSHA also recommends incentive programs that reward employees for reporting concerns. Top-level managers should be in the know on the results of these measures and engage employees to find ways to improve whistleblower programs.

If you need guidance or a third-party review of the quality of your anti-retaliation program, please contact a Jackson Lewis attorney.

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