



Stand Up Without Fear

Understanding the OSH Act's Retaliation Provisions

2020

This toolkit is dedicated to the working people who have lost their lives, limbs, or otherwise been injured or made ill from workplace hazards. We hope the information in this toolkit will help prevent such tragedies in the future.



The Occupational Safety & Health Law Project (OSH Law Project) works to strengthen health and safety protections and empower workers to improve these protections on the job. Through education about workers' legal rights and how to exercise those rights, appellate litigation in cases involving health and safety issues, legal strategies to enhance workers' rights to safe and healthy workplaces, and providing expert advice and technical assistance, the OSH Law Project works to make sure no worker is killed, injured, or made ill at work, and that all workers receive adequate compensation for any harm they have suffered if an accident or illness occurs.

This Toolkit provides general legal information. It is not advice about your particular case, situation, or citation. This Toolkit does not replace the advice of an attorney and exceptions may apply to your situation that are not covered here.

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Introduction

Today, far too many workers are injured, made ill, or killed on the job. Each day in the United States, nearly 275 workers are killed by hazardous working conditions and nearly 5,147 workers are killed on the job.¹ Despite the fact that workers at a business are usually the most knowledgeable about the hazards they face, those workers are often reluctant to point out hazards to management or to demand they be corrected because they fear retaliation. This is especially true for some of the most vulnerable workers: those unrepresented by a union or connected to a workers' center; those who work for staffing agencies (instead of directly for the employer); and those whose immigration status makes work even more precarious, such as undocumented workers or guestworkers on temporary work visas. For workers facing retaliation, the Occupational Safety and Health

Act of 1970 (the OSH Act)⁴ may provide some protection. The purpose of this toolkit is to give workers who experience retaliation and their advocates the resources to fight back.

This document has three goals: (1) to educate workers and their advocates on the relevant law and legal processes; (2) to provide the information needed to file the most effective claims of retaliation; and (3) to empower workers to step forward and take action to make their workplaces safer and healthier.

Legal Framework

The OSH Act is the primary federal law that guarantees a worker's right to a safe workplace. The Occupational Safety and Health

Administration (OSHA) was created by that Act and is the predominant federal enforcement agency on workplace safety and health issues, and the agency tasked with enforcing the OSH Act's mandates. OSHA is a federal government agency, part of the U.S. Department of Labor.

Section 11(c) of the OSH Act has specific provisions that protect most workers from retaliation if they report a violation of safety and health standards at their workplace or exercise other rights created by the Act.

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Importantly, federal OSHA enforces the OSH Act and its standards and regulations only in slightly more than half the states and territories where it applies. In the other 22 states and two territories, the state government has its own OSHA agency and the state enforces its state safety and health law. In these states, referred to as "state-plan states," federal OSHA monitors whether the state does an effective job of enforcing the law. The procedures in state plan states are similar, but not identical, to those used by federal OSHA. Five states, and the Virgin Islands, have State Plans that cover only public employees. If you work in one of those states, you may need to consult a lawyer or a union representative who knows how the state OSHA program works and how the anti-retaliation provisions of state law are enforced.

Importantly, a worker's 11(c) complaint can be filed either with a state OSHA program or federal OSHA (even in state plan states).

See Appendix I for a chart containing important information about anti-retaliation laws in state plan states.

A Note for Workers and their Advocates

One of the most effective ways to improve safety and health conditions at workplaces is to speak out about unsafe conditions and take necessary actions to protect yourself and your co-workers. This means that workers must understand what retaliation is, how to help prevent it, and who to contact when it occurs. Employers must understand that retaliation is illegal and will have consequences.

Although there are definite weaknesses to the OSH Act's anti-retaliation provisions, they can be effective in many cases. This potential became clear when the Supreme Court unanimously upheld both the provision and the regulation OSHA had promulgated implementing it.² Specifically, the Court emphasized that the Act provided workers with the right to bring unsafe conditions to the attention of both their employers and OSHA, and that employers may not retaliate against workers who exercise that right. The Court also recognized that the Act provides workers with a limited right to refuse to perform unreasonably dangerous assignments, but it conditioned that right, in most cases, on the worker, "where possible, . . . hav[ing] sought from his employer, and been unable to obtain, a correction of the dangerous condition."

OSH Act Retaliation: Brief History & Context

The OSH Act's whistleblower provision is Section 11(c).³ It was enacted in 1970, and was one of the earliest statutes of its kind in the nation. Unfortunately, as a result, it does not include some desirable features that would strengthen workers' ability to report violations that have been included in later-adopted anti-retaliation laws. For example, the OSH Act lacks an individual right of action (e.g. an ability for workers to go to court on their own and sue), a temporary reinstatement provision (a mechanism for workers to return to work while their claims of retaliation are resolved), and an extended period in which to file a complaint. More modern whistleblower statutes include these provisions, but the OSH Act's protections were groundbreaking for its time and still provide valuable rights to workers today.



OSH Act Section 11(c) The whistleblower provision

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act."

Under the OSH Act a worker who believes he or she has been the victim of impermissible retaliation may file a complaint with OSHA. The Secretary of Labor, upon a determination that impermissible retaliation occurred, may file an action in a United States District Court to remedy the retaliation.

The plaintiff in such a case is the Secretary, not the worker. This highlights the primary limitation of the OSH Act's anti-retaliation provision: that it does not provide a private right of action; only the Secretary's lawyer may file a legal action on behalf of a complaining

worker. And because OSHA's whistleblower staff is small and does not have the resources to investigate every claim comprehensively, the best way to ensure that any claim is successful is to provide OSHA with as much evidence as possible supporting the claim.



The four elements of a successful whistleblower case

1. The complaining employee was **engaged in an activity protected by the Act**;
2. The employer or other subject of the complaint was **aware of that activity**;
3. The employee suffered **an adverse action** (discipline; discharge, etc.); and
4. The adverse action was **motivated by the protected activity**.



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OSH Act Retaliation: Who, What, When & How?

Who does 11(c) protect?

All employees covered by the OSH Act (virtually all private sector employees **AND** all employees of the U.S. Postal Service) are protected by the OSH Act's whistleblower provision. In addition, some employees in industries that are *not covered* by the OSH Act (because other Federal agencies exercise regulatory authority over safety and health) may also be protected by the Act's whistleblower provision. In other words, for some industries, OSHA *does not* enforce safety and health standards at your workplace, but the OSH Act's anti-retaliation provision *does* protect you.⁴ Also, although the Act only mentions

"employees," OSHA's implementing regulations make clear that former employees are also protected by 11(c).

