



Fact Sheet: Retaliation Based on Exercise of Workplace Rights Is Unlawful

Federal agencies responsible for enforcing workers' rights seek to protect all workers from exploitation and violations, regardless of immigration status. Many workers, however, are deterred or prevented from asserting workplace rights for fear of retaliation. In some cases, employers may exploit immigration status to discourage workers from asserting their rights. U.S. laws generally prohibit employers from retaliating against workers for exercising their workplace rights, regardless of the workers' immigration status. Effective enforcement of labor and employment laws requires that the enforcement process be insulated from inappropriate manipulation by parties who seek to prevent workers from exercising their rights or retaliate against them when they do. This fact sheet clarifies that retaliation against workers who assert workplace rights is unlawful, regardless of the workers' immigration status.

Retaliation Under the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage and overtime protections for many workers in America, and it is enforced by the Wage and Hour Division of the U.S. Department of Labor. The FLSA also prohibits retaliation against any person who has filed a complaint with the Department or an employer (orally or in writing) or cooperated in an FLSA investigation. Protecting workers from retaliation and ensuring that they do not face threats or intimidation for exercising their rights is an important priority for the Wage and Hour Division.

Workers who lack work authorization are entitled to minimum wages and overtime pay for hours worked under the FLSA to the same extent as other workers. It is unlawful for an employer to terminate or in any other manner discriminate against workers in retaliation for asserting minimum wage or overtime claims (which can include pay issues such as deductions or tips) or cooperating with an FLSA investigation. These protections apply regardless of immigration status. For example, it would be unlawful for an employer to report an undocumented worker to immigration authorities in retaliation for filing a wage claim. Some remedies for retaliation violations may be limited for workers without work authorization.

For additional information, please see Wage and Hour Division [Fact Sheet # 77A: Prohibiting Retaliation Under the FLSA](#) or visit the Wage and Hour Division website: <http://www.wagehour.dol.gov>. To file a complaint regarding wage violations or retaliation call the toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243). Language services are available and calls are confidential.

Retaliation Under Laws Enforced by the Occupational Safety and Health Administration

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor enforces workplace safety and health standards and regulations and other worker rights under the Occupational Safety and Health (OSH) Act. The OSH Act prohibits employers from retaliating against employees for exercising their rights under the OSH Act. These rights include filing an OSHA complaint, participating in an inspection or talking to an inspector, seeking access to employer exposure and injury records, reporting an

injury, and raising a safety or health complaint with the employer. It is unlawful for an employer to terminate workers in retaliation for asserting OSH Act claims or cooperating with an OSHA investigation, regardless of immigration status. In addition, OSHA enforces the whistleblower provisions of 21 other laws protecting employees who report violations related to environmental and nuclear safety, transportation industry, as well as consumer and investor protections. Workers who lack work authorization are protected under the anti-retaliation provisions enforced by OSHA, although there may be some limits on remedies available to them.

For additional information, please visit the OSHA website: <http://www.whistleblowers.gov> (also available in Spanish at http://www.whistleblowers.gov/index_sp.html). To file a complaint regarding workplace safety, please visit: <http://www.osha.gov/pls/osha7/eComplaintForm.html> (also available in Spanish at http://www.osha.gov/pls/osha7/ecomplaintform_sp.html); to file a complaint regarding retaliation please visit: http://www.whistleblowers.gov/complaint_page.html (also available in Spanish at http://www.whistleblowers.gov/complaint_page_sp.html).

Retaliation by Federal Contractors Under Equal Employment Opportunity Laws Enforced by the Department of Labor's Office of Federal Contract Compliance Programs

The Office of Federal Contract Compliance Programs (OFCCP) enforces laws prohibiting employment discrimination by federal contractors (companies doing business with the federal Government) on the basis of race, color, religion, sex (including pregnancy and related medical conditions), gender identity (including transgender status), sexual orientation, national origin, disability or status as a protected veteran. All of these OFCCP-enforced laws make it illegal to fire, demote, harass, or otherwise retaliate against people (applicants, employees, or former employees) because they filed complaints of discrimination with OFCCP, because they complained to their employers or others about discrimination on the job, or because they participated in any activity related to the administration of the laws enforced by OFCCP (such as a complaint investigation or contractor compliance evaluation) or in any activity related to the administration of any other law federal, state or local law requiring equal employment opportunity. Unlawful retaliation under OFCCP-enforced laws may include any conduct that might well deter a reasonable worker from complaining of discrimination. These laws apply to every person, regardless of his or her immigration status, although some remedies may be limited for workers without work authorization.

For additional information, please visit the OFCCP website: <http://www.dol.gov/ofccp> or call the toll-free Help Desk line at 1-800-397-6251. To file a complaint of discrimination or retaliation, complete the complaint form, available in several languages, on the OFCCP website.

Retaliation Under Title VII of the Civil Rights Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act

The Equal Employment Opportunity Commission (EEOC) enforces laws prohibiting employment discrimination by employers, employment agencies, or labor unions on the basis of race, color, religion, sex (including pregnancy and related medical conditions, gender identity (including transgender status) and sexual orientation), national origin, age (40 or older), disability or genetic information. All of these EEOC-enforced laws make it illegal to fire, demote, harass, or otherwise retaliate against people (applicants, employees, or former employees) because they filed charges of discrimination with EEOC, because they complained to their employers or other covered entities about discrimination on the job, or because they participated in employment discrimination proceedings (such as an investigation or lawsuit). Unlawful retaliation under EEOC-enforced laws may include any conduct that might well deter a reasonable worker

from complaining of discrimination. These laws apply to every person, regardless of his or her immigration status, although some remedies may be limited for workers without work authorization.

