

Retaliation Prevention & Whistleblower Rights

The law, the process, and the remedies



Your Presenter

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Disclaimer

- This information has been developed by a HIOSH Compliance Assistance Specialist and is intended to assist employers, workers, and others improve workplace health and safety.
- While we attempt to thoroughly address specific topics, it is not possible to include discussion of everything necessary to ensure a healthy and safe working environment in this presentation.
- This information is a tool for addressing workplace hazards, and is not an exhaustive statement of an employer's legal obligations, which are defined by statute, regulations, and standards.
- This document does not have the force and effect of law and is not meant to bind the public in any way.
- This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. It does not create (or diminish) legal obligations under the Hawaii Occupational Safety and Health Law.
- Finally, HIOSH/HIOSH may modify rules and related interpretations in light of new technology, information, or circumstances; to keep apprised of such developments, or to review information on a wide range of occupational safety and health topics, you can visit HIOSH's website at labor.hawaii.gov/hiosh

Disclaimer part 2

- Information applies to people in Hawai'i under HIOSH jurisdiction
- Audience includes participants from across the country
- Attendees outside Hawai'i should check their own Federal or State Plan program for relevant guidance

Objectives

- To build a **foundational understanding** of HIOSH Law and other relevant information.
- Ultimately, to protect our communities.

Table of Content

1. Purpose and Background of Occupational Safety and Health
2. Purpose and Background of Whistleblower
3. HIOSH Investigative Whistleblower Process
4. Elements of Retaliation
5. Anti-Retaliatory Programs
6. Available Resources

Header

Respiratory Protection Training

Content

Purpose:

To ensure that workers can safely and effectively use respirators to protect themselves

Actionable Item(s):

- Initial, annual, and as needed training on:
 - why the respirator is necessary and how improper fit, use, or maintenance can compromise the protective effect of the respirator
 - limitations and capabilities of the respirator
 - use in emergency situations
 - how to inspect, put on and remove, use and check the seals
 - procedures for maintenance and storage
 - recognition of medical signs and symptoms that may limit or prevent effective use
 - general requirements of this standard

