

WHISTLEBLOWER RIGHTS

OSH Act 1970 - OSEA 1973

The Oregon Safe Employment Act, (ORS) 654.062

- Stemming from the federal [Occupational Safety and Health Act of 1970](#) and enacted by the legislature, the [Oregon Safe Employment Act](#) became the heart for workplace safety and health in Oregon in 1973. The act ensures safe and healthful working conditions for all working Oregonians and authorizes Oregon OSHA to enforce the state's workplace safety and health rules.
- The rights of a whistleblower are found in the Oregon Safe Employment Act, Oregon Revised Statute [ORS 654.062](#), and prohibits retaliation against employees or prospective employees due to:
 - “an employee’s or prospective employee’s complaint about, or opposition to, health and safety hazards in the workplace.”
 - It’s important to note that the Bureau of Labor and Industries (BOLI), Civil Rights Division enforces the [protection from retaliation](#) meaning that an employer:

“cannot retaliate by taking ‘adverse action’ against employees or prospective employees for bringing to light a potentially unsafe situation.”

The Oregon Safe Employment Act, (ORS) 654.062

ORS 654.062 Notice of violation to employer by worker; complaint by worker to director; inspection; employee protections; rebuttable presumption; rules. **(1) Every employee should notify the employer of any violation of law, regulation or standard pertaining to safety and health in the place of employment when the violation comes to the knowledge of the employee.**

(7)(a) In any action brought under subsection (6) of this section, there is a **rebuttable presumption** that a violation of subsection (5) of this section has occurred if a person bars or discharges an employee or prospective employee from employment or otherwise discriminates against an employee or prospective employee within 60 days after the employee or prospective employee has engaged in any of the protected activities described in subsection (5)(a) to (e) of this section. **The person may rebut the presumption that a violation of subsection (5) of this section has occurred by a demonstration of a preponderance of the evidence.**

(b) If a person bars or discharges an employee or prospective employee from employment or otherwise discriminates against the employee or prospective employee more than **60 days after the employee or prospective employee has engaged in any of the protected activities described under subsection (5)(a) to (e) of this section**, such action does not create a presumption in favor of or against finding that a violation of subsection (5) of this section has occurred.

OSH Act of 1970 – Section 11(c)

- (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.
- (2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.
- (3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

Definition of Employee

- Employee is defined in [ORS 654.005\(4\)](#) of the Oregon Safe Employment Act as:
 - (a) *Any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer.*
 - (b) *Salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations.*
 - (c) *Any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS chapter 656, whether by operation of law or by election.*

Adverse Actions

Examples of adverse actions:

- firing or laying off
- blacklisting
- demoting
- denying overtime or promotion
- disciplining
- denial of benefits
- failure to hire or rehire
- intimidation
- making threats
- reassignment affecting prospects for promotion
- reducing pay or hours

Protected Activities for Employees

Whistleblower rights provide protection against retaliation for employees who raise a complaint. Examples of protected activities for employees with workplace health and safety concerns include:

- raising a complaint to Oregon OSHA
- raising a complaint to an employer
- participating in inspections
- talking to an Oregon OSHA Compliance Officer (CO)
- asking to view employer exposure and injury records
- participating in a safety committee
- reporting an assault that occurred on the premises of a health care employer

Protected Activities for Employees (continued)

A worker may have the legal right to refuse to work where there is:

- a real danger of death or serious physical harm,
- there is insufficient time to have Oregon OSHA inspect and,
- where possible, the employee has sought from the employer and been unable to obtain correction of the dangerous condition.

Whistleblower investigations

- Oregon OSHA and BOLI have an interagency agreement that:
 - Defines the policies and procedures by which BOLI will use in the investigation of certain complaints of discrimination under ORS Chapters 654 and 659A;
 - Defines how OSHA will provide funding to BOLI for expenses related to the enforcement of ORS 654.062, complaints of discrimination by an employer against an employee for exercising rights provided by the Oregon Safe Employment Act and ORS 659A.
 - Oregon OSHA also audits BOLI casefiles on a quarterly basis to ensure that investigations conducted by BOLI are 11(c) related.

BOLI's Procedures when Filing a Complaint

Once a retaliation complaint is filed, several steps occur:

1. Complaint and Intake Screening. Immediately upon receiving a complaint, BOLI will begin to process it.
2. Notification Letter. BOLI will send out letters to the employee and employer requesting additional information.
3. Complainant Interview. BOLI will interview the employee for in-depth information about the alleged retaliation.
4. Investigation. BOLI performs a comprehensive investigation involving worksite interviews and fact-finding.

BOLI's Procedures when Filing a Complaint (continued)

5. Administration Determination or Dismissal. BOLI will come to a determination about the alleged retaliation.
6. Settlement. The parties may agree to a settlement prior to a BOLI determination.
7. Conciliation. If the finding is against the employer, a conciliation agreement will be reached.
8. Merit/Cause. BOLI determination finds that the employer did retaliate against the employee, or prospective employee for reporting safety concerns or violations.