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**Kathy:** This is what matters a talk story with friends and neighbors, living working and helping in these Hawaiian Islands. I'm your host Kathy with a K our topic Hawaii, occupational safety, and health or HIOSH and whistleblower protections and the whistleblower law what they enforce employee rights to this, and our guest is Lovelle Koike of HIOSH, the supervisor of the whistleblower unit. Their unit investigates complaints as it relates to occupational safety and health, or the whistleblower law enforce and employee rights regarding this. What is the message that you want people to know about their rights and how you and HIOSH and the whistleblower unit can help.

**Lovelle:** Thank you for having me, Kathy. I'm excited to be here. We want everyone to know that if you are under HIOSH jurisdiction, you have the right to a safe and healthy work environment and along with that basic right you have the right to speak up about unsafe and unhealthy or illegal activities in the workplace without fear of retaliation or what we call an adverse action and that includes things like being fired demoted suspended just for speaking up about safety and health concerns how HIOSH can help is if you believe that you experienced retaliation for speaking up we have a dedicated with the Whistleblower unit that investigates these types of complaints as long as the issue is related to occupational safety and health and we cover that situation.

**Kathy:** Well, let's find out how you came to lead the whistleblower unit.

**Lovelle:** I got my degree in forensic science at Chaminade university and then I went to University of Florida to get my masters in forensic DNA psychology originally I wanted to become a DA analyst in the crime lab at HPD and then I had a contact at HPD who told me that I should apply to the criminals position, which is basically a crime scene investigator to get my foot in the door so I applied, but because I was using my master's degree as a substitute for the experience requirement and I was shy of graduating with my masters by two months I didn't qualify for the job. In the meantime, you know I had to look for work right to build my resume and build experience in chemistry, which is one of the requirements for that job. I looked on the state website and saw this posting for Environmental Health Specialist and your receipt of job posting for Environmental Health Specialist. You could be applying for a job with HIOSH or oh I didn't know that at the time it just said the job description just said something like collecting and analyzing environmental samples and then doing inspection so I'll apply so I started off doing inspections first and I got to know the job and the HIOSH mission which is "to assure that

workers are provided with the safe and healthy working environment” and so I knew that it was important work and it wasn’t until I started doing whistleblower investigations that I started to connect with the work because it was mirroring what I was what I studied in college but instead of criminal law and criminal cases, I’m looking at civil civil cases, whistleblower investigation Civil side, right but the approach is the same, and that you have to be objective and you have to look at the facts and be able to view a scenario or situation from multiple perspective. That’s basically how I operate in real life anyway so I try to understand you know all sides of the equation and in college we learned you know, chronology timeline interviewing witnesses and using that information to support the evidence that’s in front of you so it’s kind of similar to a sub, Whistleblower investigations and the ability to look at a situation from abroad perspective and then be able to zoom into the specifics and details I think that’s what makes a person a good investigator so that’s how I got into this field.

**Kathy:** We just heard from Lovelle Koike of HIOSH the Whistleblower unit. This is what matters I’m your host Kathy with a K. Lovelle can you talk about the term whistleblower? What does it mean in the instant so with HIOSH and how does it connect to workplace safety and health with the floor?

**Lovelle:** It’s someone who speaks up about something or something illegal or basically blows the whistle on and unsafe unhealthy or illegal condition at work that could mean reporting it to your employer directly reporting it to HIOSH or OSHA or even to your union or reporting it to another government agency like Department of Health maybe so when we’re talking about workplace safety and health like I said, whistleblowing usually means reporting the situation that puts the worker’s safety at risk and I think that the key here is is that it’s not about trying to get the employer in trouble which it might appear that way, but it’s about protecting the workers and making sure that everyone goes home safe, the whistleblower law that we enforce recognizes that and of course, other whistleblower laws out there, which is why these protections exist to begin with to make sure that if you do speak up, you’re not punished for it you basically have the right the legal right to raise those safety health concerns without worrying about your job or worrying about retaliation.