Federal employees have similar protection under Executive Order 12196⁵ which requires all federal agencies to establish procedures to assure that no employee is subject to retaliation or reprisal for the types of activities protected by Section 11(c).⁶

In addition, private, state and local government, and Federal employees may be protected by some of the environmental whistleblower statutes OSHA administers.



Environmental whistleblower statutes which OSHA enforces

- Asbestos Hazard Emergency Response Act (AHERA)
- Clean Air Act (CAA)
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Energy Reorganization Act (ERA)
- Federal Water Pollution Control Act (FWPCA)
- Safe Drinking Water Act (SDWA)
- Solid Waste Disposal Act (SWDA)
- Toxic Substances Control Act (TSCA)

For more, see “Other Laws that Protect Workers from Retaliation” on page 18.

The OSH Act also prohibits retaliation by any *person* – not just by employers. This means that when a business retaliates against a worker, it may be named even though it does not pay that worker. Among other examples, this could apply to workers employed through staffing agencies or subcontractors.

In a retaliation complaint, workers may also be able to name supervisors or other managers, although this is not common.

The remedies afforded by the OSH Act are fairly broad. The OSH Act states that courts may order “all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay.” In past cases, appropriate relief has included consequential damages including medical bills, job search and housing costs, and punitive damages, among other things.

The most important limitation is that any complaint must be filed within 30 days of the suspected retaliation.



Be sure to file your complaint within 30 days

Workers must file a complaint with OSHA within 30 days of a suspected violation. It may take longer than 30 days for you to fully understand what actually occurred at your job or to get in touch with a competent attorney or advocate.

When in doubt, go ahead and file a complaint. You may amend (make changes to your complaint) in the future, but if you miss the 30 day window, you will have no remedy under the OSH Act.

For a deeper discussion, see “Other Laws that Protect Workers from Retaliation” on page 18.

Special Considerations for Workers at Multi-Employer Worksites

The OSH Act was passed when single employer workplaces were the norm. Now, fewer workers are employed at this type of workplace. Instead, there are often multiple employers at one worksite. Construction workers have traditionally worked at sites where there is a general contractor and a number of subcontractors. However, now many other worksites have workers who are nominally employed by staffing services or temporary employment agencies. Because the Act prohibits any “person” from retaliating against an employee, complaints against all possible employers at the worksite may still be effective.

Special Considerations for Immigrant Workers

Immigrants are covered by Section 11(c) and have the right to work safely and freely without



What retaliation sometimes looks like

- A hotel housekeeper was injured while working with cleaning chemicals at a hotel. She filed a complaint with OSHA and was promptly fired by her boss at the hotel. When she had initially been hired for her job, she completed her paperwork at a staffing agency and every two weeks, she got her pay stub from the staffing agency. **She could likely name both the staffing agency and the hotel in her retaliation complaint.**
- A farmworker on a large farm experienced heat stroke after working for hours in the hot sun without any water (that should have been provided by his employer). When he complained about the incident to his crewleader, he was fired and his co-workers were threatened not to complain. Each day at work, he had received instructions and pay from a crew leader, and was sometimes told what to do by the farmer. He was transported to work by a “raitero” hired by the crewleader. **He could likely name the crewleader and the farmer in his retaliation complaint.**

facing retaliation. However, the forms of retaliation experienced by immigrants and the possible remedies available to them may differ.

Retaliation Against Immigrants

For undocumented workers who assert their safety and health rights, many fear a specific form of retaliation: an employer who calls ICE or local police in an attempt to “deport away” an employee who complains about violations.⁷ Given the heightened immigration enforcement at worksites in the U.S., this fear is pervasive.

To address this concern, in 2011, the Department of Homeland Security (DHS) entered into a Memorandum of Understanding (MOU) with the Department of Labor (DOL), the National Labor Relations Board (NLRB), and the Equal Employment Opportunity Commission (EEOC).⁸ In the MOU, ICE agrees not to conduct civil worksite enforcement during DOL, NLRB, and EEOC investigations or proceedings of labor disputes (in most cases).⁹ A “labor dispute” is a dispute between the employees of a business and the ownership or management of the business concerning a host of rights, including the right to work under safe conditions, the right to workers’ compensation, and the right to protection from retaliation for seeking enforcement of any of these rights. **The MOU is**

not a law or regulation. It can be rescinded at any time without notice.

In addition to the interagency MOU, ICE has long maintained its own internal agency guidance regarding non-interference in ongoing labor disputes and investigations. The current version of this guidance, which is only publicly available in a redacted form, advises ICE agents that, “[w]hen information is received concerning the unauthorized employment of aliens, consideration should be given to whether the information is being provided for the purpose of interfering with a genuine labor organizing campaign or employment dispute” and defines those terms to include “the rights of employees to...have a safe workplace and receive compensation for work related injuries,” as well as to “be free from retaliation for seeking to enforce the[se]...rights.”¹⁰

As internal agency guidance, this document is not generally enforceable against ICE. However, it provides advocates with a basis to argue against ICE engaging in civil worksite enforcement during an ongoing health and safety-related labor dispute or investigation. During prior administrations, ICE has stated in writing to advocates that it endeavors to follow this internal guidance. **Like the MOU, this internal guidance can be rescinded at any time without notice.**

Remedies for Immigrants

Importantly, OSHA should not ask about a worker's immigration status when investigating the merits of an 11(c) complaint. Because 11(c) protects workers regardless of their immigration status, workers and their advocates are not required to—and likely should not—answer questions about a worker's immigration status during an investigation. Even if the retaliation a worker experiences is immigration-based (for example, the employer threatened to call ICE after the worker complained about a safety issue to her supervisor), the worker need not disclose their current immigration status during the investigation.¹¹

There are no reported cases or administrative guidance concerning whether undocumented workers are entitled to reinstatement or backpay under Section 11(c). However, the Supreme Court held in *Hoffman Plastic Compounds, Inc. v. NLRB*,¹² a case concerning the National Labor

Relations Act (NLRA), that undocumented workers are not entitled to backpay following an unlawful discharge under that law. Since the remedies for discharges in violation of the NLRA and for discharges in violation of Section 11(c) are so similar, it is likely that a court would find that undocumented workers are not entitled to backpay under the OSH Act after *Hoffman Plastic*.