29 CFR 1910.134(k)

Referenced statute, regulation, or other source



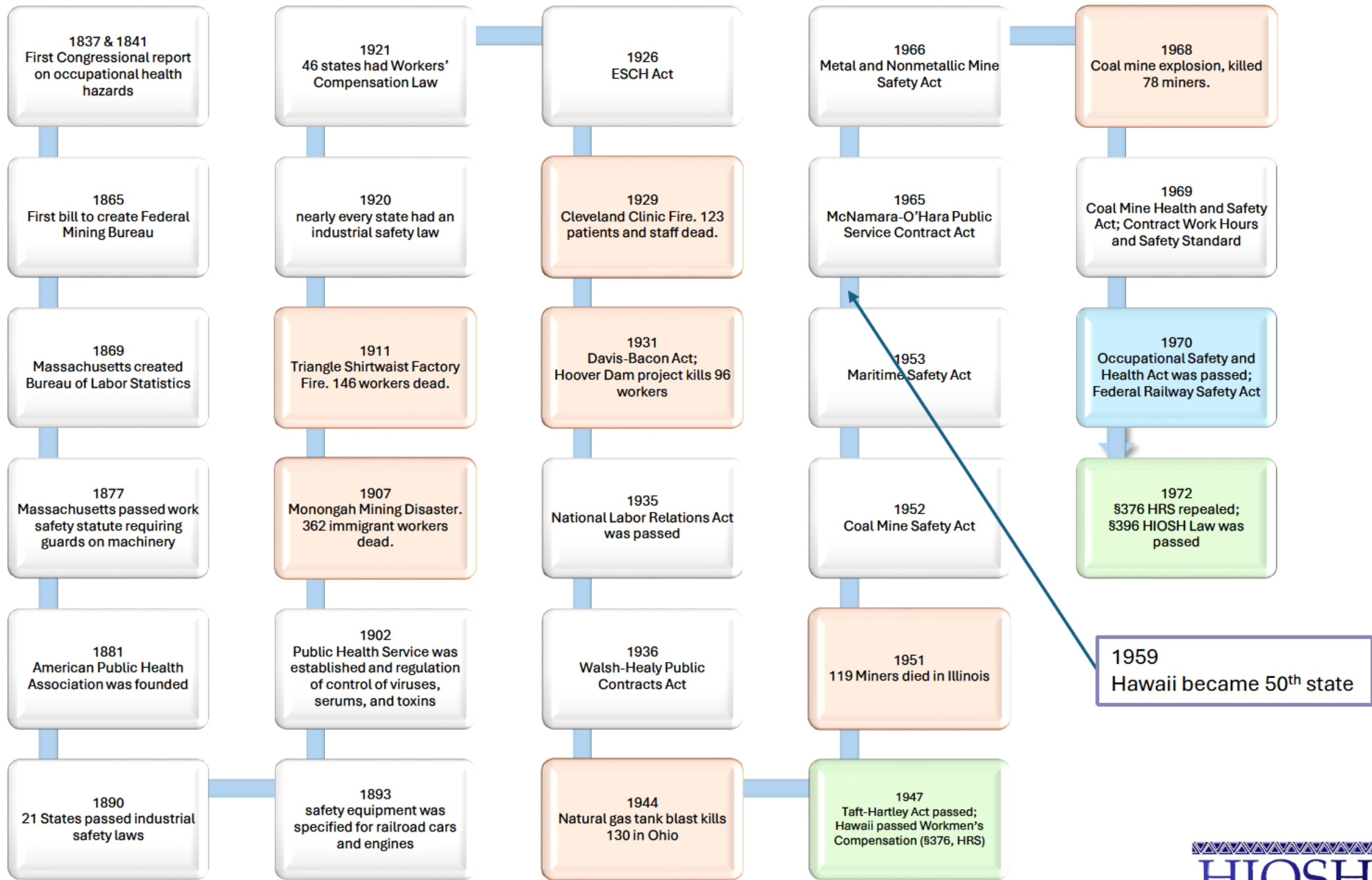
Image

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Page number

1. Purpose and Background of Occupational Safety and Health

“He Kuleana Kō Kākou”



Some but not all history in U.S. and Hawaii
Catastrophes are highlighted in orange

Burdens towards Commerce

- Lost production,
- Lost wages,
- Medical expenses, and
- Disability compensation payments

29 U.S.C. §651(a)

§396-2, HRS

OSHA vs HIOSH



- Exist nationwide
- In Hawaii, jurisdiction on*:
 - Federal agencies and
 - Federal property
- Occupational Safety and Health
- +20 Anti-Retaliation statutes



- Only in Hawaii
- Jurisdiction on*:
 - Private businesses,
 - City & County, and
 - State agencies
- Occupational Safety and Health
- 1 Anti-Retaliation statute

*29 CFR § 1952.16

Statutes and Regulations



- **Federal Statute:**
 - 29 U.S.C. Ch. 15 – OSH Act
- **Federal Regulations:**
 - 29 CFR Subpart B - Regulations
 - §1904 (Recording and Reporting)
 - §1910 (General Industry)
 - §1926 (Construction)
 - §1928 (Agriculture)



- **Hawai'i Revised Statute:**
 - § 396, HRS
- **Hawai'i Administrative Rules:**
 - §12-52.1 (Recording and Reporting)
 - §12-60 (General Industry)
 - §12-110 (Construction)
 - §12-208 (Agriculture)

Mission of the HIOSH Law



To assure so far as possible, every working man and woman in the State safe and healthful working conditions

Goal of the HIOSH Law/OSHA Act

“*To prevent the first accident*”

HIOSH Divisions

Compliance
Division

Cooperative
Program Division

Boiler and
Elevator Division

Hoisting Machine
Operators
Advisory Board
(HMOAB)