**Kathy:** HIOSH jurisdiction – which establishments would be under HIOSH?

**Lovelle:** So HIOSH is the state side of OSHA Occupational Safety and Health Administration we have jurisdiction over most businesses that operate in the state of Hawaii. We also have jurisdiction over city County employees and state government employees. We don’t have jurisdiction over federal property like the military bases, US post office, and the Hawaii national parks. We also don’t have jurisdiction over the Maritime appointment like shipyard, longshore, Marine terminals. They’re all under Federal OSHA.

**Kathy:** This is what matters I'm your host Kathy with a K we're talking with Lovelle Koike with the Whistleblower unit and we're discovering what differentiates the different departments and if you feel that the safety in your workplace is in question you can always go to the website but this talk story today just to give us a general overview to steer you in a direction. Lovelle, what exactly does retaliation or adverse actions mean?

**Lovelle:** Retaliation is when an employer punishes an employee for doing something that is legally protected like reporting a safety and health issue and adverse action is a similar concept to retaliation, but when we say adverse action, it usually means a negative job-related action taken by the employer against the employee, such as getting fired or getting suspended or demoted having your hours cut losing pay even things like being passed over for promotion or suddenly getting reassigned to the graveyard shift when you were previously working the dayshift things like that are potential red flags, especially if they happen right after you reported a safety health concern.

**Kathy:** What kinds of actions are considered protected activity that you cover and also what point should an employee do you suggest documenting whether it's a written journal should there be photos that take or video? What do you advise?

**Lovelle:** The most common example of protected activity is when an employee reports the safety health concerns directly to their employer and a lot of times, they're not satisfied with the employer's response, and they could escalate into a safety and health complaint by contacting us reporting it directly to us so that's an example of protected activity. Another example is when the high inspector shows up on the site and talk to the inspector and provide information that would be considered protected as well. I know that there are construction workers listening, so this example could be for you say for example you see a forklift on the job site, and you noticed that the horn isn't working, there's no seatbelt, maybe the data plate is missing or illegible and you report that to the deficiencies to your supervisor, this is an issue. You need to repair it and fix it and inspected before another employee goes on the forklift and the supervisor basically brushes that employee off and tells them to you know that they have to operate it because they're on schedule, they have to get their work done and the employee refuses because it's unsafe doesn't want to get into an accident and then he gets fired for that for not following the supervisor instructions so in that scenario, there's two protected activities. There's him reporting the issue the safety health issue of the forklift, and then the employees also refusing to work to operate the forklift because it's unsafe so those are two examples of protected activity. You asked about documentation, and we do recommend that if you try to save your emails or text messages that shows evidence that you did bring up those safety and health concerns to your employer that's a good idea to have a journal that 'on this day this is what happened'

so that you have some type of proof that you engage in that activity or that action. That's the hard part about some of these complaints where if there's no documentation and it's just a verbal discussion and the employee is saying one thing in employers is denying it so that's what makes it difficult sometimes yeah so it is good to document as soon as possible if you're putting that situation.

**Kathy:** And there is probably other ways to other guidelines at the HIOSH website, this would be a good time to share a phone number or website where people can get more information about the whistleblower laws and protections with HIOSH.

**Lovelle:** You can contact us directly. Our number is 808-586-9090 and we also have an email [hiosh.discrimination.complaints@hawaii.gov](mailto:hiosh.discrimination.complaints@hawaii.gov) and [hawaii.gov](http://hawaii.gov) is spelled out that email goes straight to our team that you know investigates with more complaints. You can also file online as well through the OSHA website. That website is [osha.gov/whistleblower/wbcomplaint](https://www.osha.gov/whistleblower/wbcomplaint).

**Kathy:** This is what matters I'm your host Kathy with a K. You just heard from Lovelle Koike, she leads the Whistleblower unit with HIOSH and for employers HIOSH Consultation and Training Branch offers free on-site help and training you can call 808-586-9100 but of course I just go to the website to get more information. We know about the protected activity. Can you say more about what isn't considered protected activity?