Additionally, OSHA and the NLRB have entered into a MOU concerning employer retaliation against concerted employee health and safety complaints that may violate both Section 11(c) and the NLRA.¹³ In such cases, advocates representing immigrant workers should consider whether filing an unfair labor practice charge with the NLRB (in place of or in addition to filing a Section 11(c) complaint with OSHA) would provide their client with greater protection, given the NLRB's more established processes for dealing with immigration status-related issues during the investigative process and in Board proceedings.¹⁴



Worker advocates should also consider what remedies may be available under state safety-related laws or causes of action. New York's highest court, for example, has held that undocumented workers are entitled to back wages under that state's "Scaffold Law,"¹⁵ notwithstanding *Hoffman Plastic*. California also has several state laws that prohibit retaliatory conduct relating to immigration status.¹⁶ Other states and localities may have similar laws.



What Activities Does 11(c) Protect?

Activities protected under the OSH Act include not only participating in OSHA proceedings, but also many other safety and health activities protected by the Act. These range from complaints to employers to, in certain

circumstances, a refusal to work in conditions that the worker reasonably perceives to be hazardous to his or her health or safety.

This is not an exhaustive list, but the rights described below are explicitly listed in the OSH Act, are included in OSHA regulations, or have been recognized by courts in cases brought under 11(c).

Speaking to the Boss

Workers have the right to *communicate orally or in writing* with their supervisors or other management personnel to:

- Express concerns about workplace conditions, including asking questions;
- Report a work-related injury or illness (The right to report an occupational injury or illness is also protected by OSHA's recordkeeping and reporting regulation.¹⁷ In some situations, OSHA may issue a citation instead of filing an 11(c) action in court. This is especially useful in cases where a complaint is not made within the 30 days required by Section 11(c).);
- Request a material safety data sheet (MSDS); and
- Request access to exposure records, copies of the OSH Act, OSHA regulations, applicable OSHA standards, or plans for compliance (such as the hazard communication program or the bloodborne pathogens exposure control plan), as allowed by the standards and regulations.

Speaking to the Government or Co-Workers

Workers also have the right to *communicate orally or in writing* with:

- OSHA or other government agencies about safety and health matters;
- Union officials or coworkers.

This last right is particularly useful because the NLRA also protects workers who engage in

“concerted activity” from retaliation. When an employee acts totally alone in exercising a safety-related right, that worker may be protected from retaliation under the OSH Act, but not under the NLRA. When two or more workers act together, they are protected against retaliation by the NLRA as well by the OSH Act because they are engaged in concerted activity. Likewise, when an individual worker files an OSHA complaint to protect both him/herself and other workers from hazards they all face, that individual, even though acting alone, may be protected by the National Labor Relations Act. OSHA and the NLRB have entered into a Memorandum of Understanding governing how they will handle these complaints. *When possible, draft complaints so that both of these statutory protections may apply.*¹⁸



Did you know?

Section 11(c) protects workers and their representatives in other ways, not just retaliation.

Speaking to the Press

In some situations, communication with the press about a workplace safety and health issue is protected by the OSH Act.

Exercising Any Other Right Afforded by the Act

1. Refuse Work

The Supreme Court has made clear that, in certain circumstances, a worker has the right to refuse to perform a task that she reasonably believes presents a real danger of death or serious injury. An OSHA regulation sets forth the conditions under which a work refusal may be considered a protected activity. To refuse work, a worker must: have a reasonable apprehension of death or serious injury, and refuse to work in good faith, and has no reasonable alternative, and has insufficient time to eliminate the

condition through regular statutory enforcement channels (like contacting OSHA) and where possible, has sought from her employer, and was unable to obtain, a correction of the dangerous condition. It is important to be aware that all of these conditions must be met for the work refusal to be protected.

2. Get the Protection and Benefits of OSHA

An employee also has the right to comply with, and to obtain the benefits of, OSHA standards and rules, regulations, and orders applicable to his or her own actions or conduct. The list below gives some examples of these rights, but it is not all-inclusive. A worker has the right to:

- Wear personal protective equipment (PPE) required by an OSHA standard, and to insist that the employer pay for the vast majority of that PPE;
- Insist that the employer provide appropriate training;
- Insist that the employer provide necessary training; and
- Engage in a work practice required by a standard.

3. Participate in an OSHA Inspection

An employee has the right to participate in an OSHA inspection, and to communicate with an OSHA compliance officer, orally or in writing. This can make a critical difference in ensuring that the OSHA inspector understands and can appropriately identify the hazard.

Rights of Employee Representatives

Employee representatives, who are often also employees, have rights. For an in-depth discussion of those rights, see later discussion in this report. In brief, an employee representative has a right to:

- Accompany OSHA compliance officers during a walkaround inspection.¹⁹ He/she must not suffer retaliation for exercising this right.
- Participate in an informal conference, subject to OSHA’s discretion.²⁰

- Receive certain information from OSHA (i.e., exposure records among others).

What Types of Unfavorable Employment Actions are Prohibited?

Virtually any unfavorable action taken as retaliation for a worker's exercise of a protected activity is prohibited. These include:

- Firing or laying off a worker
- Blacklisting a worker (warning other employers that the worker is an undesirable employee)
- Causing problems for the worker outside the workplace
- Demoting a worker to a lower-level position, or just assigning the worker less desirable work or a less desirable schedule
- Denying overtime or promotion
- Disciplining the employee (suspension, reprimand, etc.)
- Denial of benefits
- Failing to hire or rehire
- Intimidating/harassment
- Making threats (e.g., saying the employer will take some action against the worker if the worker persists in the activity such as reporting a status or activity of the worker to an outside authority such as the police or ICE)
- Reassignment that affects prospects for promotion
- Reducing pay or hours

When is the deadline for filing an OSHA 11(c) complaint?

An 11(c) complaint *must* be filed within **30 days** of the retaliation occurring. A large number of complaints are dismissed every year for failure to meet this deadline. For this reason, it is important to file a complaint as soon as possible, even if you do not yet have all the evidence you expect to present to OSHA. OSHA will accept

supplemental information after the complaint is filed. **The key priority is to get a complaint in on time; you can continue to gather evidence after you file.** If you are not sure if 11(c) covers you, file to preserve your rights (see Section III A for more information on 11(c) coverage). If you are not sure the mistreatment you received is covered by 11(c), file nonetheless. Although you never want to submit an untruthful or frivolous complaint, workers may not learn of key information or evidence until after the 30 day deadline. **File to protect your rights!**

How to File a Complaint for Retaliation

A retaliation complaint may be filed at any OSHA area office. It may be in made writing, orally in person or by telephone, or using [OSHA's online Whistleblower Complaint Form](#). A written complaint may be delivered in person, by mail, or other delivery service, or by fax. OSHA will accept complaints in any language, although most of its investigators speak English or Spanish. A representative of a complainant may also file the complaint. If you file a Designation of Representative form²¹ with OSHA, all future communications will go through that representative.