Certificate of
Fitness

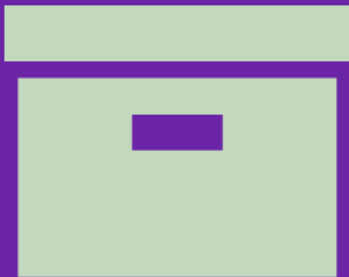
Certified Safety
and Health
Professional

Key HIOSH Divisions



Compliance Division

- Occupational Safety and Health
- Anti-Retaliation (“Whistleblower”)

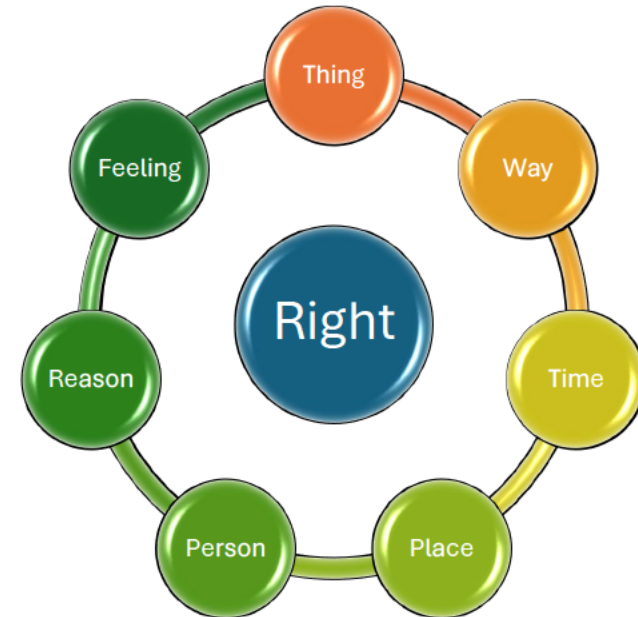


Cooperative Program Division

- Hawai‘i Voluntary Protection Program (HVPP)
- Alliance Program
- Strategic Partnership
- Consultation and Training
- Safety and Health Achievement Recognition Program (SHARP)

2. Purpose and Background of Whistleblower

“Kīnā‘ole”



At-Will Employment Doctrine

“

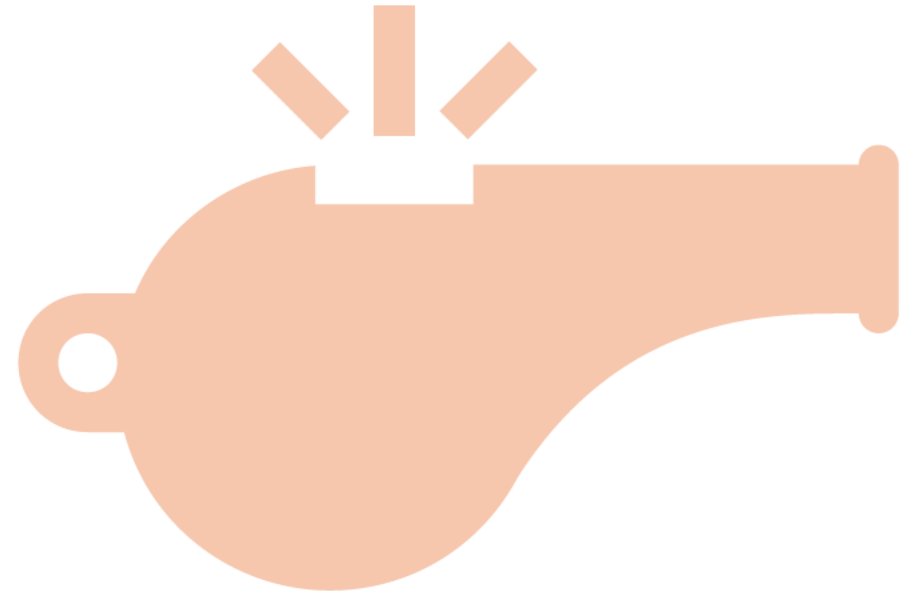
An employer or employee can end the employment at any time, for any reason. However, the reason for termination **cannot be illegal.**

