

What to Do If You're a Whistleblower Facing Workplace Retaliation

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You've had a great track record for years. You've been in the fast lane, earning great reviews and promotions, and, most importantly, getting the job done. But recently something wasn't right, and you spoke up. Perhaps you spoke up to your supervisor or even went to a government agency to report discrimination, fraud, a danger to the public or something similar. Just like that, the tide turned. That boss who gave you the great review is now monitoring everything you do, criticizing your performance, and perhaps putting you on a formal performance improvement plan. Maybe he or she even discharged you. You might be wondering what to do next.

Putting your livelihood and the support for your family on the line is a hard choice to make, and many employees choose to keep quiet out of fear. But many federal and state laws exist to protect workers who choose to come forward when they see something wrong. These laws apply to industries as varied as transportation, nuclear energy, the environmental field, finance and accounting, as well as others. There are other laws that protect workers without regard to industry, such as anti-discrimination laws, laws governing wage and hour issues, and laws governing union organizing and workers' compensation. All of these employment laws exist to protect the public at large by protecting workers who have the courage to come forward.

If you are facing adverse actions from your employer as a result of coming forward or attempting to stop fraud, misconduct, safety issues or dangers to the public, discrimination, or certain other types of wrongdoing—what the law refers to as “retaliation”—one or more of these laws may offer you protection and a recourse against your employer. If you believe you have been subjected to retaliation in the workplace for speaking up, or are about to be retaliated against, you should consult a lawyer to get an in-depth analysis of your individual situation and personalized advice on how to move forward. The following framework may help you prepare for that meeting.

Four Steps to Establishing Whistleblower Retaliation

While the requirements of each employment and whistleblower law vary, many laws protecting employees from retaliation will require the employee to show four things in order to establish that retaliation took place.

The first is that the employee engaged in “protected activity” under the law. “Protected activity” refers to comments to your employer or to an outside body that are the precise type that the individual law is designed to protect. Some laws require only that you report the misconduct internally to a supervisor or other person with the ability to remedy the wrongdoing, whereas other laws may require you to report directly to a government agency. Some laws require you to be more specific than others or to make reports in writing. Depending on which laws cover you, protected activity could mean reporting a violation, being a witness for another employee in his or her complaint of discrimination, bringing information to law enforcement, or other actions. You will want to discuss with your lawyer every instance you have reported misconduct, attempted to stop it or assisted another employee in a similar matter, including what you said or wrote, to whom you said it and how that person responded.

The second thing many anti-retaliation laws will require an employee to show is that the employer knew that the employee engaged in protected activity or that the employer believed that the employee did. The reason for this is to show that the protected activity is what inspired or motivated any workplace retaliation that later took place. In preparation for your meeting with an attorney, you will want to think back about how your employer knew—or why it would have believed—that you took the actions that you did. Perhaps you reported misconduct directly to a company ethics hotline, to human resources or to your direct supervisor. Perhaps you overheard someone talking about your

supposedly confidential report. Perhaps HR interviewed you about another employee's complaint.

The third thing you will usually need to show retaliation is that you suffered an adverse employment action. Some laws limit this to an actual discharge from employment, but others have a broader scope of what is considered adverse. In many circumstances, an action that leaves you in a less favorable financial position may be considered adverse; in some circumstances, non-monetary actions that would typically impede a worker from reporting misconduct may also be considered adverse actions. Look back carefully, and think about negative actions you have suffered since you first spoke out. Even if you think some of them do not by themselves rise to the level of an adverse action, they will be important for your attorney to know about in order to advise you.

Finally, you will generally need to show that your protected activity is what led to the adverse action. This is typically referred to as "causation." The exact standard to meet in showing causation varies greatly depending on which law applies. To help your attorney evaluate whether you will be able to show causation, think back about anything that makes you believe your employer may have been motivated by your speaking out, participating in an investigation or other protected activity. This could range from negative comments about your outspokenness to a termination immediately following your report of misconduct; you may even have an email or text message from the decision-maker explaining why he or she made the decision. All of these will be very important to discuss with an attorney.

Figuring Out Which Whistleblower Law Applies

Considering all of these factors, an attorney will be able to advise you whether there is a federal or state law that protects you—and, if so, what your next steps should be. Different [whistleblower laws](#) have different procedural requirements about how, when and where to file a claim or complaint. Some laws have very short time limits for filing, so you should not delay in speaking with an attorney if you believe you may have suffered retaliation. Some laws give workers who have experienced retaliation the right to file a claim—a lawsuit—directly in court, while others require the worker to first file with one of several administrative agencies, such as the Equal Employment Opportunity Commission or the Department of Labor, or have other procedural requirements. You may have claims under different laws with different procedural requirements. Different laws may also provide different remedies for a case that is successfully proven, ranging from reinstatement to monetary damages in compensation for past or potentially future pay. If you have raised several different types of misconduct, there may be more than one law that provides you protection.

Because so many different laws protect employees who speak out about misconduct and wrongdoing in the workplace—each with different protections, standards, and requirements—it is important to gather your facts and speak with an attorney to assess your individual situation. Even if you have already been discharged from your job, you may have a remedy that will help you get back on your feet.