



AKOSH

Whistleblower Fact Sheet

Alaska Occupational Safety and Health (AKOSH) is responsible for enforcing Alaska Statute 18.60.089, which says it is unlawful for an employer to retaliate against an employee for engaging in a protected activity.

What is a Protected Activity? (See 8AAC 61.480)

- Filing a safety/health complaint with AKOSH
- Participating in an AKOSH enforcement inspection or proceeding
- Reporting workplace safety/health concerns to management
- Reporting /Filing workplace injuries, illnesses, or fatalities

What is Retaliation?

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
- Demoting
- Disciplining
- Blacklisting
- Denying overtime
- Cutting hours

How AKOSH Determines Whether Retaliation Took Place

The investigation seeks evidence showing:

- The employee engaged in protected activity;
- The employer knew about the protected activity;
- The employer took an adverse action; and
- The evidence suggests that *but for* the protected activity, the decision to take the adverse action against the employee would not have been made; and,
- Examine evidence to determine the merit of the allegation that retaliation took place.

AKOSH Actions Regarding Retaliation

Settlement Agreements are the most expedient way to address the complaint and seek a 'make whole' remedy for the employee. AKOSH seeks to discuss settlement upon initial contact with the parties.

If the evidence supports the employee's allegation and a settlement cannot be reached, AKOSH will recommend that the Commissioner of Labor request the Attorney General to bring an action in Superior Court against the violator (the employer who retaliated).

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 AKOSH.

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>.

AKOSH/OSHA cannot enforce union contracts or state laws that give employees the right to refuse to work.

Filing a Complaint

If you believe your employer retaliated against you because you engaged in the above protected activity(ies), you must file a written complaint within 30 days of the unfavorable personnel action. For more information call **907-269-4940**.

<http://www.labor.state.ak.us/lss/oshhome.htm>

Title 8. Labor and Workforce Development

Chapter 61. Boiler and Pressure Vessel Construction Code

Section 480. Protected activity

8 AAC 61.480. Protected activity

(a) To establish a violation of [AS 18.60.089](#), the employee's engagement in a protected activity need not be the only consideration for discharge or other discrimination. [AS 18.60.089](#) is violated if

(1) engaging in a protected activity is a substantial reason for the action; and

(2) the discharge or other discrimination would not have taken place if the employee had not engaged in a protected activity.

(b) The following activities are protected:

(1) An employee may file a discrimination complaint that is related to conditions at the work place, as distinguished from a complaint related only to general public safety and health. The employee may file a complaint with the department, a federal, state or local government agency, or the employer. The employee is not required to make the complaint directly. It is sufficient if the employee sets into motion, or participates with others in, an action that results in a complaint being made.

(2) An employee may institute or cause to be instituted any proceedings related to the enforcement of occupational safety and health standards. These proceedings include contesting an abatement date under [AS 18.60.093](#) (e), petitioning for adoption of an occupational safety and health standard, requesting modification or revocation of a variance, or judicially challenging a standard. The employee is not required to institute the proceeding directly. It is sufficient if the employee sets into motion, or participates with others in, activities which result in proceedings related to [AS 18.60.010](#) - 18.60.105.

(3) An employee may testify or intend to testify in proceedings under [AS 18.60.010](#) - 18.60.105. This protection is not limited to testimony in proceedings instituted or caused to be instituted by employees, but extends also to any statements given in the course of judicial, quasi-judicial, or administrative proceedings including inspections, investigations, and administrative regulations adoption or adjudicative functions.

(4) An employee may exercise any other right afforded by [AS 18.60.010](#) - 18.60.105. These rights include participating in an enforcement inspection, requesting a copy of the log and summary of occupational injuries and illnesses, and requesting access to an employee's own medical records.

(c) An employee's engagement in a protected activity described in (b) of this section does not protect the employee from discharge or discipline for legitimate reasons unrelated to the protected activity.

(d) An employee who walks off the job because of an unsafe condition at the worksite is engaged in protected activity if the employee is confronted with the choice of not performing an assigned task or being subjected to a risk of serious injury or death arising from the unsafe condition. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person would conclude that there is a real danger of serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through the employer or regular governmental enforcement channels. An employee, if feasible, must also have first sought from the employer, and have been unable to obtain, a correction of the unsafe condition.

History: Eff. 9/21/85, Register 95 Authority: [AS 18.60.020](#), [AS 18.60.030](#), [AS 18.60.089](#)