usa.gov

Purpose of Whistleblower

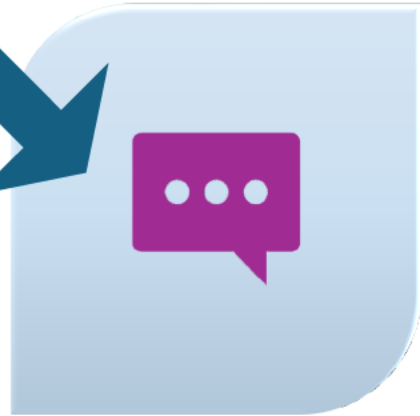
Purpose

To protect individual employees from retaliation for reporting safety deficiencies or participating in OSH Act [HIOSH Law] proceedings.



88 Fed. Reg. 49473 (September 3, 2021)

HIOSH covers...



PROTECTED ACTIVITY



PROTECTED CLASSES

Note:

For Protected Classes,
contact the **Hawai'i Civil
Rights Commission (HCRC)**.

Anti-Retaliation Statutes and Regulations



- **Federal Statute:**
 - 29 U.S.C. §657, 660
- **Federal Regulations:**
 - 29 C.F.R. §1977 (OSH Act)

(more next slide)



- **Hawai'i Revised Statute:**
 - § 396-8(e), HRS
- **Hawai'i Administrative Rules:**
 - §12-57

Anti-Retaliation Statutes

OSHA Whistleblower Statutes

1. Anti-Money Laundering Act (90 days)
2. Asbestos Hazard Emergency Response Act (90 days)
3. Clean Air Act (30 days)
4. Comprehensive Environmental Response, Compensation and Liability Act (30 days)
5. Consumer Financial Protection Act of 2010 (180 days)
6. Consumer Product Safety Improvement Act (180 days)
7. Criminal Antitrust Anti-Retaliation Act (180 days)
8. Energy Reorganization Act (180 days)
9. Federal Railroad Safety Act (180 days)
10. Federal Water Pollution Control Act (30 days)
11. International Safe Container Act (60 days)
12. Moving Ahead for Progress in the 21st Century Act (motor vehicle safety) (180 days)
13. National Transit Systems Security Act (180 days)
14. Occupational Safety and Health Act (OSH Act) (30 days)
15. Pipeline Safety Improvement Act (180 days)
16. Safe Drinking Water Act (30 days)
17. Sarbanes-Oxley Act (180 days)
18. Seaman's Protection Act (180 days)
19. Section 402 of the FDA Food Safety Modernization Act (180 days)
20. Section 1558 of the Affordable Care Act (180 days)
21. Solid Waste Disposal Act (30 days)
22. Surface Transportation Assistance Act (180 days)
23. Taxpayer First Act (180 days)
24. Toxic Substances Control Act (30 days)
25. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (90 days)

HIOSH Whistleblower Statute

1. §396-8(e), HRS (60 days)

Note:

Statute of limitations is **60 days** (§396-8(e)(4), HRS).

Anti-Retaliation Statutes

OSHA Whistleblower Statutes

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[Whistleblowers.gov](https://www.whistleblowers.gov)



§383 HRS vs §396 HRS

Unemployment Insurance

Purpose:

- To give **partial wage replacement** for unemployed workers
 - Until they find new employment or old work

HIOSH Whistleblower

Purpose:

To assure so far as possible, every working man and woman in the State **safe and healthful working conditions**

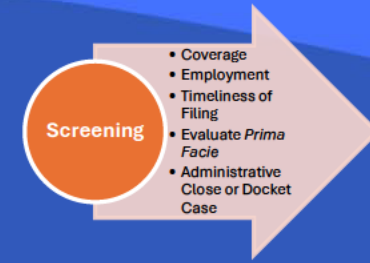
3. HIOSH Whistleblower Investigative Process



