

HIOSH Anti-Discrimination

All employees have the right to file a whistleblower complaint with HIOSH if they believe they have been retaliated against for raising workplace safety and health concerns or for reporting work-related injuries and illnesses.

Key Takeaways

- **Your Legal Rights** – Under HIOSH Law, your employer cannot legally retaliate against you for reporting workplace safety and health violations. Retaliation includes firing, demotions, reduced hours, and more.
- **Right to Refuse Dangerous Work** – You must meet all criteria to legally refuse work found in §12-57-7(b)(2), HAR
- **How to file a Retaliation Complaint** – You have 60 days to file with HIOSH of your latest adverse action.

It is illegal for an employer to retaliate against an employee who exercises their right to file a safety or health complaint with HIOSH, raise a health and safety concern with their manager or employer, participate in an HIOSH inspection, or report a work-related injury or illness.

These rights are guaranteed under §396 of the Hawaii Revised Statutes (HRS), also known as the Hawaii Occupational Safety and Health (HIOSH) Law.

Employee Protections

The HIOSH Law protects employees from retaliation for exercising their rights under the Law. Examples of protected actions include, but are not limited to:

- Communicating about safety or health matters to management personnel
- Asking questions, expressing concerns, or requesting copies of safety data sheets

- Reporting a work-related injury or illness
- Requesting copies of HIOSH standards or regulations
- Filing a safety/health complaint with HIOSH
- Participating in an HIOSH inspection
- Refusing or complaining about requirements to reimburse an employer for HIOSH penalties

Adverse Actions

An employer must not take an adverse action against an employee because the employee exercised a right under the HIOSH Law.

Adverse actions include but is not limited to:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire

Deadline for Filing Complaints

Complaints must be filed within 60 days after the alleged retaliation occurs (when the employee is notified of the retaliatory action).

Complaints regarding retaliation for reporting an injury or illness to an employer may also be considered for HIOSH safety and health enforcement action.

Filing a Whistleblower Complaint

Any employee or their representative who believes they have been retaliated against, may file a complaint with HIOSH.

Complaints can be filed verbally in any language by visiting the nearest HIOSH office, calling (808) 586-9092, mailing a written complaint to the closest HIOSH office, or by filing a complaint online at <https://labor.hawaii.gov/hiosh/home/for-workers/>.

Once received, HIOSH will review the complaint to determine whether it is appropriate to conduct an investigation. All complaints are investigated according to requirements in §12-57 of the Hawaii Administrative Rules (HAR).

Private-sector employees can also dually file a complaint with federal OSHA, as long as it is filed within 30 days of the adverse action.

What to do about an Unsafe Workplace

If an employee believes working conditions are unsafe or unhealthful, they should bring their concerns to their employer or management's attention. If possible, this should be done before they have to refuse to perform a task or expose themselves to a serious hazard.

Employees may file a complaint with HIOSH concerning a hazardous working condition at any time. For information on occupational safety and health laws, standards, and regulations, visit HIOSH's website: <https://labor.hawaii.gov/hiosh/>

Not all work refusals because of unsafe or unhealthful conditions are protected by the HIOSH Law. The employee is protected from retaliation if they have a reasonable concern of death or serious injury; refuse in good faith to perform the task; have no alternative assignment; there is not enough time for a HIOSH inspection or where such an inspection has already taken place; and, where possible, the employee requested from the employer but was unable to obtain correction of the dangerous condition.

For more information:

<https://labor.hawaii.gov/hiosh/home/for-workers/> .

Investigation Results

If the evidence supports an employee's claim of retaliation and a voluntary settlement cannot be reached, the Hawaii Labor Relations Board (HLRB) will have jurisdiction over the proceeding. The Department may seek relief to make the employee whole, including but not limited to:

- Getting their job back
- Back pay with interest
- Punitive damages

However, if HIOSH investigated the case and finds that the evidence does not support an employee's claim of retaliation, the employee may appeal HIOSH's determination, within twenty (20) calendar days of the employee's receipt of the dismissal letter.



This is one in a series of informational fact sheets highlighting HIOSH programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of HIOSH standards or regulations, refer to Title 12, Subtitle 8 of the Hawaii Administrative Rules.

Auxiliary aids and services are available upon request to individuals with disabilities. TDD/TTY Dial 711 then ask for (808) 586-9116