Private attorneys do not usually get involved in OSH Act whistleblower cases because there is no mechanism to provide them with attorney fees paid by the respondent (employer). However, legal services attorneys and attorneys representing labor unions *can and should file* 11(c) complaints on behalf of their clients or members.

It is important to remember that a worker may not specifically identify OSH Act retaliation as the cause of the adverse action they have suffered. They may initially seek help recovering wages after a termination (that was actually based on unlawful retaliation under 11(c)). Given the prevalence of retaliation and safety and health violations in low wage workplaces, and the very short statute of limitations, it is imperative that representatives and their staff do a thorough intake process to identify and fast-track any cases of possible OSH retaliation.

✓ Checklist for an effective 11(c) complaint

- State **the name of the worker, their employer, and where they work**, and any relevant witnesses.
- State **working phone numbers**, and other information relevant to communication with the worker, including **language needs**. If you are an advocate or attorney representing the worker, state your desire to be contacted when OSHA wants to speak with the worker.
- Explain **the worker's protected action**: Did the worker complain about health and safety issues to the boss? Complain to a supervisor? File a complaint with OSHA? Report an injury? Ask for copies of and enforcement plan or Hazard Communication information?
- Explain **employer awareness**: Why do you think the employer knows the worker did this? Sometimes this is obvious (for example, when the worker directly communicates the information) but sometimes you might need to connect these dots for the investigator.
- Explain **harm**: Was the worker fired? Demoted? Moved to a less desirable assignment or shift?
- Explain **how harm is connected**: Why do you think this action is retaliatory? Was the worker singled out for this harm? Is this a new or different treatment? What is the timing?

The most effective complaints will include support for each of the elements. This includes the names of witnesses to any of the relevant events, any documents supporting the claims, and any other information that may help OSHA determine that retaliation has occurred. However, do not delay filing the complaint while you gather this information. You will be able to provide it to the investigator later.

The more information the complainant can provide to OSHA, the more likely the complaint will be successful! OSHA receives about 3,000 retaliation complaints a year, and has a small staff of investigators to process them.

When possible, workers should consider working with a union representative, community advocate, representative of a workers' center, or an attorney to write a Section 11(c) complaint. Advocates experienced with safety and health law may be able to help a worker create a more complete complaint that will be more thoroughly

investigated by OSHA investigators. A worker should consider making one of these advocates their designated representative, particularly if the worker moves frequently, speaks a primary language other than English (or in some cases Spanish), or has a work schedule or personal commitments that make communication with an OSHA investigator difficult.

Additionally, workers should remember that OSHA Section 11(c) complaints cannot be made anonymously. For workers who remain on the job after filing, create a plan for how to respond when your employer receives information regarding your complaint. Keep written records of any conversations with your employer about the complaint. Insist that a co-worker, union representative, or community advocate be present for any conversations with your employer regarding the complaint.

What to Expect After Filing

Investigation

Shortly after a complaint is filed, OSHA will contact you to verify that the case meets the requirements for investigation. It will send a letter verifying that it is opening an investigation, and asking if you have a representative to be kept informed of all developments in the case. At the same time, OSHA will notify the employer or other subject of the complaint. You should be prepared to sign a written statement setting forth the allegations of the complaint if the original complaint was not written. It may take a few weeks for the formal investigation to begin.



OSHA's investigator is expected to talk to everyone involved in the incidents surrounding the complaint, as well as any other witnesses who may have relevant knowledge. This may include other workers who witnessed relevant incidents, as well as workers who may have knowledge about whether employees who did not make safety and health complaints faced similar adverse treatment. For example, if a complainant who the employer believed had

notified OSHA of hazardous conditions at a workplace was later disciplined, allegedly for arriving at work late, other workers may be able to provide evidence that they had also arrived equally late, and had not been disciplined.

The purpose of the investigation is to verify that all four elements of the alleged retaliation occurred (see "OSHA's Determination..." on page 17) and to determine whether the employer would have taken the same action even in the absence of the protected activity. Therefore, the more assistance you can provide, the more likely the investigation result will be favorable.

Settlement

Because of the high cost – in both time and resources – of litigation, whenever possible, OSHA tries to resolve cases informally. This has a number of advantages for the complaining worker as well, if a satisfactory agreement is possible. Most important, relief is guaranteed, avoiding the inherent uncertainty of litigation. Also, litigation is a lengthy process, particularly in the federal district courts that hear OSH Act whistleblower cases. Therefore, most cases are resolved through settlement.

The investigator may help settle the case. OSHA also has some pilot alternative dispute resolution programs that may help workers resolve their cases. The ADR pilot program offers workers and employers an "early resolution" process (giving the parties the opportunity to negotiate a settlement with the assistance of a neutral OSHA whistleblower expert who would not be involved in making decisions about the outcome of an OSHA whistleblower investigation) and the "mediation" process offers parties the opportunity to participate in a one-day, in-person mediation session with a professional third-party mediator.²² These programs are new and evolving.

Postponement or Deferral

In some cases, the facts that give rise to an OSHA whistleblower complain may also result in another proceeding, such as an arbitration or a matter being decided by another state of Federal

agency such as the NLRB. In these cases, if the rights asserted and the facts at issue in the other proceeding are the same as those in the 11(c) proceeding, OSHA may consider a delay of the 11(c) investigation. After a resolution of the other matter, OSHA determines whether it should defer to the result of the other case or continue its own investigation.

OSHA's Determination and Prosecution of Your Case by the Solicitor of Labor

Eventually OSHA will reach a determination in the case, and will notify both the complainant and respondent of that decision.