HIOSH Process



HIOSH Process Screening



- Coverage
- Employment
- Timeliness
- Evaluate *Prima Facie*
- Administrative Close or Docket Case
 - If Docketed, both parties will be notified of alleged unlawful retaliation
 - Company submits written *position statement*

Investigation Steps

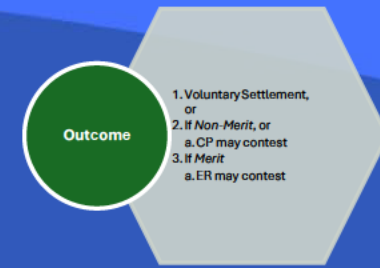


1. Investigate

- a. Request documents
- b. Interviews
- c. Photo/Video/Audio

2. Closing Conference

HIOSH Process Outcome



1. Voluntary Settlement, or

2. If *Non-Merit*, or

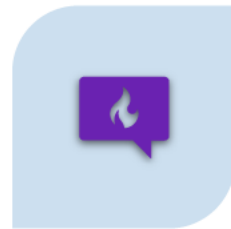
a. CP may contest

3. If *Merit*

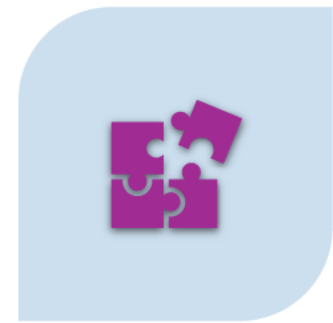
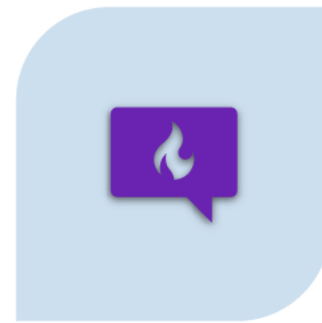
a. ER may contest

4. Elements of Retaliation

Aka Prima Facie



Elements of Retaliation



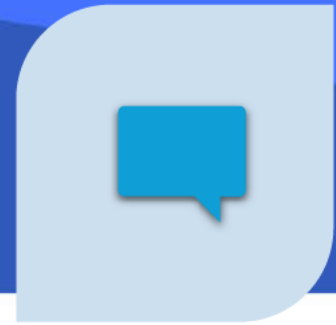
THE EMPLOYEE ENGAGED IN
PROTECTED ACTIVITY

THE EMPLOYER KNEW ABOUT, OR
SUSPECTED, THAT THE EMPLOYEE
ENGAGED IN THE PROTECTED
ACTIVITY;

THE EMPLOYER TOOK AN *ADVERSE*
ACTION AGAINST THE EMPLOYEE; AND

THE EMPLOYEE'S PROTECTED ACTIVITY
MOTIVATED OR CONTRIBUTED TO THE
ADVERSE ACTION.

Employers must not retaliate...



- Against employees who (includes but not limited to):
 - Filing a safety/health complaint with HIOSH
 - Participating in a HIOSH inspection
 - Reporting a work-related injury or illness
 - Communicating about safety/health matters to management personnel
 - *Refusal:
 - to operate or handle any machine, device, apparatus, or equipment that is unsafe
 - to engage in unsafe practices in violation of the rules, standard, citation, or order issued by HIOSH

§396-8(e), HRS
§12-57-1(a), HAR

Elements of Job Refusal



1. Has a reasonable apprehension of death or serious injury, and
2. Refuses in good faith, and
3. Has no reasonable alternative, and
4. Has insufficient time to eliminate the condition through regular statutory enforcement channels, (i.e., contacting HIOSH), and
5. Where possible, sought from his or her employer, and was unable to obtain, a correction of the dangerous condition