**Lovelle:** Receive a lot of complaints about workplace violence things like arguments between coworkers or interactions between a supervisor and employee that could be perceived as harassment maybe it's about their tone behavior or a misunderstanding that escalated so we know that these types of situations are stressful and we sympathize with our complaints when they call us with these complaints but unfortunately, HIOSH doesn't have specific standards on workplace violence, which means we generally can't treat those cases as protected activity under our Whistleblower laws, but with that being said, there are specific industries that we do take those types of complaints and they are in—we'll see healthcare and social settings, late night, retail and taxi driving and it's because if the situation is where the patient or the client attacks the employee and the employee is concerned about that that that would be considered protected activity so if it's a personal conflict we wouldn't have the authority to investigate it, but we always encourage people to reach out even though if it's something outside of our scope, we can help point them in the right direction and invite them to the correct agency that can't assist and we also don't investigate retaliation based on personal characteristics like race, sex, religion, disability things like that those types of complaints go to EEOC or the Hawaii Civil Rights Commission—not HIOSH.

**Kathy:** Hawaii Matters learning more about HIOSH in particular the whistleblower laws and protections here in the state of Hawaii. You just heard from Lovelle Koike, the supervisor with the whistleblower unit. I'm your host Kathy with a K. I'm gonna give scenarios these do not apply to me. I am just speaking the different scenarios if I've been disciplined numerous times how do I know that HIOSH won't take my employer side. They have people that will support the employer, and I don't have anyone that would support me.

**Lovelle:** That's a really common concern and I think it goes both ways. Employer might feel like for siding with the employee, so I think that when people hear the word HIOSH or OSHA, they think about the guys that go out in the job site and point out hazards, point out violations and possibly give them citations in the end. It can feel like it's us HIOSH versus them the employer, but when it comes to a similar complaint, it's a completely different process. It's a complaint or case between the employer and employee with HIOSH in the middle and it's a fractured fractured relationship so we don't take sides in the investigative process we are a neutral party and actually our goal is to resolve the complaint. We listen to both sides, both the employer and the employee and we look at the facts and try to help resolve the case and, in some situations, if both sides wanna talk, we try to help facilitate those conversations to help them come to a voluntary resolution so in that sense, that's how we help support both the employee and the employer.

**Kathy:** And in fact OSHA just wants to make sure that the employees, the employers, people who may be coming in the space to visit—you know your clients, everyone is safe because when you're safe that means you are showing up on time to work fulfilling your contract or whatever you have in place and your meeting whatever deadlines you have promised your client so OSHA is like 'we want you to win' we're looking for your success and this is why they come into the spaces so you know it's like for some people who feel like they may be thrown under the bus when people feel like they're being picked on. It's really maybe subconsciously. You are aware of certain things that you've been meaning to address so before OSHA comes in and you know your employees are looking out for you. They're looking out to make sure that everyone comes up on top so so it's before OSHA has to come and address anything just find ways to repair, replace it, and updated it to code.

**Lovelle:** That's exactly the point we want employers to create that safety culture where the employees feel heard before they even come to us.

**Kathy:** This is Hawaii matters. My name is Kathy with a K I'm your host and we are learning more about HIOSH and the whistleblower law and protections for employees and how employers and employees can work together and succeed. We're talking with Lovelle Koike, supervisor with the whistleblower unit with HIOSH. Going back to a certain

situations when someone wants to contact the whistleblower unit this example I'm afraid of my employer, English is my second language. Do you have interpreter services?

**Lovelle:** Yes absolutely we wanna make sure that we're reaching out to those workers who may feel intimidated or unsure about coming forward just because English is not their first language in our office we do have staff that can speak Cantonese, Mandarin, Ilocano, and Tagalog, and we also have interpreter services in many other languages like Spanish, Korean, Japanese just the name of you so you know we don't want our listeners to feel like just because there's a language barrier that they can't come to HIOSH for help as long as the situation that you described to us is something that we cover we're gonna get you those interpreter services so that you can explain you know what happened to you and we can we can help you.

**Kathy:** It's great that OSHA is able to provide that kind of support for people who just feel like they're not being taken seriously.

**Lovelle:** That can't speak English very well.

**Kathy:** Articulate exactly what they need from their workplace. Yes, another Example that somebody may come to the to HIOSH, the whistleblower unit if you find my employer did retaliate and violated my rights. What happens? How does the whistleblower act help me and how long does it take?