Beyond 11(c): OSHA-Enforced Laws that Impact Workers' Health and Safety**

- **Coast Guard Workers:** International Safe Container Act (ISCA) (1977) [46 U.S.C. § 80507]. Protects employees from retaliation for reporting to the Coast Guard the existence of an unsafe intermodal cargo container or another violation of the Act. 29 CFR 1977
- **Truck Drivers:** Surface Transportation Assistance Act (STAA) (1982 [49 U.S.C. § 31105]. Protects truck drivers and other covered employees from retaliation for refusing to violate regulations related to the safety or security of commercial motor vehicles or for reporting violations of those regulations, etc. 29 CFR 1978
- **Railroad Workers:** Federal Railroad Safety Act (FRSA) [49 U.S.C. § 20109]. Protects employees of railroad carriers and their contractors and subcontractors from retaliation for reporting a workplace injury or illness, a hazardous safety or security condition, a violation of any federal law or regulation relating to railroad safety or security, or the abuse of public funds appropriated for railroad safety. In addition, the statute protects employees from retaliation for refusing to work when confronted by a hazardous safety or security condition. 29 CFR 1982
- **Workers Experiencing Problems with Unhealthy Water:** Safe Drinking Water Act (SDWA) (1974) [42 U.S.C. § 300j-9(i)]. Protects employees from retaliation for reporting violations of the Act, which requires that all drinking water systems assure that their water is potable as determined by the Environmental Protection Agency. 29 CFR 24
- **Workers Who Witness Environmental Degradation:** Federal Water Pollution Control Act (FWPCA) (1972) [33 U.S.C. § 1367]. Protects employees from retaliation for reporting violations of the law related to water pollution. This statute is also known as the Clean Water Act. 29 CFR 24. The Toxic Substances Control Act (TSCA) (1976) [15 U.S.C. § 2622]. Protects employees from retaliation for reporting alleged violations relating to industrial chemicals currently produced or imported into the United States and supplements the Clean Air Act (CAA) and the Toxic Release Inventory under Emergency Planning & Community Right to Know Act (EPCRA). 29 CFR 24. Clean Air Act (CAA) (1977) [42 U.S.C. § 7622]. Protects employees from retaliation for reporting violations of the Act, which provides for the development and enforcement of standards regarding air quality and air pollution. 29 CFR 24.

**This list is not exhaustive. See [OSHA's Whistleblower Act Desk Reference](#) for more information about OSHA-enforced anti-retaliation laws.



If OSHA determines that the case does not have merit, it will provide you with an opportunity to seek reconsideration of that determination. The letter you receive notifying you of the determination will explain the procedure. If that review is unsuccessful there is no further recourse because the OSH Act does not allow 11(c) complainants to prosecute cases on their own.

If OSHA determines that the case has merit, and it is not settled, OSHA will refer the case to the Office of the Solicitor of Labor (SOL) for litigation. The SOL is OSHA's attorney and law firm. The SOL litigates very few 11(c) cases. Litigation occurs in United States federal district courts, with the Secretary as the plaintiff, and the employer or other person charged as the defendant. If there is no real dispute over the facts, but only over legal issues, such as whether the complainant's activity actually is protected under the statute, or whether the consequences of that activity are legally "adverse," the case may be resolved "on the papers," with no trial. More often, however, there will be a trial, with witnesses being sworn, and the judge ultimately making a decision.

Other Laws that Protect Workers from Retaliation

There are three other categories of anti-retaliation protections relevant to workers' health and safety concerns. First, there are many federal anti-retaliation laws that OSHA is tasked with enforcing in addition to 11(c). Many of these laws enforce the anti-retaliation provisions in relation to a specific sub-population or industry of workers. Second, there are federal anti-retaliation laws that relate to workers' health and safety, but are not enforced by OSHA. Earlier, this toolkit discussed remedies under the NLRA, but there are other federal anti-retaliation laws worth considering. Last, some workers may be able to enforce their rights under state law, separate and apart from 11(c) and OSHA enforcement.

OSHA-Enforced Laws (Other than 11(c))

In addition to the OSH Act's 11(c), OSHA is also responsible for implementing 21 other anti-retaliation (whistleblower) laws, many of which also address safety and health. Among the most widely used are the Surface Transportation

Assistance Act, (STAA), 49 U.S.C §31105 (for interstate truck and bus drivers) and the Federal Railroad Safety Act (FRSA), 49 U.S.C §20109 (for railroad workers).²³ Importantly, some of these laws have longer deadlines for filing complaints and may have different remedies and burdens of proof than 11(c). See the chart on page 17 for more information.

Other Federal Laws that Protect Workers

Workplace retaliation can manifest in a variety of ways. 11(c) prohibits retaliation based on a worker's complaint relating to job-related health and safety issues. But in many workplaces, particularly low-wage workplaces, employers flout various workplace law and workers complain about bad working conditions more holistically. In fact, when approaching advocates, workers will often lead with stories about retaliation based on legal violations other than 11(c). Or, the facts underlying a worker's case may lead to possible retaliation under several different laws. Advocates must complete robust intakes to ensure that they are identifying all possible avenues for remedy.

Quick Note: Miners' Safety

The Mine Safety and Health Act, enforced by the Mine Safety and Health Administration (MSHA) contains strong anti-retaliation provisions.

Most commonly, low-wage workers voice retaliation based on the wage and hour violations of the Fair Labor Standard Act (FLSA) or on the NLRA (discussed in Section A). However, workers may experience retaliation motivated by an employer's violation of Title VII of the Civil Rights Act of 1964, the Migrant and Seasonal Agricultural Workers Act (MSPA) the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the

Family and Medical Leave Act (FMLA) or others. Many of these laws, except the NLRA, permit workers to file suit to remedy the violation even when OSHA does not pursue their case. Given various statutes of limitations, it is vital to identify all possible legal protections for the retaliation experienced by the worker.

State Laws that Protect Workers²⁴: Public Policy Exceptions, Workers' Compensation Protections, and Other Whistleblower Laws

As noted above, all state-plan states have laws that provide (at a minimum) the same level of protection as 11(c).²⁵ However, this portion of the Toolkit focuses on state laws that may provide remedies for workers outside of (and in addition to) 11(c) and state OSH plans. See Appendix I and the Toolkit's Introduction for more information on state plan states.

In many states, a common law exception to the at-will employment doctrine exists when an employer takes retaliatory action against an employee in violation of public policy. Although case law varies on what comprises "public policy," and the individual elements of each state's definition changes, advocates may bring a tort suit when workers face retaliation for making safety and health complaints or reporting injuries. This is vital as the remedies available in the lawsuits may be more expansive than under other anti-retaliation laws. See Appendix II for more state-specific information.