§12-57-7(b), HAR

Never Walk off the Job

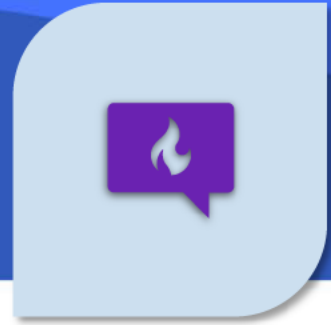


- Hazardous conditions may typically be corrected by employer when notified,
- Employee can request inspection if corrections are not accomplished,

∴ Therefore, **don't walk off the job** because you can still be disciplined.

§12-57-7(b), HAR

Adverse Actions



- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation, threats, or harassment
- Reassignment to a less desirable position
- Reducing pay or hours

Some but not all examples of Adverse Actions

Civil Penalties & Relief

- Civil Penalties: ≤**\$1,000**/violation
- Damages
 - Rehiring, or
 - Re-instatement with:
 - Back pay, and
 - Restoration of seniority
 - “Other appropriate relief”

§396-8(e)(6), HRS
§12-57-1(d), HAR
§12-57-1(e), HAR

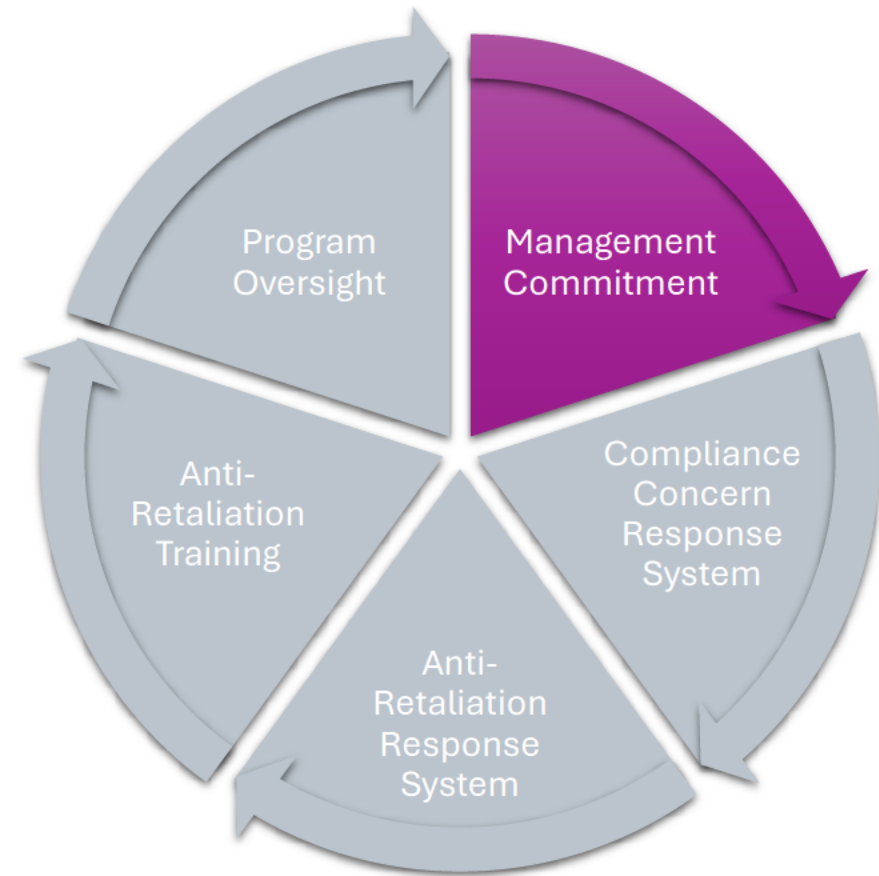
5. Anti-Retaliatory Programs (ARP)

Ways to be proactive.
Visit [whistleblowers.gov](https://www.whistleblowers.gov) for more.