**Lovelle:** If an employer violated your whistleblower rights will basically help get back what you lost. Remember earlier we're talking about adverse actions? So, if you were terminated we'd help get your job back. If you lost wages and will help, get you backpay. If you were suspended will try to help you lift that suspension. Basically, we will try to help the employer restore things to the way they were before the retaliation happen and how long does it take? That's a good question. Each case takes a life of its own if if we get parties to talk, they're open to resolution—early resolution then the case is gonna close I'd say within 2 to 6 months at best, but there is also some cases that are very complex for example. If there's a case involving multiple employers are multiple contractors or there's other issues involved with the case that could take anywhere from six months to over a year sometimes or even over two years sometimes hopefully not but yeah, it depends on the case and the timeline in the facts and the cooperation of the parties.

**Kathy:** Yeah I guess every submission that comes through HIOSH I guess a ballpark of how many of them actually go through with an investigation.

**Lovelle:** Yeah so I think that average is around 60 complaints that we get every year and out of those 60 maybe 10 to 15 actually get investigated through the investigative process.

**Kathy:** Have the inquiries reduced over the seasons?

**Lovelle:** Right, I feel like it's increasing.

**Kathy:** Because of people feeling more protected and feeling safer to share that information.

**Lovelle:** Yeah, it's definitely been increasing for some reason.

**Kathy:** HIOSH has been very effectively helping those within the community. This is Hawaii Matters, and we want to find levity in it because we are all human and we all just wanna cooperate we but if you find a career or a workplace and coworkers and bosses that you enjoy spending time with you know you wanna come back again and again and also you know the whistleblower act is just to keep everyone safe. Safety first. Hawaii Matters I'm Kathy with a K host we're talking with Lovelle Koike with HIOSH. Where can workers go for more information that we talked about the website earlier, but just overview to get help with filing a whistleblower complaint or just other branches within HIOSH that may be applicable to what their concerns are?

**Lovelle:** If you think you've experienced retaliation, the best thing to do is to contact highest directly. Our phone number is 808-586-9090. We also have an email and that is HIOSH [hiosh.discrimination.complaints@Hawaii](mailto:hiosh.discrimination.complaints@Hawaii) and Hawaii spelled out .gov and then you can also file a complaint online through the official website that website is [osha.gov/whistleblower/wbcomplaint](https://osha.gov/whistleblower/wbcomplaint) and for employers listening, we also have a consultation and training branch shout out to Alan Yamamoto. Alan's team provides free and confidential consultations to help you identify hazards and improve your safety health program and actually he and some of his team were former whistleblower investigation investigators so they have experience on this topic. So while they're on site you know you could ask them questions and they could provide those answers on this topic and you can reach them at 808-586-9100. Additionally, we also have outreach programs within HIOSH and the ATS branch which stands for Administration and Technical Support branch and that is headed by Randal Tiu. They offer compliance assistance and his his team he and his team also has formal whistleblower investigators and so knowledgeable on this topic as well and they could provide information for both managers and employees and you can reach them at [labor.hawaii.gov/HIOSH/cooperative-programs](https://labor.hawaii.gov/HIOSH/cooperative-programs) so there's a lot of resources that highest provides right hopefully the general public doesn't think that we're just the guys that go out in cite people.

**Kathy:** And all the information that you heard can be found at their official website. Lovelle, of all the information that you shared what is the one thing you need people to know about HIOSH and the whistleblower law?

**Lovelle:** The biggest thing is that every employee deserves to come home safe and sound to their families it's that simple and if someone feels that their workplace isn't safe or healthy they should be able to speak up without worrying about losing their job and like I said earlier for employers, this means creating a culture where the employees feel heard before you know complaints come to high, so we wanna be able to work with both employees and employer to make sure that no one has to choose between their job and their safety.

**Kathy:** Thank you, Lovelle Koike of HIOSH. For a replay or to share this episode search Hawaii Matters where you listen to podcast and at this radio stations website. For Pacific Media Group Honolulu I'm your host Kathy with a K. Mahalo.