For additional information, please visit the EEOC website: <http://www.eeoc.gov>. To file a charge of discrimination or retaliation you should contact your nearest EEOC office or call 1-800-669-4000. In addition you can complete an online assessment at <http://www.eeoc.gov/employees/howtofile.cfm>.

Retaliation Under the National Labor Relations Act

The National Labor Relations Board (NLRB) enforces the National Labor Relations Act (NLRA), which protects the rights of most private-sector workers to form, join, decertify, or assist a labor organization (union), and to bargain collectively through representatives of their own choosing, or to refrain from such activities. Employees may also join together to improve terms and conditions of employment without a union. The law forbids employers from interfering with employees in the exercise of rights to form, join or assist a labor organization for collective bargaining, or from working together to improve terms and conditions of employment, or refraining from any such activity. Similarly, labor organizations may not interfere with employees in the exercise of these rights.

Workers who lack work authorization are covered by the protections of the NLRA, including protection against retaliation. However, reinstatement and backpay are not available as legal remedies for employees who do not have work authorization. See section below, *Are Workers Who Lack Work Authorization Entitled to Backpay?*

For additional information, please visit the NLRB website: <http://www.nlr.gov>. To file a charge regarding violations or retaliation against an employer or labor organization, you have a number of options. You may call the toll-free information line at 1-866 667-NLRB (6572), which will transfer you to a local NLRB field office. You may also visit a local NLRB field office during its regular business hours or mail a charge to a local NLRB field office. You can find a NLRB field office directory with contact information and hours of operation at <https://www.nlr.gov/who-we-are/regional-offices>, and charge forms at <https://www.nlr.gov/resources/forms>. You may also e-file a charge through the NLRB's website at <https://apps.nlr.gov/eservice/efileterm.aspx?app=chargeandpetition>

Retaliation Under the Immigration and Nationality Act and Certain Nonimmigrant Visa Programs

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in the Civil Rights Division of the U.S. Department of Justice enforces the anti-discrimination provision of the Immigration and Nationality Act (INA). This provision prohibits employers from discriminating in hiring, firing, or recruiting or referring for a fee based on citizenship or immigration status; discriminating in hiring, firing, or recruiting or referring for a fee based on national origin by employers that fall outside of the EEOC's jurisdiction; discriminating in the process of verifying a worker's employment eligibility (the Form I-9 and E-Verify processes) based on national origin or citizenship status; and retaliation or intimidation against individuals who file charges with OSC, cooperate with an OSC investigation, contest action that may violate the law, or assert rights on behalf of themselves or others under the INA's anti-discrimination provision.

For additional information, call OSC's Worker Hotline at 1-800-255-7688, 9 a.m. to 5 p.m., Eastern (TTY for the hearing impaired: 1-800-237-2515). Callers can remain anonymous and language services are available. You can also visit <http://www.justice.gov/crt/about/osc> for more information on OSC and the law it enforces. For information on filing a charge, visit <http://www.justice.gov/crt/filing-charge>.

The Department of Labor's Wage and Hour Division enforces the worker protections in the H-1B (high skilled temporary workers), H-2A (temporary agricultural workers), and H-2B (temporary non-agricultural workers) nonimmigrant visa programs. Employers of H-2A workers and H-2B workers generally may not intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate in any manner against any person who has filed a complaint, testified or is about to testify in a proceeding, consulted with an attorney or legal assistance program, or exercised or asserted any right or protection under these programs or the INA on behalf of himself/herself or others. Employers may not retaliate or discriminate against H-1B workers who disclose violations or cooperate in proceedings concerning the employer's compliance with the program.

To file a complaint regarding retaliation in nonimmigrant visa programs, call the toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243). Language services are available and calls are confidential.

Are Workers Who Lack Work Authorization Entitled to Backpay?

"Backpay" generally includes two categories of wages: (a) wages earned for work performed, and (b) wages awarded for work that would have been performed if the worker had not been unlawfully fired. Workers who lack work authorization always have the right to the first category of backpay, or those wages they have earned for work performed, as well as certain other remedies as appropriate under labor and employment laws.

There are some limits on the second category of backpay, or wages for workers who lack work authorization with regard to work that has not been performed. The U.S. Supreme Court ruled in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), that the NLRB could not award backpay to an unauthorized worker who had been unlawfully discharged in retaliation for his involvement in a union organizing campaign for work that would have been performed if the worker had not been unlawfully fired. By contrast, if a work-authorized worker is unlawfully fired, that worker generally can be awarded backpay for work that would have been performed if the worker had not been fired. A worker is always entitled to pay for work actually performed, regardless of immigration status.

For additional information about remedies, please see:

NLRB General Counsel Memoranda:

- [GC 15-03](#) Updated Procedures in Addressing Immigration Status Issues that Arise During Unfair Labor Practice Proceedings
- [GC 98-15](#) Reinstatement and Backpay Remedies for Discriminatees Who May Be Undocumented Aliens In Light of Recent Board and Court Remedies
- [GC 02-06](#) Procedures and Remedies for Discriminatees Who May Be Undocumented Aliens after *Hoffman Plastic Compounds, Inc.*

U.S. Department of Labor, Wage and Hour Division [Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Plastics decision on laws enforced by the Wage and Hour Division](#)

Last Updated: December 10, 2015

This guidance document is not intended to be a final agency action, has no legally binding effect, and has no force or effect of law. The document may be rescinded or modified at the Department's discretion, in accordance with applicable laws. The Department's guidance documents, including this guidance, do not establish legally enforceable responsibilities beyond what is required by the terms of the applicable statutes, regulations, or binding judicial precedent. For more information, see "Memorandum for All Components: Prohibition of Improper Guidance Documents," from Attorney General Jefferson B. Sessions III, November 16, 2017.