

Whistleblower Flyer for Low-Income Workers Clinics

Federal and state laws have created an uneven patchwork of protections for workers who raise concerns about safety, health, fraud and compliance with environmental, transportation and consumer protection laws. Many of these laws provide for enforcement through administrative agencies. For 22 federal laws, complaints must be filed with OSHA's Whistleblower Protection Program, with deadlines between 30 and 180 days. Each law sets its own time limit for filing a complaint.

Initial Assessment

- 1. Identify the protected activity.** What concerns did the employee raise? When and how? What made the boss upset? Answers tell the advocate what laws might apply. **For example**, if the worker complained about poor storage causing food to rot, the Food Safety Modernization Act (FSMA) might apply (180 days to file with OSHA). A complaint about toxic chemicals can be protected under the Toxic Substances Control Act (TSCA) (30 days, to OSHA). In most cases, complaints to anyone can be protected if employer knowledge can be shown or inferred.
- 2. Assess the worker's interest in an official investigation.** Check if the worker is ready for the boss to know that the worker is making a retaliation complaint. Undocumented workers can make complaints, but their remedies might not include reinstatement and backpay. Some law enforcement agencies (such as the Department of Labor's Wage and Hour Division, WHD) will help undocumented workers with certifications for U visas.
- 3. Ask about the worker's source of information.** It is normally proper for workers to save the information the employer permits them to see, and then use that information to help law enforcement investigate violations. Workers normally cannot snoop around for confidential information they were not permitted to access. It is a crime to access computer information without permission. In twelve states, it is unlawful to make audio recordings without the consent of everyone recorded.
- 4. Capture supportive witness statements.** Witnesses might help now and might also become reluctant later. Help the worker to identify witnesses and get affidavits now.
- 5. Advise the worker to mitigate damages.** Claimants have a duty to lessen or "mitigate" their damages. Claimants should keep a written record of their efforts to get another job.

The Laws. Lists of federal whistleblower protection laws are available at:

<https://kcnfdc.com/most-legal-claims-have-time-limits/>

<https://www.whistleblowers.gov/sites/wb/files/2019-12/WB-Statute-Summary-Chart-10.8-Final.pdf>

- 6. Environmental.** Seven federal environmental laws have whistleblower protections. Most have a **30-day time limit** to file a complaint with OSHA. These laws protect concerns about pollution of the air, water, land and drinking water, and any concerns about toxic chemicals. **Nuclear and pipeline safety whistleblowers have 180 days** to file with OSHA.
- 7. Transportation Safety.** Special laws protect truck drivers, seamen and employees of railroads, public transit systems, airlines, and auto parts manufacturers. **Airline employees have 90 days** to file a complaint with OSHA. **Others have 180 days** to file with OSHA.
- 8. Occupational Safety and Health.** Workplace health and safety whistleblowers have a weak protection in Section 11(c) of the OSH Act. Time limit to file is **30 days**. OSHA can choose to take a case to court, but the whistleblower cannot. Look for an environmental, transportation, state or other law that might also apply.
- 9. Food Safety Modernization Act (FSMA).** Twenty million Americans work with food production, transport, storage, preparation or sales. They are protected when they raise concerns about food safety, or when they refuse to violate standards or serve unsafe food. The time limit for OSHA complaints is **180 days**.
- 10. Sarbanes-Oxley Act (SOX).** SOX protects employees when they raise concerns about accounting at publicly traded companies, or compliance with SEC rules, such as the requirement to disclose known liabilities and refrain from fraud. The time limit for OSHA

complaints is **180 days**.

11. **Consumer Protection.** Employees are protected when they raise concerns or refuse to violate consumer protections that could be enforced by the Consumer Product Safety Commission, or the Consumer Financial Protection Bureau. The time limit for OSHA complaints is **180 days**.
12. **Affordable Care Act and ERISA.** Some employers have started cutting workers' hours to avoid liability for health insurance. Actions taken about workers qualifying for a subsidy or raising concerns about health insurance coverage or discrimination are already illegal under 29 U.S.C. § 218C. The time limit for OSHA complaints is **180 days**. Those suffering retaliation for seeking or approaching qualification under an employer's benefit plan have **three years** to file an ERISA reprisal claim. 29 U.S.C. §1132(a), 1140.
13. **Wage and Hour whistleblowers.** The Fair Labor Standards Act (FLSA) protects workers who initiate proceedings or complain to the employer about wage and hour violations. Complaints can be made to the Wage and Hour Division (WHD) or directly in federal court. Those suffering reprisals for using the Family and Medical Leave Act (FMLA) may use the same process. The time limit is **two years** (three years for willful violations).
14. **Concerted Activity.** The National Labor Relations Board (NLRB) protects workers when two or more act in concert for their mutual aid or protection. No union connection is necessary. Even conversations about terms and conditions of employment, or seeking a co-worker's attendance for a meeting with management, are protected. The time limit to file and serve an NLRB Charge Against Employer form is **six months**. The NLRB does not cover agricultural workers, managers or supervisors. Sorry.
15. Most **federal employees** can file complaints with Form 14 at the Office of Special Counsel (<http://osc.gov/>). Time limit: 3 years. For EEO retaliation, the time limit to initiate with the Agency's EEO office is 45 days. Employees of **federal contractors** have 180 days to file with <http://www.dol.gov/ofccp>, or 3 years to file with the Agency IG (under the NDAA).

How to file with OSHA or WHD.

16. **No particular form** of a complaint is required. File with OSHA on-line at: <http://www.whistleblowers.gov> Or by fax, see: <http://www.taterenner.com/sampcomp.php>
17. **Identify the complainant**, by name, address and telephone number.
18. **Identify the respondents.** For each entity responsible for the retaliation (including the employer), give the legal name, and the office address and telephone number.
19. **Describe the protected activity.** The description should explain how the law would apply to the employee's protected activities.
20. **List all adverse actions.** If the worker is terminated, give the date of the employer's first notice of its final decision to terminate. Check for other adverse actions, such as failure to promote, discipline, warnings, reduction of duties, transfers and hostile work environments (HWE).
21. **Sign it.** Anyone can sign the complaint if they are doing so for the complainant. If no one else is available to sign, then the complainant can sign his or her own complaint.
22. **File it.** Fax, mail or deliver it. Document the date of delivery.
Find OSHA offices at: <http://www.osha.gov/html/RAmap.html>
Find WHD offices at: <http://www.dol.gov/whd/america2.htm>
Find NLRB offices at: <http://nrlb.gov/who-we-are/regional-offices>
23. **Amend it.** An OSHA whistleblower complaint can be amended and supplemented (such as after new adverse actions). OSHA's interview or a statement of the complainant can constitute a supplement to the complaint.

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This flyer is updated at: <http://www.taterenner.com/WhistleblowerFlyer4clinics.pdf>

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