Depending on the worker's experience, there may be anti-retaliation protections based on the filing of a workers' compensation claim.²⁶

Lastly, many states have general whistleblower statutes that may be applicable to retaliation that arises in the context of complaints about workplace health and safety.²⁷ See Appendices 1 and 2 on pages 20 and 22 for information.

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Appendix 1

Anti-Retaliation Protections: OSHA State-Plan States*

State	Days for Worker to File Complaint	Days for Agency to Issue Finding	Preliminary Reinstatement	Worker Can Pursue Complaint If Agency Does Not
AK	30	90	No	May appeal determination within 10 days.
AZ	30	90	No	Not Specified
CA	180	60	If the employer does not comply with the Commissioner's order within 10 days, the Commissioner may enforce the order in court and shall petition the court for temporary relief or restraining order. However, the statute does not provide that the Commissioner may petition a court for temporary relief or restraining order if the order is appealed within 10 days.	May appeal determination within 10 days. Additionally, if case dismissed, the complainant may file suit independently.
CT*	180	90 (after hearing)	No	May appeal commissioner's decision to Superior Court.
HI	60	90	No	May appeal determination within 20 days. Employee may also have an independent right of action.
IA	30	90	No	Not Specified
IN	30	90	No	Not Specified
IL*	30	90	No	Not Specified
KY	120	90	Yes, upon an initial determination by the commissioner that an employee has been wrongfully discharged, the secretary of the Labor Cabinet may order reinstatement of the employee pending a final determination and order of the review commission.	If dismissed, may petition the secretary for review of the determination.
MD	30	90	No	Not Specified
MI	30	90	No	May request a review of the determination within 15 days.

MN	30	Not Specified	No	Not specified, but may have a private action.
NC	180	90	No	If no finding issued 90 days after complaint filed, may request a right-to-sue letter; if case is dismissed without investigation, a right-to-sue letter is provided.
NJ*	180	90	No	Not Specified
NM	30	60	No	Not Specified
NV	30	90	No	Not Specified
NY*	30	90	No	Not Specified
OR	90	90	No	If case is dismissed, or no action is taken within 1 year after complaint is filed, agency must issue a 90-day notice to file a civil suit. Additionally, instead of filing a complaint, the employee may file a civil suit within one year of the retaliatory action.
PR	30	90	No	Not Specified, but law states that employee may have an independent claim to recover compensation for wrongful discharge.
SC	30 days (private); 1 year (public, file in court)	Not Specified	No	Not Specified
TN	30	90	No	May appeal decision or determination within 10 days.
UT	30	90	No	Not Specified
VA	60	Not Specified	No	May file suit if case dismissed.
VI*	30	90	No	Not Specified
VT	30	90	No	Private action in addition to or in lieu of filing complaint with agency.
WA	30	90	No	May file suit if case dismissed.
WY	30	90	No	Not Specified

*State plan covers public employees only.

Disclaimer: The legal information contained in this chart is based on the most current information available to the Center for Effective Government as of the release of this report. Although we have attempted to confirm the accuracy of this information, information may have changed since the date of this report. For the most up-to-date information on the handling of retaliation complaints in your state, please refer to your state's official laws and regulations.

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Appendix 2

Common Law Exceptions to At-will Employment Doctrine

An * in the following list indicates a state plan state. Original source: Center for Effective Government.

State	Recognizing common law cause of action	Rejecting common law cause of action	Reasoning/ comments
Alabama		Grant v. Butler, 590 So. 2d 254 (Ala. 1991)	11(c) constitutes adequate remedy, and additional remedy in tort is not necessary
Alaska*	Kinzel v. Discovery Drilling, 93 P.3d 427, 438 (2004)		"In the present case, violations of explicit public policies—protection of whistleblowers who file safety complaints or workers who file workers' compensation claims—are alleged. In these circumstances we believe that it is appropriate to allow a tort remedy to more effectively deter prohibited conduct."
California*	Hentzel v. Singer Co., 138 Cal. App. 3d 290, 188 Cal. Rptr. 159 (1982); Boston v. Penny Lane Centers, 88 Cal. Rptr. 3d 707 (2009)		"Though Cal-OSHA created a statutory right of action for workplace safety claims, it did not extinguish the common law tort of wrongful termination in violation of the public policy in favor of workplace safety." Boston v. Penny Lane Centers, Inc., 88 Cal.Rptr.3d 707, 716, 170 Cal.App.4th 936, 947 (Cal.App. 2 Dist.,2009) citing Hentzel v. Singer Co., supra, at p. 303, 188 Cal.Rptr. 159; Cablesuela v. Brown-ing-Ferris Industries of California, Inc. (1998) 68 Cal.App.4th 101, 107, 80 Cal. Rptr.2d 60.
Colorado		Miels v. Martin Marietta Corp., 861 F. Supp. 73, 74 (D. Colo. 1994)	"Colorado law is clear that a separate public policy wrongful discharge claim is not available where the statute at issue provides a wrongful discharge remedy... Accordingly, the plaintiff may not base her public policy wrongful discharge claim on alleged retaliation for filing an OSHA report." NOTE: this opinion is a federal case interpreting state law, and is therefore not binding within the state jurisdiction. No state case was found.

State	Recognizing common law cause of action	Rejecting common law cause of action	Reasoning/ comments
Connecticut		Burnham v. Karl and Gelb, P.C., 745 A.2d 178, 185, 252 Conn. 153, 165 (Conn.,2000)	Note that case is brought under statute defining public policy discharge, CT ST § 31-51m, and also alludes to common law cause of action. Court concludes “the plaintiff’s common-law cause of action for wrongful discharge is precluded because she had a remedy under 29 U.S.C. § 660(c) for her alleged retaliatory termination.”
Illinois	Fragassi v. Neiburger, 646 N.E.2d 315, 318, 269 Ill.App.3d 633, 637 (Ill. App. Ct. 1995)		“OSHA does not preempt this State’s retaliatory discharge remedy....we believe that a State remedy supplementing that available under the Federal statute effectuates the State’s strong public policy while doing no violence to the interests protected by the Federal statute.”
Indiana*		Groce v. Eli Lilly, 193 F.3d 496 (7thCir. 1999)	Indiana recognizes the public policy exception to the at-will doctrine, but applies it very narrowly. This federal case is the only case addressing a situation involving a safety concern. The court noted two reasons to reject the plaintiff’s cause of action: the existence of the statutory remedy, which under Indiana law is the same as 11(c), and the narrowness of the state approach to retaliatory discharge.
Iowa*	George v. D.W. Zinser, 762 N.W.2d 865, 872 (Iowa 2009)		“We hold that the remedy set forth in Iowa Code section 88.9(3) [the state OSH plan] does not preclude an employee from bringing a common law action for wrongful discharge. The policy of encouraging employees to improve workplace safety and the fact that the statute contains permissive and not mandatory language point in favor of allowing a common law action. Iowa Code §§ 88.1, 88.9(3).”
Kansas	Flenker v. Willamette Industries, 967 P.2d 295, 297, 266 Kan. 198, 198 (Kan.,1998)		On certified question from U.S. District Court, Iowa Supreme Court: “Does the remedy provided by OSHA § 11(c) for employees who allege that they have been discharged in retaliation for filing complaints under that statute preclude the filing of a Kansas common law wrongful discharge claim under Kansas’s public policy exception to at-will employment?” The answer is, “no.”

