



Reporting injuries and retaliation

In July of this year, during our national convention, we conducted a number of workshops. Among them was a safety and health workshop, which consisted in part of a presentation by members of the Chicago regional office of the Occupational Safety and Health Administration (OSHA). One of the items that they discussed during their presentation was whistleblower protection covered by OSHA.

To better understand the scope of issues that are covered by the governing regulations, I draw your attention to OSHA's main webpage, osha.gov. On the left side, halfway down the page, you will find a listing of top links. Click on the "Whistleblower" link, which should take you to the section dedicated to learning about this protection enforced by OSHA (whistleblowers.gov). At the top of the page is a series of labeled icons. Click on the one titled "Regulations and Directives," which should take you to whistleblowers.gov/regulations_page.html. At the bottom left of the page, you can find the whistleblower's investigation manual. Download this and review Chapter 7, which is dedicated to the investigation of retaliation against activity protected by the Occupational Safety and Health Act.

Chapter 7 begins with the following quote:

Section 11(c) of the OSH Act mandates: '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.'

Some of the items that OSHA lists as protected activity are the following:

- Filing oral or written complaints about occupational safety or health with the employee's supervisor or other management personnel
- Filing an occupational safety or health grievance under a collective-bargaining agreement would also fall into this category
- Providing testimony or being about to provide testimony relating to occupational safety or health in the course of a judicial, quasi-judicial or administrative proceeding, including, but not limited to, depositions during inspections and investigations
- Reporting a work-related injury or illness
- An employee has a right to communicate orally or in

writing about occupational safety or health matters with union officials or co-workers

The regulations spell out that your employer may not retaliate against you for exercising rights protected under OSHA. The manual advises how to file a complaint and explains that you must initiate your complaint within 30 days of the date when you believe you were subjected to retaliation.

This means that if you believe that you were retaliated against through your receipt of a letter of discipline (letter of warning, suspension or termination), you have the right to file a whistleblower's complaint with OSHA within 30 days of the action that you believe was retaliatory.

If you do exercise your right to file a whistleblower complaint, you also have the right to file a grievance under Article 14 and Article 19 (citing the relevant section of Chapter 8 of the *ELM*). Make sure that you also protect your grievance rights by promptly communicating with your union representatives and getting your grievance filed within 14 days of the date of your receipt of the letter of discipline.

The investigation of your whistleblower complaint requires that you identify the protected activity that you engaged in and the timing of the act of retaliation.

A memo dated March 12, 2012, by the deputy assistant secretary of OSHA on the subject of Employer Safety Incentive and Disincentive Policies and Practices advises that:

Reporting a work-related injury or illness is a core employee right, and retaliating against a worker for reporting an injury or illness is illegal discrimination under section 11(c)... If employees do not feel free to report injuries or illnesses, the employer's entire workforce is put at risk. Employers do not learn of and correct dangerous conditions that have resulted in injuries, and injured employees may not receive the proper medical attention, or the workers' compensation benefits to which they are entitled. Ensuring that employees can report injuries or illnesses without fear of retaliation is therefore crucial to protecting worker safety and health.

The entire memo is worth reading and can be found through the OSHA website at osha.gov/as/opa/whistleblowermemo.html

Many union officials have recently assisted employees and groups of employees in the processing of complaints involving retaliation, and they have described great success.

Get involved in making your workplace safer. ☒