Management Leadership, Commitment, and Accountability

- **Implement** and oversee reporting systems
- **Consult** with workers on anti-retaliation
- **Train** leadership on retaliation prevention
- **Evaluate** reporting willingness and outcomes
- **Recognize** employees' positive disclosures



Compliance Concern Response System

- **Provide** multiple reporting channels
- **Protect** reporter confidentiality and access
- **Give** clear internal/external reporting guidance
- **Allow** reporting to government freely
- **Encourage** early, informal employee communication
- **Remove** incentives that discourage reporting



Anti-Retaliatory Programs

Anti-Retaliation Response System

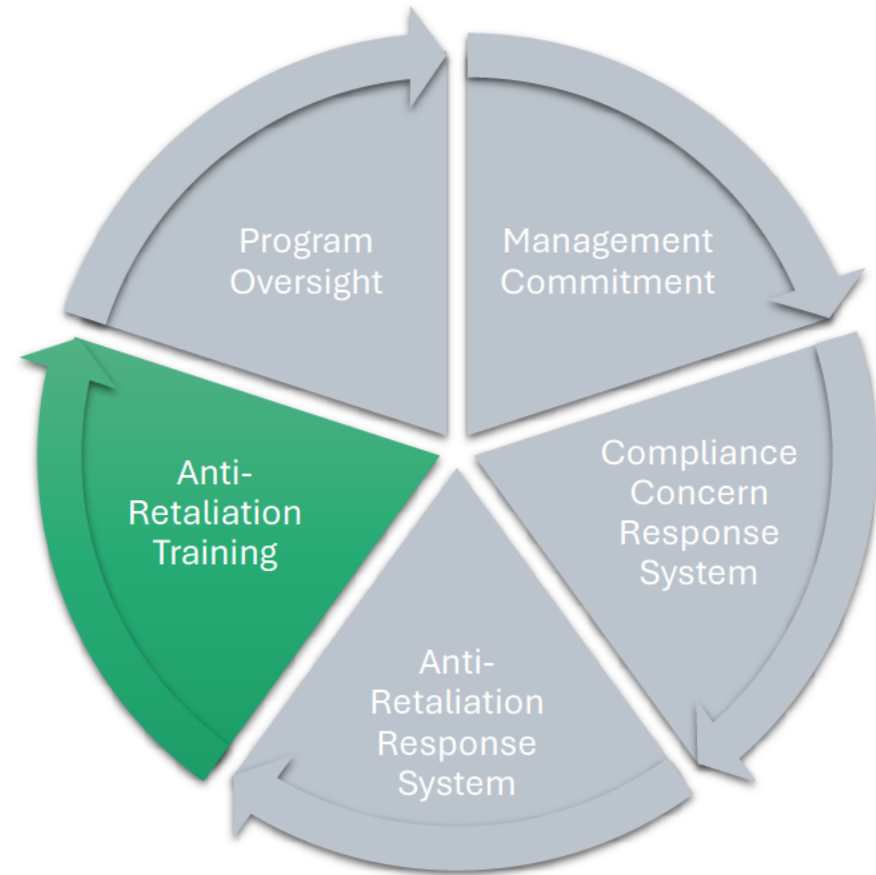
- **Treat** all retaliation reports seriously
- **Protect** confidentiality without blocking investigations
- **Explain** investigation process transparently
- **Use** objective, independent review process
- **Avoid** preconceived assumptions in investigations
- **Apply** conflict-of-interest safeguards
- **Involve** senior leaders appropriately
- **Don't** restrict external reporting rights
- **Keep** employees updated throughout investigation
- **Follow** up to ensure protection
- **Use** independent third-party investigators
- **Separate** investigation from company legal counsel
- **Consider** early dispute-resolution options
- **Clarify** HIOSH/OSHA filing rights and deadlines
- **Address** chilling effects proactively



Anti-Retaliatory Programs

Anti-Retaliation Training

- **Explain** anti-retaliation rights, laws, and regulations
- **Outline** reporting and program process
- **Define** retaliation behaviors clearly



Anti-Retaliatory Programs

Program Oversight

- **Develop** and **implement** a plan of oversight of the anti-retaliation program
- **Review** oversight findings
- **Improve** and **modify** as needed



Q: A restaurant employee raised concerns about food safety to their employer and was then fired. HIOSH covers this under §396-8(e), HRS.