State	Recognizing common law cause of action	Rejecting common law cause of action	Reasoning/ comments
Kentucky*		Hines v. Elf Atochem N. Am., Inc., 813 F. Supp. 550, 552 (W.D. Ky. 1993)	"Both the federal OSHA statute, 29 U.S.C. § 660(c), and the Kentucky OSHA statute, K.R.S. § 338.121(3)(b), create a public policy exception by prohibiting termination or discrimination against employees who refuse to violate the statutes. Both statutes provide a structure for employees to pursue when alleging violations. The statutes preempt wrongful discharge claims based on OSHA." Note that this is a federal case.
Massachusetts	Antlitz v. CMJ Mgmt, 6 Mass.L.Rptr. 371, 1997 WL 42396 at *1 (Mass. Sup. Ct. 1997)		In upholding the common law action, this trial court made an important distinction: "Massachusetts decisions have barred common law public policy claims only in wrongful discharge cases where a state statutory remedy for the alleged public policy violation was available and provided a private cause of action. There is no appellate decision in Massachusetts on this issue
Missouri	Shawcross v. Pyro Prods., Inc., 916 S.W.2d 342, 345-346 (Mo.. App.E.D., 1995)		"We find OSHA does not provide a complete remedy and therefore we conclude that Missouri's public policy exception is applicable notwithstanding the existence of the federal statutory remedy under OSHA. Plaintiffs have stated a claim of wrongful discharge under the public policy exception to Missouri's employment at-will doctrine."
Montana	Motarie v. N. Mont. Jt. Refuse Disp. Dist., 907 P.2d 154 (1995) Overturned by Legislation		The court remanded the case, noting that if the plaintiff's "discharge was in retaliation for a good faith reporting of what he reasonably perceived to be a violation of public policy," then he would have a cause of action. This case was superceded by the Montana Wrongful Discharge from Employment Act, MT ST 39-2-902 ("This part sets forth certain rights and remedies with respect to wrongful discharge. Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment." The exception includes any discharge "that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute." 39-2-912
Nevada	D'Angelo v. Gardner, 819 P.2d 206, 216, 107 Nev. 704, 719 (Nev.,1991)		"...we hold that dismissal of an employee for seeking a safe and healthy working environment is contrary to the public policy of this state."

State	Recognizing common law cause of action	Rejecting common law cause of action	Reasoning/ comments
New Hampshire	Cloutier v. Great Atlantic & Pac. Tea Co., Inc., 436 A.2d 1140, 1144-45 121 N.H. 915, 923-24 (N.H., 1981)		“public policy supporting the plaintiff’s claim derives from 29 U.S.C. § 654(a), the Occupational Safety and Health Act of 1970” but “Though a public policy could conceivably be so clear as to be established or not established as a matter of law, in this case it was properly a question of fact for jury determination.”
New Jersey	LePore v. National Tool & Mfg. Co., 115 N.J. 226, 557 A.2d 1371, cert. denied, 493 U.S. 954, 110 S.Ct. 366, 107 L. Ed.2d 353 (1989)		State common-law tort claim for wrongful discharge in retaliation for reporting safe workplace violations was not preempted under federal OSH Act nor by §301 of the LRMA. Plaintiff would also have had claim under state whistleblower law, except that the law was enacted after the LePore case arose.
New Mexico*	Gutierrez v. Sundancer Indian Jewelry, Inc., 868 P.2d 1266, 1275, 117 N.M. 41, 50, (N.M.App.,1993)		“The common law requires that employers provide employees with a reasonably safe workplace. Public policy in New Mexico prohibits discharging an employee for reporting unsafe working conditions to the Bureau. Finally, we find that the legislature did not intend NMOHSA to provide the exclusive remedy for an employee alleging wrongful discharge in retaliation for reporting safety violations.”
North Carolina*	Coman v. Thomas Mfg. Co., 325 N.C. 172, 381 S.E.2d 445 (1989)		At-will truck driver who alleged that he was discharged for refusing to operate truck in violation of federal law and to falsify records required pursuant to federal regulations stated cause of action for wrongful discharge, in that discharge under such circumstances would violate state public policy involving both health and safety and public safety on the roads.
Ohio	Kulch v. Structural Fibers, Inc., 78 Ohio St. 3d 134, 152, 677 N.E.2d 308, 322 (Ohio 1997)		“the public policy embodied in the federal Occupational Safety and Health Act, Section 651 et seq., Title 29, U.S. Code, may serve as a basis for recognition of a common-law cause of action for wrongful discharge in violation of public policy.”

