



# Health Care Reform

## LEGISLATIVE BRIEF

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## Filing Whistleblower Complaints Under the Affordable Care Act

The Affordable Care Act (ACA) includes whistleblower protections for employees. Employees are protected from retaliation for reporting alleged violations of Title I of the ACA. Employees are also protected from retaliation for receiving a federal health insurance income tax credit or a cost-sharing reduction when enrolling in a qualified health plan.

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) published an [interim final rule](#) in the Federal Register that governs whistleblower complaints filed under Section 1558 of the ACA. The rule was effective on Feb. 27, 2013. Comments may be submitted until April 29, 2013.

### SUMMARY

The ACA contains various provisions to make health insurance more affordable and accountable to consumers. To further these goals, the ACA's section 1558 provides protection to employees against retaliation by an employer for reporting alleged violations of Title I of the Act or for receiving a health insurance tax credit or cost-sharing reductions as a result of participating in a Health Insurance Exchange or Marketplace.

Title I includes a range of insurance company accountability requirements, such as the prohibition of lifetime limits on coverage or exclusions due to pre-existing conditions. Title I also includes requirements for certain employers. Many of the provisions in Title I are not effective until 2014.

### COVERED EMPLOYERS AND EMPLOYEES

The definitions "employer" and "employee" under this whistleblower provision are found in the Fair Labor Standards Act. Therefore, this provision prohibits retaliation by private and public sector employers.

### PROTECTED ACTIVITY

An employer may not discharge or in any manner retaliate against an employee because he or she:

- Provided information relating to any violation of Title I of the ACA, or any act that he or she reasonably believed to be a violation of Title I of the ACA to the employer, the federal government or a state's attorney general;
- Testified, assisted or participated in a proceeding concerning a violation of Title I of the ACA, (or is about to do so); or
- Objected to, or refused to participate in, any activity that he or she reasonably believed to be in violation of Title I of the ACA.

In addition, an employer may not discharge or in any manner retaliate against an employee because he or she received a credit under section 36B of the Internal Revenue Code of 1986 or a cost-sharing reduction under section 1402 of the ACA for health coverage purchased through an Affordable Health Insurance Exchange (also known as a Health Insurance Marketplace).

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.

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## UNFAVORABLE EMPLOYMENT ACTIONS

An employer may not take unfavorable employment action against an employee based on the employee's protected activity. Specifically, an employer may be found to have violated the ACA if the employee's protected activity was a contributing factor in the employer's decision to take unfavorable employment action against the employee.

Unfavorable employment actions may include:

- Firing or laying off;
- Blacklisting;
- Demoting;
- Denying overtime or promotion;
- Disciplining;
- Denying benefits;
- Failure to hire or rehire;
- Intimidation;
- Making threats;
- Reassignment affecting prospects for promotion; and
- Reducing pay or hours of work.

## DEADLINE FOR FILING COMPLAINTS

Retaliation complaints must be filed **within 180 days** after an alleged violation of the ACA occurs. An employee who believes that he or she has been retaliated against in violation of the ACA may file a complaint with OSHA. An employee's representative may also file a complaint on the employee's behalf.

## HOW TO FILE AN ACA RETALIATION COMPLAINT

An employee can file an ACA complaint with OSHA by visiting or calling the local OSHA office or sending a written complaint to the closest OSHA regional or area office. Written complaints may be filed by facsimile, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended) or other third-party commercial carrier.

The date of the postmark, facsimile, electronic communication, telephone call, hand delivery, delivery to a third-party commercial carrier or in-person filing at an OSHA office is considered the date filed. No particular form is required and complaints may be submitted in any language.

For OSHA area office contact information, please visit [www.osha.gov/html/RAmap.html](http://www.osha.gov/html/RAmap.html) or call 1-800-321-OSHA (6742).

Upon receipt of a complaint, OSHA will first review it to determine whether there is a valid complaint allegation (for example, timeliness or coverage). Complaints are then investigated in accord with the statutory requirements.

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## 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, as appropriate, reinstate the employee, pay back wages, restore benefits and provide other possible relief to make the employee whole.

OSHA's findings and order become final **within 30 days**, unless they are appealed within that time period. 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.

If a final agency order is not issued within 210 days from the date the employee's complaint is filed or within 90 days after the employee receives OSHA findings, then the employee may file a complaint in the appropriate U. S. district court, with a copy provided to OSHA.

## TO GET FURTHER INFORMATION

For a copy of the Affordable Care Act, the regulations (29 CFR 1984) and other information go to [www.whistleblowers.gov](http://www.whistleblowers.gov).

For information on the Office of Administrative Law Judges procedures and case law research materials, go to [www.oalj.dol.gov](http://www.oalj.dol.gov) and click on the link for "Whistleblower." For information on the Affordable Care Act, go to [www.healthcare.gov](http://www.healthcare.gov).

*Source: Occupational Safety and Health Administration*

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