

The Virgin Islands Department of Labor
Division of Occupational Safety and Health (VIDOSH)
YOUR RIGHTS AS A WHISTLEBLOWER

You may file a complaint with VIDOSH if your employer retaliates against you by taking unfavorable personnel action because you engaged in protected activity relating to workplace safety and health, commercial motor carrier safety, pipeline safety, air carrier safety, nuclear safety, the environment, asbestos in schools, corporate fraud, Securities Exchange Commission (SEC) rules or regulations, railroad carrier safety or security, or public transportation agency safety or security.

WHISTLEBLOWER LAWS ENFORCED BY OSHA

Each law requires that complaints be filed within a certain number of days after the alleged retaliation.

You may file complaints by telephone or in writing under the:

- Occupational Safety and Health Act (30 days)
- Surface Transportation Assistance Act (180 days)
- Asbestos Hazard Emergency Response Act (90 days)
- International Safe Container Act (60 days)
- Federal Rail Safety Act (180 days)
- National Transit Systems Security Act (180 days)

Under the following laws, complaints must be filed in writing:

- Clean Air Act (30 days)
- Comprehensive Environmental Response, Compensation and Liability Act (30 days)
- Energy Reorganization Act (180 days)
- Federal Water Pollution Control Act (30 days)
- Pipeline Safety Improvement Act (180 days)
- Safe Drinking Water Act (30 days)
- Sarbanes-Oxley Act (90 days)
- Solid Waste Disposal Act (30 days)
- Toxic Substances Control Act (30 days)
- Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (90 days)

UNFAVORABLE PERSONNEL ACTIONS

Your employer may be found to have retaliated against you if your protected activity was a contributing or motivating factor in its decision to take unfavorable personnel action against you. Such actions may include:

- Firing or Laying Off
- Blacklisting
- Demoting
- Denying Overtime or Promotion
- Disciplining
- Denying Benefits
- Failing to Hire or Re-hire
- Intimidation
- Reassignment Affecting Promotion Prospects
- Reducing Pay or Hours

FILING A COMPLAINT

If you believe that your employer retaliated against you because you exercised your legal rights as an employee, contact your local VIDOSH office as soon as possible, because you must file your complaint within the legal time limits. VIDOSH conducts an in-depth interview with each complainant to determine whether to conduct an investigation. For more information, call your closest Regional Office: New York Regional Office, U.S. Department of Labor/OSHA, 201 Varick St., Room 670, New York, N.Y. 10014, Phone: (212) 337-2378, Fax: (212) 337-2371.

Some complaints must be filed in writing and some may be filed verbally (call the local/state VIDOSH office for assistance).

VI Department of Labor
Division of Occupational Safety and Health (VIDOSH)
4401 Sion Farm,
Christiansted, St. Croix, V.I. 00820,
Phone: (340) 773-1994, Fax: (340) 773-0094

Written complaints may be filed by mail (we recommend certified mail), fax, or hand-delivered during business hours. The date postmarked, faxed or hand delivered is considered the date filed. If retaliation for protected activity relating to occupational safety and health issues takes place in a public sector agency, contact the local VIDOSH office. If the complaint is within a private sector agency, please contact file with the Federal OSHA: Puerto Rico Area Office, Triple SSS Plaza Bldg. /1510 FD Roosevelt Ave./Suite 5-B, Guaynabo, PR 00968, Phone: (787) 277-1560 / Fax: (787) 277-1567.

Although the *Occupational Safety and Health Act* covers only private sector employees, VIDOSH state plans cover state and local government employees. For details, see <http://www.osha.gov/fso/osp/index.html>.

HOW OSHA DETERMINES WHETHER RETALIATION TOOK PLACE

- The investigation must reveal that:
- The employee engaged in protected activity;
- The employer knew about the protected activity;
- The employer took an adverse action; and
- The protected activity was the motivating factor (or under some laws, a contributing factor) in the decision to take the adverse action against the employee.

If the evidence supports the employee's allegation 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 remedies to make the employee whole.

LIMITED PROTECTIONS FOR EMPLOYEES WHO REFUSE TO WORK

You have a limited right under the OSH Act to refuse to do a job because conditions are hazardous. You may do so under the OSH Act only when (1) you believe that you face *death or serious injury* (and the situation is so clearly hazardous that any reasonable person would believe the same thing); (2) you have tried to get your employer to correct the condition, and there is no other way to do the job safely; and (3) the situation is so urgent that you do not have time to eliminate the hazard through regulatory channels such as calling OSHA. Regardless of the unsafe condition, you are not protected if you simply walk off the job. For details, see <http://www.osha.gov/as/opa/worker/refuse.html>. OSHA cannot enforce union contracts or state laws that give employees the right to refuse to work.

WHISTLEBLOWER PROTECTIONS IN THE TRANSPORTATION INDUSTRY

Employees whose jobs directly affect commercial motor vehicle safety are protected from retaliation by their employers for refusing to violate or for reporting violations of Department of Transportation (DOT) motor carrier safety standards or regulations, or refusing to operate a vehicle because of such violations or because they have a reasonable apprehension of death or serious injury.

Similarly, employees of air carriers, their contractors or subcontractors who raise safety concerns or report violations of FAA rules and regulations are protected from retaliation, as are employees of owners and operators of pipelines, their contractors and subcontractors who report violations of pipeline safety rules and regulations. Employees involved in international shipping who report unsafe shipping containers are also protected. In addition, employees of railroad carriers or public transportation agencies, their contractors or subcontractors who report safety or security conditions or violations of federal rules and regulations relating to railroad or public transportation safety or security are protected from retaliation.

WHISTLEBLOWER PROTECTIONS FOR VOICING ENVIRONMENTAL CONCERNS

A number of laws protect employees who report violations of environmental laws related to drinking water and water pollution, toxic substances, solid waste disposal, air quality and air pollution, asbestos in schools, and hazardous waste disposal sites. The *Energy Reorganization Act* protects employees who raise safety concerns in the nuclear power industry and in nuclear medicine.

WHISTLEBLOWER PROTECTIONS WHEN REPORTING CORPORATE FRAUD

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

MORE INFORMATION

To obtain more information on whistleblower laws, go to www.osha.gov, and click on the link for "Whistleblower Protection."