

OSHA FactSheet

Filing Whistleblower Complaints under the Sarbanes-Oxley Act

Employees who work for publicly traded companies or companies that are required to file certain reports with the Securities and Exchange Commission (SEC) are protected from retaliation for reporting alleged violations of mail, wire, bank, or securities fraud; violations of rules or regulations of the SEC; or federal laws relating to fraud against shareholders.

Covered Companies

A company is covered by section 806 of the Sarbanes-Oxley Act of 2002 (the Act) if it has a class of securities registered under Section 12 of the Securities Exchange Act, or is required to file reports under Section 15(d) of that Act. Its contractors, subcontractors, or agents may also be covered.

Protected Activity

If an employer is covered under the Act, it may not discharge or in any manner retaliate against an employee because he or she:

- provided information
- caused information to be provided, or
- assisted in an investigation by
 - a federal regulatory or law enforcement agency
 - a member or committee of Congress, or
 - an internal investigation by the company relating to an alleged violation of mail fraud, wire fraud, bank fraud, securities fraud, or violating SEC rules or regulations or federal laws relating to fraud against shareholders.

In addition, an employer may not discharge or in any manner retaliate against an employee because he or she filed, caused to be filed, participated in or assisted in a proceeding under one of these laws or regulations.

If an employer takes retaliatory action against an employee because he or she engaged in any of these protected activities, the employee can file a complaint with OSHA.

Unfavorable Employment Actions

An employer may be found to have violated the

Act if an employee's protected activity was a contributing factor in the employer's decision to take unfavorable employment action against the employee. Such actions may include:

- Discharge or layoff
- Blacklisting
- Demoting
- Denial of overtime or promotion
- Disciplining
- Denial of benefits
- Failure to hire or rehire
- Intimidation
- Reassignment affecting prospects for promotion
- Reduction in pay or hours

Deadline for Filing Complaints

Complaints must be filed within 90 days after an alleged violation of the Act occurs (that is, when the complainant becomes aware of the retaliatory action). An employee, or representative of an employee, who believes that he or she has been retaliated against in violation of the Act may file a complaint with OSHA.

How to File a Complaint

Complaints must be filed in writing. The complaint should be filed with the OSHA office responsible for enforcement activities in the geographic area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials can be found in local directories and at www.osha.gov.

Complaints may be filed by mail (certified mail is recommended), fax, or hand delivery during business hours. The date postmarked, faxed or hand delivered is considered the date filed.

Contents of a Complaint

There is no set form for the complaint, but it must be filed in writing and include the following information.

- The name, address and phone number(s) of the person filing the complaint, or on whose behalf the complaint is being filed, must be included.
- The names and addresses of the company(s) and person(s) who are alleged to have violated the Act (who the complaint is being filed against).
- Sufficient detail to allege the four elements of a *prima facie* violation:
 1. The employee engaged in a protected activity or conduct;
 2. The employer or named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;
 3. The employee suffered an unfavorable personnel action; and
 4. The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

See 29 CFR 1980.104(b) for further information.

When it receives the complaint, OSHA will review it to determine whether to conduct an investigation, and will conduct its investigation in accordance with the Act's requirements.

Results of the Investigation

If the evidence supports an employee's claim of retaliation and a settlement cannot be reached, OSHA will issue an order requiring the employer to reinstate the employee, pay back wages,

restore benefits, and other possible relief to make the employee whole, including:

- Reinstatement with the same seniority status.
- Payment of back pay with interest.
- Compensation for special damages, attorney's fees, expert witness fees, and litigation costs.

OSHA's findings and order become the final order of the Secretary of Labor, unless they are appealed within 30 days.

After OSHA issues its findings and order, either party may request a full hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision and order may be appealed to the Department's Administrative Review Board for review.

If a final agency order is not issued within 180 days from the date the employee's complaint is filed, then the employee may file it in the appropriate United States district court.

Additional Information

For a copy of the Act, the regulations (29 CFR 1980), and other information, go to www.osha.gov and click on the link for "Whistleblower Program."

For information on the Office of Administrative Law Judges procedures and case law research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

For information on Federal securities laws, rules and regulations or for information on publicly traded companies, go to www.sec.gov.

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.

For more complete information:



U.S. Department of Labor

www.osha.gov

(800) 321-OSHA