(select one answer)

A. True

B. False

Note: Under the **FDA's Food Safety Modernization Act** (FSMA), they must file with **Federal OSHA** within 180 days of adverse action.

Q: Under §396-8(e), HRS, within how many days must a whistleblower complaint be filed after the adverse action?

(select one answer)

A. 10 days

B. 30 days

C. 60 days

D. Five years

Note:

Statute of limitations is **60 days** (§396-8(e)(4), HRS).

Q: An employee is protected from retaliation for reporting conduct that the employee mistakenly believes is unlawful.

(select one answer)

A. True

B. False

Note:

- It has to be in **good faith**. Malicious or knowingly false reports are not protected activities.
- Scrutinizing would discourage employees from speaking up about problems, creating a *chilling effect*.

Q: Which of the following is not considered *protected activity* under HIOSH's whistleblower protections?

(select one answer)

A. Reporting a work-related injury

B. Age

C. Participating in HIOSH inspection

D. Asking for SDS

Note: For Protected Classes, contact Hawai'i Civil Rights Commission (HCRC).

Q: Whistleblowers can file anonymously with HIOSH.

(select one answer)

A. True

B. False

Note: Unlike HIOSH's safety and health complaints, whistleblower complaints cannot be filed anonymously.

Q: An employee can successfully claim retaliation under §396-8(e), HRS, if they were fired and then filed a safety complaint with HIOSH.

(select one answer)

A. True

B. False

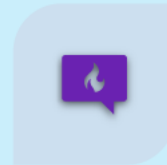
Note:



THE EMPLOYEE ENGAGED
IN *PROTECTED ACTIVITY*



THE EMPLOYER KNEW
ABOUT, OR SUSPECTED,
THAT THE EMPLOYEE
ENGAGED IN THE
PROTECTED ACTIVITY;



THE EMPLOYER TOOK AN
ADVERSE ACTION AGAINST
THE EMPLOYEE; AND



THE EMPLOYEE'S
PROTECTED ACTIVITY
MOTIVATED OR
CONTRIBUTED TO THE
ADVERSE ACTION.

Q: An employee can file under §396-8(e), HRS with HIOSH if he/she was fired because he/she suffered a work injury which is compensable under the Workers' Compensation Law.
(select one answer)

A. True

B. False

Note:

An employer may not suspend, discharge, or discriminate against you solely because the employee has suffered a work injury, compensable under Workers' Compensation.

- **Exception:** *the employee is no longer capable of performing the work, and*
- *the employer has no other available work which the employee is capable of performing.*

§378-32(a)(2), HRS Wage Standards Division (30-day statute of limitation)

6. Available Resources

To help comply or understand the HIOSH Law better

HIOSH Whistleblower Investigation Manual

[Home](#) / [Guidelines](#) / [Directives](#) /

HIOSH Whistleblower Investigation Manual (HWIM)

UNDER CONSTRUCTION

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- [Executive Summary](#)
- [Significant Changes](#)
- [Disclaimer](#)
- [Table of Contents](#)

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DIRECTIVE NUMBER: CPL 02-03-011

SUBJECT: Whistleblower HIOSH Investigation Manual (WHIM)

EFFECTIVE DATE: October 1, 2025



ABSTRACT

Mahalo (*thank you*)

- April = Struck By hazards and relative standards
- May = Fall Protection Standards
- June = Trench and Excavation Standards
- July = Electrical Standards
- August = Bloodborne Pathogens Standards
- September = Hazard Communication Standard

Sign up for [HIOSH e-Newsletter](#) for updates