

# Preventing Retaliation Claims During and After an Internal Investigation

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When an employee reports a concern regarding fraudulent or illegal behavior, an employer's immediate response is likely to open an investigation, stop any wrongdoing, and take appropriate corrective action. In the race to manage a challenging situation, it is easy to overlook the possibility that an investigation not conducted properly might actually create additional liability, even if the original allegations are unfounded. Given the ongoing influx of whistleblower claims, employers should be alert to preventing potential retaliation claims arising out of internal investigations.

## What laws should you be aware of?

A plethora of federal, state, and local laws prohibit employers from taking adverse actions against employees who report concerns such as safety violations, fraud, or discrimination; and against employees who participate in any related investigation.

Some whistleblower and anti-retaliation provisions are well known, such as those found in:

- The Sarbanes-Oxley Act (SOX) and The Dodd-Frank Act;
- The False Claims Act; and
- Title VII of the Civil Rights Act of 1964.

However, the legal protections for whistleblowers who report alleged violations of law go far beyond these statutes. For example, in addition to investigating claims under SOX, the Occupational Safety and Health Administration (OSHA) is also responsible for investigating whistleblowing claims in [more than 20 other federal statutes](#) covering a broad range of industries and activities, including:

- The Affordable Care Act;
- The Consumer Financial Protection Act;
- The Food Safety Modernization Act;

- The Asbestos Hazard Emergency Response Act; and
- The Consumer Product Safety Improvement Act.

## **How should you take action?**

Because there are abundant protections for employees who make complaints, employers should strive to conduct their investigations in a manner that does not create additional liability. Depending on the circumstances, this may include:

- Establishing strong anti-retaliation policies that cover protected activity and provide multiple avenues to report alleged misconduct;
- Informing employees reporting concerns and those participating in an investigation that retaliation is strictly prohibited and that they should report any perceived retaliation immediately;
- Making explicit to those accused of potential misconduct that retaliation against employees who have either complained or participated in an investigation is prohibited and that violating this policy can lead to disciplinary action up to and including termination; and
- Independently reviewing personnel decisions regarding employees who have complained or otherwise participated in an investigation.

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National Law Review, Volume IX, Number 357

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