State	Recognizing common law cause of action	Rejecting common law cause of action	Reasoning/ comments
Oregon *		Walsh v. Consolidated Freightways, Inc., 563 P.2d 1205, 1208, 278 Or. 347, 352 (Or. 1977) BUT NOTE Legislative change described to the right that is part of the Oregon State OSH Plan created cause of action, as did the state's general whistleblower statute.	While the state recognizes the public policy exception to the at-will doctrine, in this case the plaintiff had an available remedy through 11(c) – about which he both knew and used – and therefore public policy doctrine not extended to safety complaint. Court wrote, “We feel that existing remedies are adequate to protect both the interests of society in maintaining safe working conditions and the interests of employees who are discharged for complaining about safety and health problems. We also note that ORS 654.062(5) now provides a similar remedy under state law although, admittedly, these provisions were not in effect at the time of the conduct in question.” § ORS 654.062(5) now provides for civil actions (allowing for “all appropriate relief”) after administrative exhaustion in cases involving safety and health complaints & retaliation. For a very recent discussion of 654.062(5), see <i>Ossanna v. Nike, Inc.</i> , 2018 WL 627056 (Or. App., 2018). Oregon also has a generic whistleblower statute, OR ST § 659A.199 (“employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.”)
Pennsylvania		McLaughlin v. Gastrointestinal Specialists, Inc., 750 A.2d 283, 284, 561 Pa. 307, 309 (Pa.,2000)	Plaintiff “cannot state a claim for wrongful discharge solely based upon an alleged retaliatory termination of her employment in violation of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651, 660(c) (OSHA).”
Washington *		Cudney v. ALSCO, Inc., 259 P.3d 244, 250, 172 Wash.2d 524, 536 (Wash.,2011)	Where the state OSH plan anti-retaliation provision included a right to bring a private action and to obtain all appropriate relief, the state supreme court held, when considering a certified question, that the state plan cause of action was adequate: “WISHA and its accompanying regulations adequately protect the identified public policies.”
Wyoming*		McLean v. Hyland Enters, 34 P.3d 1262, 1271 (Wy. 2001)	“This Court hereby declines in this situation to second-guess the policy decisions of the other branches of government and will not impose a judicial remedy where an administrative remedy has already been provided.”

Endnotes

- 1 AFL-CIO, *Death on the Job: the Toll of Neglect*, 2019, at https://aflcio.org/sites/default/files/2019-05/DOTJ2019Fnb_1.pdf.
- 2 *Whirlpool Corp. v. Marshall*, 445 U.S. 1 (1980).
- 3 29 U.S.C. 660(c).
- 4 The Fifth Circuit Court of Appeals (covering Texas, Louisiana, and Mississippi) has held that the whistleblower provision does not protect workers whose underlying safety conditions are governed by the Coast Guard. *Donovan v. Texaco*, 720 F.2d 825 (5th Cir. 1985). However, no other circuit has expressed that view and OSHA has never adopted it.
- 5 See also 29 CFR 1960.46
- 6 A federal employee who wishes to file a complaint alleging retaliation due to occupational safety or health activity should contact his or her personnel office or the Office of the Special Counsel. OSHA's Office of Federal Agency Programs may also provide assistance in filing a complaint. A PDF complaint form is available at: <https://www.osha.gov/oshforms/osha7.pdf> and an online portal to file a complaint is available at: <https://www.osha.gov/whistleblower/WBComplaint.html>.
- 7 See <https://d279m997dpfwgl.cloudfront.net/wp/2019/03/paz.pdf>.
- 8 Addendum to the Revised Memorandum of Understanding the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (2016) available at https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4684/dol-ice_mou-addendum_w.nlrb_osh.pdf.
- 9 *Supra* note 24. For more information, see "Immigration and Labor Enforcement in the Workplace: The Revised Labor Agency-DHS Memorandum of Understanding," National Employment Law Project and the National Immigration Law Center, (2015) at <https://www.nilc.org/wp-content/uploads/2015/11/ImmigrationLaborEnforcementWorkplace.pdf>.
- 10 U.S. Immigration and Customs Enforcement, *Guidance on Civil Inspections of the Employment Eligibility Verification Form (Form I-9) During Labor Disputes*, at 1 (May 10, 2016), available at <https://www.lexisnexis.com/legalnewsroom/immigration/b/insideneews/archive/2016/10/10/ice-memo-guidance-on-civil-inspections-of-the-employment-eligibility-verification-form-form-i-9-during-labor-disputes.aspx?Redirected=true>.
- 11 If you are asked this question, contact your local union, workers' center, COSH group, or the OSH Law Project.
- 12 535 U.S. 137 (2002).
- 13 Memorandum of Understanding between the National Labor Relations Board and the Occupational Health and Safety Administration, U.S. Department of Labor (Jan 12, 2017), available at <https://www.osha.gov/laws-regs/mou/2017-01-12>. This memo defines a 'concerted' complaint as one 'undertaken in concert with or on behalf of co-workers, including, but not limited to, the filing of a grievance under a collective bargaining agreement.' In cases where it is not obvious whether the complaint is concerted, seek advice from an attorney familiar with the NLRA, as this is a highly technical area of law.
- 14 See, e.g., Memo. GC 15-03, *Updated Procedures in Addressing Immigration Status Issues that Arise During Unfair Labor Practice Proceedings* (Feb. 27, 2015) available at <https://www.nlrb.gov/news-publications/nlrb-memoranda/general-counsel-memos> (search "15-03"); *Flaum Appetizing Corp.*, 357 NLRB 2006 (2011) (limits on employer inquiries into

- immigration status in compliance proceedings).
- 15 *Balbuena v. IDR Realty LLC*, 845 N.E.2d 338 (N.Y. 2006). See also *Affordable Hous. Found., Inc. v. Silva*, 469 F.3d 219, 228 (2d Cir. 2006) (following *Balbuena* in similar case concerning Scaffold Law).
- 16 See *California leads the way: A look at California laws that help protect labor standards for unauthorized immigrant workers*, Daniel Costa, The Economic Policy Institute, <https://www.epi.org/publication/california-immigrant-labor-laws/>
- 17 30 C.F.R. 1904.
- 18 Memorandum of Understanding between the National Labor Relations Board and the Occupational Health and Safety Administration, U.S. Department of Labor. (2017, January 12.) Available at <https://www.osha.gov/laws-regs/mou/2017-01-12>.
- 19 29 U.S.C. §657(e).
- 20 As specified in 29 CFR § 1903. 20.
- 21 OSH Law Project. (2019). *Eliminating Workplace Hazards*. See page 53. Available at oshlaw.org/wp-content/uploads/2019/04/eliminating-workplace-hazards-toolkit.pdf.
- 22 https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-03-008.pdf.
- 23 For more information on all the whistleblower protection laws that OSHA enforces, see https://www.whistleblowers.gov/worker_protections.
- 24 For more information on this topic, see “Federal and State Law Protecting Workers from Retaliation for Health and Safety Activity,” by Ava Barbour, Emily Spieler, and Katie Tracy, Occupational Safety and Health Law Bootcamp, March 16, 2018.
- 25 Importantly, state plan OSH laws may provide for a private right of action. See Appendix I.
- 26 For more information, see Appendix 2 on page 22.
- 27 For more information on this topic, see “Federal and State Law Protecting Workers from Retaliation for Health and Safety Activity,” by Ava Barbour, Emily Spieler, and Katie Tracy, Occupational Safety and Health Law Bootcamp, March 16, 2018.



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