

# OSHA<sup>®</sup> FactSheet

## Filing Whistleblower Complaints under the *FDA Food Safety Modernization Act*

Employees who work for entities engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food are protected from retaliation for reporting alleged violations of the *Federal Food, Drug, and Cosmetic Act (FD&C)*.

### Covered Entities

Section 402 of the *FDA Food Safety Modernization Act (FSMA)* prohibits entities engaged in manufacturing, processing, packing, transporting, distributing, receiving, holding, or importing food from retaliating against employees for engaging in certain protected activities, including reporting alleged violations of the FD&C.

### Protected Activity

FSMA protects employees of covered entities from retaliation for:

- providing information relating to any violation of the FD&C or any act that he or she reasonably believed to be a violation of the FD&C to:
  - the employer,
  - the Federal Government, or
  - the attorney general of a state
- testifying, assisting, or participating in a proceeding concerning a violation of the FD&C; or
- objecting to or refusing to participate in any activity that he or she reasonably believed to be in violation of the FD&C.

Employees who believe they have been retaliated against in violation of FSMA may file a complaint with OSHA. See "How to File a FSMA Complaint", to the right, for details.

### What is Retaliation?

Retaliation is not limited to firing an employee. Retaliation can include several types of actions, such as:

- Firing or laying off
- Reducing pay or hours
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining

- Denying benefits
- Failing to hire or rehire
- Intimidating
- Making threats
- Reassigning

### Time Limits for Filing Complaints

An employee, or representative of an employee, who believes that he or she has been retaliated against in violation of FSMA may file a complaint with OSHA. Complaints **must** be filed within 180 days after the alleged retaliatory action.

### How to File a FSMA Complaint

An employee can file a FSMA complaint with OSHA by visiting or calling his or her local OSHA office, sending a written complaint to the closest OSHA office, or filing a complaint online. No particular form is required and complaints may be submitted in any language.

Written complaints may be filed by fax, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

The date of the postmark, fax, 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.

To file a complaint electronically, please visit [www.osha.gov/whistleblower/WBComplaint.html](http://www.osha.gov/whistleblower/WBComplaint.html).

To contact an OSHA area office, please call 1-800-321-OSHA (6742) for the closest area office. Or visit our website at [www.osha.gov/html/oshdir.html](http://www.osha.gov/html/oshdir.html) and click on Regional/Area offices to find your local office address and contact information.

When OSHA receives a complaint, the agency will first review it to determine whether certain basic requirements are met, such as whether the complaint was filed on time. If so, the complaint will then be investigated using the procedures required by the FSMA. See [29 CFR 1987.104](#).

### Results of the Investigation

If the evidence supports an employee's claim of retaliation, OSHA will issue an order requiring the employer to, as appropriate, put the employee back to work, pay lost wages, restore benefits, and other possible relief. The exact requirements will depend on the facts of the case. If the evidence does not support the employee's claim, OSHA will dismiss the complaint.

After OSHA issues a decision, the employer and/or the employee may request a full hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision may be appealed to the Labor Department's Administrative Review Board.

The employee may also file a complaint in federal court if the U.S. Department of Labor does not

issue a final decision within certain time limits. Details on this provision can be found in OSHA's regulations, at [29 CFR 1987.114](#).

### To Get Further Information

For a copy of Section 402 of the *FDA Food Safety Modernization Act*, the regulations ([29 CFR Part 1987](#)) and other information, go to [www.whistleblowers.gov](http://www.whistleblowers.gov).

OSHA's Whistleblower Protection Program enforces the whistleblower provisions of more than twenty federal whistleblower laws. To learn more about the whistleblower statutes which OSHA enforces, view our "Whistleblower Statutes Desk Aid" at [www.whistleblowers.gov/whistleblower\\_acts-desk\\_reference.pdf](http://www.whistleblowers.gov/whistleblower_acts-desk_reference.pdf).

For information on the U.S. Department of Labor's 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 Collection."

For information on the *Federal Food, Drug, and Cosmetic Act*, go to [www.fda.gov](http://www.fda.gov) and click on this Act in the A to Z Index .

**This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.**

**For assistance, contact us. We can help. It's confidential.**



[www.osha.gov](http://www.osha.gov) (800) 321-OSHA (6742)



U.S. Department of Labor